A country study on constitutional asymmetry in Spain

Asymmetry as a device for equal recognition and reasonable accommodation of majority and minority nations

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1. Introduction

Asymmetry may foster equal recognition and reasonable accommodation. This can be achieved by means of acknowledging and respecting some differences of minority nations that distinguish them from territories of the majority nation. While asymmetry seems in tension with surface equality between units of self-government, it can foster deep equality between minority and majority nations. A multinational constitution, therefore, ought to respect, grant and even promote asymmetries of different kinds. From this perspective, the chapter aims to analyse historical, political and constitutional asymmetries in Spain, with particular attention to Catalonia and Basque Country. In respect to constitutional asymmetries, such analysis requires distinguishing constitutional potentiality from its actuality. Although the 1978 Spanish Constitution looks multinational and allows asymmetry in many aspects, its vagueness and ambiguity left much leeway to legislation and politics. Nevertheless, this Constitution has clear uninational and unitarian traits regarding other aspects such as sovereignty, territorial unity and integrity, constitution-making and centralized judiciary. This deep uninational character together with a narrow understanding of the asymmetrical potential may explain much of today secessionism in Spain.

2. Historical context

In Spain, territorial asymmetries have long-standing precedents and have been a more or less constant feature. Although from Madrid unification and centralization were long pursued, asymmetries persisted thanks to strong sub-State identities, communities and institutions. As we will see, history matters to understand present political and constitutional asymmetries in Spain.

In the middle ages, there were different kingdoms and other political entities in the Iberian Peninsula. Among them, Castile managed, over centuries, to become the main centre of power as well as the cultural and political community from which the Spanish nation-State would (attempt to) be built. Around it, there were other cultural, political and legal spaces that with the centralizing and unifying action of the monarchy would tend to be

less and less distinct. One of these spaces, located in the north of the Peninsula, was the Kingdom of Navarre and the Basque territories. Despite internal fragmentation, they shared certain cultural, political and legal bonds. Having the Basque language in common indicates such ties. While the Kingdom of Navarre remained independent until the 16th century, centuries earlier the Basque territories were already under the lordship of the king of Castile.

Another of these spaces was the Crown of Aragon in the north-east of the Peninsula. In the 12th century, the powerful Count of Barcelona, leader of the Catalan counties, became by marriage also King of Aragon. The Crown of Aragon was from then onwards a composite monarchy of the kingdom of Aragon and the Principality of Catalonia later adding the kingdoms of Valencia and Mallorca (as well as other Mediterranean islands and territories). Although being separate realms, cultural, political and legal similarities united them (the last three, for instance, shared the Catalan language). In the 15th century, the union of the Crowns of Castile and Aragon was forged with the marriage of Isabella I of Castile and Ferdinand II of Aragon. With this marital union, plus the conquests of the kingdom of Navarre and several domains overseas, began the so-called Hispanic monarchy.

The Hispanic monarchy remained for centuries a composite monarchy, in which different kingdoms and other political entities maintained their own laws and institutions. There are some common traits of these mentioned spaces located in the north and east of the Iberian Peninsula. Alongside the monarchic institutions, they preserved and developed strong representative institutions (following medieval patterns of representation based on estates). Arguably, stronger and more representative than those of Castile, where the monarch sooner became more powerful. Over time, the monarchy, however, quite managed to build common interests, institutions and practises. The monarchy extended its influences in some entities more than others; as for instance more in Valencia than in Catalonia.

In Catalonia, in particular, every new monarch had to promise to keep the Catalan constitutions, some of which forced the king to legislate with the consent of the realm (as was also the case in Aragon and Valencia) and to honour these consensual laws (developing sophisticated mechanisms of compliance such as the *Tribunal de Contrafaccions*). Similar institutions were in place in the Basque territories and Navarre (such as the *pase foral* and the *derecho de sobrecarta* as sorts of rights of nullification). In sum, they shared a similar political culture grounded on consensus between the monarch and the realm and the observance of the resulting consented laws.

After the Spanish War of Succession at the beginning of the 18th century, king Filipe V of the French dynasty of Bourbons passed certain Decrees that put an end to the distinct kingdoms of Valencia, Aragon, Mallorca and Catalonia as well as their particular institutions, laws and practises. Such Decrees were based on the right of conquest, the absolute power of monarchy and the breach of the promise of loyalty to the King. The chaos generated by the abolishment of most laws in Valencia partly explains why in

Aragon, Mallorca and Catalonia public law was repealed but civil law was maintained. Private law was probably perceived less threatening for the new political power than public law. As Basque and Navarrese fought in the winning side of the War of Succession, their distinct rights and institutions were maintained during the 18th century.

The idea of a unified and centralized Spain remained dominant during the 19th century. In the making of the proto-liberal Constitution of 1812, the former laws and institutions of Catalonia were not re-established. Some decades later, in another war to seize the Spanish throne, the Basque and Navarrese favoured the conservative Charles, brother of the dead King Ferdinand VII. The conservative programme was more respectful with the keeping of traditional rights and privileges and, thus, the legal pluralism of the ancient regime. The first Charlist War ended with the 1841 Pacted Law. Under this Law, the kingdom of Navarre disappeared, but tax collecting powers were kept. A quote (*cupo*) was to be agreed with and paid to the central State. This was the beginning of the so-called Navarrese *convenio*, to be later followed by a similar Basque *concierto*.

During the rest of 19th century, demands for territorial autonomy and self-government were inspired by romantic movements experienced across Europe. In Spain, such claims did not have much political success. The brief and unstable period of the I Republic (1868-74) witnessed the existence of federal views in Spain. The unifying and centralizing forces of the State were, however, too strong. Pro-centralization liberals accused decentralizing claims of being tied to the *ancien régime*. This was partly true, since the ancient regime in Spain, as well as in many other parts of Europe, was grounded on composite monarchies where powers and jurisdiction were shared between several layers of government, and territorial asymmetries and privileges were not generally blamed. These historical claims did not stop Catalonia and Basque Country to lead the industrial revolution in Spain.

Already in the 20th century, some degree of administrative autonomy was granted to Catalonia from 1914 onwards. The so-called *Mancomunitat de Catalunya* ended as soon as 1923 with the Dictatorship of Primo de Rivera. With the emergence in 1931 of the II Spanish Republic, the Constitution and the central government allowed for the creation of autonomous regions. A Statute of Autonomy for Catalonia was passed in 1932 and for Basque Country in 1936. Nevertheless, the *coup* of General Franco and the following Civil War (1936-9) put an end to this short regime of self-rule once again. At least during the 20th century, democratization and decentralization often appeared, developed and perished together.

The natural death of the dictator in 1975 opened a pathway for transition to democracy. The Spanish Constitution of 1978 paved the way for a long-lasting territorial autonomy for the first time in centuries. With such institutional past and laws that survived the passage of time, with their own cultures and languages, with distinct political parties systems and associative networks, Catalan and Basque minorities were the most active territories demanding the implementation of self-government before and after the passing of the current Constitution. These minority nations are implicitly referred to by the

Constitution as "nationalities" (Article 2) and "peoples of Spain" (Preamble). To conclude, the promulgation of the 1978 Constitution was neither the beginning nor the end of an enduring desire for self-government in Catalonia and Basque Country.[2]

3. Political asymmetries

3.1. Population, territory and bargaining power

Population and territory of the Spanish sub-State units are considerably asymmetrical, as can be observed in the following table.

