SPAIN

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I. OVERVIEW

The current system of territorial allocation of powers in Spain was established by the 1978 Constitution. In the aftermath of Franco's dictatorship, the territorial model of political decentralization became one of the most controversial issues in the process of constitution drafting. Self-government claims voiced from several regions, mainly the Basque Country, Catalonia, and Galicia, could not be ignored. The 1978 Constitution set up an open-ended model. The Constitution did not define the component states, or their powers.[1] The Constitution recognized the right to autonomy and established basically two proceedings for enacting the corresponding Autonomy Statute, and thus for achieving the status of "Autonomous Community" (hereinafter component states).[2] The Autonomy Statute is the foundational norm of the component states and hence the supreme norm within the state legal system.[3] After the Constitution's approval, the model of political decentralization was extended to the whole territory, which became organized in 17 Autonomous Communities[4] (and two autonomous cities).[5]

The Spanish Constitution contains the list of powers reserved to the central government. Beyond this list, component states may assume the powers they choose by listing them in the respective Autonomy Statute. Although this model is potentially asymmetrical regarding the allocation of powers among the component states, in practice the states have tended to assume equivalent levels of power.[6] The allocation of powers between the central government and the component states follows two criteria: subject matter and function.[7] The central government and the states might be granted exclusive or concurrent powers. In case of exclusive powers, the corresponding level of government enjoys all functions over a specific subject matter. In case of concurrent powers, each level of government is allocated a specific function with regard to the same subject matter: legislation, basic legislation, or execution. For example, regarding labour law, the central government has legislative power and execution is left to the states; regarding environmental law, the central government has the power to pass basic legislation, while the states have the power to develop basic legislation and to execute the laws.

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[1] Cruz Villalón, P., "La estructura del Estado o la curiosidad del jurista persa", *Revista de la Facultad de Derecho de la Universidad Complutense,* núm. 4, 1982; FOSSAS, E., "Asimetría y plurinacionalidad en el Estado autonómico", en Fossas, E. y Requejo, F., *Asimetría federal y Estado plurinacional,* Trotta, Madrid, 1999.

[2] These two proceedings are known as "fast-track" and "slow-track" proceeding to autonomy, because the level of autonomy that could be achieved at the beginning depended on the proceeding that was followed. Ruipérez Alamillo, J., *Formación y determinación de las Comunidades Autónomas en el ordenamiento constitucional español*, Tecnos, Madrid, 1991; López Guerra, L., *Derecho Constitucional. Los poderes del Estado. La organización territorial del Estado*, Tirant lo Blanch, Valencia, 2007, pp. 315-319.

[3] Aguado Renedo, C., *El Estatuto de Autonomía y su posición en el ordenamiento jurídico*, Centro de Estudios Constitucionales, Madrid, 1996; Torres Muro, I., *Los Estatutos de Autonomía*, Centro de Estudios Políticos y Constitucionales, Madrid, 1999; Castellà Andreu, J. M., *La función constitucional del Estatuto de Autonomía de Cataluña*, Institut d'Estudis Autonòmics, Barcelona, 2004.

[4] Andalucía, Aragón, Asturias, Baleares, Canarias, Cantabria, Castilla-La Mancha, Castilla y León, Cataluña, Extremadura, Galicia, Madrid, Murcia, Navarra, País Vasco, la Rioja, Comunidad Valenciana.

[5] Ceuta and Melilla.

[6] AA.VV., *Uniformidad o diversidad de las Comunidades Autónomas*, Institut d'Estudis Autonòmics, Barcelona, 1995.

[7] Viver Pi-Sunyer, C., *Materias competenciales y Tribunal Constitucional. La delimitación de los ámbitos materiales de las competencias en la jurisprudencia constitucional*, Ariel, Barcelona, 1989; Carrillo, M., "La noción de materia y el reparto competencial en la jurisprudencia del Tribunal Constitucional", *Revista Vasca de Administración Pública*, núm. 36, 1993.

One can identify four main periods regarding the development of the Spanish territorial model.[8] Over the first period (1979-1985), the Statutes of Autonomy of each component state were enacted. Public institutions were set up and began to function. The 1981 "Autonomy Agreements" brought homogeneity regarding the states' institutional design. Second, between 1985 and 1999, there was a trend towards homogenizing state powers. The 1992 Autonomy Agreements led to the transfer of new powers to the states and to the amendment of several Autonomy Statutes to incorporate these new powers. The result was a considerable homogenization of the model of political development.[9] Third, from 1999 to 2004, there was a tendency towards centralization, particularly since 2000, when the Popular Party achieved an absolute majority. Finally, from 2004 to the present, several component states have amended their Autonomy Statutes in order to improve the level of self-government. This last wave of amendments has elicited a profound debate about the territorial model of political decentralization as well as much political tension. Shortly after Catalonia amended its Autonomy Statute in 2006, the Statute was challenged before the Constitutional Court by the representatives of the Popular Party in Congress, arguing that a significant number of provisions clashed with the federal Constitution.[10] The decision by the Constitutional Court was for long awaited and finally issued in June 2010 (STC 31/2010). Regarding the definition of the several types of competences, the Constitutional Court mainly applied previous case-law without taking up the challenge of rethinking how competences are functionally defined.[11]

The Spanish system is sometimes regarded as a federal state. Hardly anybody in Spain, however, would characterize it as a true federation. Several reasons militate against such a characterization; among others, they are: the component states cannot amend the respective Autonomy Statutes without the approval by the central Parliament; component states may not intervene in the process of constitutional amendment; the Senate does not actually represent the states, and hence the states do not fully participate in the legislative process at the central level; and the judiciary is not decentralized.[12] In sum, the Spanish "autonomous" system is a *sui generis* model in comparative law.

