Multinational Democracy and Political Recognition in Spain, 1978-2010

by

Sebastian Dario Baglioni

A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy

Graduate Department of Political Science
University of Toronto

© Copyright by Sebastian Dario Baglioni (2013)
Abstract

In this dissertation I attempt to build a bridge between normative discussions about multinational democracy and political recognition, and a contextually-sensitive empirical analysis of the Spanish case. I argue that, by looking at the characteristics and political dynamic of Catalonia, the Basque Country and Galicia, we can gain a better understanding of the definition, composition and viability of a multinational democracy.

Combining normative discussions and a description of an empirical case (Spain) I seek to bridge both normative and empirical literatures about political recognition and multinationality highlighting the fruitful interconnections between them. In doing so, I attempt to provide adequate tools to normatively assess concrete and actual processes of political recognition in a context-sensitive manner.
The dissertation also emphasises the possibilities (and limits) of federalism as a viable political and institutional framework to accommodate multinational demands in a democratic fashion. By looking at the Spanish case and the controversies and challenges that Catalonia, the Basque Country and Galicia present, I believe I offer a better understanding of political recognition. I defend a view of democracy and politics that is open by definition and is amenable to contestation and ongoing negotiations. I contend that the temptation to arrive at a “solution” as if it were a final and permanent state of affairs should be avoided; rather, the indeterminate and open-ended nature of the processes analysed should be not only tolerated but rather assessed according to the conditions and dynamic of the process of political recognition identified and discussed in my dissertation.
Acknowledgements

Throughout my studies in the PhD Programme at the University of Toronto, I have greatly benefitted from the assistance and guidance of my supervisor, Joseph Carens, and my thesis committee members Richard Simeon and Simone Chambers. I am indebted to all of them for their help and illuminating comments from beginning to end.

I also like to thank the support and friendly encouragement of Susan Solomon and Neill Nevitte who, not formally involved in my dissertation, were generous enough to listen to me and engage in numerous fruitful conversations.

My fellow students have been a source of continuous strength and entertainment in equal measure. They are too numerous, but specific thanks go out to Michael Painter-Main, Victor Gomez, William Flanik, Wayne Chu, Ethel Tungohan, Suzanne Hindmarch, Cheryl Auger, Reuven Shlozberg, Luc Turgeon, Steve White and Jennifer Wallner. They have all contributed to keeping me sane and a relatively well-adjusted graduate student.

I am immensely grateful to Teresa Kramarz, my adoptive sister. She has been my friend, critic, and supporter. Endless hours of conversation with her showed me not only the complexities of academic life but also the tremendous value of the friendship of a fellow Argentine abroad.

Finally, I want to dedicate this dissertation to my family. My mother Beatriz and my father Horacio; my sister Sandra and brother Pablo; and my niece Agustina and nephews Valentin, Santiago, Lucas and Juan Ignacio. They have always been there for me, at the distance, patiently listening to my adventures in Canada and eagerly waiting for my odd visit home.
# Table of Contents

Introduction ................................................................................................................................. 1

Chapter 1 ........................................................................................................................................ 8
Normative Discussions around Multinational Democracies ...................................................... 8
  1.1 - Politics: from National to Multinational ......................................................................... 10
  1.2 - Democracy and demos in multinational contexts .......................................................... 14
  1.3 - Recognition and the processes of citizenisation ............................................................. 21
  1.4 - Federalism and Multinational Democracy .................................................................... 32

Chapter 2 ........................................................................................................................................ 43
The 1978 Spanish Constitution .................................................................................................... 43
  2.1 State- and Nation-Building Projects in Spanish History .................................................. 45
  2.2 - The Spanish Constitution of 1978: Nationalities and Regions ..................................... 53
  2.3 - Spain, the Estado de las Autonomías and Federalism .................................................. 63
  2.4 - Federalism and Multinationality: normative bones for empirical flesh ....................... 72

Chapter 3 ........................................................................................................................................ 80
The Constitutional Court, Policy Areas and Political Identities in Spain .................................. 80
  3.1 - Constitutional Recognition ............................................................................................. 82
  3.2 - Competences of the Autonomous Communities: language and education ................. 90
  3.3 - Political identities: the emergence of dual identifications ............................................. 101
  3.3 – Multinationality and political recognition: a preliminary assessment .......................... 111

Chapter 4 ........................................................................................................................................ 114
Possibilities of Reform of the Spanish Political System ............................................................. 114
4.1 - Reform of the Statute of the Basque Country .......................................................... 116
4.2 - Reform of the Statute of Catalonia ........................................................................ 139
4.3 - Galicia: between identity claims and lack of consensus ......................................... 157
4.4 - The elusive consensus around Constitutional Reform ........................................... 168

Chapter 5 ......................................................................................................................... 179

Spain, Multinational Democracy and Political Recognition. An Assessment ................. 179
  5.1 - Democracy and the Spanish case ....................................................................... 179
  5.2 - Political Recognition and the Spanish Case ...................................................... 188
  5.3 - Spain as a Multinational federal polity .............................................................. 198

Conclusion ...................................................................................................................... 209
  Political Recognition and the process of Citizenisation ......................................... 211
  Implications and future directions ......................................................................... 220
  Conclusion .................................................................................................................. 223

Bibliography .................................................................................................................. 224
List of Tables

Table 1 - Definition of Identity of the Spanish People ......................................................... 102
Table 2 - Relative weight of Spanish and Regional identities in Spain at large ....................... 103
Table 3 - Relative weight of Spanish and Regional identities .................................................. 104
Table 4 - Relative weight of Spanish and Regional identities in Galicia ................................. 104
Table 5 - Spain Electoral Results to Central Parliament (1977-2004) ................................... 108
Introduction

“Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist”.

(John Stuart Mill, Considerations on Representative Government, 1861).

Democracy in a multinational context is a thorny issue for theorists, politicians and citizens alike. This is so because of the complexity of the issues at stake, which includes the definition of the demos and different sets of political institutions, social attitudes and citizenship practices in everyday life contexts. For theorists, the idea of multinational democracy opens up a scenario where different interpretations are possible in order to provide answers to the question of what is the best way to accommodate demands stemming from nationalist sentiments. For politicians, the challenge lies in the difficult equilibrium they have to maintain: they are expected to defend and exercise tolerance and open-mindedness on the one hand, and resist chauvinism and xenophobia on the other. For citizens, the expectations around them as active members of a multinational democracy can be too high, normatively speaking. That is, the ideal citizen displaying all the necessary civic virtues in order to accommodate cultural differences may fall short of real concrete attitudes held by the people involved.

From a normative point of view, leading political theorists have acknowledged the necessity of incorporating political recognition and accommodating nationalist demands. However, even among those who agree on this need, and share a set of basic abstract political principles, may not identify the same specific institutions, procedures and practices as the best ones. That is to say, even assuming that there is agreement on the desirability of multinational democracies,
there will still be discrepancies on the best way to realise that ideal. Moreover, the practical consequences and empirical application of those principles remain contested. This means that a general and abstract principle like political recognition does not translate automatically into concrete institutions or decision-making mechanisms. There is room here for disagreement or at least alternative interpretations about the meaning of political recognition and the best way to realise it in concrete historical cases. Equally, the concept of multinationality, its impact on our understanding of basic principles like democratic legitimacy, political inclusion and participation is open to diverse analyses. Further, the best way to accommodate nationalist demands in a multinational democracy also seems to be part of debates and normative discussions.

It is relatively unproblematic to assert that democracy in a multinational context should accommodate cultural diversity; but the specific institutions and procedures through which that accommodation can be realised are not obvious. This is my starting point to think about multinationality and political recognition, both from a normative abstract point of view, and from an empirical (i.e., Spanish) perspective.

In this connexion, leading political theorists like Kymlicka, Carens and Tully among others have both warned us about the dangers of abstract theorising and fostered a contextual approach in order to better understand the conditions under which a political project like the institutionalisation and viability of a multinational democracy can be undertaken. Put generally, there is a process of translation from political principles to institutions and from there to empirically situated actors and dynamics. This process presents contentious issues and different alternatives, especially taking into account that the majority and minorities alike will define and approach these issues from very different positions and assumptions. Given the inherently contested nature of these debates, I believe it is fundamental to spell out the conditions under which a fruitful dialogue can be secured, weigh the merits or demerits of the positions and demands put forward, and identify the mechanisms through which we can assess the legitimacy of the decisions being taken.
Therefore in this dissertation I adopt a context-sensitive approach for the accommodation of cultural diversity, with a double purpose. Firstly, I want to explore the normative discussions that the concept of multinational democracies bring to the fore, and the ways in which the principle of political recognition should be understood and applied in order to secure a minimum set of working conditions for a multinational democracy. The analysis is then complemented by a more institutional perspective on this issue, paying special attention to the possibilities and limits of asymmetrical federal arrangements as a useful alternative for the accommodation of multinationality and the enshrinement of political recognition. Secondly, in this dissertation I seek to situate Spain as a relevant example of a political unit in need of the establishment of multinational democratic institutions. Moreover, I show the ways in which the political principles that inform the ideal of multinational democracy can be applied to concrete, historically situated circumstances, actors and processes in light of the political history of Spain. Multinationality calls for a reassessment of normative assumptions about the state and the demos that give democracy legitimacy. I will argue that Spain shows that the traditional understanding of democratic legitimacy based on a single nation and the principle of majority rule is not appropriate when different national groups advance disparate claims in relation to the ways in which they are incorporated into the polity. Multinational democracies therefore rest on a delicate balance of, on the one hand, shared political principles, but on the other, disagreements about the ways in which those principles can accommodate particular claims and aspirations (Tully, Norman, Requejo).

Obviously, Spain is not the only existing multinational democracy in the world. Countries facing similar problems include Canada, the United Kingdom, Belgium, and Switzerland, among others. The application of political principles to accommodate multinationality will most likely follow different paths, according to the specific circumstances of each case. There is a tension between the aspiration to generalise through cases and the need to recognise the specificities of each case. In this context, the Spanish experience can provide not ready answers about the best way to realise the principle of political recognition and accommodate nationalist demands, but rather an informed instance from which valuable lessons can be learned. For this reason in this dissertation I defend a contextual approach to analyse both the normative and empirical
conditions that a multinational democracy calls for. The ultimate aim is not to reach an uncontested formula but to engage in a fruitful dialogue between theory and practice, where careful analysis of empirical cases informed by a serious discussion of political principles can shed new light to these complex problems.

The original contribution sought in my dissertation is to engage on the one hand the existing literature on multinational democracy and, on the other, show the ways in which the Spanish case (comparing Galicia, the Basque Country and Catalonia) can illuminate debates around the definition, characteristics and viability of a multinational democracy. I assert that this is missing in current analyses of the Spanish case, namely a discussion of the empirical details of the case connected to the normative principles of multinational democracy. Further, I will highlight the explicit relations that can be established between the normative level and the empirical level through a contextual approach.

In the first chapter I present a set of normative discussions about the concepts of multinationality and political recognition, and how both of them can be applied to cases in which a polity is characterised by demands advanced by national minorities, in a democratic manner. The analysis then, in the rest of the dissertation, will be extended to the Spanish case, showing the different instances in which the required conditions for a multinational democracy are met (or not), and the mechanisms through which political recognition is guaranteed (or not) in that polity.

In chapter two I proceed to analyse the historical evolution of the terms ‘nation’ and ‘state’ in Spain and the ways in which these constituted different and opposing political projects. Further, I discuss the 1978 Constitution as a half-way solution between a unitary conception of sovereignty around the idea of an indissoluble Spain, and the enshrinement of political autonomy for both regions and nationalities. The Estado de las Autonomías, as created by the 1978 Constitution, has evolved in a particular direction among a number of possible ones. I argue that Spain since then has progressively adopted a ‘federalising’ system, despite the absence or imperfect realisation of some of the defining features of a federal polity.
In chapter three I concentrate on a number of issues fundamental to the structure and dynamic of the Estado de las Autonomías. These have taken the form of political controversies between Galicia, the Basque Country and Catalonia on the one hand, and the Spanish State on the other, given the political salience of such controversies and the prominent importance associated to them in relation to the differing nation-building projects sustained either from the central government or the governments of these regions. My analysis here includes the following areas: a) constitutional recognition; b) language and education; c) political identity of citizens. I take these three factors as issues that demonstrate the conflicting views that the Spanish nationalities hold vis-à-vis those of the central government. Each of them constitutes the source of conflicts and negotiations between both levels of government, which in turn affects the possibilities of accommodating multinationality.

In chapter four I discuss recent attempts at redefining the nature and composition of the Spanish political system. In recent years there have been two new significant developments regarding the Estado de las Autonomías, both of which called into question aspects of the current system. First, the Basque Country and Catalonia embarked themselves in projects to reform and expand their Statutes of Autonomy. These projects pursued a whole series of new powers and competences for those communities and, related to this, a new status for these regions (or, more properly, nationalities/nations) vis-à-vis Spain. I also discuss the attempt at reforming the Galician Statute of Autonomy and the reasons for its failure as an illustrative contrast to the other two experiences. Second, and parallel to the previous developments, the Spanish socialist political party pushed for an eventual reform of the Constitution, as a remedy to the original ambiguity and indeterminacy of the constitutional text. My discussion here also concentrates on the reasons why the different initiatives of constitutional reform have not succeeded.

In chapter five I present a general overview of the most relevant arguments presented in the previous analysis of the Spanish case. By doing so, I will follow a more encompassing perspective, with a view to integrating that discussion in the general framework of political recognition and multinational democracies. First, the analysis of this chapter highlights the
overall historical trajectory of Galicia, the Basque Country and Catalonia, paying special attention to their similarities and differences. From the previous analysis, the underlying reasons for the distinct character and dynamic of identity politics in each of these three regions will be explored. Moreover, I present in this chapter an overall assessment of accommodation of nationalist demands in Spain during the last thirty years, emphasising the democratic nature of the country and the ways in which it has responded to the challenges presented by its multinational character. Equally important, my analysis aims at identifying the basic factors at play and the interactions among political actors when it comes to political recognition in a multinational democracy.

The existing literature has touched upon some aspects of this. On the one hand, there is a growing discussion on multinational democracy. Here it is notable Tully, who defends the principle of political recognition and processes of citizenisation; Keating, who deals with stateless nations (including Catalonia); or Gagnon and Simeon, who explore the relation between multinationality and federalism. There are also other prominent authors who deal with issues related to multinational democracies, even when they sometimes do not use that concept (Carens, Kymlicka, Patten, Norman).

On the other hand, several authors have analysed the Spanish case highlighting different aspects of it. For example, Lecours concentrates on the Basque Country and its relations with the Spanish state; Diez-Medrano highlights social classes and identities in both the Basque Country and Catalonia. Equally important is the self-reflection of Spanish social scientists. Here it is worth mentioning Requejo, Moreno and Guibernau, among others. The first advances a theoretically-inspired analysis of multinationality in Spain, with special emphasis on state structures and asymmetrical mechanisms. Moreno has concentrated on the evolution of the Autonomous Communities system and the territorial distribution of power; whereas Guibernau has stressed the nationalist dimension of identity in Spain, with special emphasis on Catalan politics.
Other Spanish scholars have concentrated on certain aspects of Spanish politics that are relevant for the present dissertation. Just to name a few, Colino and Hombrado highlighted the accommodation of diversity, democracy and governance effectiveness of the country; Del Pino and Colino analysed the relation between democracy for Spain as a whole and subnational democracy in the historical communities; and Digón Martín explored the possibility of secession based on mutual dialogue and negotiations. There is a vast literature also focusing on more detailed issues of Spanish politics, including political representation, intergovernmental relations, administrative decentralisation, and citizens’ participation among the most salient ones (Alonso, 2008, 2012; Pemán Gavín, 2009; Colino and Del Pino, 2010).

My dissertation proposes to link both literatures, highlighting the ways in which a systematic comparison between Galicia, the Basque Country and Catalonia can illuminate the discussion about the conditions and viability of a multinational democracy. Moreover, the proposed comparison between these three ‘historical communities’ in Spain offers a wide range of variation in the character and demands of national identities: from a rather latent and weak manifestation in the case of Galicia, to a more violent and clearly secessionist position in the case of the Basque Country; to a somewhat more civic-oriented expression in the case of Catalonia. This variation, it is argued, will help explore some of the conditions and perhaps limits in the establishment of a just and stable multinational democracy.
Chapter 1

Normative Discussions around Multinational Democracies

Multinational democracies pose a serious challenge to the notion of democracy and political legitimacy, due to the fact that this kind of polity comprises two or more communities, living side by side within the same institutional and political order. With a view to securing justice, the communities involved must be able to display specific values and characteristics. Notably among these, there needs be a widespread acceptance of the fact of national pluralism and an open, de-politicized search for options conducive to building political mechanisms able to accommodate such pluralism.