Table 1. Population and territory of autonomous communities and cities [3]

Autonomous Community	Population	Population (%)	Territory (Km^2)	Territory (%)	Density (hab/ Km^2)
Andalusia	8.379.820	18%	87.600	17,3%	95,7
Catalonia	7.555.830	16,2%	32.100	6,3%	235,4
Madrid	6.507.184	14%	8.000	1,6%	813,4
Valencian C.	4.941.509	10,6%	23.300	4,6%	212,1
Galicia	2.708.339	5,8%	29.500	5,8%	91,8
Castile-León	2.425.801	5,2%	94.200	18,6%	25,8
Basque C.	2.194.158	4,7%	7.250	1,4%	302,6
Canarias (islands)	2.108.121	4,5%	7.450	1,5%	283
Castile-La Mancha	2.031.479	4,4%	79.500	15,7%	25,6
Murcia	1.470.273	3,2%	11.300	2,2%	130,1
Aragon	1.308.750	2,8%	47.700	9,4%	27,4
Balearic Islands	1.115.999	2,4%	5.000	1%	223,2
Extremadura	1.079.920	2,3%	41.600	8,2%	26
Asturias	1.034.960	2,2%	10.600	2,1%	97,6
Navarre	643.234	1,4%	10.400	2,1%	61,8
Cantabria	580.295	1,2%	5.300	1%	109,5
La Rioja	315.381	0,7%	5.050	1%	62,5
Ceuta (autonomous city)	84.959	0,002%	19	0,004%	4.471,5
Melilla (autonomous city)	86.120	0,002%	12	0,002%	7.176,7
Total	46.572.132	100%	505.990	100%	92

One may point out that the more relatively populated a region is, the more negotiation power it may have and, thus, the more privilege it may get. Less populated nationalities might have problems to make their voice heard, whereas bigger nationalities such as

Catalonia may have the advantage of sending two out of seven framers of the 1978 Constitution.[4] However, granting more powers and autonomy to sub-State units with smaller population and territory as well as farther from the centre (especially if separated by salt-water) might be more tolerated by the rest of regions and people.

One thing is to allow an exception to few, and quite another to grant an exception to many. This may partially explain, together with others factors such as history, why the taxation was only granted to the Basque Country (currently 4.7% of the Spanish population) and Navarre (currently 1.4% of the Spanish population) and not to other autonomous communities such as Catalonia (currently 16.2% of the population). On occasion, smart bargaining during negotiations trumps the power of numbers. On top of that, bargaining power may be strengthened by the force of arms.[5]

Map of the current territorial organization of Spain

3.2. Regional economy

Regional economic imbalances and development heterogeneity has been a constant feature of Spanish economy. Institutional, political and social factors historically shaped diverse patterns of development across regions. A progressive integration of the Spanish home market led to the concentration of economic activity and industrialization in few territories. Industrialized peripheral regions such as Catalonia and Basque Country multiplied their wealth, while less industrialized regions in the centre, south and west of Spain slumped. In 1930, Catalonia reached 87% and the Basque Country 46% above the average Spanish income per capita.[6] Economic asymmetries are still a relevant factor in Spanish politics, even though Table 2 shows that this historical imbalance has decreased. This favoured Basque and Catalan demands of more fiscal autonomy and powers.

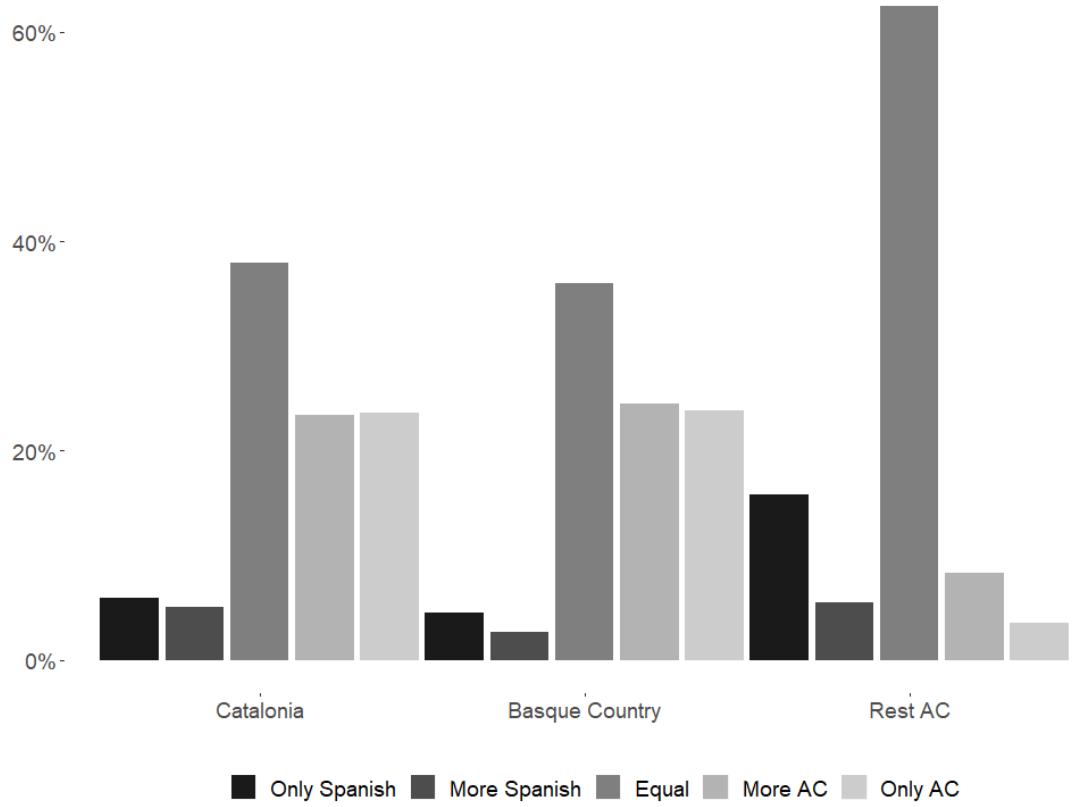
Table 2. GDP per capita of autonomous communities [7]

	GDP per capita (€)	Rate over total (%)
Madrid	33.809	135,2
Basque Country	33.088	132,4
Navarre	30.914	123,7
Catalonia	29.936	119,7
Aragon	27.403	109,6
La Rioja	26.044	104,2
Balearic Islands	25.772	103,1
Castile-León	23.555	94,2
Cantabria	22.513	90,1
Galicia	22.497	90,0
Valencian C.	22.055	88,2
Asturias	22.046	88,2
Murcia	20.585	82,3
Canarias (islands)	20.425	81,7
Castile- La Mancha	19.681	78,7
Ceuta	19.524	78,1
Andalusia	18.470	73,9
Melilla	17.945	71,8
Extremadura	17.262	69,1
Spain	24.999	100

3.3. National identity, languages and territorial preferences

The so-called "national question" has been a salient cleavage in Spanish politics. Spanish national identity is not symmetrically distributed among different nationalities and regions. From a sociological perspective, national self-identification through the Linz-Moreno question is regularly asked to Spaniards in surveys conducted by the *Centro de Investigaciones Sociológicas* (CIS). Its reports show the persistence of dual identity as the dominant identity, that is feeling equally identified with Spain and the respective autonomous community. Nonetheless, there are variations among territories. Catalonia, Basque Country and to lesser extent Navarre and Canary Islands show the existence of strong sub-State identities. Interestingly, in Catalonia and Basque Country people feel more identified or exclusively identified with their respective autonomous communities, which are clearly equated to Catalan and Basque national identities. In contrast, in Madrid and Castiles there is higher self-identification with an exclusive Spanish identity, even though dual identity is still dominant.