II. THE FEDERAL DISTRIBUTION AND EXERCISE OF LAWMAKING POWERS

1. *Central Government Legislative Powers*

The Constitution contains the list of powers allocated to the central government in article 149.1. Pursuant to this article, the central government's *exclusive* powers extend to the following subject matters, among others: nationality, immigration, the right of asylum; international affairs; defence and the Armed Forces; administration of justice; customs, tariffs, and foreign trade; monetary system, foreign credits, exchange and convertibility; general finance and public debt; external health; maritime fishing; merchant marine and the ownership of boats; lighting of coasts and maritime signals; harbours of general interest, airports of general interest, control of the aerial space, transit and transport, meteorological service and aircrafts' registration; railroads and land transportation through the territory of more than one state; general communications system, traffic; postal services and telecommunications; aerial and submarine wires, and radio-communication; public works of general interest or the realization of which affects more than one

[8] Argullol Murgadas, E. (dir.), *Federalismo y autonomía*, Ariel, Barcelona, 2004, p. 91; AJA, E., *El Estado autonómico. Federalismo y hechos diferenciales*, Alianza Editorial, Madrid, 1999, pp. 58-78.

[9] Aja E., *El Estado autonómico…, op. cit.*, pp. 69-74; Álvarez Conde, E., "El ejercicio del derecho a la autonomía y la configuración del Estado autonómico", en *El funcionamiento del Estado autonómico*, MAP, Madrid, 1999.

[10] The Autonomy Statute of Catalonia has been challenged by the parliamentary representatives of the Popular Party and the *Defensor del Pueblo* (the Spanish Ombudsman). Other amended Autonomy Statutes, such as the Statute of Andalucía, which have included identical or very similar provisions, have not been challenged before the Constitutional Court.

[11] Since the decision by the Constitutional Court was issued, many articles have been published commenting upon this. Among others, see the monographic issued by *Teoría y Realidad Constitucional*, núm. 27, 2011, and by the *Revista d'Estudis Autonòmics i Federals*, núm. 12, 2011.

[12] Fossas, "Asimetría y plurinacionalidad…", *op. cit.*, pp. 284-285; Requejo, F., *Multinational federalism and value pluralism*, Routledge, London, 2005, pp. 82-83.

state; production, sale, possession, and use of firearms and explosives; protection of the cultural, artistic, and monumental heritage of Spain against exportation and exploitation; museums, libraries, and archives belonging to the central government without prejudice to their management by the states; public security, without excluding the creation of state police bodies according to the respective Autonomy Statute; statistics for national purposes; and authorization for convoking popular consultations via referendum.

The Constitution also allocates *concurrent* powers to the central government with respect to several subject matters. It allocates to the central government either general legislative power or the power to pass basic legislation. Firstly, *legislative* power includes the competence to pass parliamentary legislation and the power to enact executive regulations to develop legislation. The central government holds legislative powers over subject matters such as: commercial, criminal, procedural, and labour law; intellectual and industrial property, weights and measures, setting the official time; pharmaceutical products, forcible expropriation, regulation and concession of water resources and projects when waters run through more than one state, the authorization of electrical installations when their use affects more than one state or when the transportation of energy goes beyond the borders of one state, and the conditions for obtaining, issuing, approving, and standardizing academic and professional degrees.

Secondly, the Constitution may grant to the central government the power to pass *basic legislation* on several subject matters. The concept of "basic legislation" is elusive and has been interpreted through constitutional case law in an expansive way. Basic legislation should set a common floor for all component states in order to secure the general interest. Basic legislation includes parliamentary acts, but also, by way of exception, executive regulations when they are necessary to complement the basic legislation.[13] The Constitution grants the central government powers to enact basic legislation concerning a number of subject matters: contractual obligations, credit, banking, and insurances; the general planning of the economic activity; promotion and general coordination of scientific and technical research; health; social security; public administrations' legal system and civil servants' statutory regime, which shall secure a common treatment to all citizens; common administrative procedure, without prejudice to the specialties deriving from the states' particular organization; administrative contracts and concessions; the regime of responsibility of all public administrations; environmental protection, without prejudice to the states' capability to establish additional standards of protection; woodlands, forestry projects, and livestock trails; mining and energy systems; press, radio, and television, and all means of social communication in general; and education.

The most frequently used constitutionally specified source authorizing central regulation is the clause regarding "the bases and coordination of the general planning of economic activity" (art. 149.1.13). The practical use of this clause is similar to the so-called "commerce clause" in the US. Article 149.1.13 has been interpreted broadly by the Constitutional Court. As a result, this clause has allowed the central government to regulate fields within state powers, as long as there is a connection with the economic activity, such as housing, tourism or agriculture, among others.

2. *State Legislative Powers*

The Spanish Constitution does not expressly allocate powers to the component states. States may assume all powers that have not been reserved to the central government by the Constitution (*principio dispositivo).*[14] Hence, state powers are those listed in the respective Autonomy Statute.

[13] Tornos Mas, J., "La delimitación constitucional de las competencias. Legislación básica, bases, legislación de desarrollo y ejecución", en *El funcionamiento del Estado autonómico,* MAP, Madrid, 1999;
[14] Fossas, E., *Principio dispositivo en el Estado autonómico,* Marcial Pons, Madrid, 2007.

The Constitution includes a list of competencies that all states may have assumed at the foundational moment, according to article 148.1.[15] Depending on the proceeding followed to enact the Autonomy Statute, certain states could only acquire the powers included in the list of article 148.1. These states needed to wait for five years to expand this list.[16] These were the so-called "slow-track" states (art. 146).[17] "Fast-track" states could assume all powers not reserved to the central government from the very beginning (art. 151.1).[18] At present, article 148 is now somewhat irrelevant, as all the "slow-track" states have extended their powers after waiting the requisite five years.

Component states may only acquire *exclusive* powers, including legislative and executive powers, over subject matters that are not reserved to the central government.[19] Component states have tended to assume the following exclusive powers: organization of their self-governing institutions; regulation of the territory, zoning, and housing; railways and highways whose itinerary runs completely in the territory of the state; public works of interest to the state in its territory; and social assistance, among others. In general, subject matters listed in article 148 of the Constitution have been assumed as exclusive powers by the states.

With regard to *concurrent* powers, when the central government has jurisdiction to legislate, component states may assume the power to *execute* central government legislation. It should be recalled, as mentioned above, that the central legislative power includes parliamentary acts and developing governmental regulations. Therefore, the states may only execute central norms and adopt self-organizing regulations.[20] Component states have tended to assume executive power, for instance, over the following subject matters: prisons, labour law, or intellectual and industrial property.