It follows that if democracy is to be efficient and stable in the long run it must rely on an institutional framework that respects the underlying social and cultural conditions present in a given society. This is all the more so when taking into consideration the case of multinational democracies, where the relationship between institutions and the citizenry is complicated by the fact of a multiplicity of cultural (national) communities.

As shown below, the existence of a polity characterised by multinationality brings to the fore important considerations. First, from a normative point of view, one must ask oneself about the appropriate principles and general considerations that inform democracy and legitimacy in such contexts. Second, from an institutional perspective, one can analyse the institutions and practices (i.e., rules and behaviour) that sustain democratic politics, despite deep-rooted, enduring cultural differences. Third, it is assumed that multinationality is not a transitory feature of that polity: what is supposed to be a collective political actor is, in fact, a multiplicity of potentially conflicting actors. Further, no political device can be democratically justified in order to override those differences. And yet, civic belonging must avoid any attempts at ignoring such differences. This seems to point in the direction of a publicly sustained dialogue and political negotiations, where all the parties involved engage themselves on an equal footing
and democratically exchange ideas and arguments in order to arrive at collective binding decisions. However, there is no clear way in which this can be achieved. Put it slightly different, the normative principles or conditions that make democratic legitimacy possible in a multinational context can be enunciated in a general manner; nevertheless, those very principles and conditions can adopt different modalities, depending on specific historical contexts.

I will argue that members of a multinational polity can become democratic citizens, independently of their own particular sense of belonging, be it defined either exclusively by one national community, or entailing some form of dual identity. However, citizenship is a highly complex political product, which is acquired through a variety of experiences and agents. In principle, it is possible to highlight the sources of citizenship, i.e. where people learn, acquire and respect civic and democratic values. These include socialisation structures (family and schools); empowerment mechanisms (political parties and election processes); and public-opinion formation (discussions with peers and exposure to the media). But when the polity becomes increasingly multinational, these citizen-‘creating’ factors might prove to be too thin from a common-ground perspective. Under such conditions, each community may react by isolating itself from the supposedly shared common identity (if such an identity is recognised at all). As a result, there may be some constraints stemming from multinationality to the way (modes of participation) in which citizens get involved in, or relate themselves to, the political process.

I contend that any democratic arrangement for a multinational society can only be secured via an explicit acknowledgement of the cultural pluralism expressed by the national communities that make up the polity. This idea in turn implies the condition that (nearly) all the members of a multinational polity must be able to recognize each others’ cultural identities and claims. This applies equally to both the majority and the minorities and the ways in which they address each others’ claims. Moreover, I will argue that both the notions of democracy and citizenship and the ways these are understood, institutionalised and practiced gain a fundamental importance in contexts of multinationality.
As a way to analyse these important issues, in the first two sections of the present chapter I critically explore the ways in which multinationality changes the classic understanding of democracy; in the third section, I focus on the principle of political recognition and citizenship practices. Finally, in the fourth section, I discuss federalism as a political and institutional option for multinational polities.

1.1 - Politics: from National to Multinational

Traditional political thinking has associated the establishment of a legitimate political order with the institutionalisation of political equality. This means that a democratic polity must secure its members’ sense of belonging via a process of genuine incorporation in its institutions and practices on an equal footing. However, this has been usually defined in terms of the equal political status that the principle of citizenship entails, which guarantees that no special rights or privileges be granted to a particular sector of the population (or, slightly different, the liberal claim about neutrality or blindness in political matters).¹ Against this and in light of the existing number of multinational polities in the world, current approaches now support the idea that, in the name of democracy, the existing social and cultural differences must be fully recognised and incorporated into the political and institutional order (Kymlicka, 1995, 49-57, 80-93; Taylor, 1993b; Tully, 2000, 2001). The uniformity that citizenship implies seems no longer suitable to secure the democratic character of a polity, especially when it comes to multinational ones.

The debate around the idea of multinational democracy is relatively new, being the result of an increased acknowledgement of the political value of people’s identities being properly recognised. This situation, in turn, has eroded the previous classical understanding of democracy. That is, both the notion of a relatively homogenous demos and a strong set of shared values are not taken for granted anymore. This is, in itself, a major change in the way in

¹ For a critical assessment of liberal neutrality see Caney (1998); for a more sympathetic view, see Galeotti (1999).
which political theorists have traditionally understood and defined these issues. From Mill’s emphasis on the need of a single national identity to the current approaches to accommodate and recognise diverse national communities in the same polity, the understanding of democracy and citizenship has undergone considerable changes.

Mill is famously pessimistic about the possibility of establishing a democratic order where people from different nationalities live side by side. This is so, he argued, because they lack “fellow-feeling”, and hence, “the united public opinion...cannot exist”. This reflects the traditional liberal understanding according to which any given person belongs to a polity. In the name of impartiality and justice, political membership had to be secured through the imposition of a uniform status, regardless of the diverse identities of the people concerned. What is interesting to note is the current consensus among influential political theorists on the importance of defending the exact opposite idea (Kymlicka, 1995; Tully, 2000, 2001; Requejo, 2001a, 2005; Keating, 2001). According to this view, considerations of justice and political legitimacy call for a public institutionalisation of the multiplicity of attachments held by members of a political community, recognising that these attachments represent meaningful values and practices for the people in question. Moreover, given the multiplicity of national communities that a multinational democracy entails, those values and practices are bound to be (partially) divergent, which poses the question of how to accommodate them in a democratic manner.

Nationalists and communitarians alike have also accepted this change (Walzer, 1995; Taylor, 1993b). To be sure, Tully frames the theoretical and conceptual change in very similar terms: “[o]ne standard aspect of equality is that all citizens be treated equally in the sense of being ‘impartial’ or ‘indifferent’ to any and all identity-related differences” (2000, 221; emphasis added). However, in multinational contexts, this understanding has given way to a

---

2 Tully asserts: “Many liberals have agreed and have reconceived liberalism along these lines. Several nationalists have reconceived national identity along the lines of diversity and public negotiation” (2000, 221-222). Tully has in mind Laden and Taylor, respectively; however, many others could be added (despite the differences between them): in the former group, Kymlicka, Bellamy and Hollis, whereas in the latter, Walzer and Tamir.
“suggestion...to interpret and apply those principles [of democratic politics] in a difference-awareness manner” (2000, 221; emphasis in the original).

A redefinition of the political order so as to accommodate multinational claims has far reaching consequences. Most notable is a fundamental change to the very idea(l) of democracy and citizenship. In this light, the work of leading political theorists has progressively acknowledged that the historical achievements around the ideal of a universal principle of political inclusion can no longer find justification in the mere fact of being equal to all the members of a polity. Uniformity was thought to be a safeguard of equality insofar as the demos onto which that status was granted was assumed to be fairly homogeneous. If that assumption no longer holds, then membership in the polity cannot be justified merely on grounds of uniformity. Quite the contrary, the very aim of equality in a multinational context calls for the incorporation of differentiated citizenship claims based, precisely, on a multiplicity of identities.

References to the phenomenon of “multiculturalism” abound in recent political theory debates. From identity politics to institutional engineering, multiculturalism seems to be a catch-all concept. Given the ambiguity and potential confusion that surrounds the arguments about multiculturalism, I believe it is important to identify two main types of claims that are usually lumped under this broad term. On the one hand, there is the agenda of gender (feminism) and other significant social movements (notably, gays and lesbians, ecologist groups, pacifism) whose claims are based on life-styles. On the other hand, there are what Kymlicka calls “ethnocultural groups”, which comprise national minorities, immigrants, indigenous peoples, racial groups, and ethno-religious groups (Kymlicka, 2002, 335). The claims of this second type of group are broadly based on culture. In the present dissertation I focus only on the phenomenon of diverse identity claims based on culture (i.e., language, sense of belonging and identity) and the specific ways in which they affect politics in a multinational polity.

3 In general, the term “cultural diversity” seems to me preferable to the more popular “multiculturalism”: the latter lends itself to potential confusion given its multiple meanings and political (ab)use. Granted, the term multiculturalism, as its etymology expresses, can be useful when portraying the multiplicity of cultural worldviews living side by side.

4 This in no way denies the importance of the social movements mentioned before, nor the potentially fruitful connection between both types of demands.
More precisely, I adopt the following definition of ‘nation’:

“...a human group conscious of forming a community, sharing a common culture, attached to a clearly demarcated territory, having a common past and a common project for the future and claiming the right to rule itself” (Guibernau, 1999: 14)

On this reading, a human group or a community becomes a nation when there are at play all these elements: the psychological, cultural, historical, territorial, and political. Moreover, one can think of such a community in two different ways (Mason, 2000: 20-30). It encompasses, in an ordinary sense, a group of shared values and a way of life, which gives people an identity and a sense of mutual belonging. But a community also presents a moralised sense, by which it fosters a sense of solidarity and acknowledgement, on the one hand, and a lack of exploitation among its members on the other. However, in a multinational democracy the moralised sense of community is part of contestation and debates between the different communities that make up that kind of polity. If a multinational democracy fails to secure a minimum sense of shared understanding and solidarity across its members, then each community (in the ordinary sense) will isolate itself around its own values and identity:

“...the association [then] is experienced as ‘alien and imposed’, as a structure of domination that is both ‘unfree and illegitimate’. Subjects turn to other communities of democratic discussion and dialogue available to them, centred on their language, culture, ethnicity, nationality, gender, sexual orientation and the like” (Tully, 2000: 216).

Therefore, the existence of a multiplicity of (national) communities in a single polity has emerged not only as a serious political challenge in many places around the world, but also has provoked a considerable reassessment of the ways in which such phenomenon can be
theorised. In the case of multinational democracy, the challenge is only too evident: how to organize that society in order to make democracy work without misrecognising the heterogeneous composition of the demos?

The complexity of the task becomes apparent when considering two interrelated factors: firstly, each one of the component communities of a multinational democracy constitutes in itself a complete social unit, with a whole range of institutions, decisions and actors encompassing the political, economic, social, and cultural spheres of life (Keating, 2001b).\(^5\) This means that the community in question is able to offer its members a rich and meaningful sense of belonging and the possibility to lead a fulfilling life. Put it simply, membership in a community is a central element of one’s identity, and not a secondary consideration, or a simple matter of taste. Secondly, the inclusive unit is a democracy. This means that it upholds values, procedures, and institutions that are inclusive and representative. I contend that the same rationale can be extended to a multinational democracy, and argue that it should equally uphold values, procedures and institutions according to which the communities constituting the polity must be acknowledged and respected (Tully, 2001: 2-3).

### 1.2 - Democracy and demos in multinational contexts

The very definition of democracy is the object of contested debates, given the evolving nature of the phenomenon and its multiple possibilities of realisation (from abstract principles to concrete practices). Any definition of democracy is always open to criticism, due to the inherent problems of spelling out elements and characteristics that remain part and parcel of permanent contestation.

\(^5\) Keating affirms, “...the nation [is presented] as a broad system of social regulation or ‘global society’ rather than a fragment of a wider society” (2001b, 43).
Etymologically speaking, democracy means rule by the people. More precisely, it entails a community (*demos*) with the ability to dictate the principles, rules and institutions that will govern (*kratos*) their collective life. However, these terms remain highly elusive regarding both their concept and concrete application (Sartori, 1987; Saward, 1994: 6-7, 1998: 8-10). It seems to me preferable to think of democracy not as a neat set of principles and clear-cut characteristics, but as a process, an ongoing activity whose features and ultimate limits are anything but fixed (Dryzek, 2000a).

In this light then, the approach to democracy I adopt here is characterised not by a rigid definition or formula, but a broad range of “democratic politics”, a process inspired by a set of core values, regardless of specific institutional settings and procedures, which are bound to be historically situated and hence variable.

Having said that, the idea of democracy, following Saward (1994, 1998), could be expressed as the combination of *political equality* and *responsive rule*. In the first case, it entails the intuition that every person has the right to participate equally in those decisions that affect them. This, in turn, leads to the ideas of freedom, equality and a set of social and economic conditions that render those ideas possible. In the second case, a democratic government entails and fosters the political inclusion of the people over whom it rules, as well as the principles of accountability and legitimacy. Therefore, a democratic government will be that which is chosen according to specific rules and procedures that guarantee the equal participation of the people and is held responsible for its decisions by the citizenry. All in all, Saward asserts, “[a] political system is democratic to the extent that, and only to the extent that, it involves realization of responsive rule” (Saward, 1994: 14).

The classic idea of representative democracy secures its own legitimacy through the adoption of the principle of “one person, one vote”, and the general accountability of government and its decisions. However, if legitimacy is understood as the combination of rule of law and self-

---

6 “[N]o one person can rightly claim to have sufficiently broad or perpetual superior knowledge of either (a) the rightful course of a political community, or (b) the totality of a given citizen’s interests” (Saward, 1998, 13).
rule (granted, through representation), then in the case of multinational democracies this may become a thorny issue (Tully, 2001). For, as previously stated, the various national communities of a given polity will present a number of claims as political expression of their self-rule; and democratic legitimacy establishes the space within which those claims can or cannot be accepted. Therefore, the question of effective participation on the one hand, and reaching acceptable collective binding decisions on the other, becomes a much more complex matter than simply counting votes. Democracy in this context then, calls for something more than the basic principle of majority rule, as the mechanism through which decisions are taken.

The movement from the classic liberal understanding of democracy to a multicultural and multinational one is rejected by some political theorists. This position has been defended vigorously by Brian Barry (2001), who thinks that a polity will be democratic by simply establishing a universal set of rights, based on the equality of citizenship. Contrary to that, I contend that the existence of more than one community with national aspirations in Guibernau’s sense calls precisely for some form of political recognition and accommodation. Of course, this begs the question of how to achieve that. In the remainder of this chapter I argue normatively for the adequacy of Tully’s processes of citizenisation and the principle of political recognition in order not only to assess the validity and justifiability of claims put forward by national communities, but also the ways in which these claims could be accommodated in a multinational democratic polity. In the rest of this dissertation I explore and assess how these principles have played out in the Spanish case, looking at the different instances of success and/or failure when it comes to the accommodation of multinational claims.

The challenge for multinational democracies becomes one of establishing a set of political institutions and procedures that are accepted by the diverse communities. That is, all the existing (national) groups need to acknowledge and legitimise the political authority and democratic decision-making mechanisms of the polity. If not, democracy finds itself reduced to an empty discourse, and democratic institutions are perceived more as oppressive elements than expressions of self-determination.
The political order thus needs to accommodate the divergent cultural attachments of the constitutive communities. However, this should be accomplished respecting those attachments. That is, political institutions and the sense of loyalty to the polity should be fostered through the recognition of real and meaningful cultural practices and traditions. People acknowledge the value of belonging to some form of collective group for a number of reasons, being the safeguarding of an identity across time the most salient one (Kymlicka, 1989: 162-166; Margalit and Raz, 1995: 83-85; Taylor, 1993a: 45-53). However, as shown below, they equally value the actual political recognition of that cultural belonging.

I believe there are two important consequences from this. First, the accommodation of people’s identities does not deny the existence of multiple, sometimes even conflicting, attachments held by the members of each of these communities. Think of the Spanish case. Do all Catalans identify themselves as Catalans, or is it possible that some will think of themselves as primarily Spaniards? Does this sense of identity shift in time? Can the members of different communities hold in a coherent manner dual identities? I will discuss these matters in chapter 3 and show how a significant number of people in Spain do not see it difficult to be a proud member of a specific community (Catalonia, Galicia, or the Basque Country) and a proud member of the overall polity (Spain). Second, the constitutional and legal order of a multinational democracy assigns powers and competences to the communities, through their governments and political authorities. This brings to the fore the relation between the sense of identity of the members of a cultural community and the ways in which politicians and leaders of that community advance specific claims and defend concrete interests. There is room here for disagreement. It could be the case that some politicians will try and exploit nationalist sentiments for their own aggrandisement, or that the dynamic and complex identity attachments held by the members of one community are not properly expressed by their own

---

7 Kymlicka affirms, “The decision about how to lead our lives must ultimately be ours alone, but this decision is always a matter of selecting what we believe to be most valuable from the various options available”, which are “determined by our cultural heritage” (1989, 164-165). Of course, whether the source of personality is based on the individual or on a group does make a difference, as the debate between liberals and communitarians clearly shows. See Beiner (1995, 12-16) and Kymlicka (1995, 90-92). However, it does not make a difference regarding the importance for people to have an identity.
leaders. I think this is a crucial discussion and one that becomes apparent in my analysis of the Spanish case below.

People’s sense of belonging and identity cannot be sacrificed in the name of political stability, given the apparent injustice of such political misrecognition. Therefore, multinational democracies face a double challenge. On the one hand, the people(s) involved should be able to identify with, and support some set of mechanisms of inclusion, around which a common shared identity is to be constructed. But, on the other, such a process should not imply a (partial or total) denial of specific cultural traits, for this would put the concept of political legitimacy in jeopardy, not to mention the oppressive nature of that possibility.