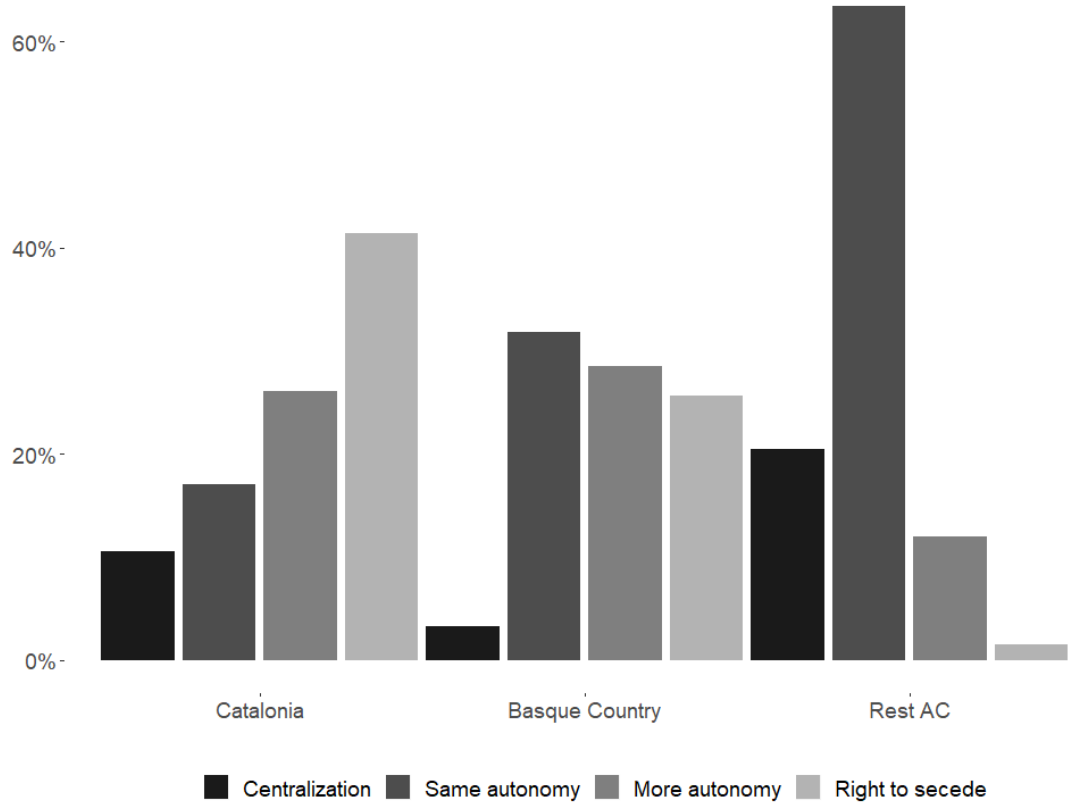
Graph 1. National self-identification by autonomous communities [8]



In Spain, minority nation identities have been strongly attached to historical minority languages such as Catalan and Euskara. Around 50% of the Spanish population lives in officially multilingual territories. Regulation, uses, denominations and prestige of minority languages vary considerably across territories. Sociolinguistics has relevant political and legal implications.

The territorial organization of Spain has been a relevant cleavage in Spanish politics in parallel to the existing competing views on national self-identification. Three main groups of autonomous communities concerning public opinion on the preferred territorial model can be distinguished. The most numerous group supports the status quo. There is a growing group of autonomous communities in which citizens favour a more centralized system, preferring the options “Less autonomy” or “Centralized State”. In contrast, a third group, which includes Catalonia and Basque Country, prefers “More autonomy” or a looser federation which recognizes the “Right to secede”.

Graph 2. Territorial preferences by autonomous communities [9]



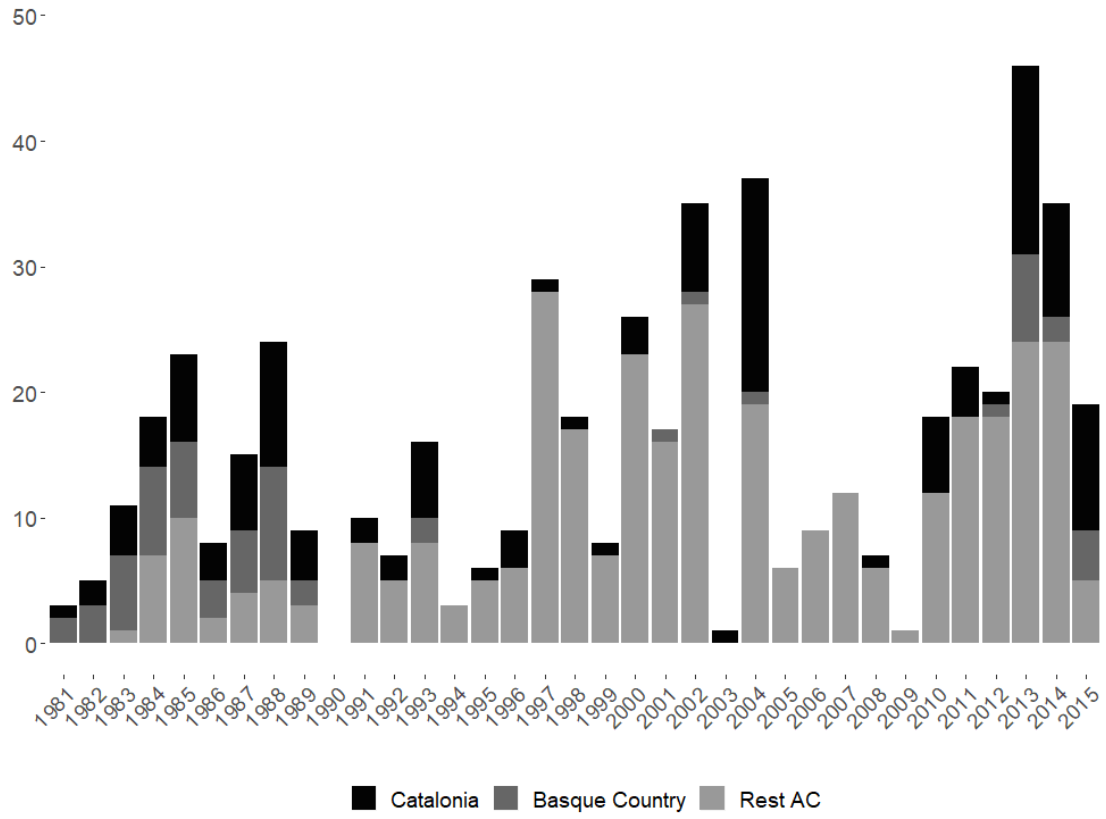
3.4. Political party system, constitutional conflicts and autonomy development

The creation of the autonomous communities generated significant sub-State arenas of political organization and competition. In turn, this multi-level party system furthered a decentralization dynamics. Regional branches of State-wide parties with strong claims for autonomy and self-government exist in communities such as Catalonia and Basque Country. What is more, the strength of State-wide parties and the presence of non-State-wide parties are distributed asymmetrically across autonomous communities.

While in most autonomous communities State-wide parties control the regional arenas, in nationalities such as Catalonia and Basque Country there are different party-systems and non-State-wide parties have usually governed sub-State institutions. This can be traced before the 1978 Constitution and continued afterwards. Furthermore, the presence of Catalan and Basque political leaders in the central Executive has been scarce. In particular, from 1812 until today, very few Premiers of Spain have been Catalans or Basques. Yet, nationalist Catalan and Basque political parties, on occasions, have preferred not to send their leaders to the central Executive.

There is asymmetrical development, exercise and defence of territorial autonomy in Spain across nationalities and regions. In particular, one factor for noticing a different desire to develop self-government is paying attention to the legislative activity of some autonomous communities in comparison to others. For instance, Catalonia has been eager to pass many statutes. The Basque Country may seem less active because much Basque legislation is issued by its three historical assemblies. Likewise, Catalonia and Basque Country have been significantly active in challenging central legislation compared to other autonomous communities. These variations might be explained according to different conceptions of autonomy and willingness to exercise it.

Graph 3. Central primary legislation challenged before the Constitutional Court by autonomous communities [10]



4. From dictatorship to the 1978 Constitution

In 1975, after the death of the dictator Francisco Franco, a transition to democracy started in Spain. Elections were held in 1977 with the main aim of drafting and passing a liberal-democratic constitution. The mainstream opinion deems the 1978 Constitution as the result of a broad consensus among the many factions.[11] Indeed, the Constitution was submitted to a referendum in December 1978 and citizens all over Spain expressed their overwhelming support for it. While in Catalonia the new Constitution was received with great support, in the Basque Country the reaction was more half-hearted and indifferent.[12]

The Constitution was nonetheless drafted in the midst of a transition from an authoritarian regime, in a context of weak recognition of human rights, rushed legalization of political parties, tough pressures and threats of a coup d'état by the military and police forces and armed violence from many sides. The transition to democracy was the product of a political reform piloted by certain elites of the previous regime. The influence of such elites as well as other important factions and powers such as the military partly explain the enshrinement of "the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards".[13] Notwithstanding such traits of demotic monism, the consensus reached across political factions and the possibilities opened to national minorities and their members were a clear advance from the previous regime.