When the central government holds the power to pass basic legislation, component states may assume the power to pass *developing legislation* and to *execute* central basic legislation. They have tended to do so in fields such as credit, banking, and insurance; mining and energy systems or environmental protection.[21]

The exercise of central power cannot prevent the states from exercising their concurrent powers. Thus there is no pre-emptive effect. Each level of government has specific functions with regard to concurrent subject matters, and the central government cannot go beyond its attributed functions. In other words, the central government may not infringe functions allocated to the component states or prevent the states from exercising their powers.

[15] Article 148.1 includes, for instance: the organization of self-governing institutions; regulation of the territory, zoning, and housing; public works of interest to the Autonomous Community in its own territory; railways and highways whose itinerary runs completely within the territory of the Autonomous Community; refuge harbours, recreational harbours, airports, and generally those which do not carry out commercial activities; agriculture and livestock raising according to general regulations; woodlands and forestry; activities in matters of environmental protection; museums, libraries, and music institutions of interest to the Autonomous Community; monuments of interest to the Autonomous Community; promotion of culture, research, and, when applicable, the teaching of the language of the Autonomous Community; promotion and regulation of tourism within its territorial area; social assistance.

[16] According to article 148.2: "After five years, through the reform of their Statutes, the Autonomous Communities may expand their competences within the framework established in Article 149".

[17] Most of the states followed the "slow-track" proceeding (Aragón, Asturias, Baleares, Canarias, Cantabria, Castilla-La Mancha, Castilla y León, Extremadura, Madrid, Murcia, la Rioja, and Comunidad Valenciana).

[18] The states that followed this proceeding, which was more complex, were: Andalucía, Cataluña, Galicia, and País Vasco. Navarra followed a specific procedure (Additional Disposition 1 of the Constitution).

[19] Jiménez Asensio, R., *La Ley autonómica en el sistema constitucional de fuentes del derecho*, Marcial Pons, Madrid, 2001.

[20] Jiménez Asensio, R., *Las competencias autonómicas de ejecución de la legislación del Estado*, IVAP, Madrid, 1993.

[21] With the 2006 amendment, the Autonomy Statute of Catalonia has partly redefined the types of concurrent and executive powers (articles 111 and 112). These clauses have been challenged before the Constitutional Court claiming that they clash with the Constitution and previous Constitutional Court case-law.

In practice, however, the concept of "basic legislation" has been interpreted broadly. As a result, the central government might intrude in fields of state power when enacting basic legislation. The line separating "basic legislation" from "developing legislation" is not clear. As a result, the expansive exercise of the power to pass basic legislation can have the effect of preventing the states from fully exercising their developing powers in practice. The Constitutional Court has jurisdiction to police the central government to ensure that it respects the limits of basic legislation. The Court has recognized, however, that the central government has considerable leeway in this context. At the same time, component states do not need to wait for the central government to enact basic legislation to exercise the respective powers to pass developing legislation. Yet, once the central government legislates, component states must adapt their legislation to central basic laws.[22]

In practice, the fields in which states have passed a greater number of laws are the following: public institutions, education, culture, agriculture, livestock and fishing, social assistance, environment, zoning and housing, public works, industry, commerce, media, health, and tourism. One might say that the most productive and innovative states have been Catalonia (which holds an undisputed first place in this regard), Galicia, Madrid, Valencia, Andalucía, and Canarias.[23] Also, states that enjoy specific powers have legislated on the linguistic system and on private law. The most important areas in which central and component state regulations coexist are those in which the central government holds the power to pass basic legislation and states have jurisdiction to develop and execute central legislation; environmental law, civil service, or education are examples. Also, central and state legislation coexist when economic activity is somehow involved and the central government invokes the constitutional clause authorizing it to act in this field.

3. *Principles Relating to the Interaction between Central and State Legal Systems*

The Constitution allocates residual powers to the central government (art. 149.3). The system works as follows: the Constitution lists the powers reserved to the central government in article 149.1. In their respective Autonomy Statutes, component states may assume any powers not reserved to the central government. Then, the remaining powers not assumed by the component states belong to the central government by virtue of the residual clause (art. 149.3). In practice, this clause is of very little use because, over time, component states have tended to assume all powers not reserved to the central government.

The constitutional principle to resolve conflicts between central and component state law is the "principle of competence." There is no hierarchy between central government and component state legislation. Hence, in case of conflict, the question is whether the competence corresponds to the central government or to state authorities, according to the Constitution and the respective Autonomy Statute.

The Constitution is the supreme norm of the land and thus it is hierarchically superior to the Statutes of Autonomy. At the same time, Statutes of Autonomy complement the Constitution regarding the system of allocation of powers in Spain. In order to have the whole picture of how power is vertically allocated, both the Constitution and the respective Statute of Autonomy need to be taken into account.

III. *The Means and Methods of Legal Unification*

[22] Fernández Farreres, G., "El sistema de distribución de competencias entre el Estado y las Comunidades Autónomas en la jurisprudencia constitucional: cuestiones resueltas, problemas pendientes", *Asamblea. Revista Parlamentaria de la Asamblea de Madrid*, núm. 2, 1999.

[23] See the data in Porras, A., Gutiérrez, F., y Morillo, M. L., "La actividad legislativa de los parlamentos autonómicos, 1980-2000: Agenda legislativa y mapa normativo", en Subirats, J., y Gallego, R., *Veinte años de autonomías en España*, CIS, Madrid, 2002, p. 170, 194-195. The "Instituto de Derecho Público" publishes since 1989 a report on the Autonomous Communities (*Informe Comunidades Autónomas*), which includes information about the legislative activity of each Autonomous Community.

1. *The Exercise of Central Power* (*Top Down*)

The Constitutional Court has interpreted several *constitutional principles* as, in some way, reinforcing the powers of the central government and thus limiting the exercise of state powers. These constitutional principles are the following: unity (art. 2), solidarity (art. 2, 138.1), free movement of people and goods throughout the territory (art. 139.2), subordination of all wealth to the general interest (art. 128.1), and economic order and market unity (art. 131.1, 138.2, 139.2).[24] In addition, constitutional norms protecting rights must be interpreted and applied in the same way throughout the country. The central government has powers to legislate on the basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and fulfilment of their constitutional duties (art. 149.1.1).[25]

The most common means of legal unification is central government legislation, including both legislative acts and governmental regulations. The central government, however, may not mandate that component states pass implementing legislation. In particular, when the central government enjoys the power to pass *basic legislation*, developing state legislation must abide by it, but the states are free to decide how and when to exercise their developing power. In any event, through basic legislation, the central government can establish the goals that must be achieved by developing state legislation. This is an important way of harmonization because what is "basic" has been interpreted quite broadly by the Constitutional Court.