Thus in order to make democracy work in a multinational context a carefully crafted balance between both unifying forces and splitting tendencies has to be secured. In light of this problem, Mill’s pessimism regarding the relation between national diversity and democracy becomes understandable. However, an attitude of pessimism is as unjustified as one of self-denial is unacceptable. Once the need to address the challenge of multinational democracies as a pressing issue is fully acknowledged, then possible solutions come to the fore.

The political aim of such a polity must be that of fostering some sense of belonging to an overarching community, uniting the different communities living together under the same institutions while respecting at the same time their distinctiveness. How can this be achieved? I argue that normatively, there is a need to reformulate the idea of demos and democracy so as to accommodate the multinational character of some polities. Furthermore, I also contend that this can be achieved by endorsing the principle of political recognition and adopting an

---

8 For an assessment of the concept of political recognition and its need in multinational contexts, see below.
9 To be sure, there is in principle a limit to what is to be tolerated even in the name of democracy. Not every cultural claim advanced in the name of particular identities will be granted recognition. As Crowder states, “[t]olerance cannot be without limits: liberals cannot, and need not, tolerate intolerant actions. So, too, pluralist liberals cannot and need not promote, in the name of diversity, practices that are destructive of diversity” (Crowder, 1999, 9). This is a crucial issue for multinational democracies that must be normatively informed and empirically grounded.
institutional framework of asymmetrical federalism. In the reminder of this chapter I present an
analysis of the meaning and possibilities of these principles.

The cultural composition of a political community has a specific impact on the political content
and dynamics of a particular society. The people that make up a polity can present different
degrees of homogeneity/heterogeneity, which in turn will affect the options available to
accommodate such diversity. The people of any democracy constitute a *demos* which is the
bearer of democratic rights (i.e., democratic inclusion, membership and participation). That
demos will find expression in political processes by establishing a given political order around
certain institutions. However, in polities characterised by their multinational character, this is
complicated by the existing relations between (national) communities. One of the main factors
to identify here is the relative power of the groups involved; whether there is a clear majority
and a number of (significant) minorities; or there is an even distribution of power among the
groups (Horowitz 1985). The first element can take the form of strong concentrated minorities
who enjoy a relative privileged position, be it in demographic, political or economic terms. For
example, in the case of Spain, Catalonia traditionally enjoyed a strategic economic position and
power which led to a strong sense of identity and political claims. The second element points to
the composition of a community and its internal homogeneity or heterogeneity. The
composition of the Basque Country reflects this fact, displaying a complex web of minorities
within the minority, along nationalist and non-nationalist lines. The third element indicates the
possible leverage of a community within the larger unit when advancing claims and demanding
recognition. Both the Basque Country and Catalonia within Spain represent significant
minorities not only given their cultural distinctiveness but also due to their demographic weight
and economic power. These factors can create specific dynamics between those regions with
national sentiments or cultural distinctiveness and the rest of the polity when negotiating their
accommodation under a multinational framework.

This is not to say that the fairness of the claims put forward will be solely determined on the
relative position and power of the community in question. A just claim should find justification
on the merits of the claim itself. However, political negotiation and pressure are also part of these claims, and are affected by the relative power of the community.

Any democratic polity presents a certain political order and a series of social and cultural conditions. On the one hand, there is the set of principles and institutions that makes up the state and the government, whereas on the other, there is the political tradition and patterns of behaviour that characterise the way a given society understands and accepts political practices. The former entails the territorial distribution of power, the division of powers in the state, and the general competences that different levels of government enjoy; the latter makes reference to a broad notion of political and cultural tradition which legitimises specific political attitudes and values.\footnote{Naturally, these elements will take different forms and their content will equally vary depending on the particular history and political evolution of the polity in question.} I believe that the challenge is to spell out the way in which these two factors constitute the defining elements of a continuous process of negotiation in order to accommodate the existing national pluralism in a democratic manner. I think that Spain offers an interesting example of this interaction, in terms of federalism and the proposed institutional framework adopted in the 1978 Constitution. As it will be shown in chapter 2, the idea of federalism traditionally enjoyed limited social support (almost exclusively in Catalonia) and was never formally adopted. Once the 1978 Constitution incorporated a quasi-federal solution for the accommodation of cultural claims, a debate followed regarding the adequacy of these mechanisms in view of the lack of social and political tradition of the country with such political instruments. The establishment, institutionalisation and consolidation of federal practices in Spain, I argue, can lead to a progressive realisation of that principle, whereby political parties and leaders slowly adapt themselves to the dynamic of a federal polity.

One other important element here is the very composition of the demos and the ways in which it expresses itself in political terms. Traditional liberal theories of democracy have been by and large silent about the criteria according to which the demos is defined (Requejo, 2001b: 165). Moreover, usually the demos is not established by procedural rules of the democratic order but from historical processes (including wars, conquests, exterminations...) which are in turn

\[\text{\footnote{Naturally, these elements will take different forms and their content will equally vary depending on the particular history and political evolution of the polity in question.}}\]
(allegedly) justified in terms of a set of universal and impartial rules of a constitution. As Requejo puts it, “theories of democracy have traditionally been theories of the democratic state, conceived around a uniform demos” (2005: 11; emphasis original). Similarly, Keating (2001a: 8) highlights the importance of the demos as both the subject upon which sovereignty is invested and the agent that makes democratic dialogue and exchange possible. However, Keating equally denies that the demos would have to necessarily correspond with a clearly defined homogenous ethnic group. In multinational contexts, the definition of the demos as well as the powers and competences bestowed upon it become the centre of political disputes. As I will argue later, political inclusion and participation in a multinational democracy is compounded by multiple identities and sense of belonging that people develop, and the ways in which this is translated into political rights and duties. The question of the demos in a multinational democracy then represents the heart of disputes between the majority and minorities and, depending how this concept is defined and understood, creates (or impedes) the conditions for the political recognition of multinationality.

1.3 - Recognition and the processes of citizenisation

From the dictionary definition to the most sophisticated arguments about it, recognition presents different alternatives to articulate that balance between the unity of a multinational polity and the multiplicity of national communities that comprise it. Therefore, in this section I present a discussion of the concept of political recognition, largely following the analyses of Charles Taylor and Axel Honneth. Then I critically assess James Tully’s understanding of this issue, paying special attention to his idea of processes of citizenisation in contexts of multinationality.

The main claim of a “politics of recognition”, according to Taylor, is that the distinctness that each person’s or group’s identity expresses “has been ignored, glossed over, assimilated to a dominant or majority identity” (Taylor, 1995a: 234). And this takes the form of a conflict
between universalism and difference: “the reproach the first [universalism] makes to the second [particularity] is just that it violates the principle of non-discrimination. The reproach the second makes to the first is that it negates identity by forcing people into a homogenous mold that is untrue to them” (Taylor, 1995a: 236). However, this does not imply an abandonment of liberal universalism centred on citizenship; rather, it should allow differences stemming from individuals’ and groups’ identities to be granted due recognition. It is worth stressing here that Taylor is not against liberalism per se; his criticism is addressed at a particular brand of liberalism, what he calls “procedural liberalism” (Taylor, 1995b: 186-187).  

Another influential author who makes the case for recognition is Axel Honneth. He affirms the need of a minimum of “mutual affirmation between subjects” (1995: 43). This means that, first, an individual must recognise herself as an individuated agent, performing actions and engaging in relations with others; second, that person must also acquire a social dimension, which is intersubjectively granted, and enables her to be recognised as a member of a particular community (Honneth, 1995: 92-93). These relations of intersubjective recognition are part of constant struggles among social groups, which means that their relative standing at a given moment in time will express a concrete self-understanding of that society. And that self-understanding will eventually change (or, at least, cannot be frozen), given both the dynamic relations and relative power among groups, new normative standards, and consequently new forms of recognition.

Moreover, there is nothing that can guarantee the successful recognition-practices proposed by Honneth. In the case of love, disrespect will assume the form of abuse or rape; in the case of

---

11 A libertarian like Kukathas is also a suitable target for Taylor’s critique: “…liberalism is not troubled by the question of whether respecting human dignity requires recognizing individual identities or recognizing the identities of groups. Liberalism is not concerned with granting recognition to either. It does not offer recognition at all... Liberalism might well be described as the politics of indifference” (Kukathas, 1998: 691; emphasis added). Compare this radical view with more –and yet distinctively liberal- accommodative ideas defended by Kymlicka (1995).

12 Honneth then applies these general ideas to three basic relations of recognition: a) Love (self-confidence); b) Rights-Law (self-respect); c) Solidarity (self-esteem). All three elements are subject to contestation in a series of struggles for recognition that each society comes to terms in its own historical evolution (Honneth 1995).
rights, denial of that status and exclusion; in the case of solidarity, denigration and insult (Honneth, 1995a: 131-134). All these forms of disrespect are extremely serious, not only for their disruptive individual effect (personality disorders, angst, unhappiness, suicide), but also for their potential conflict at the social level (from anomie and civil disobedience, to protest and civil war).

Both Taylor and Honneth also point to the idea that recognition should play a part in discussions about democracy. Taylor (1995a, 1995b) advocates a redefinition of liberalism, advancing a more inclusive form of liberal practices under the aegis of intersubjective dialogue. In the case of Honneth (1995, 1998), recognition becomes part of moral struggles, which give society a particular self-understanding along time.

For Taylor, identities come from a certain interpretation of the world and one’s own life, which is the ethos of authenticity. This in turn, is connected to the principle of recognition, which means that one’s identity is the result of an ongoing intersubjective conversation, sustained along time in a language community. For Honneth, the very sustainability of a community calls for mutual affirmation between individuals. This entails two steps: first, the person must realise her potential to become an agent, both in her capacity to act in meaningful ways and relate to others. Second, this potential must project itself to the social world, in which she is recognised through intersubjective dialogues as a full member of the community.

These authors share a concern about intersubjective affirmation of identities; or, slightly different, the notion that identities must be recognised through processes of dialogue, which are conducive to respect for differences and the institutionalisation of those differences in the workings of a multinational democracy.

David Miller, from a republican conception of identity and citizenship, touches upon similar issues. I find Miller’s analysis intriguing insofar as he brings to the fore a discussion about national identity and how it is sustained through deliberative practices in which the members of the community engage with each other and present their arguments in order to arrive at collective binding decisions (2000: 53-55, 58). Nevertheless, Miller’s position seems to prioritise
the existence of a national identity and the recognition he advocates is firmly grounded on a sense of belonging to that community: “the recognition sought is recognition qua citizens, not recognition qua group members, and this is what distinguishes the quest for inclusion from the politics of identity” (2000: 67). Miller understands national identity and a sense of belonging to a nation (comprising the overall polity) as a precondition for recognition along the lines of a republican citizenship. However, in a polity characterised by multiple national communities that is precisely what is at stake: the establishment of an identity that can be shared by the members of a polity irrespective of their own cultural or national identities. I am sympathetic to Miller’s concerns about publicly sustained citizenship practices but I remain doubtful whether a national identity needs to be already firmly recognised in order to make those practices possible.

Granted, Miller does acknowledge that citizenship in divided societies presents specific problems. Related to this, he identifies three kinds of pluralism: ethnic cleavages, rival nationalities and nested nationalities (2000: 126-132). Nested nationalities are those polities where:

“two or more territorially-based communities exist within the framework of a single nation so that members of each community typically have a split identity. They think of themselves as belonging both to the smaller community and to the larger one” (Miller, 2000: 129)

Spain is one of the examples Miller has in mind (together with Belgium, the UK, Canada and Switzerland). Moreover, he affirms that the public culture and ethical horizon embodied by a national identity is not sacred but dynamic, a product of political debate and collective deliberation that could lead to reform (2000: 107). If this is the case, then Miller would be amenable to ongoing historical processes through which a national identity and sense of belonging can be modified so as to accommodate the publicly sustained claims of members of that polity, even when these claims actually challenge and seek to change the existing content
of that national identity. However, I believe there is a tension here in Miller’s thought insofar as national identity is at moments treated as pre-existing other kinds of identities and enjoying at the same time ethical pre-eminence. Ultimately, this tension takes the form of a clash between national identity and republicanism and the relative normative standing assigned to one and the other.

The question of recognition raises a formidable challenge to democracy. One of the fundamental principles of democratic legitimacy is that “what touches all must be approved by all” (Tully, 2001: 24). It is hard to see how democratic principles, institutions and practices in a multinational context can pass this test if they are not able to provide an answer to the question of recognition of the existing national communities in a given polity.

Tully, in a similar fashion to the previous authors, also highlights the social dimension of political recognition and the importance of this principle in order to present an alternative version of democracy equipped for the challenges posed by multinational contexts. Tully asserts that the identity-discussion and identity-formation in a multinational democracy “...are (predominantly) discursive practices in which citizens discuss, acquire, and negotiate the very identities they put forward for recognition” (2001: 17). The three processes referred to are the following: a) members of a group reach an agreement, claiming to be currently misrecognized in relation to their identity; b) such an agreement is at the same time open to discussions with other members of the multinational society; c) the latter become also engaged in the identity-formation discussions, as their own identity is altered by the original claim (Tully, 2000: 219, 223-224; 2001: 17-19).

Moreover, Tully affirms that these three processes are the fundamental mechanisms whereby people can become citizens in a multinational democracy (2000: 215-217; 2001: 25). To fully grasp the meaning of this, I believe it is necessary to consider the broader context in which these processes occur. People belong to a national community, which in multinational democracies is supposed to share the overall polity with at least one more community, equal in

13 This comes from the classic Latin formulation: “Quod omnes tangit omnibus tractari et approbari debet”.
nature. This means that, whereas there is one political community (the polity), there will be a multiplicity of national communities, all of them searching or struggling for public recognition.

Therefore, these processes are expected to overcome the seemingly inevitable tension between a multiplicity of identities and the political expression of them. Put it slightly different, a multinational democracy should be able to express its multinational character through a series of mechanisms which avoid serious political conflicts. Dialogue becomes a central element in this context, whereby people who define themselves differently, can nonetheless establish and accept some set of principles and institutions that they all accept as legitimate.

It is clearly not enough that a national community defines itself as belonging to a given polity. It is equally important that such definition be accepted (i.e., recognised) by the other communities living in the same polity. Moreover, both sides (majority and minority) should find ways to define the terms of that recognition on mutually acceptable grounds. All in all, the overarching political order should be strong enough to foster a minimum sense of solidarity, or “togetherness”, according to which the people in question can recognise themselves as taking part of a coherent whole. Political recognition then implies the active public acceptance from all the members of a polity of those differences among them, and at the same time the denial of such differences being too divisive a political factor. Ideally, there should be a sense of shared fate, whereby all members irrespective of their cultural attachments can define themselves as belonging to the overall political unit.

In this connexion, Galeotti affirms:

“[d]ifferences ought to be publicly recognised not because they are important and significant per se, though they may well be, but because they are important and significant for their bearers and because their public dismissal, coupled with their social definition as ‘different’ from the ‘normality’, is a source of injustice” (1999: 47; emphasis in the original).
In a similar vein, Tully (2000: 214) couples the possibility of civic participation with its actual exercise, as a means by which people become free citizens. The basic factor through which people can reach a minimum level of commonality, at least in principle, is the possibility of genuine political participation. It is clear that the potential of public engagement in a civic manner has to be translated into concrete citizen practices\textsuperscript{14}, which ideally fulfil the requirements of equality and mutual respect.

The process of struggling for recognition is publicly sustained, presenting very specific characteristics (Tully, 2001: 19-21). It is intersubjective (as identities constitute a product of the process itself, involving all the relevant actors); multilogical (as the participants in the process advance their own reasons while listening to the others’); continuous (as identities cannot be frozen in any given moment); and contestatory (members of different communities struggle for their identities and the relationships stemming from those identities).\textsuperscript{15}

Faced with the feeling of being misrecognised, a community put forward specific claims in the way just described. Tully calls this a right of disclosure: a given community is entitled to publicly sustain a specific cultural identity and, as the case may be, demand protection/recognition. Put it slightly different, the ultimate goal of this is to seek political recognition by presenting certain claims to the rest of society. On their part, those who are addressed with such claims have a duty to acknowledge it (2000: 227; 2001: 13-15). This implies that the rest of the society cannot simply ignore the right of disclosure of a national community (and the claims this can entail). Therefore, according to Tully, political recognition necessitates a reciprocal process of political negotiation of identities. On the one hand, there is the right of a community to present its cultural identity as worthy of protection and, on the other there is the duty of the polity as a whole to impartially and seriously consider such claims.

\textsuperscript{14} Such concrete practices are far from being uniform. They are the result of specific cultural dynamics and contexts, ranging from loose political organisations and public opinion-formation activities, to formal political parties and direct political involvement in federal units with differentiated policies.

\textsuperscript{15} This characterisation conveys a clear appeal to deliberative practices, although some notions of republicanism and Rawlsian liberalism are also distinguishable.
I think that the alluded reciprocal process of political negotiation of identities provides an appealing normative standard with which to assess and evaluate a polity characterised by multinationality like Spain. As I will show below, Basques, Catalans and Galicians regularly address the rest of the polity with specific identity-based claims. The central question here is the concrete conditions and demands under which the processes of “disclosure-acknowledgement” take place. Following Tully, I contend that by analysing the ways in which these processes are carried out in a particular historical context we can develop an informed assessment of the justice of both the claims being advanced and the rights being recognised.