The claims of self-government in Catalonia and Basque Country and the will to overcome the political and legal centralization of the dictatorship led to the entrenchment in the Constitution of a right to autonomy and the establishment of a procedure to create "autonomous communities" all over Spain as units of self-government. Already before the enactment of the 1978 Constitution, both Catalans and Basques were given back provisional institutions of self-government which they had already enjoyed during the Second Republic (1931-9). After the enactment of the Constitution, Catalonia and Basque Country were legally recognized as nationalities and institutionally organized as autonomous communities. Other eleven pre-autonomous-community entities were created before 1978, which finally increased to fifteen autonomous communities.

5. Constitutional asymmetries

5.1. Status

5.1.1. Recognition of nationalities and regions

Spain is a multi-tiered State with a codified, rigid and judicially controlled Constitution. A constitutional right to autonomy of nationalities and regions is enshrined in Article 2 of the 1978 Constitution, which reads:

> The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards, and it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed and the solidarity among them all.

Today there are seventeen autonomous communities (plus two autonomous cities). The Constitution, however, does not list or identify them.[14] Such identification and recognition seems left to legislation and politics, under some vague constitutional criteria. In particular, Article 143 of the Constitution provides that provinces with common historical, cultural and economic traits may become autonomous communities. Even

though the right and process to autonomy was thought to be exercised bottom-up (as was the case in Catalonia and Basque Country), it was actually built and shaped top-down by the pacts of the main Spanish parties of 1981 and 1992. This partially favoured an early symmetrisation of the system.

Although Catalonia is not explicitly mentioned in the Spanish Constitution, it was implicitly recognized as a nationality to be legally and politically organized as an autonomous community. There are several arguments to hold that. First, the Catalan and Basque cases were public reasons to constitutionalize a right to autonomy and to mention "nationalities" in Article 2. Second, the so-called Catalan minority took part of the drafting of the 1978 Constitution. Third, the 1979 Statute of Autonomy of Catalonia defined Catalonia as a "nationality" in Article 1. The 2006 Statute of Autonomy defined Catalonia as a nation in the Preamble. Nevertheless, in Judgement 31/2010, the Constitutional Court upheld such definition in the preamble provided that it is of no legal nature, since in constitutional terms there is solely the Spanish nation. This nation holds the sovereign rights exclusively, whereas nationalities only have a right to autonomy.

The Basque Country is also recognized as a nationality. Self-determination claims in Catalonia and Basque Country were explicit arguments to coin Article 2 of the Constitution and to constitutionalize a system of territorial decentralization later called "State of Autonomies". Specifically for the Basque case, Transitional Provision 4 of the Constitution referred to the possibility of "integration" of Navarre to the Basque Country. What is more, Additional Provision 1 of the 1978 Constitution protects and respects the historical rights of the territories with traditional laws and jurisdiction (*territorios forales*). Although other territories such as Catalonia claimed to fall under the scope of such provision, it was understood to refer only to Basque Country and Navarre.[15] Article 1 of 1979 Statute of Autonomy (still in force) recognized the Basque people as a nationality which is to be self-governed as an autonomous community.[16]

5.1.2. Entrenchment of territorial autonomy

The Spanish Constitution enables the establishment of autonomous communities with their representative institutions and territorial self-government. Each community is created by means of a statute of autonomy, which determines the powers it is entitled to exercise and regulates its main political institutions, which include legislative and parliamentary branches of self-government. The judiciary, as we shall see, remains centralized.

The status of autonomous communities is thus formally recognized in the particular statute of autonomy of each nationality or region. The statute of autonomy is the basic law of the region (Article 147 of the Constitution). In principle, different statutes of autonomy can establish very different levels of self-government. However, since statutes of autonomy are to be passed by the central Parliament as organic statutes (Article 81.1

of the Constitution), the system of allocation of powers remains, in essence, quite centralized and uniform. Legally speaking, the autonomous communities are creatures established and shaped by the constituted powers of the central State. Nonetheless, once the statute of autonomy is duly enacted, it can only be amended with the consent of both the central parliament and the autonomous community parliament following the particular amending procedure established in each statute of autonomy.

In 2004 the Basque Parliament sent a proposal to the Spanish Parliament to reform the Statute of Autonomy, but the latter rejected it outright in a single plenary session. Claiming a "right to decide" of the Basque people, the proposal aimed to establish a Basque Community "freely associated with Spain" (Article 1). Such rejection led to the enactment of the Basque Statute 9/2008, which intended to hold a referendum on the "right to decide" of the Basque people. The Spanish Constitutional Court soon declared unconstitutional this Statute (see Judgement 103/2008).

Even after parliamentary consensus and ratification through referendum, Constitutional Court Judgement 31/2010 overruled and neutralized many amendments of the 2006 Statute of Autonomy of Catalonia. In general, this ruling disabled much of the normative force of this type of statute, even though in previous Judgement 247/2007 the Court admitted that the statute of autonomy is the "essential piece in the territorial distribution of the political power of the (Spanish) State". Some would say that the Court ignored that the statute of autonomy is a quasi-constitutional norm for territorial organization, agreed by central and autonomous community parliaments and passed by qualified majorities in both parliaments (as well as approved by the Catalan citizenry through referendum). While Judgement 31/2010 deactivated the Statute of Autonomy, it is broadly believed that it significantly activated the pro-secession movement in Catalonia.

5.1.3. Self-organization

Every autonomous community has autonomy to organize its self-government institutions within the framework of its statute of autonomy. Article 152.1 of the Constitution sets the basic model of those institutions for the fast-track autonomous communities (Catalonia, Basque Country, Galicia and Andalusia). This model consisted in having an assembly with power to enact primary legislation, a president elected among the members of the assembly (as head of government and head of the autonomous community) and a government with executive and administrative powers. Such model was finally followed by the rest of statutes of autonomy. Paradoxically, although the fast-track autonomous communities could reach autonomy and powers faster, their degree of autonomy to organize its institutions is more conditioned by the Constitution than the slow-track communities, since the latter are not bound by Article 152.

The Basque Country is divided in three Historical Territories (*Araba, Bizkaya and Guipozkoa*). Accordingly, it has an internal "federal" organization: each Historical

Territory has a directly elected Legislative (*Juntas Generales*) and its Executive (*Diputación Foral*). These three historical provinces have much more powers than ordinary provinces of the rest of Spain. Such internal federalism manifests also in the organization of the Basque parliament, which although unicameral (as the rest of autonomous communities) it has the same number of directly elected representatives in each Historical Territory (Article 26.1 of the Statute of Autonomy). In addition, there is a Basque quasi-judicial institution, named Arbitral Commission, which has jurisdiction regarding Basque internal conflicts of allocation of powers (Article 39 of the Statute of Autonomy).

5.1.4. Representation

In Spain, shared-rule is weaker than self-rule. While there are no legal requirements of sub-State representation in the central executive, some considerations deserve attention in relation to the central parliament. The Spanish Parliament (*Cortes Generales*) is composed by the Congress and the Senate. Although Article 69.1 of the Constitution reads that "the Senate is the chamber of territorial representation", there are several reasons to question that constitutional statement.

Regarding the legislative functions of Senate, the upper chamber has weak temporary veto powers over the legislation passed by the lower chamber. Congress can by-pass a veto of the Senate in two different ways: either by an overall majority in Congress or by just waiting two months after which the temporary veto loses its force. Even in relation to the passing of the statutes of autonomy, the main role is reserved to the Congress rather than the Senate (see Article 81.1 of the Constitution). Although the Senate has a weak role in relation to ordinary territorial matters, it is the sole legislative chamber which may empower the Executive to adopt extraordinary coercive measures against disobedient autonomous communities (see Article 155 of the Constitution).[17]

The Spanish Senate is composed of two types of senators. The most numerous type is directly elected by universal suffrage in provincial constituencies and the less numerous type is elected by proportional representation in each autonomous parliament.[18] This makes the Senate a chamber of Spanish national representation rather than representing the nationalities and regions.

