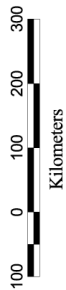
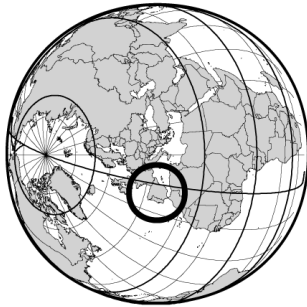


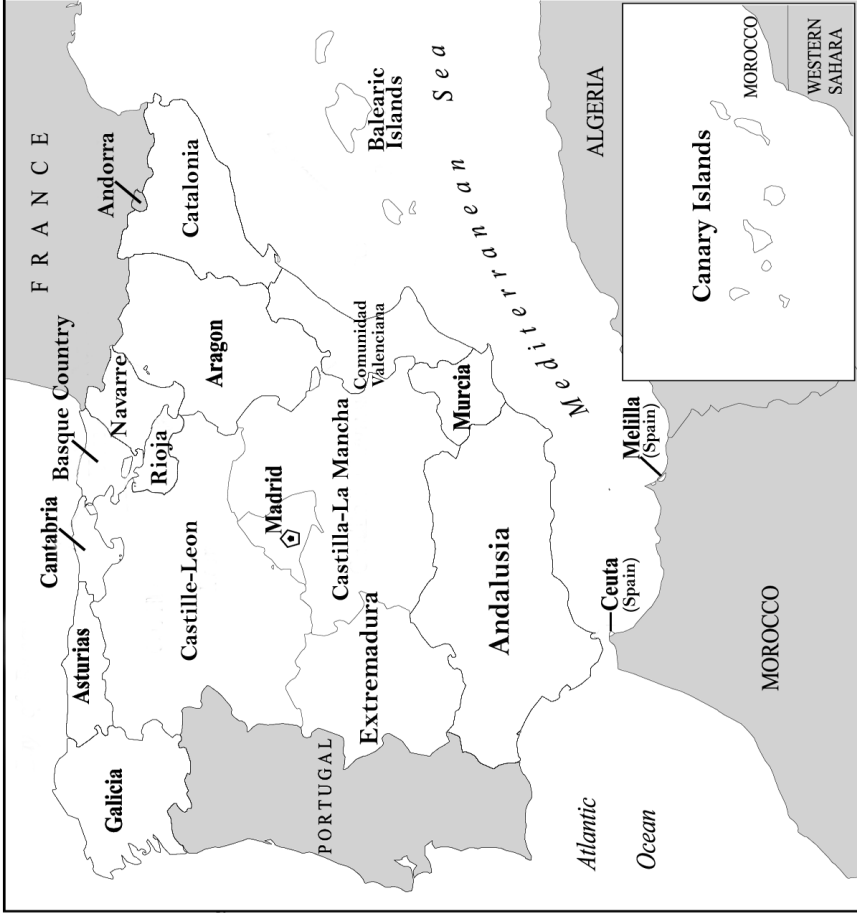
Kingdom of Spain

Capital: Madrid
(Madrid Province)
Population: 40 Million
(2001 est.)

Boundaries and place names are representative only and do not imply any official endorsement.



Sources: ESRI Ltd.; CIA World Factbook;
Times Atlas of the World



Kingdom of Spain

FRANCISCO VELASCO CABALLERO

Local governments play a very important role in Spain's contemporary success. They contributed significantly to the establishment of democracy. The restoration of democracy, after four decades of military dictatorship (1939–75), was not only a question of freely electing the central government; it also required expansion of a new culture of participation and freedom. The municipal councils played a fundamental role in this process as far back as 1977, before the Constitution was proclaimed in 1978.

Local governments, next to the new autonomous communities created in 1979, have been decisive in Spain's economic development. The municipal and provincial councils have collaborated very actively to establish the economic bases (i.e., services and infrastructure) for private entrepreneurial activity. Thus the municipal and provincial councils have been successful in securing, like never before, more efficient delivery of public services, such as water supply, waste disposal, and highway maintenance. In addition, through the use of new municipal companies and administrative agencies, councils have attained unprecedented levels of success in promoting economic development locally. Recently, local governments have also been influential in achieving the objectives of the welfare state. It is the city councils that, precisely because of their proximity to the citizens, were the first to design and implement public policies focused on underprivileged citizens.

The constitutional and legal frameworks of local governments, firmly grounded in the principles of democracy and autonomy, play an integral role in the social, economic, and political success of Spain. Democracy has made local governments fully accountable to their citizens and has thus fostered their autonomy. In turn, local autonomy has stimulated the leading role of the councils. It has also prompted innovative public choices suited to the specific needs of individual towns. To accommodate this local autonomy, sufficient resources are made available to finance specific local choices.

Despite the progressive nature of local government, politicians and scholars have asked for a review of the local government system. Some proposals concern the possibility of introducing new powers of legal control by the autonomous communities over all local governments, or at least over the smaller ones. By contrast, the associations of local governments advocate for the expansion of local jurisdiction and the financial resources available to local government. All these proposals, however, rest on a firm acceptance of the current local government system and are mainly directed at remedying certain problems and developing local autonomy.¹

The Kingdom of Spain ranks among the largest countries in the European Union (EU) in terms of its population, gross domestic product (GDP), and size of its territory.² Spain has 44.7 million inhabitants, constituting 8.9% of the entire population of the EU. Currently, at least 4.1 million of these inhabitants are immigrants (9.3% of the total population).³ These figures would be even higher if the approximately 700,000 additional illegal immigrants were included in the total. Moreover, the fact that Spanish nationality is easily attainable by certain foreigners from Latin American countries and Morocco (mainly) means that in a few years a significant portion of the population will come from other countries. Although the Spanish population is certainly growing (at a rate of 1.2% in 2006), almost the entire increase is attributable to immigration and is concentrated in only a few regions and towns, namely Catalonia, the Mediterranean coast, and Madrid. The changes in the demographic structure have resulted in new political and constitutional debates, such as the electoral rights of immigrants (which at the moment are tied to nationality) and the institutional position of other religions, such as Islam and many Protestant churches, which have grown as a result of numerous Latin American immigrants, thus countering the traditional pre-eminence of the Roman Catholic Church.

The economic position of Spain has changed since 1986, when it first entered the European Community. Estimated GDP for 2006 rose to €976.189 billion (US\$1.3 trillion), which represents a good 3.9% of annual economic growth (the highest figure in the EU). Nevertheless, these positive figures hide several economic weaknesses. Per capita income in Spain ranks only twelfth in the EU. In addition, the striking Spanish economic growth shows important imbalances: 60% of the national economy is derived from the service sector, with 10% originating from the building sector. In addition, economic growth is highly concentrated in only a few regions: Madrid, Catalonia, Murcia, the Basque Country, and Navarre.

The constitutional structure of Spain has remained stable since 1978. In almost thirty years, only one reform has been instituted: the recognition of EU citizens' electoral rights in municipal elections. Within the context of this constitutional stability, however, salient reforms have been made to the

statutes of autonomy of the different regions of Spain. These reforms have been geared toward increasing regional self-government. With the last reforms of these statutes (Catalonia in 2006 and Andalusia, Aragón, and the Balearic Islands in 2007), the level of regional autonomy easily equals or surpasses that which prevails in many federal countries. Nevertheless, the term “federal” is normally avoided in Spanish territorial and political debates as a consequence of the separatist connotations associated with its use since the beginning of the nineteenth century.

The “quasi-federal” character of the Spanish state can be easily demonstrated by considering some salient features of the autonomous communities. First, the statutes of autonomy are necessarily drafted and initially passed by the regional parliaments – logically within the boundaries of the Constitution – and finally approved by the Spanish Parliament. Every autonomous community has a parliament exercising a broad jurisdiction, even exclusively, on a wide range of important matters – for example, education, public security, local government, urban planning, and environmental protection. Even more extensive are the administrative functions of the autonomous communities because they apply not only regional laws but also most of the state ones. Three autonomous communities – the Basque Country, Catalonia, and Navarre – also have their own police forces, although Navarre has a mixed system. Finally, even though the administration of justice is an exclusive competence of the state, the autonomous communities also possess important powers relating to the judicial bureaucracy.

There are currently proposals by the national government for constitutional reforms. These would address matters such as the equality of male and female heirs in respect of succession to the throne, definitive identification of the autonomous communities that comprise Spain, and reform of the Senate to reinforce its function as the chamber for territorial representation.