Related to this last point, however, the mere fact of advancing a claim of this nature does not necessarily mean that it will receive political recognition. Tully makes an important theoretical distinction between “acknowledgement” and “recognition”. The former entails the public disclosure of a claim for recognition, dully discussed in a deliberative fashion. And Tully stresses that this is independent of the outcome; it only secures the treatment of the claim by the political association as a whole. The latter takes the form of formal constitutional recognition of the claim advanced, changing the very terms and conditions of the political association (this is actually what Tully refers to when talking about the “success” of a claim put forward for recognition). To put the matter negatively, not every culturally-based claim will automatically receive political recognition. For it is only too possible that a given cultural community be unreasonable in its relations with the other cultural communities, or that some of the stages in the three-fold process of citizenisation fail to meet the conditions required (i.e., an elite misrepresents the cultural heritage and/or identity of its own community, or the dialogue between communities is biased, due to persisting stereotypes and intolerance).

Nevertheless, Tully affirms that the mere possibility for a community to exert its right of disclosure is enough to legitimise the polity as a whole, even if the challenge is not successful. By this, he means that the possibility of acting in such a way (one’s ability to advance a public claim about one’s own identity) is in itself a source of legitimacy (Tully, 2001: 29-33). Put it slightly different, the actual process of engaging in this kind of contested public political activities foster a sense of self-respect and recognition, even if it proves to be unsuccessful at
the beginning. The idea seems to be that the political community unfolds a progressively enriched moral understanding of its own multinational composition via continuous public deliberations.\textsuperscript{16}

Two considerations are in place. Firstly, I contend that there may be a somehow naïve assumption about these so-called “processes of citizenisation”. For if becoming a citizen in a multinational democracy involves engaging in public discussions and negotiations, this means that there are no \textit{a priori} reasons to expect that the people involved will engage in the proposed public contests in the first place; or, at least, not following the requirements that this ideal demands. It is entirely possible that the actors involved may not be cooperative at all, given the fact that those processes largely determine one’s identity (and hence, the political legitimacy of the polity). This is not a cynical but an empirical caveat; one that I discuss in detail below, looking at the ways in which national communities in Spain live or do not live up to this ideal when presenting their claims and demanding some form of recognition of their identities.

To reiterate, the process of citizenisation in multinational democracies calls for the right of disclosure and the duty of acknowledgement. And these should take place according to the conditions stipulated by Tully (i.e., the process is intersubjective, multilogical and contestatory). However, this position presupposes that all the parties involved in any process of political negotiation of cultural identities has to exhibit certain values, such as willingness to engage in public dialogues, respect for dissenting views, and commitment to accept decisions democratically reached. Most likely, these conditions are not present in a multinational polity and part of the process of becoming a citizen in this context is precisely to learn how to foster such values. It remains an open question and centre of debates where these conditions come from, and what is the best way to realise them when absent. Tully seems to be optimistic on this point, somehow relying on the appeal of a democratic ideal which would bring the parties

\textsuperscript{16} This line of reasoning comes close to Honneth’s own view of the struggles for recognition that a society displays in history. This view may imply a dubious teleological assumption regarding the practices of political recognition in a multinational democracy. However, Tully does acknowledge that such public activities of recognition are not to be weighed by their success, but only by their availability to the diverse communities seeking recognition.
into a shared set of basic rules to conduct their negotiations. His trust on this point might just
turn out to be exaggerated.

Secondly, I think that to contend that these processes are conducive to some degree of
citizenisation even when they fail to properly recognise the identities at stake needs a similar
qualification. Tully’s aim seems to be the reframing of the very notion of recognition, whereby
the struggle is not about succeeding (although that is an implicit goal) but rather about being
able (or “free” in Tully’s words) to contest the public forms of recognition. The acceptance of
this point, however, casts some doubts about whether this condition is enough to secure an
adequate level of belonging from the participating people(s), and hence to legitimise the overall
political association.

In Tully’s words:

“A multinational democracy is free and legitimate, therefore, when its constitution treats
the constituent nations as peoples with the right of self-determination in some appropriate
constitutional form, such as the right to initiate constitutional change. This enables them to
engage freely in negotiations of reciprocal disclosure and acknowledgement as they develop
and amend their modes of recognition and cooperation, in conjunction with the fair
reconciliation of other forms of diversity” (2001: 33).

I believe there is a clear risk here. For if struggles for recognition are to be thought of as being
merely the exercise of one’s right of disclosure, independent of the outcome, it might just be
the case that a community is denied recognition on a regular basis. Of course, this could be
warranted, insofar as those claims are based on “the wrong reasons”, i.e. expressing one or
some of the unreasonable grounds alluded to above. However, any member of the polity
should feel a minimum sense of being co-responsible in the shaping of their own institutions
and practices. Such an aim can only be achieved if all the members of the polity are recognised
as valuable elements of it, enjoying an equal status of recognition and respect. Democracy may
have difficulties in reaching unanimity, but that does not mean that the majority can dictate to the minority(ies) unfair terms of incorporation into the political body.\textsuperscript{17}

Democratic citizenship in a multinational context thus entails a double responsibility: on the one hand, the communities that make up the polity must be committed to advancing just identity-based claims; whereas, on the other, the society as a whole must be committed to treating those claims in a fair manner. The criteria according to which I contend that identity claims should be advanced for acknowledgement/recognition (following Tully’s distinction) include:

a) \textit{Respect for minorities}: a national minority cannot advance a claim that represents a violation of the rights of minorities-within-minority;

b) \textit{Reciprocity}: a national community cannot advance a claim that does not apply to itself;

c) \textit{Feasibility}: a claim advanced by a national community should be within the realm of the actual political, social and economic possibilities;

d) \textit{Public reasoning}: a claim advanced by a national community should be open to public dialogue and contestation, not presented in a close, dogmatic way.

I endorse these four criteria and I apply them systematically to the Spanish case in the reminder of this dissertation. By looking at the demands put forward by national communities in Spain and the interactions of them with the rest of the polity through these four criteria, I believe we can develop an informed understanding of the possibilities of political recognition in multinational contexts.

\footnote{This is especially true for multinational democracies, where a national minority can thus be subjected to permanent misrecognition given the relative power relation stemming from sheer numbers (i.e., percentage of the population, mechanisms of political representation...).}
These normative ideas about political recognition and multinational democracy provide us with criteria for the assessment of the political dynamics of a polity characterised by its multinational character. Divisive issues can include the definition of the state, the division of powers among the different political levels of government, or more policy-oriented areas such as language and education. Nevertheless, these principles do not identify specific solutions susceptible of being applied without further refinements regarding empirical cases. For instance, it is clear that political institutions will be legitimate if they enjoy a broad consensus from the demos regarding their justification, but that still does not specify in which ways that justification came to be accepted by people (or peoples) holding different and sometimes opposing identities.

In the next section I analyse the possibilities that federalism offers in contexts of multinationality, with special consideration to asymmetrical arrangements. This analysis complements, from a more institutionally driven perspective, my previous normative arguments.

1.4 - Federalism and Multinational Democracy

Federalism in its simplest form is defined as “self-rule plus shared-rule” (Elazar, 1987: 12). It presents a double way to organise power in a polity, with a double level of political authorities. On the one hand, there is a central government which assumes certain powers and functions and, on the other, there are some constituent units (with different names, depending on the polity: provinces, cantons, autonomous communities) that also assume certain powers and functions. In more general terms, the idea of federalism implies that “the powers of government within [federal polities] are diffused among many centers, whose existence and authority are guaranteed by the general constitution, rather than being concentrated in a single
center” (Elazar, 1987: 34; emphasis added). The combination of unity and diversity that federalism presupposes clearly presents tensions and may not be easily accommodated. However, federal arrangements are usually proposed to do exactly that: find a political and institutional framework in which not only the unity of the polity as a whole is guaranteed, but also the diversity of the political community is protected (Kymlicka, 1998; Requejo, 2005; Simeon and Conway, 2001). Such diversity most likely will take the form of territorial, cultural, linguistic, religious or economic claims, based on (partially) competing identities and forms of belonging.

There is a distinction to be made between the normative general principle of federalism on the one hand, and the diverse types of federal arrangements that different polities can adopt (Requejo, 2007: 125-128). The former embodies the basic notion of the unity of shared-rule around an overall political structure which coexists with a distribution or dispersion of power among the constituent units. The latter allows for variations regarding the ways in which self-rule is exercised by the constituent units vis-à-vis the powers and competences of the central government. As a result, federal arrangements can take the form of federations (symmetrical or asymmetrical), federacies, confederations, regional states, leagues, condominiums, and unions (Elazar, 1987; Watts, 1994; Requejo, 2007). It is important to note for the present purposes that, despite the different institutional and political meanings of these forms, they all affirm the same principle: power can be shared and compartmentalised at the same time, depending on the level of government which, in multinational polities, will correspond to the political and sociological realities of the national communities in question.

Multinational federalism aims at providing national minorities a workable alternative to secession. It attempts to accommodate democratically the claims of those groups in the overall polity. But this may create what Kymlicka (1998) calls “the paradox of multinational federalism”, since in itself this arrangement can foster a sense of entitlement that those groups have regarding the exercise of sovereignty, namely to secede if they so desire. However, the move from accommodation through federal arrangements to a view where secession is seen as a real (probable) possibility is by no means an inevitable outcome (Keating 2001a: 109-110). It
will depend largely on the understanding that relevant political actors (both in a federal government and in the units that comprise it) have about the normative nature of the polity. On the one hand, they can think of the polity as a single-nation that embarks upon state- and nation-building processes inspired by the modern ideal of universal citizenship and a uniform set of rights and liberties. On the other hand, they can think of the polity as a polycentric structure of power whereby the community-based claims and distinctiveness of the constituent units take place side by side with the unity of the whole. Typically, the centre of power of a polity (usually around the capital city of the country) tends to adopt the first view, whereas peripheries (especially if they are territorially concentrated) tend to favour the second. This of course does not deny the considerable variation that can be present among majority and minorities when it comes to subscribing a particular model of polity. Nevertheless, I think it is worth exploring the possibility of reaching a middle ground between these two positions, affirming the value of democratic inclusion (and legitimacy) that federalism can provide by combining unity and diversity in a multinational polity. As Keating points out:

“Changing the frame of reference from the nation-state to the plurinational state or the historically informed concept of the union state opens new perspectives, although it does not itself provide an alternative, universally applicable model of the state” (2001: 133)

Related to this point, Karmis and Gagnon (2001) argue that the crux of the matter here is to find the appropriate balance between unity and diversity. This is, of course, in line with the very definition of federalism, and thus reinforces the idea that federal arrangements could constitute a viable way to accommodate this tension\(^\text{18}\). If the balance between unity and diversity is defined as “the institutionalization of both the plurality and the asymmetry of

\(^{18}\) Interestingly, they remain skeptical about the feasibility of this balance given the experience of Canada and Belgium. This is an important argument to be assessed empirically, taking into account the ways in which specific historical, political, social and economic conditions may favour or hinder the establishment of multinational federalism.
allegiances in compatible ways” (Karmis and Gagnon, 2001: 138), then it is clear that the success or failure of federalism as a way to accommodate the multinational character of a polity will depend on creating the right conditions for those “compatible ways” to be adopted and shared.

In this connexion, Wayne Norman asserts that a multinational federation must respond to a double tension: on the one hand, there is “the self-governing aspirations of more than one national community” whereas, on the other, there are “rival nation-building projects by political actors in these communities” (2006: 96). Therefore, federalism should be understood not only as an institutional-legal framework, but also as a political system where dynamic interactions and tensions commonly arise.

Issues of federalism as fundamental factors to both the political order of the polity and the possibility (or not) of accommodating nationalist demands have been a concern of a number of Spanish scholars. I will be discussing the most salient positions of this debate below, but suffice it to mention here the following contributions: Arbós (2013) described the political character of Spain as ‘constitutionally unpredictable’ given the fact that federalism is neither explicitly endorsed nor precluded by the constitution. Digón Martín (2013) also pointed to the possibility of embracing some form of asymmetric federalism, in light of opposing nation-building projects. However, this author identified the need for dialogue, openness and mutually acceptable compromises in order to make possible the accommodation of nationalist demands. Moreno and Colino (2010) stressed the process of decentralisation that has led to the ‘federalisation’ of Spain as a way to recognise its heterogeneity. According to these authors, the possibility of success of this strategy is compounded by two main obstacles: first, some divisive elements like historic rights or political violence; and second, the lack of hegemony of any sense of nationhood in Spain (be it in any of the three historic communities, or Spain as a whole). From a more theoretical perspective, Sala (2013) engaged with the federal nature of Spain, asserting that the country represents a fully-fledged federal system despite some

---

19 I am sympathetic to this point of view, and I will analyse in detail the implications of this position. Equally important is the rigidity of the Spanish Constitution and the great difficulties for its reform, something I discuss at length in Chapter 4.
‘idiosyncrasies’ of the polity given its particular history. More importantly, I think, Sala made it clear that Spain has advanced in “sequential post-constitutional stages”, showing the dynamic of this process, and also linking the Spanish experience with the multiplicity of features that any federal arrangement displays. Discussions of decentralisation (Colino and Hombrado, 2013; Colino and Del Pino, 2010) and asymmetry (Digón Martín, 2013; Seijas, 2013; Sala, 2013) have become part of an intense debate among Spanish political scientists. As shown below in Chapter 2, I think this is important insofar as it connects with different models of the state and nation and the possible ways in which those models reflect the political history and reality of the country.

Federalism and Asymmetry

The challenges stemming from the political conditions of a multinational polity could be solved, some argue, through the adoption of asymmetrical federal arrangements. Asymmetrical relations in federal systems can have a de facto or de jure nature. The former simply states that the constituent units will differ in a number of aspects, such as the size of the population and territory of each of them, their economic development, geography, among others (Boase, 1994: 91). The latter presents a more serious issue, for it implies that:

“[t]he constitution itself should de jure treat various constituent units differently. The constitution could do so in three different ways: by variations in the powers assigned to different regional governments; by permitting varied institutional structures within different constituent units; by demarcating regional boundaries in such a way as to accentuate asymmetry among the constituent units” (Watts, 1994: xi-xii)
The importance of this idea is that it introduces a significant element of heterogeneity within the federal polity in question. Moreover, this line of reasoning not only seeks to acknowledge a certain sociological reality of differences among the constituent units, but also assigns to them value and grants them political recognition, usually through the enshrinement of constitutional protection (Gagnon and Iacovino, 2007: 159).

There are several reasons for asymmetrical federalism. First, it is argued, the self-rule implicit in any federal arrangement must be carefully institutionalised so as to give room for asymmetry whereby some constituent units will enjoy a different status than the other units in a particular polity. And this is justified for reasons of democratic protection of certain values of the minority (language and culture being prominent examples) (Boase, 1994: 92) which would be otherwise systematically overruled by the majority living in the polity taken as a whole. Second, asymmetries can be treated as a political reality that, if not properly recognised and protected, can present itself as a destabilising force for the whole political order. Third, and related to the previous points, federal institutions and practices that affirm asymmetry fully embrace the movement from a single-nation model to a multinational one, recognising at the same time that the political dynamic and very nature of the polity is different and, consequently, requires a departure from the classic understanding (i.e., symmetrical) of federalism (Requejo, 2001a).

Whether through a pragmatic (stability) or a substantive (democratic legitimacy) argument, there seems to be a case for asymmetry an appropriate response for multinational polities. One obvious objection would be to point out that adopting these practices and institutions will most likely fuel discontent among the rest of the constituent units of the federations which, in a real or perceived sense, may find themselves at a disadvantage (i.e., they do not enjoy certain powers or competences that the asymmetry introduced in the federation). This, in turn, could lead again—though this time in the opposite direction—to destabilising forces in the federation.

From a normative point of view, there are two arguments against these fears. First, a rejection of the single-nation state model is implicit in the adoption of asymmetrical federal

---

20 They refer to this idea as part of their analysis of the relations between Quebec and Canada, but the more general normative distinction remains clear.
arrangements. This means that those constituent units that would enjoy a special status in the federation are entitled to it given their political and sociological reality of being a national community. Moreover, those powers that are enjoyed by some national communities in a multinational federal arrangement (and denied to other constituent units of the federation) should stem from the national character of the community in question and should also be justified in terms of recognition of that character. Second, the introduction of asymmetry in a federation is also in line with the broader ideal of federalism and processes of citizenisation in a multinational polity. This means that any rights, powers or competences enshrined in the constitutional order of the polity is open to the double process of right of disclosure and duty of acknowledgement discussed above.