In addition, according to the Constitution, several subject matters need to be regulated through "*organic law*". The difference between organic laws and ordinary laws is that the former need to be approved by the absolute majority of Congress. Formally, organic laws are not a means of allocating powers to the central government. However, since this kind of law may only be passed by the central Parliament, the subject matters reserved to organic laws are ultimately reserved to the central government. This is true, for instance, for the general electoral regime and the development of fundamental rights. In addition, any powers that states might assume over these subject matters must comply with the respective organic laws enacted by the central government.

The use of the *spending power* by the central government has turned out to be a very controversial issue. The Constitutional Court has held that it cannot be a mechanism to take over state power. Since the 1990s (STC 13/1992), constitutional case law began to curtail the central government's traditional policy of using the spending power to induce state policy-making. Through the exercise of its spending power, the central government had tended to regulate the conditions to obtain public funds in fields under state jurisdiction. The Constitutional Court argued that the spending power does not grant new powers to the central government over subject matters allocated to the states. Thus, the central government's capacity to intervene through the spending power on a certain field must be limited to the specific functions enjoyed by the central government in that field. Yet, the Constitutional Court has admitted that even when the subsidized field corresponds to the exclusive power of the states, the central government may still grant public funding. In those cases, the central government shall limit itself to assigning an amount of money to a certain activity in a general way, without setting specific goals, conditions, or processes to obtain those funds. In practice, however, even exclusive state powers have been conditioned by the central government spending power.[26]

[24] Viver Pi-Sunyer, C., *Materias competenciales y Tribunal Constitucional*, *op. cit*., pp. 106-120.
[25] Pemán Gavín, J., *Igualdad de los ciudadanos y autonomías territoriales*, Civitas, Madrid, 1992; Cabellos Espiérrez, M. A., *Distribución competencial, derechos de los ciudadanos e incidencia del derecho comunitario*, Centro de Estudios Políticos y Constitucionales, Madrid, 2001; González Pascual, M. I., *El proceso autonómico ante la igualdad en el ejercicio de los derechos constitucionales*, IVAP, Oñati, 2007.
[26] Fernández Farreres, G., "La subvención y el reparto de competencias entre el Estado y las Comunidades Autónomas", *REDC*, núm. 38, 1993; Fernández Farreres, G. (dir.), *El régimen jurídico de las subvenciones. Derecho español y comunitario*, Consejo General del Poder Judicial, Madrid, 2007; Carrasco Durán, M., "Repercusión de los Estatutos de Autonomía en la actividad de

The central government may not take over a field that is reserved to the component states, even in the case of state inaction or state action that does not conform to centrally specified standards. It is for the Constitutional Court to resolve the conflicts regarding the allocation of powers. First, with regard to state inaction, the central government can bring an action before the Constitutional Court, but the central government cannot force the states to regulate by threatening to take over the field. In the past, it was admitted that the central government could pass legislation as "supplementary" law, which would apply in case of lack of state legislation. In the mid-1990s (STC 118/96, 61/97), however, the Constitutional Court held that the central government could only legislate in those fields over which it had specific powers. Thus, the central government was prevented from passing developing legislation by arguing that it would only apply as supplementary law if all states had assumed the power to develop basic legislation regarding that specific field. Second, with regard to state action clashing with centrally specified standards, the central government can bring an action before the Constitutional Court. The Constitutional Court will decide whether the state has unduly infringed central legislation.

Exceptionally, the Constitution establishes that if a component state does not comply with its constitutional or legal obligations, or if its action seriously impinges upon the general interest, the central government may take the *necessary measures to force the state* to comply with its obligations and to protect the general interest (article 155). Before it can do so, however, the central government should require the non-complying state's President to abide by the law. Furthermore, the Senate is required to approve any necessary measures by absolute majority. In practice, however, this provision has never been used.

The Constitutional Court has the ultimate authority to interpret the Constitution and the Statutes of Autonomy. Through its case law, the Court has delineated the scope of central government and state powers. Its interpretation of constitutional clauses allocating powers is binding upon all judges and public authorities. Constitutional interpretation might allow for a broader or narrower scope of action for the central government to pass uniform legislation. For instance, the appeal to the "general interest" has allowed for a broad interpretation of the power to enact "basic legislation", narrowing the scope of state powers in crucial areas such as education. Also, the broad interpretation of article 149.1.13 (general planning of economic activity) has allowed the central government to act in fields under state power such as housing, tourism, or agriculture (STC 152/88, 75/89, 14/89). This has been an avenue for furthering harmonization among the states.[27]

In several fields, the Constitution allocates to the central government a *coordinating power*. This term has been interpreted by the Constitutional Court as the competence to establish mechanisms for integrating the multiple state systems within the central system. These integration mechanisms seek to secure a degree of homogeneity in the face of potential diversity of state regulations over the same field, such as regulations of health or scientific and technical research. In practice, these mechanisms take on a number of forms: they may mandate disclosure of certain information, establish forums for sharing information, set criteria that component states must follow, or create public central registries. The Constitutional Court has also admitted that the power to legislate might include the power to coordinate.[28]

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fomento estatal", a Agudo Zamora, M., *El desarrollo del Estatuto de Andalucía*, Centro de Estudios Andaluces, Sevilla, 2008; Sánchez Serrano, L., "Ayudas comunitarias y distribución de competencias entre el Estado y las Comunidades Autónomas", *Noticias de la Unión Europea*, núm. 118, 1994; Torres Pérez, A., *La projecció de la potestat subvencional sobre la distribució competencial*, Institut d'Estudis Autonòmics, Barcelona, 2011.

[27] Fernández Farreres, G., "El sistema de distribución de competencias entre el Estado y las Comunidades Autónomas en la jurisprudencia constitucional", *op cit*.