Furthermore, the structure and position of the political parties have become crystallized since the 1980s. The political scene is dominated by two principal parties: the conservative Partido Popular (PP) and the social-democratic Partido Socialista Obrero Español (PSOE). These two parties have been trading places as the ruling party since 1982. Following the two leading parties, the left-wing Izquierda Unida, which incorporates the historical Partido Comunista (Communist Party), has been progressively losing electoral support, nowadays failing to obtain anything higher than 5.5% of the vote. Additionally, in three of the autonomous communities – Catalonia, Galicia, and the Basque Country – there are sizable nationalist parties. In the case of the Basque Country, the Partido Nacionalista Vasco has been governing the community without interruption since 1979. Catalonia had also been governed continuously by the *Convergència i Unió*, a nationalist party, until four years ago. The *Bloque Nacionalista Gallego* is less popular, being the third political force in Galicia, after the PP and the PSOE.

HISTORY, STRUCTURE, AND INSTITUTIONS OF LOCAL GOVERNMENT

Municipalities have been a permanent fixture in the political history of Spain. Yet the first historical predecessors of the present municipalities are found during the Christian Conquest and repopulation of the Iberian Peninsula, from the Arab kingdoms, in the eighth century. The conquest was based on "*cartas pueblas*" (privileges for repopulation), which secured for the new settlers possession of land and a high level of autonomy against the feudal or royal power. Although later centuries saw limits progressively imposed on this self-government of cities and villages, it remained a historical reference to a time of freedom and autonomy of the cities. This memory repeatedly reappeared as a political "myth" in later centuries.

From the mid-twelfth century, the municipalities were subject to significant restrictions of power, to the benefit of the royal crown or the lords. At that time, there was an irregular distribution (along the Iberian Peninsula) of cities and towns subject to different authorities. Towns of *realengo* were placed under the authority of the king, whereas cities of *señorío* were subject to the power of feudal lords. Although the municipalities of *realengo* lost part of their power (which was exerted to a great extent by authorities directly named by the king – *corregidores*), at the same time, they took part in the new monarchical institutions (including representation of these cities in the Cortes, or Royal Parliament). The diminution of the power of the municipalities was even more conspicuous in the territories of *señorío*. In addition, the city councils lost their "democratic" character, no longer being popular assemblies but autocratic bodies composed of councillors appointed by the king (or the feudal lord) for life and in exchange for a fixed payment. This historical phenomenon, known as the "sale of public posts," was a determinant cause of the continual deterioration of municipal life until the end of the eighteenth century. Similarly, from the sixteenth century, a process of municipal fragmentation began, consisting of the dismemberment of ancient larger municipalities. It resulted in the formation of some 20,000 local bodies by the end of the *ancient régime*. Again, the need for funding by the monarchy appears to have been the motivation for the fragmentation. The creation of a new municipality, appointed by the king by means of "*privilegio de viallazgo*," gathered important revenue for the royal treasury. Also to the further benefit of the king, the fragmentation of municipalities limited the political power of some of the great cities of the time, such as Toledo. The Royal House of the Bourbons, having settled in Spain as a result of the War of the Succession (1701–14), transferred to Spain the centralized organization of power found in France. As a result, the municipalities lost autonomy (mainly economic) to the benefit of the new royal authorities (*intendentes*). This situation lasted until the dawn of constitutionalism and Spanish liberalism in 1812.

The Spanish Constitution of 1812 was directly connected to the French revolutionary movement, initiated in 1789. While the Spanish cities fought against Napoleon, the deputies of those same cities approved a constitution clearly influenced by French revolutionary thought. The 1812 Constitution paid special attention to municipalities, prompting a significant reduction in the number of municipalities (leaving around 9,000 in existence, a figure similar to that of today). It also set up a second level of local government: the province. It forbade the sale of municipal posts and established the election of mayors and councillors by the townspeople (only the heads of households). The new constitutional municipalities were subject to the control of the provincial councils.

The political instability of the nineteenth century was duly reflected in local government. Frequent military uprisings and erratic alternation between two parties in the central government – the “moderate” and the “progressive” parties – resulted in continuous changes being made to the political organization of local bodies. An example of the parallel processes this evoked is that mayors were either elected by the townspeople or appointed by the royal government. Councils, depending on who was in power, were assigned either merely deliberative roles or actual decision-making ones. Broad government powers could be manipulated to suspend or dissolve the councils or to restrict them. Last but not least, those in power at the time determined the extent of the powers of the provincial president (*jefe político*) over the mayors and municipal councils.

Several dictatorships during the twentieth century culminated in the political and economic regression of municipalities. The dictatorship of General Francisco Franco (1939–75), in particular, firmly placed the local bodies (i.e., municipalities and provinces) under the control of the central government. This was effected not only through the direct appointment and removal of mayors and provincial presidents but also by means of requiring central government approval of all major local decisions. This situation radically changed after the proclamation of the Constitution of 1978. The municipalities and provinces were democratized and assumed a central position in the new decentralized state.

At present, public authority is exercised at four basic levels in Spain: the central state, autonomous communities, provinces, and municipalities. These four orders of government are directly established and guaranteed by the Constitution. The entire state is comprised of seventeen autonomous communities (plus two autonomous cities – Ceuta and Melilla) and two types of local bodies: forty-three provinces and 8,108 municipalities.⁴ Unlike municipalities, provinces do not always exist as local bodies in all the autonomous communities. In some autonomous communities – Asturias, Madrid, La Rioja, Cantabria, Murcia, the Balearic Islands, and Navarre – provinces are only subdivisions of the state and not

local governments. In the Basque Country, provinces are substituted for by the "Historical Territories" of Álava, Guipúzcoa, and Vizcaya. In the case of the archipelagos, the distribution of local entities is complex. The Autonomous Community of the Canary Islands is composed of two provinces; each province has several islands, and each island is a local entity. The Autonomous Community of the Balearic Islands does not have provinces, but the islands that constitute the archipelago function as local entities too. This territorial power structure can only be explained using historical-political criteria. In respect of efficiency criteria, it is difficult for a population of 44 million to justify the existence of seventeen autonomous communities,⁵ and even less so the existence of over 8,000 municipalities (of which, incidentally, over 80% have a population of under 5,000 inhabitants and only 2% have over 50,000 inhabitants). However, despite the inefficiency inherent in the high number of primary territorial entities, the reduction or fusion of these entities is not currently on the agenda of the political parties.⁶ The sentiment of territorial identity is deeply rooted in Spain, so any attempt to amalgamate municipalities faces strong social resistance.

From the perspective of expenditure, the progressive importance of the autonomous communities, the withdrawal of the central state, and the apparent stability of the local entities are clearly observed. Thus, in global figures in 2006, after intergovernmental transfers, 49% of public expenditure was accounted for by the state, 37% by autonomous communities, and 13% by local entities (i.e., municipalities, islands, and provinces). These figures can easily be explained through an analysis of the main economic costs of two public services – education and health – both of which are functions of the autonomous communities. In comparative terms, in countries where local expenditure rises above 19% of total public expenditure, education and health services are generally allocated to local bodies.⁷

The territorial distribution of power is asymmetrical. The national state centres its activity on legislative functions, the administration of justice, and the administrative management of very select sectors (such as defence and the construction and management of general infrastructure). The autonomous communities perform legislative tasks and manage the greater part of the administrative functions, mainly those that are typical of the social state, such as education, health, and social security. The municipalities implement state and regional laws and provide most local public services, such as traffic, waste management, and the municipal police force, among others. Finally, the provinces assist and cooperate with municipalities, their main function being to ensure the provision of local services by the smallest municipalities. In the case of the archipelagos (i.e., the Canary and the Balearic Islands), the functions of the continental provinces and a good part of the regional powers are performed by the islands. Some particularities are presented by the "Historical Territories" of the Basque Country.

They operate in similar ways to autonomous communities in so much as they have ample jurisdiction, for instance, regarding taxation.

In sum, the primary structure of local government in Spain is based on two institutions – municipalities and provinces – but their composition varies significantly. On the one hand, municipalities can be large, with over 500,000 inhabitants (e.g., Madrid, Barcelona, Valencia, Sevilla, Zaragoza, and Malaga); on the other hand, as is the case with the majority, they are medium-sized or small cities. Of the 8,108 Spanish municipalities, 6,817 (84.1%) have fewer than 5,000 inhabitants. Provinces show similar divergence. In contrast with the most populated, such as Barcelona, Zaragoza, or Malaga, each with over 1 million inhabitants, others, like Soria, hardly reach 90,000. The great differences in size are a source of the various dysfunctional elements in the structure of local government because the interests of the larger municipalities are difficult to reconcile with those of the more numerous smaller ones. Whereas the large cities openly question the functions, and even the existence, of provinces, small municipalities are clearly dependent on them. Another example is the difficulty of combining the interests of the different sized municipalities in the context of (1) exclusive associations of municipalities and provinces, (2) the Federation of Municipalities and Provinces, for the whole of Spain, and (3) the federations of municipalities within the autonomous communities.