Ultimately, the viability or not of a federal asymmetrical polity characterised by a multinational composition will depend on the specific political dynamic that characterise the relations among the units that comprise it. This means that the particular relations between the central government and the constituent units on the one hand, and the relations among the constituent units themselves on the other, will create (or deny) the minimum conditions for workable solutions in the spirit of asymmetrical federalism. Put it slightly different, the relative position and power of a national community has an impact on the willingness of its leaders (and citizens at large) to engage in public discussions and advance their identity-based claims in good faith. The same applies to past and ongoing forms of relations between the different communities of a given polity.

Moreover, both the political evolution of the polity as a whole and the patterns of interactions among political elites (central and regional) is of the utmost importance: the fact that a majority of politicians and/or citizens follow a single-nation model of state or a multinational one, greatly affects the ways in which power is organised in that society. To be sure, the traditional forms of interaction among elites or members of different communities do not carry normative weight. Federalism as an option for the political organisation of power in a multinational polity should be assessed on its own merits, possibilities and eventual shortcomings. However, the political evolution of a concrete polity may condition the ways in
which federalism could be adopted it in the first place. I show below that the Spanish case is clearly affected by prejudices against federalism from the centre, and misplaced hopes about its promise from some national communities.

Federalism, in the sense of embodying a delicate balance between unity and diversity, promises to create working conditions for the democratic accommodation of multinationality. First, it aims at creating the necessary space to incorporate the claims stemming from the different communities of a multinational polity, through a complex structure of power that is supposed to bring about the necessary accommodation of cultural (or national) differences. Second, the federal principle is characterised by the open-ended nature of the political process, whereby contestation and deliberation are part and parcel of politics.

However, this factor of flexibility and openness that characterises federalism is at the same time a problem when trying to come up with neatly defined analytical propositions. Federalism, in order to be effective in multinational contexts, has to be indeterminate so as to flexibly make room for the multiple and changing demands of national communities. This in turn creates a changing political dynamic, with zigzag like movements where different actors will advance different views of the whole political process, with different degrees of success.

The relations between central governments and constituent units can thus be characterised both by ongoing negotiations and by permanent accommodation, reflecting the particular self-understanding they hold at different moments in time. The elusive balance between change and continuity is given by the open discussion of reasons through which the members of different national communities learn to become citizens of a multinational polity.

To be sure, there remains the issue of how exactly a multinational polity can create the right conditions that combine the plurality and asymmetry of allegiances endorsed by all the constituent national groups of that polity. Clearly, there is a difference between saying that a set of principles and institutions are needed in order to establish a workable multinational federation and identifying the conditions under which those principles and institutions can actually be realised.
My contention is that this is an empirical question that has to be accordingly addressed through concrete historical cases. I think it is worth mentioning a couple of factors though: first, the multinational federal arrangements discussed here respond to an open-ended logic which means that conflicts and tensions are a normal element of politics. In other words, the fact that a multinational federation faces regular conflicts should not be surprising at all. The question is the ways in which a multinational federation is able to respond to those claims. This means that federalism is not a magical solution for the conflicts and tensions that characterise a multinational polity. Rather, a federal institutional arrangement can provide the basis on which national communities enjoy a substantial degree of political recognition through the combination of shared rule and self-rule. These principles that inspire federalism can complement the requirements of political recognition inasmuch as both ideas make possible contestation and adaptation that the processes of citizenisation alluded to above entail.

Second, as Tully stresses, the processes of citizenisation through which people belonging to different national communities learn to be citizens of the overall polity while keeping their respective national identities must be regulated themselves by general democratic principles. These include respect for the minorities, reciprocity, feasibility and public reasoning. Moreover, any claim advanced in a multinational federation must itself respect those general democratic principles. I understand these processes and conditions as equally applying when it comes to the possible adoption of a federal framework.

Erk and Gagnon (2000, 93-4) propose to see “federal trust” as a mechanism through which a multinational federation avoids disintegration via constitutional ambiguity. This seems to hold true for newly-democratised polities, where the very fragility and uncertainty that democracy presents in those contexts is usually enough to hold all (or nearly all) political forces working together for a common goal. However, the authors stress that the more democracy is consolidated, the more disagreements may surface between political actors. This is an almost

21 The same reasoning could be applied to all multinational democracies, and not just newly-democratised ones. I believe that the crucial relation here is that between the enshrinement of certain rights at the constitutional level and the ways in which those rights play out in everyday politics (dialogue, deliberations, and negotiations among all relevant political actors).
unavoidable risk in multinational polities, with the overlapping and crisscrossing projects held by each of the potential nations. In an extreme case, those projects may become mutually exclusive, threatening the polity itself with secession.

Federal trust is certainly an elusive quality. It presupposes that the actors involved trust one another and establish relations of good faith with one another. This may very well not be the case in multinational polities. If political processes and overall agreements about the nature of the polity are not solid enough to sustain the future of a multinational polity, then the assertiveness of certain demands and right-claims will become a divisive political factor. Such conflictive scenarios can involve the distribution of competences between levels of government or the political recognition of symbols and identities. But they can also include the territorial distribution of power (or the territorial division of the polity itself) or the very definition of what democracy means.

I contend that the possible normative adequacy of (asymmetrical) federalism for multinational contexts is exactly that: a possibility. Its realisation and value will depend, in large part, on the ways in which a concrete polity is able to adopt federalism as its own, and explore the political dynamic of the system. I have tried to provide reasons for hope in relation to the capacity of federal arrangements to accommodate multinationality. However, I also recognise the tensions and eventual conflicts that such a system may face.

In order to better appreciate the possibilities and limits of these general principles, the remaining part of my dissertation further explores the normative status of these ideas and the ways in which they apply to the Spanish case. In so doing, I analyse from a normative but also contextually-situated perspective the multinational character of Spain and the challenges that this fact presents.

Therefore, my analysis below discusses in detail the ways in which the concepts of multinational democracy and political recognition (together with a federal institutional

22 In a similar vein, Harty and Murphy (2005) also highlight “trust” as one of the key dimensions of their proposed multinational citizenship.
framework) provide the basis for an assessment of the divergent experiences of three Spanish national communities (Catalonia, the Basque Country and Galícia), the response of the central Spanish state, and the political dynamic between them.
Chapter 2

The 1978 Spanish Constitution

So far I have framed the discussion on a normative level, focusing on the condition of multinationality and the principle of political recognition. In this chapter I extend the analysis to the Spanish case. My starting point here will be to situate two fundamental concepts like ‘nation’ and ‘state’ in Spanish history. By doing that, I will present some of the relevant models that Spain has tried in the recent past, and the ways in which they either attempted to reflect or fail to acknowledge the multinationality of the polity.

Related to this point, in this chapter I also deal with general trends in the historical evolution of the country. Although the analysis takes as the starting point the establishment of the 1978 Constitution, important ideas such as historical communities, regional identities and the model of the state go back in time. This historical dimension needs to be understood in order to make sense of current debates in Spanish politics around centralising/decentralising positions, federalism, and the limits of discourse and capacity for accommodation that actors and institutions exhibit in different moments in time.

Consequently, I present a brief discussion of the historical evolution of Spain as a way to better grasp the overall patterns of relations between different regions, political parties and leaders, and the ways in which they engage with each other and defend their own ideas. Debates, historical options and decisions only acquire full meaning when taken in the context of a broader political evolution, unfolded in history.

In this context then I discuss the First and Second Republic and the Franco Dictatorship (only to the extent that they are relevant to the current situation). By doing so I identify the historical expression of Spanish identity (and some regional identities within Spain), and I highlight the general mode of relations between the relevant political actors. This analysis is the springboard
for the current political organisation of the country, established in the 1978 Constitution.

Basically, the system has been characterised by an uneasy balance between the unity of the polity on the one hand, and territorial decentralisation and political autonomy, on the other. Especially important for the present purposes are two points: a) the legal basis for political autonomy and the constitutional guarantees for its political expression as expressed in the 1978 constitutional text; and b) the territorial distribution of power given the open nature (i.e., indeterminate in the Constitution) of the system.

Stemming from the previous points, there are two factors which I think are crucial to understand the political and institutional framework adopted in 1978: a) the tension between a trend towards homogenisation across Autonomous Communities (what has been termed ‘coffee for everybody’) and the emphasis put by the historical communities on ‘differential facts’, which are usually used as a justification for asymmetry; and b) the evolution of the system of Autonomous Communities since 1978, which presents different characteristics, at different times. This is what Moreno calls the ‘territorial competence model’, whereby a number of competences are being devolved from the central State to the Communities, and regional governments progressively consolidate themselves as important and influential actors in the political life of the country.

This, in the case of Galicia, the Basque Country and Catalonia has brought about a renewed sense of belonging. Democratic legitimacy and the principle of subsidiarity have inspired and justified these regional governments, as an expression of sub-state nationalism seeking recognition.

The final section of this chapter will concentrate on the different historical phases of the Estado de las Autonomías, and the tension not only between ‘regions and nationalities’ as defined by the Constitution, but also the tension between the process of establishing political autonomy and re-centralisation attempts from the central government.
2.1 State- and Nation-Building Projects in Spanish History

The political evolution of Spain since early nineteenth century has been marked by competing and opposing national images. As Balfour and Quiroga summarise it:

“Historians have tended to identify three dominant discourses or political projects for nationalist affirmation in the first half of the twentieth century. One was a liberal, civic nationalism, which culminated in the progressive Republican governments of 1931-3, and 1936-9...[where] the national diversity of Spain was recognized... A counter-project was National-Catholicism... which sought to impose by authoritarian means a uniform nationalization or españolización based on a traditional, religious, linguistic, and cultural identity... The third was the assertion by regional nationalists... of a distinct history and identity and the demand for autonomy or independence” (Balfour and Quiroga, 2007: 10).

The first expression of modern Spanish nationalism was identified with the resistance against the Napoleonic invasion of the Peninsula in 1808. Although the revolt was mainly led by the rural clergy against the French army (doubly feared for its foreign character and the modernising, atheist ideals it promulgated), it soon became to be known as the ‘War of Independence’ of the Spanish people, and used as a founding myth in the liberal tradition of Spanish nationalism (Alvarez Junco, 1996, 2001; Garcia Carcel 2007). The liberal elites, a product of the urban centres and themselves belonging to educated middle classes, pursued the democratisation and modernisation of the state apparatus. However, they tended to be conservative and enjoyed little penetration in the population as a whole. This was due to two factors: on the one hand, the lack of adequate resources and institutional presence of the Spanish state meant that the role played by education as a mobilising and nationalising factor
had a weak impact\textsuperscript{23}; on the other, these liberal elites resorted to the support of the Church and local oligarchies rather than the people. The liberal tradition was against the Absolutist power of the Monarch but did not fully articulate an idea of the nation based on the people (Smith and Mar-Molinero, 1996: 4-5).

The liberals established the first Spanish constitution in 1812. Although the constitution remained to a large extent a mere formal document and was soon overturned, it did expound the liberal vision of Spain. The Cadiz Constitution of 1812 declared the Spanish nation as sovereign and “defined the national community in terms of a common history and culture rooted in the Middle Ages” (Balfour and Quiroga, 2007: 19). Moreover, this tradition favoured a strong, central state around which the people represented an organic body in the Herderian sense. However, popular support for this option was not widespread, and indeed not wholeheartedly pursued.

If the liberals interpreted the ‘War of Independence’ of 1808 as a struggle against the modernising ideals of the French Revolution, traditionalists deemed that process as a mobilisation to fight against atheism an as an undeniable expression of Spanish Catholic faith and identity (Balfour and Quiroga, 2007: 21). Altar and Crown constituted the main elements of their definition of Spanish unity and symbols of the national identity\textsuperscript{24}. The nation –taken as the population of the country- was seen with suspicion or defined as a fabricated product of liberal revolutionaries. Therefore, the traditionalists defended the power of the King and local authorities as guarantors of an unbroken identity of Spain which found glorious expression in both the Empire and Catholicism. This element, in turn, was used as a rationale to assert that identity against both the dangers of Protestantism and foreign political ideas (Alvarez Junco, 2001).

\textsuperscript{23} Both Alvarez Junco on the one hand and Balfour and Quiroga on the other, stress the same point, comparing the lack of a nationalising force through education in Spain and the crucial role that that played in other European countries, notably France.

\textsuperscript{24} However, the traditionalists or conservative forces in Spain did not make explicit references to the nation during this period, preferring the image of traditional authorities and legitimacies. Only with Franco in the 1930’s did the Spanish Right articulate a fully National-Catholic doctrine.
Between the liberals and traditionalists, there were minority groups trying to express alternative models of nation and state. For example, some liberals were more progressive, and favoured a decentralised state and emphasised the power enjoyed in the past by local and regional assemblies and institutions (de Blas, 1997: 427). This last idea was also embraced by leaders of a more republican persuasion, some of whom were explicitly federalist (particularly in Catalonia with figures like Pi i Maragall and Almirall (Smith and Mar-Moliner, 1996: 4-6; de Blas, 1997: 428-430)). However, federal principles were only adopted a few decades later, during the First Republic (1873-1874). Unfortunately, the First Republic was characterised by a period of political instability and its attempt at adopting a republican form of government ended in ultimate failure. The association between federal principles and the failed experience of the First Republic undermined the standing of federalism as a viable political alternative ever since in Spanish history.

The first part of the twentieth century continued to be dominated by the clash between these two main ways to interpret Spain and define Spanish nationalism. On the one hand, there was the rich liberal tradition that expressed the interests of urban centres and educated middle-classes, pursuing the modernisation and democratisation of the state, and moving away from traditional authorities, especially the Church and local (conservative) elites. This expression of Spanish nationalism sometimes favoured a central modern state inspired by the French model but sometimes also preferred more explicit federal features, where autonomy and some form of home rule were deemed as necessary tools of democracy. On the other hand, the conservative articulation of Spanish identity and nationalism expressed the longing for a glorious past and exalted the figure of the King and Church as founding elements of what it meant to be Spanish, defined in an essentialist almost a-historical manner. This form of Spanish nationalism enjoyed widespread support in rural areas and the local traditional elites, who feared that modernisation and democratisation would lead to their losing of historical privileges.²⁵

²⁵ The divide between liberal urban centres and conservative rural areas was so marked that for the most part of the Spanish Civil War (1936-1939) the territories dominated by either side corresponded
The tension between liberal and conservative national narratives was compounded by the emergence of peripheral, substate nationalisms during the first decades of the twentieth century, which forced a redefinition of Spanish identity sometimes in a confused manner given the complex criss-crossing lines of conflict:

“...the clash between Spanish nationalism and substate nationalisms will mix with the other existing causes of socio-political division (democracy, role of the Church and the army, the issue of land [ownership], the struggle between workers and businessmen), and all these fracture lines will result in a series of crises, each time more serious, and that will finally lead to the destruction of the system by the Primo de Rivera coup in 1923” (de la Granja et al, 2003: 52)

This competition between different national narratives was especially important in Catalonia and the Basque Country. In these two regions substate nationalism adopted a position close to that of the conservatives in some respects, because it affirmed the ‘ancient liberties’ embodied in the fueros (i.e., regional or local customs and laws, recognised and respected by the central state) but closer to the liberals in its emphasis on decentralisation. The national identity in these two regions (and Galicia) emerged first as a cultural phenomenon, ranging from literary contests and newspapers to traditional dances and celebrations. Both the Renaixença (Catalonia) and the Rexordimento (Galicia) were the expression of a mythologised past according to which the identity of these regions could be thought of as going back to ancient times. In the case of the Basque Country, the political expression of its identity took either the form of fuerismo, a movement that asserted Basque liberties around ancient privileges and exemptions from royal laws and decrees; or Carlismo, a profoundly conservative movement that sought to protect and preserve alleged Basque liberties gained in the early Middle Ages. (Smith and Mar-Molinero, 1996: 7-8; Fernandez Sebastian, 1995: 20-23).

almost exactly to that division. Not only did liberals and conservatives control the cities and the countryside respectively, but also they enjoyed strong and explicit support in those areas.
In the case of Catalonia, the political expression of substate nationalism was along the lines of federalism, absence of violence and an overall integrationist aspiration (de la Granja et al, 2003: 60-80). This was in stark contrast to the Basque Country, where the nationalist discourse assumed a strong traditionalist and essentialist tone characterised by the notion of *fueros*, Catholicism and even race as a defining feature of the Basque people. As a consequence, the political stance of Basque nationalists in the early twentieth century was characterised for the most part by an exclusivist attitude (de la Granja et al, 2003: 80-99). In Galicia, nationalist movements were markedly weaker than in Catalonia and the Basque Country; nonetheless, their main expression supported an idea of economic and social progress given the relative backwardness of the region compared to the rest of Spain.