Regarding party politics, the Senate is, in practice, organized on party-lines basis, instead of territorial-representation. In addition, since more rural and unpopulated provinces favour more conservative parties, the Senate tends to be less inclined to decentralization and territorial autonomy. Interestingly, minority nationalist parties (both Basque and Catalan), instead of prioritizing a reform of the Senate into a real chamber of territorial representation, prefer to have direct bilateral intergovernmental relations with the central government. However, the bilateral mechanisms designed in the 2006 Statute of

Autonomy of Catalonia have not developed the kind of participation expected by their proponents.

5.1.5. National sovereignty, indissoluble unity and constituent power

The constitution-making and revision power rests in the sole hands of the Spanish Nation and its representatives (see Articles 166, 167 and 168 of the Constitution). Only the Spanish Parliament, together with the whole Spanish citizenry in some cases, can decide upon the reform of the Constitution. Autonomous communities have a right to propose constitutional amendments to the Spanish Government or to the Congress (Article 81 together with Article 166 of the Constitution). Amending the constitution is, however, a sort of taboo in Spain.[19] The Constitution has only been amended twice (one Article each time) and in both occasions following supra-State obligation and pressures (European integration) rather than sub-State initiatives or demands.

Under the duty of constitutional loyalty, Constitutional Court Judgement 42/2014 requires the Spanish Parliament to debate a proposal to amend the constitution coming from the legislature of an autonomous community. This is a case of paramount importance which adjudicates on a resolution of the Catalan Parliament declaring the sovereignty and the "right to decide" of the people of Catalonia. Although the Spanish Constitutional Court deems its ruling of "the same tenor" as the Quebec Secession Reference of the Supreme Court of Canada, the Spanish duty to debate seems much weaker than the Canadian duty to negotiate. Other differences emerge regarding the monistic understanding of sovereignty, for the Spanish Court considers:

> Article 1.2 of the Spanish Constitution reads that "national sovereignty belongs to the Spanish people, from whom all State powers emanate." This provision, "the basis of all our legal order" (Judgement 6/1981), attributes, therefore, the holding of national sovereignty exclusively to the Spanish people, the ideal unity of constituent power and, being so, the basis of the Constitution and the legal order and the origin of any political power (Judgements 12/2008, 13/2009, 31/2010). If in the current constitutional order only the Spanish people are sovereign, and it is so in an exclusive and indivisible way, no public power can attribute the status of sovereign to any other subject or State body or to any fraction of this people. An act of this power that affirms the category of "legal subject" of sovereignty as a feature of the people of a self-governing unit entails the negation of the national sovereignty which, according to the Constitution, only belongs to the Spanish people as a whole. Thus, sovereignty cannot be entrusted to any fraction or part thereof.

Such understanding of sovereignty seems quite far from what either a federal constitution or a multinational constitution should be. A federal constitution seems keen to admit the distribution or division of sovereignty and especially sovereign powers between layers of government. A paramount instance of shared-sovereignty could be the requirement of certain consensus between layers of government to amend the central Constitution. A

multinational constitution ought to be prone to the recognition of several nations within the State with some degree of sovereignty and, in particular, of *pouvoir constituant*.

In a more general conceptual approach, this monistic understanding of sovereignty follows many classic political and legal theorists, who understood sovereignty as an absolute, independent, indivisible power. In a more specific and contextual approach, this is the conception of sovereignty followed in Spain before, during and after the 1978 Constitution.[20] As seen, partly as a result of the type of transition to democracy and the lobbying by some powerful institutions and forces of the previous authoritarian regime.

Such conception of national sovereignty and centralisation of constituent power has practical effects, namely the current jurisprudence on referendums of self-determination. In the leading Judgment 103/2008, the Court forbids calling a referendum on self-determination or any other issue that would require a constitutional reform. Since the constitutional amending procedures include a referendum in its last steps, a referendum cannot be held right at the beginning. For the Constitutional Court, only the bearer of sovereignty can speak on substantial questions that would require a constitutional reform. It is not even up to the central State to call a referendum on sovereignty, self-determination or secession. When issues affect relevant constitutional provisions, only the constitution-making power through due constitutional procedures can give public and official answers. The constitution-making power, in such juridical conception of the Constitutional Court, is not a body but a legal procedure.

5.1.6. Weak sub-State veto powers

Nationalities and regions enjoy few formal or legally-entrenched veto powers. Only one seems worthy of mentioning, namely that statutes of autonomy are agreed norms which can only be amended with the consent of both the central and autonomous community parliaments. Each statute of autonomy stipulates its amending procedure (Articles 147.3 and 152.2 of the Constitution).[21] This sub-State veto power should be analysed from a broader picture so as to not over-emphasize its importance. First, while the basic law of self-governing units of many federal States are sub-State constitutions, statutes of autonomy are central laws passed by the Spanish parliament. Second, it is the Spanish Parliament that establishes, in the end, the amending procedure of each statute of autonomy. Third, central authorities can always amend the Constitution in order to explicitly or implicitly repeal provisions of statutes of autonomy. Fourth, the provisions of the statute of autonomy are submitted to the judicial review of the Spanish Constitutional Court. In sum, such sub-State veto power should be contrasted with the remarkable central powers over the basic law of autonomous communities.

Under the scope of Article 152.2 the Constitution, statutes of autonomy of the fast-track communities shall only be amended after approval in a referendum to be held in the territory where it should apply. This referendum is only optional to other autonomous

communities (and up to their statutes of autonomy to establish it). Whether the compulsory referendum should be held before or after the decision of the Spanish Parliament and the Constitutional Court has raised an interesting debate. While the decentralising forces desired to weaken the Spanish Parliament and Constitutional Court by sending amendment proposals already backed by the direct voice of the citizens, the centralizing forces aimed for these central institutions to retain a broad margin of amending power. The latter approach was finally established.

5.1.7. Centralized judiciary

In Spain the judiciary remains centralized. Notwithstanding the judicial unity, there is one superior court of justice in each autonomous community. This is to say, the Spanish unitary judicial system is adapted to the territorial organization of the "State of autonomies". Likewise, public prosecution remains centralized. Although the organization may seem adapted to the State of Autonomies, the Attorney General, who is appointed by the central government, has hierarchic power over all Spanish public prosecutors.

Constitutional Court judges are elected by central State bodies (see Article 159.1 of the Constitution). The autonomous communities may participate through the Senate. The 2006 Statute of Autonomy of Catalonia mentions the autonomous community participation in the designation of members of the Constitutional Court (Article 180). Despite the lack of direct legal force of this provision, the Constitutional Court tends to have, at least, one judge from Catalonia or Basque Country, sometimes one of each nationality.

Autonomous communities are not allowed to have their own constitutional courts. In Judgement 31/2010, the Constitutional Court struck down a provision of the Statute of Autonomy of Catalonia that granted the Catalan Council of Statutory Guarantees the power to deliver binding opinions on basic rights shrined in the Statute of Autonomy. The ratio of this ruling was that such binding opinions could weaken the Constitutional Court monopoly of judicial review of (both central and regional) legislation.

In contrast, in the Basque country there is a unique quasi-judicial institution, named Arbitral Commission, which adjudicates on conflicts of allocation of powers between the autonomous community and Historical Territories, and among the latter. It is a sort of Basque Constitutional Council whose rulings are binding and basically final.

With respect to self-determination conflicts in Catalonia and Basque Country, having a centralized judiciary favours a central government strategy of *judicializing* many issues.

5.1.8. Central oversight

The central power to legislate on many matters is large, since central competences regarding legislation are broad and vague (see Article 149 of the Constitution). Once a matter is under the scope of central legislation, the laws of the autonomous communities should adapt to that new legal framework. Having said that, central legislation cannot directly repeal regional legislation, only Courts may decide not to apply or annul regional legislation and only the Constitutional Court can strike down primary legislation.