The constitutional system does make allowances for (although it does not impose) the existence of other local bodies: those established by the autonomous communities – this is the case with the *comarcas* (counties) in Catalonia and Aragon – and single-purpose public partnerships established by two or more municipalities for the efficient management of local public services (*manucomunidades*). The creation of these other entities is frequently the cause of political conflict. In the case of the *comarcas*, established for multimunicipal servicing and planning, dissension is created because they try to occupy the functional space that would typically belong to the provinces. The Constitution establishes the existence of provinces and does not permit their extinction, causing parallel rivalry between them and the counties.

A special case is that of the metropolitan areas of the large cities. Their normal structure is that of a large city that, in its expansion, encroaches upon small towns and cities, which in turn experience notable rates of demographic growth. In the case of Barcelona, for example, the metropolitan area is comprised of thirty-two municipalities, including the city of Barcelona. The metropolitan areas do not have their own specific local government. Since 1979 the autonomous communities have impeded the development of any new special territorial government for the metropolitan areas, which could limit their functions. In fact, some pre-existing metropolitan governments, created before 1978 – like that of Barcelona – were eliminated by a law of the relevant

autonomous community. Instead of general metropolitan governments, the metropolitan areas of some large cities (such as Barcelona and Valencia) provide different organizational structures for certain public services. In Barcelona there are specific intermunicipal cooperation entities for the provision of urban and interurban transport and for environmental protection. These cooperative entities, however, do not exist in Madrid. That the metropolitan area of Madrid is, in itself, an autonomous community means that the metropolitan area is governed directly by the Autonomous Community of Madrid.

Finally, both Madrid (3,128,600 inhabitants) and Barcelona (1,605,602 inhabitants) each have their own specific legal order in the form of a special state law.⁸ Both laws either regulate the participation of the respective local councils in the management of state infrastructure (e.g., airports and rail stations) or create specific measures for improving municipal organization or exercising specified municipal competences, such as traffic regulation. Furthermore, despite the demands of Madrid and Barcelona, neither of the two special laws contains specific measures that improve their financing. In general terms, the special laws of Madrid and Barcelona do not differentiate in any essential manner between these two cities and other urban municipalities.

The current structure of local government is not novel in terms of comparative constitutionalism. Frequently, federal states – as is the case in Germany – include two or more types of local government: municipalities and counties. The place and role of these territorial bodies in the federation is of course another matter. Spain, and the structures established by the Constitution of 1978, can be fully understood only if one takes into account the organization of the dictatorial regime between 1939 and 1975. The military dictatorship of General Francisco Franco clearly centralized public authority. The authoritarian regime eliminated all forms of regional autonomy. Only two local organizations survived – the provinces and the municipalities – which were, in both cases, under strict, even hierarchical, control by the central state. The democratic transition, embodied in the Constitution of 1978, did not radically change the territorial organization. Rather, it supplemented and readjusted it with two primary decisions: the creation of the autonomous communities and the reconversion of the local bodies (i.e., provinces and municipalities) into democratic local self-governments. The new constitutional system, however, did not precisely define the functions and role of the provinces within the framework of the new autonomous communities. In practice, this has meant that the very existence of the provinces gives rise to continuous conflicts being brought before the Constitutional Court.⁹

CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENTS

Article 137 of the Constitution (Constitución Española, CE) guarantees municipalities, provinces, and the islands (along with the autonomous

communities) the "right to self-government" in the following terms: "The State is organized territorially into municipalities, provinces and autonomous communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests."

Since 1999 local governments have been permitted to plead this political autonomy before the Constitutional Court. The constitutional recognition of local autonomy, however, does not imply the direct conferral of power to local authorities. Unlike the detailed constitutional regulation of the autonomous communities,¹⁰ local bodies are granted only the right to local autonomy. The Constitution does not specify what powers such autonomy entails. From a historical point of view, priority was then given to the recognition of the autonomous communities and their effective powers. The local governments (and therefore local powers) are basically defined by statutory law. This definition is limited not only to state law but to autonomous community legislation as well.¹¹ In fact, according to the constitutional distribution of powers, the autonomous communities assume (in their statutes of autonomy) legislative powers that extend over local government. Therefore, the establishment of local autonomy was, to a great extent, the responsibility of the regional parliaments. The legal configuration of local autonomy must necessarily take place within the framework of the constitutional guarantee of local self-government, and the rulings of the Constitutional Court have been decisive in identifying these constitutional limits. For example, the court held that the regional laws must grant municipal councils the power to initiate new urban plans.¹²

The legal system of local government falls under the concurrent jurisdiction of the national state and the autonomous communities. According to Article 149.1.18 CE, the state has the power to establish (initially by an Act of Parliament) the "foundations of public administration law." Therefore, by describing the provinces and municipalities as "public administrations," the Constitution acknowledges the regulatory powers of the central state over local government. Nonetheless, the statutes of autonomy confer upon the autonomous communities (with different texts and nuances of meaning) exclusive powers over local government, "notwithstanding" the fundamental regulation by the state under Article 149.1.18 CE. The Constitutional Court has concluded that Spain's local government system has a "two-fold nature."¹³ It is defined by the laws of the state as well as by the laws of the different autonomous communities. The state is responsible for "fundamental" regulation; the autonomous communities are responsible for "nonfundamental" regulation, or so-called "developmental" regulation. Moreover, the state has interpreted its own "fundamental" powers broadly.¹⁴ This "fundamental" regulation of local government by the national state is found primarily in two laws: Act 7/1985 of 2 April, relating to the regulation of the Basis of the Local System (LBRL);¹⁵ and Royal Legislative Decree 2/2004 of 5 March, which approves the Restated Text of

the Local Tax Authorities Act (LHL).¹⁶ The extent of “fundamental” regulation by the state has thus far imposed clear limitations on the legislative power of the autonomous communities.

In terms of functions and organization, the municipalities in the different autonomous communities are fairly uniform, but the provinces are quite diverse. In 1979, with the creation of autonomous communities, the provincial structure underwent important modifications; in some communities the province disappeared as a local entity. In the Basque Country the provinces were transformed into “Historical Territories.” In the archipelagos the provinces were partially or totally substituted for by specific local governments called “islands.” But apart from these exceptions, the organization and functioning of the provinces are very similar throughout Spain. The same can be said of the municipal governments. The composition of the assemblies, the electoral system, and financing and management of public services do not differ noticeably across the autonomous communities.

In 2006 the reform of various statutes of autonomy was initiated, something that has had important consequences for local government overall. From the new statutes of Catalonia (2006) and Andalusia (2007), the following points can be highlighted. First, both statutes contain direct regulation with regard to some essential aspects of local governance (i.e., various guarantees of local autonomy and some organizational matters). In addition, the new statutes increase the legislative powers of the autonomous communities in matters of local government (some of the matters that are currently regulated in national Acts will become regional matters). Lastly, the new statutes contain a provision that guarantees local funding. Points of contention, upon which scholars disagree, however, are the role and position of the new statutory rulings with relation to the laws of the central state. What is unclear is whether the new statutes are able to trump the “fundamental” laws of the state.¹⁷

GOVERNANCE ROLE OF LOCAL GOVERNMENTS

The Constitution does not attribute specific powers to the local entities, nor does it distribute local power between provinces, municipalities, and islands. As mentioned earlier, Article 137 CE guarantees the local autonomy of municipalities, provinces, and islands, but without any great precision. The local government system, therefore, lacks a constitutional “universal clause” that irrefutably establishes the powers of local government, as exists, for example, in the German Basic Law.¹⁸ In recent years, certain scholars have made the argument that Article 137 CE (right to local autonomy) includes a “universal clause” of powers, finding expression in the so-called “principle of subsidiarity.”¹⁹ Moreover, these scholars argue that such universal powers can be limited only by law and in terms of the principle of

proportionality. These opinions have clearly been influenced by German public law and, especially in recent years, by the principle of subsidiarity in terms of Article 4.3 of the European Charter on Local Autonomy of 1985 (ratified by Spain in 1988). Thus far, such opinions have not been accepted by the Constitutional Court,²⁰ even though since 1999 some dictums have appeared to indicate a new doctrine tending in this direction.²¹

Municipalities

State Act 7/1985 (LBRL) does not directly give powers to municipalities; it enumerates matters or functional areas in respect of which the national and regional Acts have to allocate a "minimum" of jurisdiction to the municipalities. In the majority of cases, it is the laws of the autonomous communities that transfer these powers. This is due in part to the fact that matters best regulated locally in accordance with Articles 25 and 26 LBRL coincide with the powers of the autonomous communities in terms of their respective statutes.