[28] López Guerra, L., *Derecho Constitucional…*, *op. cit*., pp. 384-386.

2. *Formal or Informal Voluntary Coordination among the Component States* (*Bottom Up*)

State legislators are likely to follow each other. Since they have tended to assume the same kind of powers, they are also prone to look to one another when acting upon them. As a result, the degree of state diversity in practice is lower than could be expected. There is a clear *trend towards harmonization* in the fields under state power. In particular, after one state decides to innovate in a certain field, the others tend to follow suit. Hence, momentary diversity produced when certain states pass innovative legislation is diluted in a bottom up homogenizing process.[29] State legislation is not identical, but the degree of similarity is high. This phenomenon is known as "*isomorfismo*." For instance, state power over zoning is exclusive. In this area, states have tended to emulate previous regulations, except where the central government has invoked its authority to legislate. Still, some differences regarding terminology and procedures remain.

At the same time, component states might pursue different agendas: Catalonia, Andalucía, Valencia, and Canarias tend to legislate more profusely on education and culture. The Basque Country, Navarre, Asturias, and Cantabria are more prone to legislate on public works, zoning, housing, and industry. Galicia, Castilla y León, and Extremadura tend to regulate agriculture, livestock, and fishing. In general, there is a tendency to expand legislation on social assistance and issues related to the welfare state.[30]

The *collaboration* among component states, both bilateral and multilateral, is minimally regulated by the Constitution (art. 145.2), which refers to the Autonomy Statutes for further details. The Constitution establishes two kinds of agreements: "collaborating conventions" and "cooperation agreements". The main difference between them is that the latter require the central Parliament's authorization while the former only require that information be provided to the central Parliament. Generally, state governmental officials handle state-to-state collaborative negotiations. Yet, pursuant to the respective Autonomy Statutes, the adoption of collaborating conventions or cooperation agreements might also require the participation of the state Parliament. In that case, parliamentary participation might take several forms: information-sharing, authorization, approval, ratification, or supervision.[31] In any event, state parliaments only become involved at the end of the process.[32]

In practice, it is rare for the component states to formally subscribe to state-state collaborative conventions. Until 2006, only 25 of these had been published, and they relate to fields such as forest fires, road planning and construction, or environmental protection.[33] Most of the existing agreements are bilateral (rather than multilateral) and they are aimed at solving specific problems between neighbouring component states, limiting any unifying effect they might otherwise have. An explanation for the reluctance to subscribe to multi-state collaborative agreements might also lie in the lack of political will or in the lack of a tradition of state multilateral negotiation.[34] States have tended to make use of informal means of collaboration to avoid central parliamentary control, but these agreements are not published.[35] In any event, horizontal collaboration does not seem to be a relevant way of unification.

[29] Porras, Gutiérrez y Morillo, "La actividad legislativa…", *op. cit*., pp. 168-169, 191 y ss.
[30] Porras, Gutiérrez y Morillo, "La actividad legislativa…", *op. cit*., pp. 195-201.
[31] González García, I., *Convenios de cooperación entre Comunidades Autónomas. Una pieza disfuncional de nuestro Estado de las Autonomías*, Centro de Estudios Políticos y Constitucionales, Madrid, 2006, pp. 107-111.
[32] Analysts are very critical of how horizontal collaboration is regulated. See García Morales, M. J., "Las relaciones intergubernamentales en el Estado Autonómico: estado de la cuestión y problemas pendientes", en AA.VV., *Las relaciones intergubernamentales en el Estado autonómico*, Centro de Estudios Políticos y Constitucionales, Madrid, 2006, pp. 41-44, 84-89.
[33] González García, *Convenios de cooperación… op. cit.*
[34] González García, *Convenios de cooperación… op. cit.*; AJA, *El Estado autonómico… op. cit*., p. 207; García Morales, "Las relaciones intergubernamentales…", *op. cit*., pp. 33-40.
[35] García Morales, "Las relaciones intergubernamentales…", *op. cit*., pp. 44-47.

By contrast, bilateral collaborative conventions between the central government and component states have been much more frequent (numbering more than 8,000), even though they lack constitutional recognition. In practice, the central government tends to sign the same model-convention with several component states bilaterally. The predominance of bilateral relationships between the central government and component states over agreements between the member states themselves has been regarded as a flaw from the standpoint of state self-government.[36]

The most common means of voluntary cooperation are the so-called *sectorial conferences*, which are not regulated by the Constitution. These bilateral conferences are composed of a ministry of the central government and the respective state authorities, depending on the subject matter under discussion, such as transportation, science and technology, healthcare, environmental protection, etc. Since these bodies lack decision-making powers, they are fora for exchanging information, reaching agreements about common lines of action, or discussing formal conventions. They are weakly institutionalized and their effectiveness varies considerably.[37] The ultimate productivity of sectorial conferences may also vary depending on which central government ministry has responsibility for convoking and presiding over the conference.[38] In 2004, the Conference of Presidents, a reunion of the central government President and state Presidents, met for the first time. Since then, it has met three times, but the experience has been rather disappointing.

The field in which voluntary coordination among component states has been most productive is matters involving the European Union. The Conference for European Communities Affairs has functioned in practice since 1988, and it was formally established in 1997. During 2005, it held eleven horizontal meetings without the participation of the central government. There is no actual legal regulation of these "horizontal sectorial conferences," which are very common in other federal states, such as Germany.

3. *The Influence of EU Law on Legal Unification*

The process of European integration plays a central role in legal unification. With the accession to the European Union (EU), Spain transferred sovereign powers to a supranational organization. Powers transferred to the EU included powers previously allocated to both the central government and the states. Consequently, EU legislation has the general effect of enhancing unification in areas previously under the domain of the states.