The central government has no general powers to dictate executive instructions to the autonomous communities with some exceptions concerning delegate powers and exceptional powers (see Articles 153 and 155 of the Constitution). In general, the central government shall go to Courts to annul autonomous communities' actions and to force their authorities to fulfil their legal obligations. Regional activity can be challenged before both the Constitutional Court and ordinary Courts. When the central government challenges any regional law, decision or activity before the Constitutional Court, it may request its suspension which operates almost automatically (Article 161.2 of the Constitution).

Due to the weakness of shared-rule in Spain, new statutes of autonomy such as that of Catalonia of 2006 started to provide mechanisms of sub-State participation in central institutions and decision-making. However, the Constitutional Court deems such ways and means of participation as not legally binding (see Judgement 31/2010). Since statutes of autonomy are central laws, passed by the Spanish Parliament by means of organic statutes, it should be less surprising that they attempted to stipulate mechanisms of shared-rule.

There are two devices of central coercion that deserve a brief mentioning because of their current interest. In 2015, to oppose the Catalan secessionist challenge, the Constitutional Court Organic Act was amended to increase the powers of the Court to enforce its own rulings. In Judgement 185/2016, the Court upheld such reform. Nevertheless, while the Constitutional Court was eager to use its powers of word regarding the Catalan secession process, it was less willing to use its powers of sword. In October 2017, the Spanish Senate authorized the Spanish Government, under Article 155 of the Constitution, to block the process of independence of Catalonia by dismissing the President of Catalonia and the rest of members of the Catalan Executive, giving instructions to all Catalan public bodies and their officials, dissolving the Parliament of Catalonia in order to hold new elections. The sword of the Spanish Government proved to be fast and effective.

5.2. Competences

5.2.1. The allocation of competences in the "State of Autonomies"

The Constitution establishes no specific territorial model, but a right to autonomy and procedural rules to exercise this right. Within the constitutional limits, the powers of nationalities and regions are specified in each statute of autonomy. In this vein, the Constitution lists the central competences barred to the autonomous communities (Article 149.1), opens up the possibility for autonomous communities to assume the rest of competences through their statute of autonomy (Articles 147 and 148) and, closing the circle, reserves any residual competences for the central State (Article 149.3). Residual powers, however, play no important role since subject-matters usually fall under the scope of other clauses.

Thus, the statute of autonomy has the constitutional functions of establishing and regulating the self-government bodies and of attributing competences to them. Because of this function of assigning powers and because it is an organic statute passed by the Spanish Parliament, the statute of autonomy should not be confused with the typical constitutions of the units of a federation.

The Constitution of Spain does not define a substantial and definite territorial organization and allocation of powers. This has been named "de-constitutionalization" or, in Schmittian terminology, "dilatory compromise" for the constitutional agreement merely defers the issue setting vague rules to decide it in the future.[22] To fill such constitutional space, the notion of "constitutional block" was developed to emphasize the importance of the Statutes of Autonomy as quasi-constitutional laws to specify the competences.[23] The Constitutional Court, rather than safeguarding the diversity caused by distinct Statutes of Autonomy enshrining different provisions and powers, during the last decade has tended to passively uphold the central legislation with standardizing aims as well as promoting homogenization with its own rulings (see, in particular, Judgement 31/2010).[24]

Beyond the autonomy granted by each statute of autonomy, there is one constitutional clause allowing the transfer of specific State powers to particular autonomous communities through organic statutes (Article 150.2).[25] Perhaps some powers might be easier to attribute to autonomous communities through an organic statute of Article 150.2 than through statutes of autonomy, since the State can recover these powers by itself without the need to follow the particular amending procedure set in each statute of autonomy. While statutes of autonomy are norms resulting from a consensus of each region with the State, statutes under Article 150.2 are, legally speaking, unilateral State laws. In short, the central State might be more willing to grant more powers to autonomous communities through Article 150.2 because it may unilaterally withdraw them in the future.

5.2.2. Types of competences assigned to autonomous communities

Important sub-State competences include the organization of the public institutional of self-government; education; culture; health; social services other than those included in the social security; environment; local government; tourism; internal trade and industry; agriculture and farming; territorial organization, land regulation and planning; internal roads and transportation.[26]

Although this list may seem long, there are not many exclusive competences reserved to autonomous communities. But, certainly, this depends on the broadness or narrowness of the particular matter taken into consideration. For instance, the answer shall be different if education is taken as a whole or, instead, we start distinguishing between compulsory and non-compulsory education, academic and professional education, university and non-university education, legislation and execution, primary and secondary legislation, and so forth (see Article 131 Statute of Autonomy of Catalonia). Therefore, the narrower the focus, the more numerous exclusive competences we will find.

In this respect, the 2006 Statute of Autonomy of Catalonia attempted to be more specific and precise on the matters for which the Catalan government shall have exclusive competences. While a matter could be shared, a sub-matter could be of exclusive competence. Constitutional Court Judgement 31/2010, however, undermined such pro-exclusivity technique. The Court ruled that autonomous communities' exclusive competences as defined by Statutes of Autonomy are not unsurmountable limits to central powers. As a result, most matters tend to be shared. The system of allocation of powers looks, therefore, more decentralized in books that in practise. At the end of the day, the system is rather unclear and generates a high rate of constitutional disputes.

The scheme tends to be based on central "basic legislation" (*legislación básica*) and sub-State "developing legislation" (*legislación de desarrollo*). Although such "basic legislation" could be understood as framework legislation or binding guidelines (similar to EU directives), it tends to regulate many issues in precise ways and detailed provisions. That is, the central State interprets the concept of basic competence broadly, both in terms of issues covered and the detail in which these issues can be regulated. Such basic regulation does not always take the form of primary legislation but often of secondary legislation.

Beyond the basic legislative competence, there is also a legislation-execution power sharing between central and sub-State institutions (i.e. State legislates and autonomous communities execute central laws). Nonetheless, the central State also has executive powers over many competences. In other words, the central Government does not only legislate but also administrates many fields.

Finally, there are concurrent competences understood as both central and sub-State layers having simultaneous or similar powers over the same matter. In principle, the paramount concurrent competence is culture. In practice, however, concurrences (which are often called duplicities) are found in many matters. The central State, claiming the presence of general interests and the need for supra-territorial action (beyond the autonomous

communities' jurisdictions), tends to intervene in many issues that are supposed to be left to autonomous communities.[27]

5.2.3. Asymmetric competences

Both the Catalan and Basque cases present three similar kinds of asymmetries regarding competences: civil law, police and language. Regarding the first, these nationalities have their own historical systems of civil law which they have the power to maintain and renovate (Article 149.1.8 of the Constitution).[28] In this vein, there is the Civil Code of Catalonia and the Statute of Basque Civil Law. Second, both Catalonia and Basque Country have their own police corps and powers to organize and direct them (*Mossos d'Esquadra* in Catalonia and *Ertzaintza* in the Basque Country).[29] Last but not least, an important asymmetric power of Catalan and Basque governments concerns matters involving the regulation and promotion of their vernacular language.

Article 3 of the Constitution establishes "Spanish language" (i.e. Castilian language) as the official language of Spain. Accordingly, all Spaniards have the duty to know it and the right to speak it. The same provision allows the co-officiality of "other Spanish languages" in their respective autonomous communities in the terms stipulated in the statutes of autonomy. Hence, such Article opens the door to asymmetry allowing Catalan to be co-official in Catalonia and Euskara in the Basque Country.[30]

One important instance of the language dispute concerns public schools. While in Catalonia public schools shall, according to the Education Act of Catalonia, use "normally" Catalan as a teaching language, in the Basque country there is individual choice based on linguistic grouping (ranging from teaching in Euskara only to Castilian only schools). Although the Constitutional Court denied an individual right to linguistic option in public schools (thus accepting the Catalan model), case law rules for more presence of Spanish in schools of Catalonia. The policy of emphasising Catalan in school should be understood, however, in a context which greatly favours Spanish language. Among other things, TV, cinema and internet make sure that all Catalan pupils know Spanish fairly well. Teaching in Catalan, then, aims to rebalance the social presence and power of both co-official languages.