According to Article 25.2 LBRL, municipal councils must be empowered to perform in the following domains: safety in public places, planning for vehicle traffic and pedestrians on urban roads, civil defence, firefighting, urban regulations, historic-artistic heritage, environmental protection, abattoirs, markets and consumer and user protection, public health, cemeteries and funeral services, social services, water, public lighting, street cleaning, waste, sewage, public transport, cultural and sports activities, and maintenance of school buildings. In all these areas, legislation (of the national state or the autonomous communities) must confer the necessary powers to municipalities, although not necessarily exclusively.

In addition, in terms of Article 26.1 LBRL, municipalities are directly responsible for a certain minimum of public services. These required services increase according to the number of inhabitants of a municipality and must be managed according to national law or, in most cases, regional laws.²² These laws do not usually contain specific financial provisions. The funding for each public service, therefore, comes from the common financial resources of each municipal council, which, as shall be explained later, are regulated by state legislation. Thus there is a clear separation between the territorial entity that regulates local services (normally the autonomous community) and the territorial entity that regulates local income (normally the central state).

Finally, Article 28 LBRL completes the outline of powers and public services of the municipalities by authorizing the municipalities to perform "complementary activities" to those of other administrations in the following areas: education, culture, promotion of women, housing, health, and environmental protection. These local activities have clearly surpassed

their “complementary” nature and are essential tasks of municipalities, highly demanded and valued by citizens. This is the case in respect of policies on equality, children’s education, treatment of drug addicts, and urgent healthcare. In addition to “complementary activities” formally included under Article 28 LBRL, municipalities perform new tasks (especially social services) without express empowerment to do so. Two especially noteworthy examples are the social integration of immigrants (both legal and illegal) and activities revolving around international cooperation – very well developed in the municipalities of Catalonia.

The provision of public services consumes the major part of the municipal budget. However, this portion of the expenditure is proportionally higher in the small municipalities than in the large cities. According to the budget figures for 2004, the highest average amount of expenditure was dedicated to the production of social goods in the following order: urban development, public municipal works, culture, collection and treatment of waste, supply of water, education, and sanitation. The next most relevant areas of expenditure are those referred to as “social protection and promotion” (i.e., essentially aid given to the most disadvantaged sections of the population) and “public security.”¹⁹ An important figure, although difficult to estimate, is the level of municipal expenditure on services that are not obligatory. As explained above, the extent of mandatory local services depends on the size of the municipal population. But this does not prevent small and medium-sized municipalities, under the pressure of popular demands, from providing public services to certain sectors of the population without a real right to them. It is estimated that in 2003, 26.7% of municipal expenditure was destined for these services, mainly focusing on civil security and protection, culture, education, and social aid.²⁰ Finally, it is necessary to emphasize that all municipal expenditure comprises only 8.3% of total public expenditure, which, when added to the 4.3% of expenditure by the provinces and islands, represents a total of 13% of total public expenditure. Of the remaining expenditure, 49% is accounted for by the state and 37% by the autonomous communities. As explained above, the low relative contribution of the municipalities is attributed to the fact that the two expensive services – education and health – are provided by the autonomous communities.

The legal regulation of the management of local powers and services is contained, to a large extent, in the same regional laws that give powers to the municipalities. For example, the regional laws that regulate the water supply also regulate the system of tariffs and the possible sanctions for failure to pay. Beyond these material regulations, the form of organization of each power or service is a matter for each municipality to decide. This forms part of the “power of self-organization” that is guaranteed both by Article 4.1(a) LBRL and by Article 6.2 of the European Charter on Local

Autonomy. In this way, and with few limits, each municipality can choose between managing a power or service directly (by means of municipal agencies, public municipal companies, and foundations) or indirectly (through a public service contract or administrative concession). In general terms, each council can employ additional persons who do not become part of the civil service. Adding together the two categories (civil servants and additional employees), the municipalities employ collectively 602,001 persons – 20.8% of the total employment of the public sector, compared with 50.2% employed by the autonomous communities, 22% by the central state, 3.8% by universities, and 3.2% by the provinces and islands.²¹

From an overall perspective, and under the paradigm of the greater efficiency in private management, a clear tendency can be observed today toward public power management built on trends found in the private sector, namely substitution of civil servants by non-civil-service employees, creation of municipal limited companies for the management of services, and the management of services by means of administrative contracts with the private sector.

Special mention should be made of the management of public services in metropolitan areas, delivered jointly by the autonomous community and one or several local councils. The principal examples are Madrid and Barcelona, although there are great differences between them for reasons that include their political context and their territorial and demographic structures. In the metropolitan area of Madrid, the role of the Autonomous Community of Madrid is predominant, and public services are highly integrated. In the case of Barcelona, the role of the Autonomous Community of Catalonia is very limited; therefore, the coordination or integration of public services is assigned to agencies or public companies governed by the municipalities of the metropolitan area. Since 1980 both Catalonia and the Autonomous Community of Madrid have avoided the creation of any kind of general government for the metropolitan areas of Madrid and Barcelona in order to prevent strong metropolitan councils from accumulating a level of power that could rival that of the autonomous communities. In practice, this has led to each metropolitan area having a very specific management structure linked to the public services it provides.

Urban and intercity transport in metropolitan Madrid is perhaps one of the most successful examples of the combined delivery of public services. By Act 5/1985 of 16 May, the regional Parliament established the Consortium of Transport of the Community of Madrid, creating a sort of autonomous agency for the Autonomous Community of Madrid, which exercises a wide range of powers over public transport, including all administrative issues relating to transport within the autonomous community, as well as all local powers over transport in the municipalities that voluntarily join this consortium (for a minimum period of seven years). Each type or mode

of public transportation is managed in a different way. The underground is managed by a private company shared jointly by the region and the municipality of Madrid; the intercity buses by means of contracts (concessions) with private companies; and the intracity buses by means of public municipal companies. However, all these public-service agents are managed and coordinated by the regional Consortium of Transport. The consortium decides the following issues: the itineraries of public transport and the interconnections between them, the infrastructures of each type of transport, the tariffs (i.e., fares) for services and the unification of tickets, the award of contracts to private companies, the distribution of revenue and expenses among the various public and private transport agencies, and finally, providing information and assistance to customers. The management of the consortium is assigned to a council composed of representatives from the autonomous community, the city council of Madrid, other municipalities, the unions, the managerial associations, and a member designated by the consumer associations. Two fundamental legal elements have prompted the unquestionable success of the consortium. First of all, its broad powers allow for wide coordination between the very different means of transport and the responsible agent. Second, the balance of power between the autonomous community and the municipality of Madrid in its management has ensured that neither one dominates the consortium.

In accordance with the Constitution of 1978, every municipal government is based on the democratic principle. More than this, Article 140 CE establishes that this democratic legitimacy consists of the direct election of councillors. However, the Constitution says nothing with regard to the mayor, who can be elected directly by the citizens or indirectly by councillors. The system of election for mayors and councillors is established in the State Organic Act 5/1985, regulating the general electoral system. In 1985 the central state determined that its powers over the "general electoral system" authorized it to regulate fundamental matters of the municipal electoral system. These include electoral procedure, the election of the mayor, and the rights of the municipal parties. In accordance with this regulation, Spaniards and citizens of the European Union over eighteen years old (excluding other foreigners) are eligible to vote in each municipality. The residents choose a fixed number of councillors, grouped together in closed lists of political parties or electoral coalitions, according to the municipal population. For the determination of the councillors-elect, a modified proportional system is followed (the so-called d'Hont rule). The elected councillors then designate the mayor by majority vote. In recent years, most of the political parties have considered the possibility of direct election of mayors, although it has not been manifested in legislative initiatives. This possibility has been highly criticized by several scholars who have pointed out that the direct election of mayors could provoke severe malfunction in an electoral system built on political parties.