At the same time, the need to comply with obligations coming from the EU can also promote legal unification in practice. The Constitutional Court has held that EU integration cannot be a way to circumvent the domestic allocation of powers. Thus, implementation of EU law must correspond to the level of government constitutionally established for regulating the subject matter at stake. In particular, the central government cannot claim the power to implement EU law merely on the basis of its international responsibility vis-à-vis the EU. The Constitutional Court has admitted, however, that the central government may assume a coordinating function to secure compliance with EU law. Therefore, in practice, the transfer of powers to the EU and compliance with EU legislation has had a considerable unifying effect.[39]

IV. INSTITUTIONAL AND SOCIAL BACKGROUND

1. *The Judicial Branch*

[36] Aja, *El Estado autonómico… op. cit.*, pp. 199-204.
[37] García Morales, "Las relaciones intergubernamentales…", *op. cit.*, pp. 89-92.
[38] Aja, *El Estado autonómico… op. cit.*, pp. 140, 211-215.
[39] Albertí Rovira, E., *Las Comunidades Autónomas en la Unión Europea*, Centro de Estudios Políticos y Constitucionales, Madrid, 2005; Bustos Gisbert, R., "La ejecución del derecho comunitario por el gobierno central", *Revista Vasca de Administración Pública*, núm. 67, 2003.

The Constitutional Court is vested with the power to monitor whether the central government or the component states have exceeded the lawmaking powers allocated by the Constitution or the Autonomy Statute, respectively. Indeed, the Constitutional Court holds the ultimate power to interpret both the Constitution and the Statutes of Autonomy. Autonomy Statutes belong to the so-called "constitutionality block" (*bloque de constitucionalidad*), which is the group of norms that the Constitutional Court must take into consideration when deciding about the allocation of powers.

Both the central government and the component states can bring an action before the Constitutional Court complaining that another unit exceeded its powers.[40] Case by case, the Constitutional Court has delineated the content and limits of central government and component states' competencies.[41] Over time, the number of cases before the Constitutional Court regarding the allocation of powers has fluctuated. In the first years under the new Constitution, both the central government and component states were particularly belligerent; this is especially true for Catalonia and the Basque Country. Between 1984 and 1988, an average of over one hundred cases a year were brought before the Constitutional Courts. During the 1990s, the conflicts notably diminished (30-40 cases per year). At that time, the Socialist Party (PSOE) in government did not have an absolute majority in Congress and needed the support of national minority parties. Conflicts increased again from the end of the 1990s until 2004, which is the period of time (1996-2004) governed by the Popular Party (PP). Aside from a fluctuating caseload, it sometimes takes the Constitutional Court up to eight years to issue a decision.[42] The backlog of cases, and the long delays in resolving them, is one of the main problems facing this Court.

Before filing an action before the Constitutional Court, the central and the state government involved may meet in a so-called "bilateral commission of cooperation" in order to reach an agreement. The law regulating the Constitutional Court acknowledges this mechanism and extends the period of time to file a constitutional challenge against a legislative act (*recurso de inconstitucionalidad*) if the conflicting parties have previously attempted to reach an agreement through this bilateral commission. When the conflict involves a governmental regulation (*conflicto de competencies*), prior to bringing the case before the Court, component state governments must, and the central government may, require from the other that the norm or act allegedly exceeding powers be derogated or annulled. Around 40% to 45% of the conflicts are solved through these extra-procedural mechanisms of negotiation and hence they do not reach the Constitutional Court.

The territorial decentralization of power does not affect the structure of the judiciary, which is unitary. As a result, there are no state courts. "Superior Courts of Justice" (*Tribunales Superiores de Justicia*), one sitting in each component state, have specific functions regarding the application and interpretation of component state law, but they are integrated with the unitary judicial system.

2. *The Senate*

The Spanish Parliament is composed of two houses: the Congress and the Senate. The Senate is defined by the Constitution as the house of territorial representation (art. 69). Nevertheless, neither its composition nor its functions allow the Senate to actually represent the component state governments. The system for electing the senators is hybrid. First, there are four senators for each province.[43] These senators are directly elected by the citizens of each province. Second, component states shall appoint one senator, plus an additional one for each one million people living in that state. These senators are

[40] García Roca, J., *Los conflictos de competencia entre el Estado y las Comunidades Autónomas (una aproximación desde la jurisprudencia constitucional)*, Centro de Estudios Políticos y Constitucionales, Madrid, 1993.
[41] Aja, *El Estado autonómico… op. cit.*, p. 135.
[42] Aja, *El Estado autonómico… op. cit.*, pp. 131-133.
[43] There are 50 provinces in Spain.

appointed by state parliaments. As a result, only around 20% senators represent the states. The rest are elected by the citizens on the basis of the provinces. Hence, the Senate fails to deliver state territorial representation.[44]

In addition, only exceptionally does the Senate hold specific functions regarding the territorial allocation of powers, such as the approval by absolute majority of measures to force the component states to fulfil their constitutional obligations (art. 155 Constitution). Moreover, the Senate has a secondary role in the legislative process. Even though the Senate can amend or veto legislative texts, Congress may reject these amendments by simple majority, and may override the Senate's veto by absolute majority (or simple majority after two months from the first vote). Therefore, Congress always has the last word. The role of the Senate has been the object of a long-standing debate. Analysts are very critical of the current situation and many have advocated for the Senate's reform.[45] Yet, there is no political consensus to amend the Constitution in this regard.

3. *The Bureaucracy*

The central government's civil service is separate from that of each state. Since the Statutes of Autonomy were approved, it has taken several years to build civil service systems within the states.[46] The Constitution allocates to the central government the power to pass basic legislation regarding the public administration system and the civil servants' statutory regime, which shall secure a common treatment for all citizens. The central government has legislated extensively in this field, with the goal of unifying the systems and guaranteeing a homogeneous position to all civil servants.[47] Component states may assume powers to regulate the state civil service regime, but state legislation must abide by the central government basic legislation.[48] In the first years, the creation of state civil services was based upon the transfer of civil servants from the central government system.[49] The Law 12/1983 on the autonomous process designed the general framework for the transfer of civil servants. This legislation secured the recognition of rights and other benefits that civil servants had at the moment they were transferred.[50] Beyond these transfers, there is little lateral mobility in practice.