Catalonia has asymmetric powers regarding the penitentiary system (basically, on the management of prisons, but not on the penitentiary primary legislation). The Basque Country has important asymmetric powers regarding taxation, since, as we shall see in the following section, it enjoys a broad fiscal autonomy.

5.3. Fiscal autonomy

Fiscal autonomy arrangements in Spain offer important asymmetries. A *common regime* which applies to fourteen autonomous communities can be distinguished from the *special regime* of the Basque Country and Navarre, from the regime of the autonomous cities of Ceuta and Melilla and from the regime of Canary Islands. This section will compare the ordinary regime with the Basque and Navarrese particular regimes, since this special regime presents the most relevant fiscal asymmetries.

In Spain, fiscal arrangements are featured by periodic negotiation and constant conflict between layers of government. Taxes change over time due to the evolution of fiscal needs and policies. Fiscal flows tend to be negotiated and revised every five years. Therefore, the fiscal system has been shaped by a multilevel bargaining process. Traditionally, Catalan and Basque political parties support to central minority executives opened the door for more fiscal autonomy. Even though law might have played a lesser role in this topic, constitutional law is neither silent nor irrelevant on the issue.

According to Article 156.1 of the Constitution, autonomous communities "shall have tax autonomy for the development and implementation of their competences, according to the principles of coordination with the central Treasury and solidarity among all Spaniards". Article 157 lays down the autonomous communities' sources of income and defers to a Spanish organic statute the regulation on the financing of those sources and powers. Although this constitutional provision allows autonomous communities to create their own taxes, it is difficult for autonomous communities to establish new taxes since the central State tends to tax most taxable events. Once something is taxed centrally, it shall not be taxed regionally. As a result, sub-State taxes are insignificant. Thus, autonomous communities depend on central State taxes assigned to or shared with them such as the personal income tax, the valued added tax, the inheritance and donation tax, the property transfer tax and the so-called special taxes on alcohol, tobacco and hydrocarbons.

The ordinary fiscal regime has evolved from strong centralization during the dictatorship to more decentralization as democracy and territorial autonomy were consolidating. In the definition of the current model, autonomous communities such as Catalonia, having different sub-State party systems, have played a crucial role. Such units often ask for more fiscal autonomy in exchange for their support to central executives in parliamentary minority. Such expansions on fiscal autonomy were then extended to other autonomous communities. The decentralizing evolution of total public expenditure for layers of government in Spain seemed to last until the 2008 economic crisis.

In contrast to the ordinary fiscal regime, the Basque and Navarre special regimes offer an asymmetry of paramount importance and unusual in comparative terms. Basque Country and Navarre enjoy a constitutionalized historical privilege (Additional Provision 1) regarding fiscal autonomy and tax powers. The so-called *concierto* in the Basque Country and *convenio* in Navarre basically grant these two autonomous communities the power to collect most taxes and the status to negotiate bilaterally the amount (*cupo*) to be paid to the central authorities for the expenses of the central State. The legal basis of the Basque

fiscal autonomy is enshrined in Title 3 of the Statute of Autonomy and the fiscal pact currently in force is entrenched in Spanish Statute 12/2002. Although taking the form of a Spanish Statute, the latter is to be repealed or amended in agreed ways only (see Additional Provision 2 of the Statute 12/2002).[31]

Additional Provision 1 of the Constitution, which protects and respects the historical rights of the territories with traditional laws and jurisdiction (*territorios forales*), offers an interesting case of an asymmetrical interpretation of "history" as a legitimate source of rights. Several Spanish territories, such as Catalonia, had their own laws and jurisdictions (called *fueros*), including their own fiscal system, in the past. Nonetheless, such constitutional provision is interpreted as only concerning those territories where distinct laws and jurisdiction have been maintained over time (without discontinuity), namely Navarre and, partially, in the Basque Country. Some may criticize, however, that such continuity was a reward for the non-opposition to the 1936 military *coup d'état* that brought Franco to power.

During the last decade, many Catalan parties and governments have been claiming a similar sort of privilege. This is a claim regarding tax powers and status to negotiate bilaterally, without refusing to fulfil the constitutional requirement of solidarity with other territories (Articles 2, 138 and 156 of the Constitution). In this respect, notice that, according to Articles 2 and 3 of Statute 12/2002, the Basque institutions shall respect the constitutional principle of solidarity, observe the international treaties ratified by Spain and maintain the harmony with the whole Spanish tax system (in particular, having an equivalent fiscal pressure). Nevertheless, according to Article 52 of Statute 12/2002, the Basque Country shall not pay for the inter-territorial compensation fund provided in Article 158 of the Constitution.

Catalan demands on fiscal matters started with more modest claims concerning the proper levels of inter-territorial solidarity. Article 206.5 of the Statute of Autonomy of Catalonia enshrined a *principle of ordinality*, which stipulated that the central State "shall guarantee that the application of the levelling mechanisms does not alter in any case the position of Catalonia in the pre-levelling ranking of per capita incomes". This principle aims to limit solidarity in the sense that it should not alter the ranking of per capita earnings before and after application of the territorial levelling. Although this follows the intuition that nobody can be forced to solidarity to such an extent that the receiver immediately becomes richer than the donor, the legally-binding force of such principle was deactivated by the Constitutional Court (Judgement 31/2010). The following table shows the ranking of the financial resources of autonomous communities in terms of tax revenues and total resources after territorial distribution in 2012 (last available data so far).

Table 3. Revenues and resources rankings by autonomous communities [32]

	Tax Revenue		Total Resources	
	Index	Ranking	Index	Ranking
Madrid	134.2	1	95.4	11
Balearic Islands	121.7	2	100.8	9

Catalonia	119.1	3	99.4	10
Aragon	114.6	4	116.3	3
Cantabria	114.4	5	124.4	1
Asturias	106.6	6	112.6	6
La Rioja	103.2	7	120.7	2
Castile-León	101.5	8	116.3	4
Valencia	93.7	9	93.6	13
Galicia	91.2	10	110.9	7
Castile-La Mancha	85.4	11	103.4	8
Murcia	83.5	12	93.1	14
Andalusia	79.9	13	93.9	12
Extremadura	76.2	14	114.5	5
Canary Islands	42.2	15	88.3	15

The principle of ordinality is not respected in several cases. Catalonia is ranked 3rd in terms of revenues but 10th in terms of resources (without taking into account infrastructures investment deficits). While data point out that Madrid could have a "fiscal deficit" similar or even higher than Catalonia, it has enormous gains of being the capital of a quite centralized country in terms, for instance, of constitutional institutions, high authorities and highly qualified civil servants. The Congress, the Senate, the Crown, the President of the Government and the Council of Ministers, the Constitutional Court, the Supreme Court, the General Council of the Judiciary, the General Public Prosecution, the Spanish Central Bank, among others, are located in Madrid.

6. A conclusion: strong potentiality and weak actuality of constitutional asymmetry

National pluralism is and should be a significant factor of constitutional asymmetries. While minority nationalism defends asymmetry, majority nationalism favours symmetry. The Spanish Constitution allows both symmetric and asymmetric systems. A historical interpretation recalls that devolution was mainly triggered by Catalans and Basques and aimed to accommodate these nationalities. Even if the number of autonomous communities and their kind of autonomy was uncertain, Catalonia and Basque Country were known to be the main nationalities referred in Article 2 of the Constitution. In a more textual interpretation, the distinct treatment of autonomous communities can be founded in the distinction that Article 2 makes between "nationalities" and "regions". That both nationalities and regions hold a right to autonomy does not mean that they both should hold it with the same strength or intensity.

The initial asymmetries between nationalities and regions were reduced by several means such as extending the powers to the rest of the autonomous communities, standardizing

central legislation, centralizing practises and homogenising case law. Although Catalonia and Basque Country enjoyed higher autonomy than other communities following the passing of the Constitution, symmetrisation tendencies already started before the constitution entered into force. As a reaction to the 1990s reforms towards symmetrisation, Catalonia and Basque Country insisted on being granted additional recognition, voice and powers to restore the original asymmetry. However, the aims for asymmetry of the 2004 Basque proposal and 2005 Catalan proposal to reform their statutes of autonomy did not succeed.[33] In sum, it was a transitory and potential asymmetry more than a permanent and actual asymmetry.