With regard to organizational regulation, the LBRL draws a clear line between political organs and the municipal administration. The LBRL regulates the former (i.e., decision-making organs) in detail and leaves the administrative organization of municipalities practically without regulation – and, therefore, open to regional regulation or municipal self-regulation. There are three main political organs among which the decision-making power in a council is divided: the assembly of councillors, the mayor, and the local government cabinet. The assembly is made up of a variable number of elected councillors, depending on the population of the municipality (which ranges from five councillors in the smallest villages to fifty-seven in Madrid). The municipal cabinet (*Junta de Gobierno*), an executive committee present in municipalities with more than 5,000 inhabitants, consists of a maximum of one-third of the councillors in the assembly, who are appointed by the mayor at his or her discretion. However, the distribution of tasks among these municipal organs is not applied uniformly throughout Spain. One can speak of three different systems: “a general system” applicable to the majority of municipalities and regulated entirely in the LBRL; a specific system for “municipalities of great population,” which was introduced into the LBRL in 2003;²³ and the special systems of Madrid and Barcelona.²⁴

In the “general system,” the assembly of councillors, directly elected by the citizens, exercises a great deal of power. For example, the activities of the assembly range from providing political or strategic direction, such as in planning and budgeting, to administrative execution, such as awarding contracts or selling goods. This functional description is adapted substantially in the large municipalities (including Madrid and Barcelona), where the assembly concentrates on decisions that are more politically relevant, such as setting norms and budgets, and on political control over the executive organs like the mayor and the executive committee. This singularity of function of the assembly in the large cities is commonly described as the “parliamentarization” of local government. In the municipalities of the “general system,” the mayor of a municipality directs local politics and exercises numerous administrative functions, such as managing personnel, overseeing the municipal police force, sanctioning powers, and conferring licences. These functions of the mayor are not present in the large municipalities. Lastly, most municipalities also have an executive committee, whose functions are diverse. In ordinary municipalities, the committee simply supports the mayor; in the large municipalities, it is vested with executive power.

Provinces

Although the new constitutional order of 1978 did not substantially change the powers of municipalities, the provinces experienced a significant

reduction of their functions to the benefit of the emerging autonomous communities. The Constitutional Court accepted the reduction of provincial powers – in favour of the autonomous communities – provided it did not alter the “essential core” of provincial powers. As the court stated in the case on Catalan provincial councils, “the adaptation of the provinces to the new scheme of functional distribution of power cannot continue, except through an amendment of the Constitution, [including] the elimination of the Province as an entity with autonomy for the management of its own interests.”²⁵ Constitutional case law has identified the minimum core of provincial autonomy with the traditional function of “cooperation and assistance” to municipalities. This cooperative function is often expressed as a “spending power,” so the core of provincial autonomy is, in essence, financial autonomy.

The provincial councils are elected not directly by citizens but indirectly by the constituent municipalities.²⁶ According to the results of the municipal elections, political parties then designate representatives to the provincial council. The responsibilities of these councils are specified via Article 36 LBRL in a reduced list of provincial powers based on the idea of cooperation and assistance to municipalities. The autonomous communities have not extended this narrow framework of powers. For the autonomous communities – especially for Catalonia and the Canary Islands – there is competition with the provinces for territorial public authority. From their perspective, provinces are frequently considered to be vestiges of the centralized state of the dictatorship period.

The 2006 statute of autonomy of Catalonia and the 2007 statutes of Andalusia, Aragon, and Balearic Islands do not promote provincial powers. In the case of Catalonia, the province is substituted for by a new regional territorial entity (*veguerías*). In Andalusia, powers of coordination (by the autonomous community) over the provinces are being considered. These regulations are in contrast with the central-state’s 2006 proposal for a new Local Government Act that would protect the autonomy of small municipalities by specifically fostering the supportive and cooperative powers of the provinces.

FINANCING LOCAL GOVERNMENT

Article 142 CE guarantees financial autonomy,²⁷ although it does not elaborate on this guarantee.²⁸ According to case law, the constitutional guarantee operates basically in respect of spending power and to a lesser extent in the area of income.²⁹ The local bodies that are given this guarantee by the Constitution (i.e., provinces, municipalities, and islands) lack the constitutional power to determine their own revenue sources.³⁰ The concise constitutional guarantee has recently been supplemented by various statutes of

autonomy. In the 2006 statute of Catalonia, the following items are directly guaranteed: a certain amount of local power over own taxes, the unconditional collection of subsidies, and the necessary provision of funding each time the law assigns a new task or power to local bodies.³¹ The effectiveness of all these financial guarantees is still not clear.

The local funding system is defined by state law in Royal Legislative Decree 2/2004 of 5 March (LHL). This state law establishes a "mixed system" of local financing. A basic distinction is made between "local revenue" and "revenue granted" by the central state or autonomous communities. Sources of "local revenue" include local property rates, local taxes, fines, and profit from credit transactions. Of all the sources of local revenue, taxes are the most important. In respect of local taxes, a distinction is made between public tariffs and fees (for individualized delivery of local public services), special contributions (presently hardly in use, imposing taxes on those who derive any special benefit from public action), and five "general municipal taxes." These taxes include the Buildings Tax, Facilities and Construction Tax (ICIO), Increased Value of Urban Land Tax (IIVTNU), Real Estate Tax (IBI), Power Haulage Vehicle Tax (IVTM), and Business Tax (IAE), the last being residual at present. Although we refer to "municipal taxes," it must be pointed out that local institutions lack their own taxing powers; in other words, they lack the authority to establish taxes. This function is reserved for central-state or autonomous-community legislation. However, the LHL recognizes the power of local governments to shape nonessential elements of local taxes determined by state legislation (such as tax rebates or tariffs). On average, tax revenues make up 50% of all municipal revenues (including intergovernmental transfers), the most important part of which is derived from the real estate tax (approximately 50% of tax revenues). Compared with other European countries, the Business Tax is not a substantial source of revenue.

Regarding tax revenue, the most significant difference between large and small towns lies in the importance of the fees or charges imposed for public services and the extent to which they affect the budget. In 2005 the small municipalities gathered around 28% of their operating costs by means of charges for the delivery of public services, whereas in the larger cities (over 500,000 inhabitants), these charges accounted for only 14% of their total revenue.³² It can be concluded that in small cities as opposed to large ones, funding is more effectively linked to the provision of public services.

Local revenue also includes borrowing from public or private organizations. Articles 48 to 55 LHL envisage municipal borrowing but subject it to different kinds of controls, distinguishing between short-term (one year) and long-term loans. Short-term loans can be arranged directly by the local body, although within limits set by legislation. Long-term loans require prior authorization by the autonomous community and, in specific cases,

the central state. In the 1980s local bodies obtained loans from banks even for financing their current expenditures. In subsequent years, there has been a lesser tendency to resort to this, but at the same time, there is greater use of loans for new infrastructure or extraordinary expenditures. In 2005 the income from borrowing did not exceed, on average, 7% of local governments' total income.²⁵

The system of local revenue is not always sufficient for financing local tasks. This is demonstrated very clearly in small municipalities where tax revenue is scanty. In the larger cities, in recent years, due to the remarkable increases in tax revenue (around 12%), the financial shortcomings have not been as strongly felt as in the medium-sized and small towns. Some big cities (e.g., Madrid) have increased their debt in the past few years, but this is clearly attributable to the significant increase in expenditure on new public policies and infrastructure rather than to any inherent shortage of income.

According to the Local Tax Authorities Act (LHL), municipal councils can improve their local revenue by increasing the tax burden, mainly through the Real Estate Tax and charges for public services. Municipal councils, however, very seldom take advantage of this option. The real and direct relationship between the municipal tax burden and opinion polls discourages local councils from any explicit increase of local taxes.³³

In the context of insufficient local revenue, the LHL considers, as a supplementary element, financing local governments either through a share of central-state or regional tax revenue or through grants. Formerly, only the central state – and not the autonomous communities – transferred earnings from state taxes to local tax bodies. Now, both the state and the autonomous communities participate in financing local governments. The share of local governments in the tax revenue of the central state (and of the autonomous communities) constitutes up to 32% of their revenue and is mainly linked to population size. Only for medium-sized and big cities (over 75,000 inhabitants) does a complementary criterion exist, based on the tax revenue (principally through income tax) directly generated in that municipality. In addition to the share in central-state revenue, municipalities receive grants from the central state and the autonomous communities. The main financial transfers to local councils have come from the central state, and these transfers remain far higher than transfers received from the autonomous communities. In the 2005 financial year, the unconditional transfers from the central state to the local governments (i.e., shares of state tax revenue) rose to €11,328 billion (US\$13,741 billion).

In addition to this sum, in 2005 the state granted subsidies to municipalities in three different ways.³⁴ First, the general Program of Economic Cooperation (€157 million, or US\$190 million) was used to finance specific local infrastructure (mainly urban development, new highways, and public

water supply) and was managed by the provincial councils through the so-called Provincial Plans of Cooperation. Second, transfers were made by the different ministries (€246 million, or US\$298 million) for specific local projects, more than half of which were destined to promote access to employment. Finally, there were injections for investment (€159 million, or US\$193 million), of which a great part was destined for the development of highways and the promotion of tourism.

The state funds granted by the Program of Economic Cooperation play an equalizing function by concentrating investment in smaller municipalities where tax income is clearly insufficient. In the state budget for 2005, 67% of state aid was devoted to municipalities of fewer than 20,000 inhabitants. In terms of public expenditure per capita, in towns with a population below 5,000, the state invested €96 (US\$116) per inhabitant, whereas in the larger cities (over 1 million), the state dedicated just about €0.70 (US\$0.85) per inhabitant.