As previously stated, the national narratives in Catalonia, the Basque Country and Galicia presented marked contrasts between them. The emerging Catalan nationalism at the beginning of the twentieth century was predominantly a modernising force, seeking to guarantee the industrial and economic preponderance of the region within Spain. As a result, its political expression was not so much directed against Spain but rather to the accommodation of Catalan interests within Spain. For its part, Basque nationalism took the form of a much more exclusivist identity, based first on race (blood lineage) and then on language. Its traditionalist features sought to protect ancient liberties against the encroachment of the Spanish state and/or Monarchy. Galician nationalists pursued a federal or confederal programme, where the ‘Iberian nations’ (including Portugal) would be restructured, and each ‘nation’ would enjoy a high degree of political autonomy, and a progressive democratisation of the state (de la Granja et al, 2003: 99-112).

It is no surprising then that the successive governments in the first part of the twentieth century were highly affected by these divergent views of Spain. However, the liberals seemed to gain momentum and enjoy political dominance during the Second Spanish Republic (1931-

---

26 This is especially true in the first formulations of Sabino Arana’s political thinking and the emerging presence of the Basque Nationalist Party (Partido Nacionalista Vasco: PNV). Later on, both Arana and the party would moderate some of these views. For an excellent presentation of his thinking and the establishment of the PNV see De Pablo and Mess (2005).
The constitution of the Second Republic was a liberal one, establishing freedom of speech and association, extending suffrage to women and allowing divorce. Moreover, it stripped the Church and the nobility of many of its traditional prerogatives and powers (mainly, education in the case of the former and old privileges in the case of the latter). These measures in themselves were open attacks to the traditional understanding of Spanish identity. However, the constitution went even further, recognising the right to autonomy of all Spain’s regions. Catalonia and the Basque Country soon took advantage of this opportunity. The Catalan Statute of Autonomy was adopted in 1932 creating a regional government (Generalitat) and granting a strong political autonomy to that region. However, this provoked fears and suspicion of a hidden goal of independence among liberal and conservative groups alike. The compromise reached reflected the tension between the unity of Spain and the diversity of its regions: while Catalonia was recognised as an autonomous region, popular sovereignty was reserved to the Spanish people. The granting of autonomy during the Second Republic to the Basque Country and Galicia was less straightforward; in the case of the Basque Country this was due to the division among Basque political forces regarding not only its status within Spain but also other equally contentious issues (the form of government (i.e. Monarchy vs. Republic) and the definition of Spanish society (secularism vs. Catholicism) (Corcuera, 1991: 38-50). In the case of Galicia, social and economic issues also played a role but the whole discussion of political autonomy for that region was significantly weakened by the lack of influence of Galician nationalist forces themselves (Maiz, 2001). Therefore, the Basque Statute of Autonomy was fiercely disputed between conservative groups and nationalist ones. The former sought to preserve the Basque Country from the anti-clerical measures of the Second Republic, while the latter pursued a more comprehensive autonomous agenda. The Statute was approved in 1936, a few months after the military rebellion that would lead to the Civil War and eventually rendered it dead.

---

27 This tension was a constant throughout the history of the relations between Spain and the three regions with nationalist sentiments, especially in the case of Catalonia. In many respects, the conflicts and disputes surrounding the establishment of the Catalan Statute of Autonomy of 1932 resembled the discussions and opposing views held during the transition to democracy and drafting of the 1978 Constitution, and the same was also true of the recent new Statute of Catalonia of 2005.
letter. The same applies to the Galician case: its Statute of Autonomy was established that same year but “the region fell to the rebels soon after the beginning of the conflict and home rule was never implemented” (Balfour and Quiroga, 2007: 35).

Although the regionalist/substate nationalism issue was a central point of conflict and explained in part the downfall of the Second Republic, this issue in itself was not the only reason for the dramatic reaction from the traditionalist groups. Equally important were the political consequences of the attack on Church and nobility, the social aspects of the Second Republic governments (divorce and non-Catholic education), and the economic reforms against the interests of large land-owners and businessmen (Graham, 1996). Home rule and autonomy did however, provoke a reaction from traditionalist and right-wing forces who saw in that process a direct threat to the very unity of Spain and an open attack on its identity as a nation.

That conservative, right-wing tradition of Spanish nationalism put an end to the Second Republic in July 1936 with a military rebellion and the subsequent Civil War (1936-1939) that led in turn to the establishment of the Francoist dictatorship. The dictatorial regime was characterised by the preponderance of the army and the Church, uniting the old traditionalist national image of Spain around religion and a strong central government, in this case the ‘caudillo’ replacing the King. As Guibernau puts it, “[t]he definition of Spain as conservative, Catholic, Castilian and homogeneous was at the core of Francoist ideology” (2004: 42). Therefore, it is not surprising that Franco identified as a threat to the unity and destiny of Spain as a nation not only the secular measures adopted by the liberals and republicans during the Second Republic, but also the movement towards home rule epitomised by the Catalan Statute of Autonomy.

Marrying nineteenth century Catholic traditionalism with twentieth century fascist thought, Franco sought to purge Spain of foreign influences that, in his view, provoked the decline of the country from its glorious past. These included liberalism, socialism and communism (Smith and Mar-Molinero, 1996: 20; Balfour and Quiroga, 2007: 36-39). Centralism and the concept of unity of the country therefore became the fundamental idea in the nationalist programme of the dictatorship. In consequence, Catalonia, the Basque Country and Galicia were the objects of
a fierce repression during the Francoist regime (de la Granja, et al, 2003: 170-190). The measures against Catalonia in particular included the proscription of its language, culture, symbols and overall identity in an attempt at reasserting a homogeneous image of Spain around Castile as the central territory of the country and Castilian as the only ‘genuine’ language of Spain.

Despite the violent and systematic programme of cultural repression carried out by the Francoist regime against Catalonia, the Basque Country and Galicia, in all these regions nationalist forces and groups found ways to survive and continue their activities, underground and facing a constant danger of death. Clandestine organisations emerged in all these regions, resisting as best they could the actions of the dictatorship. Especially acute was the process in the Basque Country, where by the 1960s the resistance movement organised itself around ETA (Basque Homeland and Freedom: Euskadi Ta Askatasuna). ETA emerged as a violent group who accused “...‘Spain’ of being responsible for the destruction of their ‘traditional’ way of life. Amalgamating radical Basque nationalism, Marxism, and Third World liberation, ETA depicted the Basque Country as a Spanish colony” (Balfour and Quiroga, 2007: 42).

The resistance against the Francoist regime in all these three regions adopted different forms and extended to varying degrees, but they all share the credentials of having fought back against the dictatorship. This gave them enormous importance after the death of Franco in 1975 and situated them in a privileged position during the subsequent process of transition to democracy.

The challenge faced by Spanish politicians and population in 1977-1978 were formidable. Not only did they have to find a way to leave behind the legacy of almost four decades of dictatorship but they also had to create institutions and mechanisms through which democracy could be established and consolidated in a country with long-lasting conflicts around its very definition and historical role.

---

28 ETA was since its creation in the late 50s an important factor to understand the Basque situation and general relations of that region with the rest of Spain. For a good, general look at ETA’s evolution and political goals, see Casanova (2007).
By the late 1970s Spain was in a position to leave bloody conflicts and historical political instability behind. However, in order to succeed in such endeavour, some form of compromise was needed, whereby these competing images of Spain could live side by side without threatening the proposed democratic order of the polity. This is precisely what the drafters of the 1978 Spanish Constitution tried to achieve.

2.2 - The Spanish Constitution of 1978: Nationalities and Regions

In 1978 Spain adopted a new Constitution, inaugurating a period of democratic rule after decades of dictatorship under Franco. However, the constitutional framers were faced with deep historical problems stemming from the previous political evolution of the country. Put succinctly, the conflict involved multiple layers of political belonging and identification on the one hand, and a diversity of national conceptions and projects that called into question the unity of the polity on the other. This last element challenged the unity of Spain as a polity or, at least, required a redefinition of the terms that made up that unity. This tension found expression in the clash between different models of the ‘nation’ as a cultural community seeking political representation and recognition (or indeed ‘nations’ as cultural communities seeking political representation and recognition) and the ‘state’ as an all encompassing structure of political organisation of territory and authority.

The Spanish transition is often described in the literature as a model of transition to democracy, given its resounding success in establishing and consolidating democratic rule (Tusell, 2007; Encarnacion, 2001). However, one should not ignore the fact that Spanish political leaders faced serious challenges after the death of Franco. Notably, there was a dictatorial regime in crisis due to the death of the leader but not necessarily breaking down; important sectors of Spanish society and influential political actors alike remained ambivalent about the future political evolution of the country (Tusell, 2007). That is to say, the eventual democratic outcome of the transition in Spain was not a predetermined result and was only secured
through decisive leadership (from both politicians and the King Juan Carlos) and a series of complicated political negotiations and pacts. In this context, it is not surprising to see the resulting constitutional text as an exquisite exercise of ambiguity, trying to reach a seemingly impossible compromise among all the contending forces.

The Spanish Constitution was nevertheless a serious attempt at addressing the conflicting images and nation-building projects of Spain, through a series of institutional mechanisms and political decisions that would change the basic characteristics of the political organisation of the country. The task at hand was a difficult one: to accommodate the claims and aspirations of sub-national groups (notably, Catalonia and the Basque Country) while at the same time securing the political future of the newly-democratised Spain. For that reason, the end result of the process of democratisation in Spain presented some peculiarities that are noteworthy.

First, the actual contents of the Constitution itself were –as expected- the centre of intense discussions, which led to some compromises stemming from the active political forces of the time and the feasibility of working agreements (Herrero de Miñón, 1998; Tusell, 2007; Martínez-Herrera and Miley, 2010). Therefore, the resulting constitutional text left undefined some important matters, such as the number and creation of the constituent units of the proposed territorial distribution of power, or the criteria according to which competences would be divided up among the different levels of government. Granted, to some extent, these questions could not be solved merely by a group of constitutional lawyers and certainly it was impossible to create political units ex nihilo, so to speak. But the fact remained that the constitution reflected the guiding principle of the transition to democracy in Spain; namely, the explicit decision of reaching agreements and forging consensus around the key points of contention that divided the country in the past. This is what Herrero de Miñón, one of the constitutionalists directly involved in the drafting process, called (borrowing from an expression

29 The Constitution does provide a list of exclusive competences of the Autonomous Communities and the State (Articles 148 and 149 respectively) but the transference and full implementation of these competences was the object of regular disputes between both levels of government. As a result, the Spanish Constitutional Court played a crucial role in the evolution of the Estado de las Autonomías. On this point, see below Chapter 3.
of Karl Schmitt) ‘promisos apócrifos’ (the literal translation being ‘apocryphal compromises’). That is,

“[a situation in which] the compromise among the drafters rested on words, but not on their meanings since these are equivocal in themselves or are made equivocal given the context... Those who reach an apocryphal compromise do meet halfway, and that is what makes a pact possible; however, the parties renounce to make explicit their own intentions in exchange of a concept that can express implicitly such intentions” (Herrero de Míñón, 1998: 79)

Or, as Tusell put it, these compromises combine opposing goals through ambiguous formulas that provide room enough for divergent readings (2007: 127). Another drafter of the constitution put it as follows: “...we were all conscious, in 1977 and even before, of the extreme difficulty in conciliating constituent power and national sovereignty with historical rights; unity of the Nation with nationalities’ right to autonomy; recognition and respect of differences without losing sight of the superior dimension of equality as a supraconstitutional value” (Cisneros, 1998: 19).

Second, the demands coming from sub-national units enjoyed a special status given the fact that they were outspoken critics and, in some cases, active resisters of the previous dictatorship of Franco. Thus, both the Basque Country and Catalonia were deemed as presenting a series of claims that had to be fully incorporated into the new democratic order (and, by the same token, the constitution).

As a result, not only did the Constitution recognise the existence of ‘regions and nationalities’, but also enshrined the ‘right to autonomy’, which could open the door for both the redistribution of power along territorial lines (decentralisation) and the recognition of a special status of these units within Spain (devolution). However, Requejo highlights that:
“[d]ecentralising a state is not the same as accommodating the distinct national identities that coexist within it. In this case, ‘self government’ is not the same as ‘more powers’. The list of the latter could be increased while the ‘discomfort’ of the minority national identities would remain due to the fact that wide recognition and development of their national specificity had not been established” (Requejo, 2005: 90).

Part of the discussion around these double objectives of decentralisation and recognition of the multinational character of Spain is provoked by the wording of the relevant sections of the constitution. For example:

“The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards; it recognises and guarantees the right to autonomy of the nationalities and regions of which it is composed, and solidarity amongst them all” (Article 2 of the Spanish Constitution)

Clearly, the Constitution tried to strike an uneasy balance between unity and diversity; between the encompassing idea of Spain as the overarching political unit and the more particular attachments based on regional units. In this particular instance, the distinction between ‘nationalities’ and ‘regions’ complicated things even further, given the difficulty in assessing the concrete judicial and legal implications of both terms (Blanco Valdés, 2005; Moreno, 1995,

30 In principle, this made reference to the so-called three historical communities: Galicia, the Basque Country and Catalonia, which enjoyed some degree or other of political autonomy in the past. However, soon enough, this group was joined by other regions: Andalucía, claiming a distinct regional character, based on culture and demographics; or the Balearic Islands, given its insularity. By 1983, all 17 Spanish Autonomous Communities had approved or were in the process of approving their own Statute of Autonomy (Tusell, 2007: 300-301).
2001a; Solozábal, 2000). For many, positions like these adopted in the Constitution represented a squaring of the circle, insofar as they seemed to acknowledge, and attempted to make compatible, mutually exclusive demands.

The general mechanism adopted was the establishment of a system of autonomous regions, known as “Estado de las Autonomías”. The system divided the country into seventeen different regions, with different degrees of competences and powers. Among these regions, Galicia, the Basque Country and Catalonia stood out, given their defined identities, cultural characteristics (including their own languages) and distinct political institutions. Moreover, in the case of Catalonia and the Basque Country, they already enjoyed a considerable degree of autonomy at the beginning of the twentieth century, and later were a staunch focus of resistance against the Francoist dictatorship. As mentioned before, in the new context of democracy it was felt that at least these regions had a strong claim to organise themselves politically, although both the specific right to self-determination and the idea of shared sovereignty were explicitly rejected.

As a result of these developments, Spanish regions went through a series of transformations in which the general trend was in favour of some sort of devolution (as opposed to allowing for a mere decentralisation without real transference of power). Consequently, a double tension emerged: on the one hand, Madrid as the centre opposed what was felt to be exaggerated claims from the three historical communities; on the other hand, these three communities tried to differentiate themselves from the other regions, making it clear that their situation was qualitatively different from that of newly formed (and in some cases actually artificial) political units of regions with no particular sense of identity or shared history.

The dynamic of this system was characterised by increasing demands from the historical communities against a reluctant centre to give up power and control. Therefore, specific policy

---

31 Be that as it may, there was doctrinal agreement that the term ‘nationalities’ was meant to refer to Galicia, the Basque Country and Catalonia; whereas the term ‘regions’ was used for all the other possible units to be constituted after the ratification of the Constitution (a process that took place between 1979 and 1983). Nonetheless, there remained heated debates on multiple possible readings of the terms and the concrete political and judicial consequences of them.

32 There were also two autonomous cities, Ceuta and Melila, both situated in the coast of North Africa (Morocco).
areas such as public administration, language, education and taxes became the focus of political struggles. Ultimately, these conflicts expressed the deep-seated disagreements around fundamental questions regarding the very nature of Spain as a political unit.

All Spanish nationalities and regions were granted the right to autonomy\textsuperscript{33}, which in practical terms meant that they were able to establish their own regional governments and negotiate a division of competences and powers between them and the centre. Granted, this process could be seen as some form of decentralisation, and not an affirmation of multinationality (Moreno, 1995; Requejo, 2005), insofar as questions like sovereignty and an explicit recognition of the historical communities as ‘nations’ was denied by the successive governments in Madrid, and routinely rejected by the central Parliament. And, as mentioned before, the open nature of the whole system of Estado de las Autonomías given the indeterminacy of the constitutional text favoured different interpretations and diverse political projects.

Another particularity of the Spanish transition to democracy and the establishment of the new constitutional order was the fact that Galicia, the Basque Country and Catalonia created and ratified their own political institutions by a “fast-track” access to autonomy, established in Article 143 of the Spanish Constitution. Moreover, the Second Transitional Provision stipulated that those territories which in the past had, by plebiscite, approved draft Statutes of Autonomy were able to proceed immediately to the establishment of self-government and the exercise of their political autonomy (Spanish Constitution). This meant that the five-year waiting period otherwise imposed on Autonomous Communities seeking to enlarge their powers and competences did not apply to Catalonia, the Basque Country and Galicia. These were important developments, since they provided nationalists in all the three regions reasons to claim a distinct status of their respective territories vis-à-vis the other constituent units.

\textsuperscript{33} Section 143 states: “[I]n the exercise of the right to self-government recognised in Section 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government and form Autonomous Communities in conformity with the provisions contained in this Part and in the respective Statutes” (Spanish Constitution).
Two other important exceptions were made. First, the Constitution recognised a basis for some ‘historic rights’ that apply mainly to the Basque Country; stating that:

“The Constitution protects and respects the historic rights of the territories with traditional charters [fueros]. The general updating of historic rights shall be carried out, where appropriate, within the framework of the Constitution and of the Statutes of Autonomy” (First Additional Provision, Spanish Constitution).