The move towards asymmetry is not, in principle, unconstitutional, since the right to autonomy as designed by the Spanish Constitution implicitly allows substantial degrees of heterogeneity. More precisely, since each statute of autonomy, as the basic norm of each particular autonomous community, can attribute to its community distinct powers from other autonomous communities, may create singular institutions and contain different clauses from other statutes of autonomy, the development of the right to autonomy through singular statutes of autonomy endorses an "inherent diversity" (in the terms of the Constitutional Court). Under the 1978 Constitution, for instance, some provinces could be directly ruled by the centre or could have an assembly without power to enact primary legislation.

In addition, there are constitutional clauses directly establishing asymmetries between territories such as on languages (Article 3.2), on civil law (Article 149.1.8), on the process to access to autonomy (Article 151 and Transitory provision 2), on the institutions of self-government (Article 152), on fiscal autonomy (Additional provision 1). Beyond the competences granted by each statute of autonomy, Article 150.2 allows for the transfer of specific State powers to particular autonomous communities through organic statutes.

Such asymmetric potential of the Constitution generated great expectations to Catalan and Basque nationalities. However, the system tended to be ever less asymmetric.[34] This move toward symmetry has two effects. From a more theoretical perspective, less plurinational recognition to Catalonia and Basque Country, since they are treated as just the other territorial divisions of Spain. A more practical effect is that granting significant powers to seventeen self-governing units is quite difficult, because it may generate an impression that the central State is becoming too weak, too insignificant. Other communities with similar powers do want the same powers as Catalonia or Basque Country but, in practise, they refuse to exercise these powers.

To conclude, the Spanish State of Autonomies had strong potential to endorse constitutional asymmetries. The weak actuality of constitutional asymmetry does not match the spirit of the constitutional consensus of 1978, at least, from the perspectives of Catalan and Basque nationalism. *De jure* asymmetries should be characteristic of the territorial organization of Spain as a *de facto* multinational State.

[1] We owe a debt of gratitude to Josep Capdeferro, Carles Viver, Ferran Requejo, Gerard Martín and the editors of this volume.
[2] In the present days, the whole Basque Lands and the Catalan Countries (as bigger cultural and linguistic domains than the Basque Country and Catalonia) are only potential cultural and political unions. Although Article 145 of the 1978 Constitution forbids the federation of autonomous communities as a general rule, Transitional Provision 4 regulates a particular procedure for Navarre to join the Basque Country.
[3] Data: *Instituto Nacional de Estadística*, 2017.
[4] Namely Miquel Roca Junyent and Jordi Solé Tura.
[5] In contrast to Catalan nationalism, a faction of Basque nationalism opted for using a violent strategy through the armed actions of ETA. With a declining support over time, ETA finally abandoned the armed struggle in 2011 and dissolved in 2018. Some believe that certain constitutional asymmetries in favour of the Basque Country are due to the terrorist threat.
[6] ROSÉS, J. R. "Why Isn't the Whole of Spain Industrialized?", *JEH* 63(4), 2003, pp. 995-1022.
[7] Data: *Instituto Nacional de Estadística* 2017.
[8] Own elaboration on data from CIS, 2015-6.
[9] *Ibid.*
[10] Own elaboration based on Official Gazette data (BOE).
[11] While the so-called Catalan minority actively participated in the drafting of the Constitution and voted in favour of it (with some exceptions), the Basque minority was less enthusiastic and abstained in the final voting of the Constitution.
[12] In the whole Spain, the turn-out was 67%, with 88% voting yes, 8% no and 4% blank. In Catalonia, the turn-out was 68%, 90% voted yes, 5% no and 4% blank. In the Basque Country, the turn-out was only 45%, 69% voted yes, 22% no and 6% blank.
[13] According to one of the seven founding fathers, the wording of Article 2 was imposed on the constitutional commission by the Executive as a final and definitive proposed agreement. The amendments made by the constitutional commission were only stylistic. SOLÉ TURA, J. *Autonomies, Federalisme i Autodeterminació*, pp. 79-83.
[14] Nonetheless, Transitory Provision 5 of the Constitution regulates the access to autonomy of the African cities of Ceuta and Melilla. This provision identifies them as possible autonomous communities without requiring it.
[15] Although Article 5 of the Statute of Autonomy of Catalonia reads that the self-government of Catalonia is based on the historical rights of the Catalan people, Constitutional Court Judgement 31/2010 limited the effects of this provision to civil law.
[16] Other statutes of autonomy define their autonomous communities as nationalities, namely Galicia, Andalusia, Canary Islands, Aragon, Balearic Islands and Valencian Community. See comparative table of Statutes of Autonomy:
http://www.seat.mpr.gob.es/dam/es/portal/areas/politica_autonomica/Estatutos_Autonomia/estatutos_materias/parrafo/03/03-Elementos-constitutivos-nuevo-08.pdf
[17] In addition, the Senate has a symmetrical role with Congress regarding the passing of statutes to "harmonize" regional laws (see Article 150.3 of the Constitution).
[18] While about 80% are "provincial senators", only 20% are "autonomous communities' senators". See http://www.senado.es/web/composicionorganizacion/senadores/composicionsenado/senadoresenactivo/index.html?lang=en
[19] See FERRERES, V. *The Constitution of Spain*. Oxford: HP, 2013, pp. 55-9.
[20] See FOSSAS, E. (dir.). *Les transformacions de la sobirania i el futur polític de Catalunya*. Barcelona: Proa, 2000.
[21] While some statutes of autonomy only allow amending initiatives from the autonomous community institutions, other statutes of autonomy also grant the right to initiate the amending procedure to central institutions. In general, though, amendments require central and sub-State consensus, with the exception of the statutes of autonomy of Ceuta and Melilla, which can be amended centrally without local consent.
[22] See CRUZ VILLALÓN, P. "La estructura del Estado…", in *La curiosidad del jurista persa, y otros estudios sobre la Constitución*. Madrid: CEPC, 2006, pp. 377-89.
[23] See RUBIO LLORENTE, F. "El bloque de constitucionalidad". *REDC*, No. 27, 1989, pp. 9-37.
[24] See VIVER, C. "Spain's Constitution and Statutes of Autonomy", in BURGESS, M.; TARR, A. (ed.) *Constitutional Dynamics in Federal Systems.* Montreal: MQUP, 2012, ch. 10.
[25] For instance, under the 1992 political agreement on autonomy, several competences were transferred by means of Article 150.2 before many new Statutes of Autonomy were passed in 1994.

[26] See comparative table of Statutes of Autonomy: http://www.seat.mpr.gob.es/dam/es/portal/areas/politica_autonomica/Estatutos_Autonomia/estatutos_materias/parrafo/010/11-Distribucion-competencias-nuevo-08.pdf

[27] See VIVER, C.; CORRETJA, M. "De Facto Concurrency in Spain", in STEYTLER, N. (ed.) *Concurrent Powers in Federal Systems*. Leiden: BN, 2017, pp. 115-38.

[28] Other autonomous communities such as Aragon, Balearic Islands and Navarre own historical systems of civil law as well. See § 2 above.

[29] Navarre also has its own police corps and similar police powers.

[30] Six autonomous communities have sub-State official languages, namely the Basque Country and Navarre (Basque), Catalonia (Catalan and Occitan-Aranes), Balearic Islands and Valencian Community (Catalan-Valencian) and Galicia (Galician). Sub-State languages are also recognized and protected in Aragon and Asturias.

[31] Many taxes are under the control of the Historical Territories.

[32] Source: Government of Catalonia.

[33] Moreover, the innovative provisions and clauses of the 2006 Statute of Autonomy of Catalonia which survived this intricate process were copycatted by other autonomous communities. As a result, such asymmetries were blurred once again.

[34] See REQUEJO, F.; NAGEL, K-J. (eds.) *Federalism Beyond Federations*. London: Routledge, 2016.