All these state grants – as well as those of the autonomous communities – normally reflect the political choices of the supra-municipal authority as opposed to those of the municipality.³⁵ Because of this, these types of grants are strongly challenged by scholars because they contradict the constitutional guarantee of local autonomy.³⁶

In recent years, different political parties, as well as many scholars, have insisted on the need to undertake basic reforms of local financing. It was proposed that local institutions should manage up to 25% of the general revenue of the central state (a figure much higher than the 13% at present). However, to obtain this level of income, the proposal should relate to a greater share of state tax revenue, which is generally regarded as preferable to an overall increase in the taxing powers of local bodies.

Local income is managed, in general, at an autonomous level because, as has already been stated, Article 142 CE guarantees local financial sufficiency in the area of expenditure. As a result, municipalities and provinces enjoy, with the exception of granted revenue, complete budgeting power over their income. Only some statutes of autonomy, such as that of Valencia and the 2007 statute of Andalusia, include certain generic controls by the autonomous community over local budgeting of the provinces. This power, however, has yet to be implemented in practice. Although spending power is formally very extensive, reality demonstrates that the level of spending, which is conditioned by the other levels of government, is considerably high. First, legislation (of both the central state and the autonomous communities) determines the tasks and services of local governments, which, therefore, have to be reflected in the budget. Second, the budget power is narrowly framed by Act 18/2001 on Budgetary Stability, prohibiting local governments from incurring a budget deficit. Lastly, the control over budget execution is exercised, cumulatively, by the local

bodies themselves and by the “courts on accounts” of both the state and each autonomous community.³⁷

In the municipal budgets for 2005, the general categories of expenditure do not differ greatly between different city councils.³⁸ Approximately 24% of expenditure is directed to capital investment, whereas the remaining 76% of the budget is usually allotted to operational expenditure. Nevertheless, it must be pointed out that over the past few years, the total expenditure directed to capital investment appears to have increased at a much faster rate than growth in operational costs.³⁹

As regards the latter category, staff costs consume approximately 38% of total operating expenditure, constituting only a slightly lower percentage in the big cities than in small towns. Goods and public utilities account for 37% of total operational expenditure, the difference between the larger cities (approximately 20%) and the small towns (41%) being much more significant in this case.⁴⁰ These figures can be explained by the advantages of employing economies of scale and by the fact that the larger cities direct an important part of their budgets to social policies that proportionally increase other categories of expenditure. Finally – and reflecting on the progressive improvement of the local financial situation – in recent years the operational income needed to service loans has accounted for only 6% of operating expenditure.

In general terms, the system of financing presents high levels of local autonomy, even though it does not avoid the existence of a certain structural deficit of income. It is difficult for the actual local contributions to cover this deficit. This gives rise to proposals for greater participation of local governments in the revenues of state taxes. In any case, the financial problem is not extremely serious; yet it must be solved, mainly by differentiating the financing of the smaller municipalities from that of the larger ones.

SUPERVISION OF LOCAL GOVERNMENTS

The state and autonomous communities exercise very limited supervision or control over the activities of the municipalities and provinces. Moreover, the Constitutional Court considers that the local autonomy guaranteed by Article 137 CE to a great extent excludes rigid governmental controls.⁴¹ All political or efficiency controls are excluded.

Furthermore, the small constitutional margin for government control over local institutions has been reduced by state law (LBRL). Although the Constitution does not prevent the central state and autonomous communities from selectively reviewing the legality of local performance (that is, ensuring that local actions do not infringe upon the law), Article 63 and others of the LBRL have ruled out this possibility. Because it is a fundamental state regulation, the LBRL prevents the regional laws from adding specific reviewing controls.

Consequently, in reality, only the judges have the competence to review legal compliance by local entities.

In extreme cases, such as actions by the local administration that seriously affect general interests or violate constitutional obligations, Article 61 LBRL provides for the dissolution of local councils by the central state. Such dissolution must be followed by a call for partial elections to replace the dissolved council. This is clearly an instrument of control that may be exercised over local authorities, but it has been used only once. Royal Decree 421/2006 of 7 April dissolved the Council of Marbella (Malaga) because over half of its councillors were being tried on charges of corruption. The exceptional nature of dissolution reaffirms the general premise that no ordinary controls over local councils may be exerted by the state or autonomous communities.

In the LBRL, government control of local institutions was replaced by a complex system of voluntary "intergovernmental relations," based on the idea of full respect for the powers of local institutions and the principle of cooperation. Only when voluntary cooperation is not technically possible do Articles 10.2 and 59.1 LBRL provide for a final decision by the state or the autonomous community. This occurs, for example, in decisions about geographical distribution of large infrastructure projects (e.g., airports, ports, or waste-treatment plants), where the central-state or regional decision is imposed on the local body.

INTERGOVERNMENTAL RELATIONS

In the context of the constitutional guarantee of local autonomy, the administrative relations between local governments and other, superior orders of government are frequently explained by using the concept of "constitutional equality." This means that municipalities, provinces, and the islands are neither a part of the central state nor institutions of the autonomous communities. They are certainly ruled by state and regional laws, but at the same time, they can defend their autonomy before the central state and the autonomous communities by appealing to the courts, including the Constitutional Court.

In recent years, the possible participation of local bodies (especially the large cities) at supra-local levels of government has featured prominently in debate in Europe. Two tendencies exist: institutional participation, through representatives of the local governments in state organs or regional or federal bodies; and functional participation, by including local bodies in decision-making procedures (especially in respect of those processes that set norms). These tendencies are exemplified in Italy and Germany.⁴²

The Spanish local government system traditionally contains some form of institutional participation within a cooperative structure. This is apparent at

the state level in the National Commission of Local Administration and, at present, also in the General Conference on Local Matters. The National Commission of Local Administration is an organ of the Ministry of Public Administration, presided over by the minister and with equal representation: thirteen representatives designated by the state and thirteen representatives from the local bodies. Its function is the obligatory preliminary assessment – although not binding – of draft laws of the state that affect local governments. Because of its composition, this body is not an instrument for expressing local interests but rather serves to secure political cooperation with the state. The General Conference on Local Matters is a vehicle for cooperation between the state and the autonomous communities on local issues, but unlike the other commissions for cooperation between the state and autonomous communities, this one includes nine representatives of the local governments. Its functions are consultative and are meant to secure political agreements.

Local participation in the exercise of power by other bodies – the state or the autonomous communities – is less clear. It does not refer to the cooperative exercise of concurrent powers as seen, for example, through the Interadministrative Commission on the Capital Status of Madrid. In general terms, it can be said that the participation of local bodies at supra-local levels of government is still very limited. However, there are new possibilities on the horizon. One proposal, modelled on the Italian example, calls for municipal participation in the Senate. Moreover, there is much anticipation about the so-called Council of Local Governments envisioned in the new statutes of autonomy (2006–07). Nevertheless, thus far, there is no clear pattern for setting up these councils, as several options are still open. First, there is the issue of whether those councils should incorporate only representatives of local governments or also include elected deputies of the regional assembly. Second, there is the matter of whether the Council of Local Governments should have any kind of veto rights in respect of regional laws or have only advisory functions. In any case, all these possibilities and proposals for participation certainly permit the promotion of local perspectives at higher levels of government. There is concern, however, regarding the proliferation of local government participation in state and regional decision-making processes, which may in turn confuse citizens with respect to where final decision-making power lies and, in consequence, who is politically accountable to the voters.⁴³

Spanish local bodies engage directly with both the central state and the autonomous communities. This has been described in constitutional case law as the “double-faced character” of local government. However, viewed from a more realistic perspective, direct relations with the state are really relevant only within the financial sphere, and they take the form of current transfers or direct transfers from the state to the municipalities and provinces. Outside

of the financial sphere, administrative relations are few or sporadic. The state administration basically acts as an instigator of legislative reform and as a management agency for information that comes from the municipalities and provinces. Truly relevant executive powers are scarce. The state administration, however, using these limited powers, can enter into direct relations with each of the municipalities and provinces. Despite this, communication tends to be collective or representative. This representation of local interests is concentrated in the Spanish Federation of Municipalities and Provinces (FEMP), an association of local bodies that, although not linked to the state, receives funding from it. Through the mediation of the FEMP, municipalities and provinces can participate in state organs such as the National Commission of Local Administration and the General Conference on Local Matters. On the whole, this refers to participation that is barely regulated and very dependent on the political interests of each national minister of public administration. Apart from this institutional participation, political cooperation between the state and local bodies is also promoted – for example, the agreements between the minister for environment and the FEMP concerning local implementation of the Kyoto Protocol on climate change (by means of which the local governments, represented by the FEMP, assume some political commitments, such as to reduce pollution derived from urban traffic). But in general, the real political scope of the FEMP is somewhat limited. Often the large national political parties, whether in government or in opposition, use the FEMP to articulate their political projects.