This again, was introduced as a concession to gain support in the Basque Country for the then consolidating democratic order. Ever since, however, the statement that the Constitution protects and respects the fueros was used by Basque nationalist parties to challenge directly or indirectly the current Spanish political order. Under this reading, the fueros represented the recognition of some pre-constitutional prerogatives that the Basque Country enjoyed and were therefore, the source of original sovereignty (Corcuera, 1991: 40-50; Laporta, 2006: 41-75).

Second, the Constitution also opened the door to the re-establishment of the ‘conciertos económicos’ (economic accords) that the Basque Country and Navarra had previously enjoyed. This special arrangement regulating the fiscal capacity of the two regions and their taxing prerogatives was deemed as part of the ‘historic rights’ protected by the First Additional Provision. As a consequence, in fiscal matters these two regions enjoyed a more beneficial system than the rest of the component units. Broadly speaking, the conciertos económicos provided the Basque Country and Navarra greater taxing capacity and a stronger guarantee of their fiscal autonomy. Martínez Churiaque, 2008; Corcuera, 2008)

These distinctions were mainly intended to recognise the sub-state national sentiments in the so-called historical communities34, and in this way to ensure the overall democratisation of the

34 The nationalist sentiment in each of the three regions presented different intensities and aspects. In the Basque Country there were clear tendencies towards isolation and a strong sense of entitlement in terms of autonomy (even sovereignty); Catalonia displayed somewhat more moderate claims although
country\textsuperscript{35}. However, it was not clear at all that the drafters of the constitution intended to establish two levels of autonomy, whereby the three nationalities would enjoy higher degrees of autonomy than the rest of the communities (regions).\textsuperscript{36}

By looking at the evolution of the Estado de las Autonomía\ües one can identify different phases. First, there was a constituent phase (1978-1981), in which the three historical regions ("nationalities" according to the constitution) negotiated what would become their respective Statutes of Autonomy. Second, there was a period of Autonomous Agreements (1981-1992), which meant the deepening of self-government and its extension to all the Autonomous Communities. These agreements took the form of pacts among the main Spanish political parties of the moment, securing the exercise of the right to autonomy by nationalities and regions throughout Spain. Third, there was a period of parliamentary coalitions (1993-2000), in which neither the Socialists nor the Conservatives enjoyed a majority government and had to resort to the support of nationalists parties (Basque or Catalans, as the case may be) to form government (Requejo, 2001: 120-121).\textsuperscript{37}

A fundamental element that helped explain the possibilities of and tensions around the exercise of political autonomy by nationalities and regions alike, was the ongoing and pervasive conflict between the establishment of a homogeneous model across the board for all seventeen Autonomous Communities and the special status claimed by the historical communities (especially the Basque Country and Catalonia). This was popularly known as "café para todos" (coffee for everybody) vs. "hechos diferenciales" (differential facts) (Laporta, 2006; Saiz Arnaiz, there was a small sector claiming sovereignty too. In the case of Galicia, nationalist claims were much more latent. For a more detailed analysis, see below.

\textsuperscript{35} The ultimate approval of the constitutional order within these three regions (especially in the Basque Country) was problematic, not only during the adoption of the Constitution in 1978, but ever since. See Núñez, Seixas (1993), Moreno (1995).  
\textsuperscript{36} Actually, there was a strong consensus among Spanish constitutionalists that that was neither an explicit goal entertained by the drafters of the constitution, nor a feasible possibility given the early evolution of the system. 
\textsuperscript{37} Requejo (2010, 157-159) then extends these phases to include a fourth (absolute majority of the Conservatives, 2000-2004), and a fifth one (relative majority of the Socialists, 2004 onwards). These periods are characterized by increasing demands from the Basque Country and Catalonia and their respective initiatives to reform their Statutes of Autonomy. On this, see below Chapter 4.
According to the former, the evolution of the Estado de las Autonomías should follow a progressive equalisation among Autonomous Communities, bringing them to a substantial degree of autonomy with two clear features. First, political devolution would be understood basically as the simple transference of powers and competences from the central government to regional ones. Second, the level of autonomy among Autonomous Communities should be more or less the same: political devolution cannot be expected to create a two-tiered level of regions. By contrast, according to the doctrine of differential facts, Galicia, the Basque Country and Catalonia had qualitative differences that set them apart from the other regions. Consequently, they should be granted more extensive powers than the other Autonomous Communities.

That latter view rested in part on the distinction introduced in the constitutional text between nationalities and regions (Article 2). Clearly, this view was supported mainly by nationalist actors in the regions involved, especially in Catalonia and the Basque Country. However, the term nationalities was chosen during the constitutional debate leading up to the adoption of the new Constitution, and preferred over the word nations (Martínez-Herrera and Miley, 2010). It is not clear what that meant exactly and what political implications that choice represented (Moreno, 1995; Núñez Seixas, 1999; Ruipérez, 2003; Castellá Andreu, 2004). It can be argued that it showed the ambivalence that the idea of multinationality had in Spain ever since the 1978 Constitution opened up the process of territorial distribution of power. On the one hand, although in a clumsy manner, the existence of sub-state nationalism in these three regions was acknowledged in the wording of the constitution. On the other, questions of sovereignty and the overall unity of the polity were firmly put in the hands of the Spanish people. Article 1 of the Constitution left no doubts about this: “National sovereignty belongs to the Spanish people, from whom all state powers emanate”. And the previously quoted Article 2 reinforced the same idea, affirming the “indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards” (Spanish Constitution).

To a large degree, the actual composition of the system of Autonomous Communities was affected by the political dynamic among all relevant actors, especially those nationalities with a
strong identity. They routinely placed specific demands for accommodation of the basic factors that made up their distinct identities (notably language, education, culture and symbols). However, this move –inspired by the logic of accommodating multinationality and seeking political recognition- can also be presented as a disruptive factor, insofar as it introduced distinct elements which were enjoyed by some units but not others. Symmetry and asymmetry were part and parcel of the discussions around the features that (should) characterise the Estado de las Autonomías.38

Moreno (1995, 2001) described the system as a “model of multiple ethnoterritorial concurrence”, where there was competition among all relevant political units (both between the centre and nationalities/regions and among nationalities and regions). Moreover, asymmetry, heterogeneity and plurality were crucial features of the institutional reality of the country and of political contestations among all relevant actors. Moreno identified three basic principles39 that helped explain the evolution of the Estado de las Autonomías: 1) Democratic decentralisation (democratisation and territorial political autonomy were deemed as two sides of the same coin, given the historical context and political circumstances); 2) Comparative grievance (the political mobilisation across Autonomous Communities followed a pattern of competing demands for self-government and levels of competences between regions and nationalities); 3) Inter-territorial solidarity (goal of equal standard of living secured through the transference of financial resources from rich Autonomous Communities to poor ones) (Moreno, 2001: 214-215).

Thus, the political evolution of the system of Autonomous Communities in Spain was characterised by the principle of political autonomy and a strong level of decentralisation where all regional governments gained more and more powers and competences vis-à-vis the central one. But, at the same time, the ways in which that principle of political autonomy (which is a right enshrined in the Constitution) was understood and exercised indicated a

---

38 This, in turn, pushed the discussion towards an analysis of the possibilities of federalism in Spain as an institutional framework capable of accommodating multinational demands. On this, see next section.

39 His “model of ethnoterritorial concurrence” is more complex, including two Axioms, two Premises, three Principles and three Rules. However, for the present purposes, the three Principles are crucial to understand the political dynamic of the Estado de las Autonomías.
struggle between two different poles: one the one hand, there was the idea that homogeneity should prevail among the constituent units (i.e., all of them enjoying an equal level of political autonomy); on the other, Catalonia, the Basque Country and Galicia pushed for a special recognition of their distinctiveness, which explicitly called for some degree of asymmetry between them as nationalities and the rest of the units, defined as regions.

In the next section I analyse the extent to which the political system of democratic Spain established by the 1978 Constitution and characterised by the Estado de las Autonomías can be defined as federal. Moreover, I bring into the analysis the possibilities and/or limits that such an institutional framework can present in accommodating multinational claims.

2.3 - Spain, the Estado de las Autonomías and Federalism

Federalism was widely recognised as a useful mechanism to accommodate the multinational character of a polity like Spain (Kymlicka, 1998; Requejo, 2005; Simeon and Conway, 2001). This was because federalism implies an institutional framework that would allow the expression of national pluralism through a division of competences and powers between the central and constituent governments. However, as I showed above, the 1978 Spanish Constitution did not formally adopt a fully-fledged federal system. Moreover, the only time the constitutional text made a reference to federalism is to explicitly forbid it. The decision to avoid discussions about the possible federal character of the new system established by the Constitution responded to historical characteristics of the political evolution of Spain.

The first serious attempt at realising federal ideas in Spain gained momentum with the short-lived First Republic (1873-1874) and the impulse of the Catalan Pi y Margall. Federalism was presented as a solution to a double problem: to accommodate the territorial diversity and

40 Section 145.1 of the Spanish Constitution reads: “Under no circumstances shall a federation of Self-governing Communities be allowed” (Spanish Constitution).
plurality of Spain; and the incorporate the democratic claims of local elites and an emerging middle-class (Villacañas, 2004: 115-117). However, given the political failure of the Republic, the federal ideas found expression more in theoretical formulations than in actual political projects. Later on, the Second Republic (1931-1939) faced increasing demands from nationalist movements in the Basque Country and Catalonia, demanding some form of recognition of their distinctive identities. However, federalism was rejected as a solution for those demands given the concerns among the republican forces that a federal institutional framework would precipitate the breakdown of Spain as a whole. This reaction responded to two interrelated factors; first, a strong organicist idea of the Spanish nation that precluded the open acknowledgement of diversity and, second, the perceived high level of power that Basque and Catalan nationalists would enjoy under a federal arrangement. Both these elements worked against any federal option. As a compromise, the preferred alternative was the so called ‘integral state’ which combined political autonomy for those regions with substate national movements with the guarantee that the central government would have the legal mechanisms to ‘correct’ any possible option for independence (de la Granja et al, 2003: 113-114)

In general terms then, federal ideas in Spain reflected conflicting views about the proper organisation of the polity. For some, it represented the appropriate institutional framework to address the long lasting tensions surrounding the territories that composed Spain. For others, it was seen as a dangerous path that could challenge the very unity of the whole country. Moreover, the historical attempts at introducing some form of federal arrangement ended up in institutional breakdowns and subsequent political crises, losing considerable legitimacy as a viable option.

In 1978 the drafters of the constitution were acutely aware of both the divisive nature of this issue and its historical record. Therefore, they decided to reject any explicit project to establish a federal political system. Nonetheless, at the same time, they made it possible to advance a federal interpretation of the constitutional text, given its ambiguity and indeterminacy regarding the territorial distribution of power in the newly-democratised Spain. This delicate equilibrium was expected to solve a double tension: a) from a symbolic and institutional
perspective, it enshrined the principle of political autonomy. This principle was expected to create enough room for the expression of the multiple existing identities that compose Spain; b) from a perspective of competence and power, it established a division of competences among all the constituent units. This division of competences was expected to avoid the political tensions provoked by any feelings of comparative grievance (Fossas, 1999).

Given the nature of the process through which the constitution was drafted and finally adopted in December 1978, and especially the series of negotiations and pacts that all relevant actors had to accept, it is not surprising that the end result remained ambiguous with respect to its relationship to federalism. This provoked a lively discussion among Spanish political scientists regarding how best to classify the Spanish political system.

In what follows I present the main position of the debate regarding whether Spain is a federal polity or not. I think this is important for a number of reasons. Firstly, the debate shows the flexibility of federalism as a political and institutional alternative for the accommodation of multinationality given the diverse mechanisms and institutions it can adopt. Secondly, and perhaps more importantly, the debate makes apparent the different positions regarding the model of state and demos that Spain should adopt. Thirdly, the normative and analytical positions of the debate are not merely academic but rather represent or are connected to different political projects backed up by concrete political actors.

Blanco Valdés (2005: 78-96), for example, argues that Spain is, without a doubt, a federal polity given the composition of political authorities and governments, and the division and distribution of powers and competences among them. Equally, Eliseo Aja (1999) in his influential book El Estado Autonómico. Federalismo y Hechos Diferenciales (The Autonomous State. Federalism and Differential Facts) depicts Spain as a through and through federal system, with the particularity of the so called ‘differential facts’; that is, elements present in some of the constituent units that set them apart from the rest, introducing some asymmetry into the federation. Aja bases his conclusion on what he considers a set of federal criteria: constitutional guarantee of political autonomy; representative political institutions independent of the central power; distribution of political and administrative competences; constitutional protection by a
special Court; objective finance; and participation of the constituent units in the elaboration of state policies and decision-making institutions (1999: 239-242)\(^{41}\).

Another influential author is Luis Moreno, who prefers to describe the system of Autonomous Communities as a model of multiple ethno-territorial concurrence, and identifies an overall trend of Spain towards the ‘federalisation’ of the state (1995; 2001). The main feature of this process of federalisation is, according to Moreno, *institutional mimetism*, which refers to the tendency of each regional government to demand equalisation in terms of competences and powers wherever they feel that some of the units enjoy (or were granted) a greater level of autonomy than the rest. The tension alluded to responds to two opposing principles: that of ‘comparative grievance’ and that of ‘inter-territorial solidarity’ (2001: 215). Moreno argues that comparative grievance represents the basic conflict between nationalities and regions. The group of historical communities interprets the process as the basis for a higher level of competences and powers vis-à-vis the regions; the regions, conversely, see it as a race towards equalisation. Institutional mimetism represents then the basic dynamic of the system of Estado de las Autonomías, moving from a higher level of power and competences for the nationalities to equalisation or homogenisation for the regions.

Beramendi and Máiiz consider that “Spain qualifies as ‘federal’ in all respects related to self-rule. But, in terms of shared-rule, Spain does not qualify as federalist at all” (2004: 136). They point to the lack of proper institutionalisation of mechanisms around which decisions affecting the central and the constituent units alike coordinate and articulate their interests on a regular basis. In this regard, there are some instances of cooperation and interest articulation, especially in fiscal, financial and educational policy areas but not a proper federal array of institutions (2004: 136-137). The Senate is another deficit when considering Spain a federal country\(^{42}\). According to the constitution (Article 69.1), the Senate is the Chamber for territorial

\(^{41}\) Aja does acknowledge that this last element is relatively weak in Spain and the country should improve its record, but nonetheless that does not affect its classification as a federal polity. Ruipérez (2003), from a constitutional point of view, also explains at length the federal character of the Spanish political system.

\(^{42}\) All these authors –independently of their position about whether Spain is a federal country or not-agree on the lack of a truly territorial chamber where the interests of the Autonomous Communities are
representation. However, it is far from being such a Chamber, given that it does not formally represent the Autonomous Communities and that “its members are elected at the same time and on the same territorial basis as the members of the national Parliament” (Beramendi and Máiz, 2004: 136).

Robert Agranoff points out that “[t]he new constitutional system was built intuitively, and the ultimate result, a yet unfinished story, is a federal system in all but name” (2010: 81). I think this is an important element to understand both the tone of this debate, and the nature of the Spanish political system. The Constitution does not unequivocally establish a federal system but it does create the room for one, depending on how to interpret the relevant articles.

In terms of intergovernmental relations, Spain has seen a rise of institutions and forums in which the Autonomous Communities can gain representation and play a more active role in the formulation of policies and adoption of decisions at the central level (Sevilla et al, 2009; Agranoff, 2010). These developments clearly point to a yet incomplete process, but one that appears to be gaining more and more legitimacy, pushing the Spanish political system towards a more classic model of cooperative federalism. One difficulty in realising this model has been the position regularly adopted by the Basque Country and Catalonia. They have tended to see these trends as a movement towards the harmonisation of nationalities and regions, and the blurring of their claimed distinctive character insofar as they would become one more participant in multilateral conferences or institutions (Balfour and Quiroga, 2007: 159-160; Lecours, 2007).

Beramendi and Máiz (2004) stress the absence of institutionalised cooperation as the major element for the ‘incomplete’ federal structure of the Spanish political system. This in turn has been reflected in a preference for bilateral negotiations between the central government and regional ones, notably in the cases of the Basque Country and Catalonia (especially during those periods in which their support was needed to form a majority government). Another important consequence of this is the active role that the Constitutional Court was forced to play, both as

represented at the central level of government. However, Aja (1999) stresses that that factor alone is not enough to declare that Spain is not a federal country.
the arbiter of disputes between the different levels of government and as the ultimate interpreter of the constitution. Both of these factors point to the existence of a rather weak internalisation of federalism by all actors involved.