4. *Tax Power*

Both the central government and component states enjoy tax power**.** The Constitution recognizes the principle of state financial autonomy, which means that the states need to have sufficient financial resources to develop their powers (art. 156.1). The same constitutional clause holds that state financial autonomy must be understood according to the principle of coordination with the central government treasury and the principle of solidarity among all Spaniards. The tax system is minimally regulated by the Constitution and developed by the Organic Law on the Financial System of the Autonomous Communities (LOFCA). The Constitution lists the financial resources of the component states in article 157.1:

i) "State taxes". Component states may create their own taxes. They are, however, banned from taxing the same events already taxed by the central government, and they must respect constitutional principles such as the principle of economic capability. The Constitutional Court has distinguished between the object

[44] Aja, *El Estado autonómico… op. cit.*, pp. 144-145.
[45] Aja, *El Estado autonómico… op. cit.*, pp. 145-147, 215-221; AA.VV., *La reforma del Senado*, Senado-CEC, Madrid, 1994; Alberti Rovira, E., *La reforma constitucional del Senado*, Barcelona, 1996.
[46] Castells Arteche, J.M., *Proceso de construcción y desarrollo de la función pública autonómica*, Madrid, 1987.
[47] Albertí Rovira, E., *Manual de Dret Públic de Catalunya*, Marcial Pons, Barcelona, 2000, pp. 350-357
[48] Mauri Majós, J., "La distribució de competències en matèria de funció pública", *Autonomies*, núm. 24, 1999; Lliset-Tornos, *La funció pública de les Comunitats Autònomes*, Barcelona, 1985.
[49] Castells Arteche, *Proceso de construcción…*, *op. cit.*
[50] Albertí Rovira, *Manual de Dret Públic… op. cit.*, pp. 351-354; AJA, *El Estado autonómico… op. cit.*, pp. 234-235.

and the event being taxed: the object is defined as the source of wealth; the taxable event is a more restricted concept referring to the specific circumstances that justify creating the tax. The same object might be the basis of different taxable events. Hence, states may tax the same object as the central government, as long as they do it for different reasons. For instance, the Constitutional Court ruled that Andalucía's tax on "under-used lands"[51] did not infringe the principle prohibiting multiple taxation. Although this state tax and the central government tax on property target the same object (the land), the taxable event is different: the central government taxes ownership of all kinds of goods, whereas the state taxes the insufficient use of the land in terms of the profits that could be obtained.[52]

ii) "Taxes transferred by the central government in total or in part; extra-charges upon state taxes and other forms of participation in the central government revenue". Over time, the central government has transferred to the states the revenue of central taxes, either completely or in part. Moreover, in several cases, regulative powers have also been transferred to the states. For instance, the central government has transferred authority to regulate income tax, property tax, and inheritance and donations tax to the states.[53]

iii) "Transfers from the central budget, taking into consideration the public services provided by each component state and the need to secure a minimum level of essential services throughout the whole territory". Indeed, one of the most controversial issues regarding the financial system is how to determine the criteria to calculate the percentages of participation of each state in the national budget.

iv) "Transfers from the "Interterritorial Compensation Fund" (*Fondo de Compensación Interterritorial*)". Resources from this Fund are distributed by the central Parliament among the component states. These resources are aimed at neutralizing economic divergences among the states, and giving effect to the principle of solidarity.

v) Other resources coming from state properties or operations of credit.

In practice, component states have not created truly separate tax systems, and their main financial resources come from central government revenue sharing. Although the Constitution establishes that states may create their own taxes, increasing the tax pressure has a political cost and thus it is not common.[54] Among state taxes, one can mention the following: Extremadura's tax on under-used irrigation lands, Asturia's tax on under-used agrarian lands, Andalucía's tax on under-used land, Islas Baleares' tax on premises affecting the environment, and Valencia's tax on residual waters.

The Basque Country and Navarra enjoy a different tax system based on their "historical rights": the so-called "economic agreement" (*concierto económico*). According to the "economic agreement", these component states collect their own taxes, and later they transfer a specific amount to the central government to compensate for the services they receive.[55]

5. *Social and Legal Asymmetries*

[51] This tax targets the insufficient use of rural lands in terms of the failure to obtaining the profits considered to be optimum for that region by the legislator.
[52] Checa Gonzalez, C., *Los impuestos propios de las Comunidades Autónomas,* Aranzadi, Navarra, 2002.
[53] Ruiz Almendral, V., *Impuestos Cedidos y corresponsabilidad fiscal,* Tirant lo Blanch, Valencia, 2004; Mora Lorente, M.D., *Impuestos cedidos: implicaciones internas y comunitarias,* Tirant lo Blanch, Valencia, 2004; Villarin Lagos, M., *La cesión de impuestos estatales a las Comunidades Autónomas,* Lex Nova, Valladolid, 2000.
[54] Zornoza, J., *Los recursos de las CCAA,* Madrid, 1996.
[55] Lambarri, C. & Larrea, J. L., *El Concierto Económico,* IVAP, Oñati, 1995.

In Spain, there are important historical and linguistic cleavages among the component states. Several states enjoy a distinct national identity on the basis of their particular history, culture, and language. These component states are the Basque Country, Catalonia, and Galicia. During Franco's dictatorship, public power was totally centralized and languages other than Spanish were banned. In the transition to democracy, these regions appealed for self-government. The territorial model was one of the most controversial issues during the Constitution-drafting process. Two options were on the table: either recognizing a certain degree of autonomy of these regions, or designing a general decentralized model for the whole country. The latter option prevailed.

At the same time, the Constitution acknowledged some distinct elements regarding specific states, such as different official languages and the power to keep, modify, and develop historically rooted private law.[56] At present, Euskera, Catalan, and Galician are co-official languages in the respective state territories, as it is established by the respective Autonomy Statute. Euskera is official in the Basque Country and Navarra (only in some areas), Catalan in Catalonia, Valencia, and the Balearic Islands, and Galician in Galicia.[57] These states have legislative powers to regulate the linguistic regime within their territories. In addition, Aragón, Catalonia, Navarra, Islas Baleares, Galicia, and, in the Basque Country, Vizcaya and Álava have kept and developed their respective historical private legislation regarding fields such as family law, inheritance, donations, and specific contracts.[58]

In some of these states, there are political parties that do not exist in the rest of the territory, and which claim a higher level of self-government, such as *Convergència i Unió (CiU)* and *Esquerra Republicana (ERC)* in Catalonia, and the *Partido Nacionalista Vasco (PNV)* in the Basque Country. Some of these parties include among their goals the independence of the state territory, such as *Esquerra Republicana* and *Partido Nacionalista Vasco.*