The autonomous communities also have direct relations with local bodies. In this case, the administrative relations go beyond the financial sphere. As has already been stated, municipal powers normally correspond to those matters that the statutes of autonomy allocate to the different autonomous communities. As a result, the administrative connection between local bodies and autonomous communities is very close in respect of three matters: land use, urban development, and protection of the environment. In these sectors of activity, the autonomous communities direct and control local activities by approving plans and programs or by reserving the approval or authorization of specific activities to themselves. Communication of municipalities and provinces with the authorities of their autonomous communities is also conducted by relevant federations or territorial associations – such as the Catalanian Federation of Municipalities, the Andalusian Federation of Municipalities and Provinces, and the Federation of Municipalities of Madrid – which, in this manner, fulfil a similar function to that of the FEMP.

The Spanish local governments, with representatives in the Committee of Regions and Cities of the European Union, participate in EU decision making only on a small scale because the role of the committee is secondary and because just four of the seventeen representatives allotted to Spain come from local governments.

POLITICAL CULTURE OF LOCAL GOVERNANCE

On a general basis, polls reflect more favourable public approval of municipal management than of other state or regional institutions, even including courts of law. Only the police, the army, and the monarchy rate above municipal councils.⁴⁴ Consistent with these results, corruption is not considered to be a relevant issue for citizens.⁴⁵ The proximity of local councils to citizens, and the social relevance of the public services they deliver, could explain the positive approval ratings of local governments.

There are numerous political parties that run in the municipal elections. In addition to the larger state or regional parties, there are small independent, left-wing radical, green, and alternative parties with a concentrated local focus. Normally, the large state or regional parties present candidates in all the municipalities, and it will be one or several of those parties that govern each municipality. The lists of the large parties include many local candidates (widely experienced in local government), as well as popular state or regional politicians (ministers or deputies). For example, the previous president of the Autonomous Community of Madrid is now the mayor. The truly local parties govern only small towns and cities, and this is normally with the support of one of the large parties. The political parties that obtain representation in the elections form the "municipal political groups" financed by the council itself. The councillors who separate themselves from these groups do not lose their position in the assembly, but they cannot form a new political group.

Participation in local elections is relatively high (67.6% of voters in 2003; 63.9% in 2007), and local governments are generally stable. Several recent proposals for the direct election of the mayor have been rejected. This is due in part to the widespread perception that the present system functions well.

The profile of the elected councillors progressively tends toward a male-female equilibrium and a higher standard of qualifications.⁴⁶ In 1979 only 1.22% of mayors were female, as opposed to 12.6% in 2003 and 14% in 2007. As regards the number of female councillors, in 1979 women constituted 3.23% of the total, as opposed to 25% in 2003 and 37% in 2007. With regard to qualifications, in the last municipal elections (2007), 38.7% of councillors held high school degrees, and many of them were working as professionals in the private (27%) or public (15.2%) sectors. These changes are due to the relatively high turnover of those in office. According to the results of the last municipal elections, 46% of the councillors were new.

The economic and administrative status of councillors and mayors has been, and continuous to be, improving. The municipal assemblies decide the functions of each councillor. The mayor is not necessarily compelled to

dedicate him or herself exclusively to that office. Only a restricted number of councillors dedicate themselves full time to local tasks, whereas other councillors dedicate themselves part time or take part only in local assembly meetings. Full-time mayors and councillors of large and medium-sized municipalities are frequently well paid, earning (before tax) around €50,000 (US\$67,210) on average. Some mayors earn considerably more than the president of the country. Both full- and part-time councillors receive social security benefits. In addition, since 2007 full-time councillors have had a right to unemployment benefits when leaving office.

The practical reality of local democracy is that, in general, the state (or regional) parties play a direct role in exercising local power. This can be attributed to the fact that either the local political elites are also represented in the central structures of the political parties or the parties direct the governance of local matters with a supra-local perspective. In both cases, a certain lack of connection exists between the constitutional guarantee of local autonomy, which is based on the existence and advancement of local interests, and the actual exercise of this autonomy, which is often linked to the demands of regional and state party politics. The situation described is related, above all, to the electoral system, which favours the selection of candidates by national parties.

Participation of residents outside the electoral process is increasing in importance. Political parties promote, without exception, increases in civic participation. In this regard, there is the new "popular municipal initiative," introduced by Act 57/2003 on Measures for the Modernization of Local Government.⁴⁷ In addition to the numerous municipal regulations and plans for civic participation, and the new municipal organs and committees established for this participation, numerous programs have been created to provide subsidies that promote such participation. The concrete results for the new instruments of participation are frequently minimal.⁴⁸ There are a number of factors behind this outcome: defects in the mode or manner in which participation takes place, such as too much procedural formality; irrelevance of participation in the adoption of government decisions; and limitations on matters open to civic participation. These factors all diminish the positive outcomes of engaged public participation.

EMERGING ISSUES AND TRENDS

Local governments have contributed in a very positive manner to the effective political, economic, and social development of Spain. In the first place, this is due to the adoption of democratic rule as opposed to dictatorship. In the second place, local governments provide essential public services, uphold private enterprise, and invest in local economic development projects. Finally, they initiate social policies (e.g., employment, social work, and immigrant

integration) that are later assumed by the autonomous communities or the state. The shortcomings in the system, however, lie in the large number of municipalities, which creates various economic and political inefficiencies.⁴⁹

From an economic perspective, a significant part of public services is too costly for smaller municipalities. These services account for the greatest proportion of the budgets of small municipalities. From a political perspective, the multiplicity of municipalities makes it difficult to produce a rigorous representation of local interests before the regional and central governments. As any in-depth reform of the municipal system has been ruled out, the remaining political and economic challenge is to make the system more efficient. There have been several development initiatives in this area, including increasing the differences between the legal status of large and small municipalities, reinforcing the provinces and counties as replacements for small municipalities, and privatizing the provision of local services.

For some twenty years, the large municipalities have been calling for greater distinctiveness in their organization, competences, and financial structure. These demands have been satisfied to a limited extent by the legislative changes effected between 2003 and 2007, but the issue is no closer to being resolved. Calls for better financing (principally from Madrid and Barcelona) have been satisfied only temporarily. Greater independence for the large cities, based on a higher level of political and economic autonomy, faces objections from the autonomous communities and small municipalities. This is motivated by the fact that the autonomous communities would lose substantial powers to the cities. Small municipalities, in turn, fear new territorial and economic imbalances that would favour these principal cities.

Nonetheless, improving the economic efficiency of the municipal network in Spain requires a redefinition of the intermediate local entities (i.e., the provinces, counties, and metropolitan areas). The reinforcement and strengthening of local governments, backed by almost all political voices today, are not always possible at the level of municipalities. Small municipalities lack the technical, political, and economic size to control a very significant part of public affairs. The reinforcement of governance in this context requires a better determination of the purpose and functions of the intermediate local entities. The question of who should lead this reform and how it should be conducted remains open. The obvious choice is between the autonomous communities (which have been the principal competitors with the provinces until now) and the central state.

Finally, the search for efficiency in the functioning of small municipalities is taking shape. This is manifested in the tendency to favour private management of public services. The excessive cost of public-sector employment is creating incentives for municipal services to be subcontracted on a large scale to private companies, normally in a monopolistic system. This

often relates to companies with broad reaches within a determined territory, permitting them to exploit the benefits of economies of scale. By means of this new trend of privatization, a significant improvement can be achieved in the efficiency of municipalities. An open-ended question evident in all of this relates to the level of actual control that small municipalities can maintain over the private companies that are progressively taking over the provision of local services.

All these challenges fit into the idea of a stable institutional system. In accordance with the constitutional order, local government is one of the three territorial organizations that exercise power in the Kingdom of Spain, together with the central state and the various autonomous communities. Thus the local governments are instruments neither of the central state nor of the autonomous communities. They are autonomous governments, even though they are regulated and controlled to a limited extent by the state and the autonomous communities. Given this point of departure, there are two concurrent political positions today. One proposes an increase in the regional "interiorization" of the local governments, following the example of many federal states. The other proposes greater local autonomy, to the disadvantage of the autonomous communities.