In addition, there are asymmetries in wealth and economic development among the component states.[59] The Basque Country, Catalonia, and Madrid are more economically developed and industrialized than other states. These economic asymmetries are relevant for the redistribution of wealth pursuant to the solidarity principle and revenue sharing in general. One of the most important asymmetries acknowledged by the Constitution relates to the tax system, as mentioned before. The Basque Country and Navarra enjoy an asymmetrical tax system, the so-called "economic agreement", on the basis of their "historical rights". In contrast to the general system, these component states collect taxes and pass on a specific amount of money to pay for the services provided by the central government.[60] The tax system in Canarias also shows some peculiarities. Catalonia has for a long time demanded a system close to the Basque "economic agreement", which would allow for greater autonomy over its financial resources. By contrast, the poorest regions, such as Extremadura and Andalucía, have resisted any moves to economic decentralization.

From a territorial standpoint, the insular character of two component states introduces some asymmetries. The territories of Baleares and Canarias are each composed of a group of islands. The Constitution recognizes the *Cabildos* and *Consejos insulares* as specific public institutions for local government in

[56] López Aguilar, J. F., *Estado autonómico y hechos diferenciales*, Centro de Estudios Políticos y Constitucionales, Madrid, 1998; AA.VV., *Asimetría y cohesión en el Estado autonómico*, MAP, Madrid, 1997; García Roca, F. J., "Asimetrías autonómicas y principio constitucional de solidaridad", *Revista Vasca de Administración Pública*, núm. 47, 1997.
[57] Sigúan, M., *España plurilingüe*, Alianza Editorial, Madrid, 1992; MILIAN, A. (coord.), *El plurilingüisme a la Constitució española*, Institut d'Estudis Autonòmics, Barcelona, 2009; AJA, *El Estado autonómico… op. cit*., pp. 162-169.
[58] Martínez Vázquez de Castro, L., *Pluralidad de derechos civiles españoles*, Civitas, Madrid, 1997., Aja, *El Estado autonómico… op. cit.*, pp. 169-172.
[59] Agranoff, R., "Asymmetrical and Symmetrical Federalism in Spain. An Examination of Intergovernmental Policy", in DE VILIERS, B., *Evaluating Federal Systems*, Martinus Nijhoff Publishers, The Netherlands, 1994, pp. 75-78.
[60] Aja, *El Estado autonómico… op. cit*., pp. 172-180.

Canarias and Baleares, respectively (art. 141.4).[61] Also, the historical territories of the Basque Country have their own institutions, which have exclusive powers to regulate the local electoral system.[62] Finally, there are two autonomous cities on the African continent: Ceuta and Melilla. They hold a particular status within the system of political decentralization.

V. CONCLUSION

Generally, the Spanish system of political decentralization shows a significant trend towards harmonization. This is due to several factors at the supranational, central, and state level. Diversity is mainly found in those fields in which the Constitution accommodates asymmetries within specific states, such as language, the tax system, some areas of private law, and public institutions.

The tendency towards legal harmonization has been bolstered by the process of European integration. Both central and state powers have been transferred to the EU. Thus, subject matters that could have been regulated differently across the states are now under EU jurisdiction. At the same time, although the implementation of EU law corresponds to either central or state authorities according to the domestic allocation of powers, the central government retains a coordinating power to secure compliance with EU law. In addition, EU law tends to leave little discretion to the member states for its implementation, and even directives have tended to be more and more detailed.

In addition, the central government has furthered unification through several mechanisms. First, the broad interpretation of "basic legislation" has allowed the central government to expand its action over areas under concurrent state power. Also, the broad interpretation of the clause on the general planning of economic activity has allowed the central government to intrude on fields of otherwise exclusive state jurisdiction. The power of the central government to pass organic laws is a further source of legal unification. Finally, in practice, the central government's spending power constitutes a mechanism to influence state policy-making.

There is potential for diversity in fields regarding both the powers that states assume and the powers that they choose to exercise. In practice, however, there is a clear trend towards harmonization in both fields. As explained, states are free to take all powers not reserved to the central government by the Constitution. When the first Statutes of Autonomy were enacted, the degree of diversity among the states was considerable. Yet, since the 1992 Autonomy Agreements, the reform of several Statutes led towards homogenizing state powers across the component states. In 2006, Catalonia amended its Autonomy Statute to improve the level of self-government. Soon thereafter, other states followed suit. Thus, the degree of diversity introduced is being partly diluted. Still, some differences remain, regarding, for instance, the power to create a state police body or the regulation of language.

Although there are no big differences regarding component state powers, diversity could come from dissimilar legislation across the states. Nevertheless, when certain states innovate, the others tend to emulate them. Thus, the degree of diversity momentarily introduced tends to diminish over time. As a result, even in areas of exclusive powers, there is a tendency towards legal harmonization.

The highest degree of diversity is found in those fields in which the Constitution accommodates asymmetries among the states regarding language, tax, distinct public institutions, or private law. Such asymmetries tend to be found in those states with a distinct national identity. These states aim at

[61] Aja, *El Estado autonómico… op. cit.*, pp. 180-184.
[62] Saiz Arnaiz, A., "La competencia de los territorios históricos del País Vasco en materia de régimen electoral municipal", *Revista Española de Derecho Constitucional*, núm. 82, 2008.

deepening the legal recognition of asymmetric powers as a translation of their *de facto* asymmetry.[63] Admittedly, the model for the territorial allocation of powers designed by the 1978 Constitution pursued a double goal: decentralizing political power and accommodating self-government claims by national territories. The system has worked particularly well at decentralizing power, but it has proven not to be fully satisfactory for those regions with a distinct national identity. Basically, the Basque Country and Catalonia have been pressing to change the *status quo*. The proposals from nationalist parties range from a true federal (asymmetrical) system to the independence of specific states. The recent amendment of Catalonia's Autonomy Statute in 2006, which was challenged before the Constitutional Court, and the surrounding tensions have brought about a heated debate over the need to rethink the current constitutional design.

[63] Fossas, "Asimetría y plurinacionalidad…", *op. cit.*