NOTES

- 1 For a recent analysis and overview, see Robert Agranoff, "Local Governments in Spain's Multilevel Arrangements," in *Spheres of Governance: Comparative Studies of Cities in Multilevel Governance Systems*, ed. Harvey Lazar and Christian Leuprecht, 23–69 (Montreal and Kingston: McGill-Queen's University Press, 2007).
- 2 See Enric Argullol Murgadas and Xavier Bernadí Gil, "The Kingdom of Spain," in *Distribution of Powers and Responsibilities in Federal Countries*, ed. Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, 238–65 (Montreal and Kingston: McGill-Queen's University Press, 2006).
- 3 Official figures from the Instituto Nacional de Estadística, updated 1 January 2006, <http://www.ine.es> (viewed 30 January 2008).
- 4 A critical description of the public authorities can be found in Santiago Muñoz Machado, *El Problema de la Vertebración del Estado en España: Del siglo XVIII al siglo XXI* (Madrid: Iustel, 2006).
- 5 For a comparative view, see Johann Christian Pielow, "Las Estructuras del Gobierno Local en un Marco Federal: La Asimetría y las Singularidades," in *Anuario del Gobierno Local 1999–2000*, ed. Tomás Font i Llovet, 95–120 (Madrid and Barcelona: Marcial Pons, 2000).
- 6 See Catalina Escuin Palop, "Los Retos del Mundo Rural: La Fusión de Municipios como Fórmula de Viabilidad y su Problemática," *Revista de Estudios Locales*, no. 90 (2006): 25–51.

- 7 Albert Solé Ollé, "Economía Política de los Gobiernos Locales: Una Valoración del Funcionamiento de los Municipios," *Actual* 15 (Centro de Estudios Andaluces, Junta de Andalucía, March 2007): 1–20, at 17.
- 8 Act 1/2006 of 13 March, on the Special Regime of the Municipality of Barcelona; and Act 22/2006 of 4 July, on the Capital Status and Special Regime of Madrid.
- 9 stc 32/1981; 27/1987; 109/1998; and 48/2004. Constitutional Court judgments are referred to as stc (Sentencia del Tribunal Constitucional).
- 10 Articles 148 and 149 ce contain a distribution of powers between the autonomous communities and the central state, which is complemented by the statute of autonomy of each community, approved by the Spanish Parliament.
- 11 Josep Mir i Bagó, *El Sistema Español de Competencias Locales* (Madrid: Marcial Pons, 1991).
- 12 STC 58/2004.
- 13 STC 214/1989, FJ 11.
- 14 Francisco Velasco Caballero, "Organización Territorial y Régimen Local en la Reforma del Estatuto de Cataluña: Límites Constitucionales," in *Estudios Sobre la Reforma del Estatuto*, 283–350 (Barcelona: Institut d'Estudis Autònoms, 2004), 308ff.
- 15 Ley reguladora de las Bases de Régimen Local (LBRL). In 2006 the present national government presented the draft of a new Local Government Act that would basically deregulate some organizational issues and strengthen the autonomy of provinces and municipalities.
- 16 Ley reguladora de las Haciendas Locales (LHL).
- 17 See Francisco Velasco Caballero, "El Gobierno Local en la Reforma de los Estatutos: Estatutos de Autonomía, Leyes Básicas y Leyes Autonómicas en el Sistema de Fuentes del Derecho local," in *Anuario del Gobierno Local 2005*, ed. Tomás Font i Llovet, 121–52 (Madrid and Barcelona: Marcial Pons, 2006).
- 18 Article 28 II of the German Federal Constitution according to German case law: Decision 89, 127 (Rastede).
- 19 José Luis Carro y Fernández-Valmayor, "El Debate sobre la Autonomía Municipal," *Revista de Administración Pública*, no. 147 (1998): 59–96, at 89ff.
- 20 On this debate, see Francisco Velasco Caballero, "Autonomía Local y Subsidiariedad en la Reforma de los Estatutos de Autonomía," in *Anuario del Gobierno Local 2004*, ed. Tomás Font i Llovet, 117–60 (Madrid and Barcelona: Marcial Pons, 2005).
- 21 For example, in stc 159/2001 on urban planning.
- 22 Article 26.1 LBRL: "The municipalities shall individually or in association provide, in all cases, the following services:"
 - a. In all municipalities: public lighting, cemeteries, refuse removal, street cleaning, residential supply of drinking water, sewer system, access to population centres, paving of public highways, and control of food and drink.
 - b. In municipalities with a population of over 5,000 inhabitants (or equivalents), also: public park, public library, market, and waste treatment.

- c. In municipalities with a population of over 20,000 inhabitants (or equivalents), also: civil defence, social services, firefighting and fire prevention, and public sports facilities.
- d. In municipalities with a population of over 50,000 inhabitants (or equivalents), also: urban public transport, and environmental protection.
- 23 Act 57/2003, on Measures for the Modernization of Local Government.
- 24 By State Act 22/2006 and State Act 1/2006, respectively.
- 25 STC 32/1981.
- 26 State Organic Act 5/1985, on the General Electoral System.
- 27 Article 142 CE reads: "The local treasuries must have the means necessary to carry out the functions that the law attributes to the respective corporations, and they shall be supported basically by their own taxes and by sharing those of the State and the Autonomous Communities."
- 28 A complete description of the Spanish finance system can be found in Julio López Laborda, Jorge Martínez Vázquez, and Carlos Monasterio, "Kingdom of Spain," in *The Practice of Fiscal Federalism: Comparative Perspectives*, ed. Anwar Shah, 288–316 (Montreal and Kingston: McGill-Queen's University Press, 2007).
- 29 STC 48/2004, FJ 10.
- 30 Since STC 4/1981, FJ 15.
- 31 Articles 218.3, 219.1, and 219.3 of Statute of Autonomy of 2006, respectively.
- 32 Ministerio de Administraciones Públicas, *Informe Económico-financiero de las Administraciones Territoriales 2005* (Madrid: Ministerio de Administraciones Públicas, 2007), 303.
- 33 Solé Ollé, "Economía Política de los Gobiernos Locales," 10.
- 34 Ministerio de Administraciones Públicas, *Informe Económico-financiero*, 245.
- 35 Maite Vilalta, "La Financiación Local ante la Reforma del Estatuto de Autonomía de Cataluña," in *Anuario del Gobierno Local 2005*, ed. Tomàs Font i Llovet, 151–78 (Madrid and Barcelona: Institut de Dret Public and Fundación Democracia y Gobierno Local, 2006).
- 36 See Manuel Medina Guerrero, "La Garantía Constitucional de la Suficiencia Financiera de los Entes Locales," *Cuadernos de Derecho Local* 1 (2003): 38–57.
- 37 The courts of accounts are quasi-judicial courts, with permanent and independent members.
- 38 Ministerio de Administraciones Públicas, *Informe Económico-financiero*, 308.
- 39 Alfonso Utrilla de la Hoz, "La Hacienda Municipal en el Marco de la Financiación de las Grandes Ciudades," in *Estudios sobre la Ley de Capitalidad y de Régimen especial de Madrid*, ed. Luciano Parejo, Juan Bravo, and Cayetano Prieto, 437–69 (Barcelona: BOSCH, 2006), 442.
- 40 Ministerio de Administraciones Públicas, *Informe Económico-financiero*, 309.
- 41 STC 4/1981, FJ 2.
- 42 See Silvia Díez Sastre and Luis Medina Alcoz, "La Participación de la Villa de Madrid en los Procedimientos Normativos Estatales, Autonómicos y Europeos," in *Estudios sobre la Ley de Capitalidad y de Régimen especial de Madrid*, ed. Luciano Parejo, Juan Bravo, and Cayetano Prieto, 353–456 (Barcelona: BOSCH, 2006).

- 43 See José María Rodríguez de Santiago, *Los Convenios entre Administraciones Públicas* (Barcelona: BOSCH, 1997), 311.
- 44 Centre for Sociologic Studies (CIS), report no. 2657 of 18 October 2006, <http://www.cis.es> (viewed 30 January 2008).
- 45 Manuel Villoria Mendieta, "Informe Global 2007 sobre la Corrupción en España," Transparency Internacional España, Madrid, 2007, <http://www.transparencia.org.es> (viewed 30 January 2008).
- 46 Department of Local Cooperation, Ministry of Public Administrations, internal reports, Madrid, 2007; Spanish Federation of Municipalities and Provinces (FEMP), "Morfología Social de los Nuevos Representantes Sociales," report, Madrid, 2007.
- 47 Article 70.2 bis LBRL.
- 48 For example, in 2006 the elections for the Committee for Dialogue and Coexistence of Madrid did not interest even 0.3% of the possible voters.
- 49 See Carlos Alba and Carmen Navarro, "Twenty-Five Years of Democratic Local Government in Spain," in *Reforming Local Government in Europe*, ed. N. Kersting and A. Vetter, 197–220 (Opladen: Leske+Budrich, 2003).