As an example of both the potential and limitation that federal practices enjoy in Spain, it is worth looking at the newly established Conference of Presidents of Autonomous Communities. Starting in 2004, this mixed institution with participation of the central and regional governments was thought of as a venue for the Autonomous Communities to express their interests, share information and eventually arrive at consensus on a number of issues. The practice so far has included the celebration of few conferences and the dynamic in them have been of certain distrust and lack of proper authority as a forum of expression for the Autonomous Communities. This is perhaps not surprising given the multiplicity of actors involved and the myriad of interests and issues on the agenda. However, as Tajadura (2006) points out, the key factor for the success of these conferences is the idea of federal loyalty and good faith that all constituent units should display in relation to the federal system. The record so far seems to be rather weak on this.

Be that as it may, Colino remains more optimistic in this regard, highlighting the progress being made on ministers’ councils or conferences, fostering the cooperation of ministers from both the central and the regional governments. Moreover, he asserts:

“AC [Autonomous Communities] executives seek to assert regional interests at the national level. This takes the form of participation in cooperative, multilateral ministerial conferences, ministerial consultative bodies and through bilateral commissions with central government. ACs are usually consulted by central government in the development of key policy areas and, for instance, have been involved in recent national plans for fiscal consolidation, climate change, government modernisation and in promoting Spanish companies abroad” (2008: 582)

For an assessment of the Constitutional Court and its impact on the construction of the Estado de las Autonomías in general, and federalism in particular, see next Chapter.
In contrast, Ferran Requejo believes that Spain is not a federal state but, rather, a regional one, whereby political autonomy is constitutionally guaranteed. He points out that some fundamental characteristics of a federal system are either missing or only partially in place in Spain; notably, the constitutional recognition of the Autonomous Communities as constituent units, the status of the Judicial Power and lack of fiscal federalism (2005: 82-83). The first element refers to the ambiguity of the constitutional text which neither identifies the nationalities and regions nor does it establish clear mechanisms for the distribution of competences and powers; the second alludes to the lack of decentralisation regarding the Judicial Power; and the third points to the control of the central government on fiscal matters (with the exception of the special arrangements for the Basque Country and Navarra).

Related to this, Requejo also points out that federal agreements are to be distinguished from federalism; the latter being a normative concept which refers to the territorial organisation of a political community, combining self-rule and shared-rule, and the former being a descriptive concept that encompasses a wide range of possible institutional practices (2005: 55). Federalism then can be seen as an open process, a system that evolves from one point to the other, with no fixed or predetermined path. Requejo argues that Spain should move from the current regional type of system to an explicit federal one, with asymmetrical agreements among the constituent units. In this way, according to the author, Spain could accommodate its multinational character. The preferred option for Requejo seems to be one in which Spain is thought of as being composed by different nations (that is, the nationalities and not the regions) which are constitutionally recognised, introducing explicit legal asymmetries or even agreements of a confederal nature in areas like symbols, institutions and power (2005: 85-6).

I am sympathetic to Requejo’s view; however, the extent to which these changes to the political system can be adopted remains an open question. From a normative perspective, I agree that

---

44 Fossas holds a similar view, according to which Spain could not be considered a federal polity properly (1999).
45 For a discussion about the possible constitutional reform to address this important point, see below, Chapter 5.
multinationality may call for a strong asymmetry and/or confederal arrangements in order to accommodate the demands and aspirations of the nationalities that compose the polity. Having said that, I also believe that, from an empirical perspective, this may not necessarily be feasible or even desirable. Such changes in order to be successful should enjoy wide-spread support and be adopted as a result of the sort of mutual contestation and dialogue pointed out by Tully and the double process of right of disclosure and duty of acknowledgement.46

Another important element in the analysis of the Spanish system and the ways in which it can accommodate multinational demands by the establishment of federal institutions has to do with the so-called ‘principio dispositivo’ (Fossas, 2007). This principle means that the constitutional text ‘disposed’ or set out the general characteristics of the system; however, it did not determine the actual composition of the system of Autonomous Communities, nor did it dictate the specific criteria by which competences and powers would be adjudicated between the central government and the regional ones. As one author puts it:

“the fundamental concern of the Constitution is to determine the transition of one system to another, leaving out in the background the actual concrete and detailed design of the new model, which explains the general and open character that the constitutional model of territorial organisation exhibits”. (Albertí, 2005: 10; emphasis added)

Colino rightly emphasises this same point: “...it remained unclear whether the system of asymmetric decentralisation would be a permanent feature or whether a more uniform approach would eventually prevail. The Constitution allowed for both” (2008: 573; emphasis added). Federal practices in Spain have been dominated by this tension between symmetry and asymmetry, debating the different ways in which different institutional arrangements could accommodate (or not) the multinational character of the country. As Fossas puts it, the

46 For an analysis of how this played out in the attempted reform of the Basque Statute in 2003, see below, Chapter 4.
constitution limited itself to the establishment of principles and procedures, without going into the details of the model to be constructed\textsuperscript{47}. Therefore, the specific features of the Estado de las Autonomías was left to the “process of territorial restructuring of power which could lead to distinct political models” (1999: 6).

The models alluded to by Fossas and other authors signal the divergent interpretations and agendas that both political forces and academics defend regarding the nature of the Spanish political system. And this situation applies not only to the concrete evolution of the Estado de las Autonomías but also to the series of reforms proposed in order to realise a desired (partially or completely) new system. Among academics, the options range from moderate proposals of reform of the Senate and stronger institutionalisation of intergovernmental relations (Moreno, Agranoff, Sevilla, Blanco Valdes, Aja) to more radical attempts at explicitly acknowledging the multinational character of Spain, incorporating formal legal distinctions between nationalities and regions and openly endorsing confederal elements as part and parcel of the system (Requejo, Fossas). Among political parties, the central ones (the socialist PSOE and the conservative PP) have remained supporters of very limited changes to the current functioning of the system while regional ones (the Basque nationalist PNV and Catalan nationalist CiU) have favoured some form of asymmetry or confederal arrangements\textsuperscript{48}.

In general terms then, the discussion around federalism as the appropriate institutional framework to accommodate the multinational character of Spain replicates the conflict around and distinction between nationalities and regions. Ultimately, it reflects the models of state and nation that different academics and political forces alike defend: from a rather homogeneous idea of the Spanish state and nation to a variety of multinational conceptions. Therefore, when it comes to federalism, the preferred options go hand in hand with these models; for example, on one end of the spectrum, the conservative Spanish party PP clearly defends an idea of unity of Spain and remains highly sceptical of federal arrangements to give expression and

\textsuperscript{47} Fossas rightly highlights the indeterminacy of the constitutional text: “it does not constitute the Autonomous Communities, nor delimits their territory, nor yet establishes their organization, nor does it determine their powers” (1999: 6).

\textsuperscript{48} Both in the Basque Country (EH, AE) and Catalonia (ERC) there exists more radical nationalist parties which prefer independent and secessionist options.
accommodate nationalistic claims. On the opposite end, nationalist parties in the Basque Country, Catalonia and Galicia support different federal and/or confederal institutions that would explicitly and formally acknowledge the multinational character of the Spanish polity. It is not surprising then, that the Estado de las Autonomías has displayed in its evolution since 1978 conflicting features, combining clear federal elements with notable missing factors of a proper federal system.49

In the next section I compare the previous analysis with normative and theoretical considerations, paying special attention to the possibilities and limits that a federal institutional framework offers for the accommodation of multinationality of a polity like Spain.

2.4 - Federalism and Multinationality: normative bones for empirical flesh

The case of Spain illustrates the tensions around federalism as a workable solution for the accommodation of multinationality. Federalism, combining self-rule with shared-rule in principle opens up the space to recognise and accommodate the divergent demands coming from different actors and/or governments. The unity of the polity is guaranteed by the existence of a central government, whereas its diversity is guaranteed by the second level of political authorities who enjoy political autonomy and the proper constitutional protections.

That is the promise of federalism in the face of multinationality: to establish an institutional framework capable of incorporating and recognising the social, cultural, political diversity of a polity and, at the same time, secure its unity around a complex structure of authorities, power and competences.

49 The recent proposal of reform for both the Basque Country and Catalonia Statutes are attempts at ‘forcing’ the system into a clear federal/confederal direction. For an assessment on both proposals and reactions around them, see below.
However, federalism might also prove to be a difficult option in contexts of multinationality. This is so for a number of reasons. First, there is no single universal model of federalism. That is, federal systems present quite a range of institutional differences and practices, which makes the system malleable to different possible options with no \textit{a priori} reason why one of them would be the most suitable to a particular polity. I do not mean to imply that this is a problem; rather, to point out that federalism is not a readily fit-it-all solution. Second, the very dynamic that sustains a federal system may work against the long-run stability of it. This is what Kymlicka calls the ‘paradox of multinational federalism’, meaning that the very mechanisms of participation and interest articulation that federalism aims at incorporating into the workings of the system may be used to advance ever increasing demands that could lead to secession. Federalism then could become the victim of its own success. Third, federalism in order to be a working viable system must rest on something more than a series of institutions. This means that federalism must be sustained by minimum levels of federal culture, loyalty and trust among all relevant political actors and authorities.

The Spanish case presents interesting aspects of all these factors when analysing the suitability of federalism as a preferred option for the accommodation of the multinational character of a polity. This is, however, complicated by the fact that federalism per se was not acknowledged in the constitution and the actual extent to which Spain can be considered a federal country is part of an ongoing debate. This, incidentally, also shows the ways in which the federal idea can be framed in different terms and be used to pursue different objectives.

The institutional variance that federalism displays is very much present in Spanish politics taking the form of a diversity of political projects, depending on the particular models of state and nation defended by concrete political actors. Despite its historical record and the silence of the constitution regarding federalism, federal ideas have been endorsed either rhetorically or in practice by a myriad of actors in Spain (Núñez Seixas, 2004). However, even when they would all share some idea of federalism, their specific political options display for the most part considerable differences. Four broad approaches can be identified, each of which associated with particular political actors:
1) A general and sometimes vague endorsement of federal principles, more or less in line with the current characteristics of the Estado de las Autonomías as it has come to be consolidated. In broad terms, this position defends the process of political devolution and especially the constitutional protection of the principle of autonomy. At the same time, it remains ambiguous about the extent to which the system should accommodate specific nationalist demands. This position is usually supported by the Spanish conservative party PP, and some sectors of the socialists (PSOE).

2) A series of proposed reforms to refine and improve the institutional character of Spain as a federal country. The most prominent proposals are to convert the Senate into the Chamber of territorial representation that it is supposed to be according to the constitution itself, and to foster more robust intergovernmental relations by securing the active participation of the regional governments (regions and nationalities) in the elaboration and implementation of state-wide policies and decisions. A sector of the socialists defends these ideas, as do some nationalists (mainly in Galicia, and to a lesser degree, in Catalonia and the Basque Country).

3) A more radical view of what federal institutions and mechanisms should truly represent in the Spanish political system. This position endorses the acknowledgement of asymmetries as an integral part of federalism in Spain and the formal recognition of the nationalities as qualitatively different from the regions. This view has gained significant support in the last years among nationalist forces, especially in Catalonia.

4) An extreme view that supports the idea that Spain is a “nation of nations” and consequently should establish a confederal system where Galicia, the Basque Country and Catalonia would enjoy extensive powers (internal and external to the Spanish state) and perhaps the right to secession. A group of leftist political forces in the Basque Country has traditionally maintained this view; a significant minority in Catalonia is also supportive of this project.
Federalism is supposed to maintain a delicate equilibrium between the recognition of multinationality and the unity of the polity. In this regard, the Spanish case shows the likely political evolution that characterises a multinational polity. The spiralling dynamic that the Estado de las Autonomías opened up is an interesting feature to take into consideration when assessing the possibilities of federal arrangements in multinational contexts. Competing claims can lead to a cycle of demands where each round is more expansive than the previous one, with the clear risk of threatening the whole unity of the polity. This is far from inevitable; however, and on the opposite side of this argument, if those community-based claims are not properly addressed and, eventually recognised, they would constitute an equally powerful factor against the stability and legitimacy of the polity.

I propose to see federalism as inherently fluid, permitting and even fostering permanent negotiations of and deliberations about the proper functioning of the system. In other words, I believe that federalism is best thought of as an open-ended system whereby contestation and public discussions are not only tolerated but actually an in-built feature of a federal polity. On the one hand, this element opens up political and institutional possibilities to accommodate the conflicting demands coming from the constituent units; but, on the other, it also may make possible a spiralling dynamic of those same demands, legitimised by the system itself, that could lead to political instability or immobilism. The four approaches I identified above are the natural outcome of a political and institutional system that welcomes the different claims advanced by a series of different political actors, pursuing opposing but overlapping nation- and state-building projects.

The Spanish case shows this feature of federal arrangements but, as I argue, it also shows that that is a desirable state of affairs. Ultimately, the relations between the central government and the constituent units can be characterised by ongoing negotiations and permanent accommodation, reflecting the particular self-understanding they hold at different moments in time. The elusive balance between change and continuity is given by the open discussion of reasons through which different national communities learn to become citizens of a
multinational polity. I contend that this can be analysed and explained through political recognition, and the double process of right of disclosure and duty of acknowledgement.\(^{50}\)

The Estado de las Autonomías has gone through a series of phases that reflect this tension and exhibit different degrees of consensus or challenge around federal principles and institutions.

1) In the first stage (1978-1981) the principle of political autonomy was institutionalised and then generalised throughout Spanish territory, establishing a total of seventeen Autonomous Communities. At this point, the specific institutional setting of the system was not clear given the ambiguity of the constitutional text. As many authors stressed, the Constitution allowed for either an asymmetrical system where Galicia, the Basque Country and Catalonia (defined as ‘nationalities’ in Article 2) would enjoy special powers and competences because of their distinctive character as opposed to the ‘regions’; or a symmetrical system where nationalities and regions would exercise political autonomy at the same level. During the first years of the Estado de las Autonomías “neither the political decentralisation model nor the articulation of plurinationality of the state were expressed through a ‘constitutional solution’” (Requejo, 2010: 156).

2) During the second stage (1981-1992) two crucial autonomous agreements were signed by the major Spanish political parties. The ultimate objective of these agreements was the progressive harmonisation between nationalities and regions, bringing the system in line with symmetrical features and obviously denying a qualitative difference between the two categories being granted political autonomy.\(^{51}\) This was also reinforced by the use of the Spanish state of ‘base laws’ which were interpreted in an expansive way so as to regain powers and competences supposedly devolved to the nationalities and regions (Requejo 2010: 156-50).

\(^{50}\) For a detailed application of these processes and the expected conditions for their success, see below Chapter 4 and 5.

\(^{51}\) The 1982 LOAPA (Law for the Harmonisation of the Autonomous Process) is the clearest example of this attempt at harmonising the system. Subsequently, this law was declared unconstitutional by the Spanish Constitutional Court in 1983. For an assessment on this in particular and constitutional recognition in general, see below Chapter 3.
157). As Beramendi and Máiz put it, these years were characterised by “a permanent tension between harmonization and asymmetries” (2004: 138).

3) The third stage was seen as a reaction to the tendency towards the horizontal equalisation of power of previous years, led by nationalist parties in Catalonia and the Basque Country. The electoral results of this period meant that both the Spanish socialist party PSOE (1993-1996) and the conservative PP (1996-2000) had to gain the support of either Basque or Catalan nationalist parties to form government. Demands for a deepening of the system along federal lines increased during these years, and a discourse of self-determination, sovereignty and independence gained currency in Galicia, the Basque Country and Catalonia (Beramendi and Máiz, 2004: 142). These years set the stage for a series of important challenges to the Estado de las Autonomía. On the one hand, it was felt that the system was not federal enough; on the other, nationalist parties demanded significant reforms to it endorsing, albeit in a vague or confusing manner, some confederal ideas.

4) The fourth stage presented a conservative PP majority government (2000-2004) and again a socialist PSOE government in alliance with Catalan nationalist parties (2004-2010). During these years, both the Basque Country and Catalonia embarked on processes of reform of their Statutes of Autonomy. Both proposed reforms challenged the Estado de las Autonomías at its political and institutional core, demanding the incorporation of truly federal and/or confederal elements. Overall, the tendency was for demands from nationalist parties in these regions to increase, leading to a split between the Spanish political parties. The conservatives staunchly denied the necessity of any reform to the system, whereas the socialists were open to incorporate some of them, although it was not very clear how far they would go. In general terms, “due to the neo-centralist twist of the PP... the disagreements regarding the EA [Estado de las Autonomías] have become more bitter and more visible” (Beramendi and Máiz, 2004: 143).

52 For a detailed analysis of both these reforms, see below Chapter 4.
In the period 1978-1981 the system was born out of negotiations and the relative power of political forces, from federal ideas on the left spectrum to administrative decentralisation on the conservative one, to asymmetrical federalism or confederalism on the part of nationalist parties (Núñez Seixas 2004: 217). These competing models of territorial organisation of power and institutional division of competences remained a crucial element throughout the history of the Estado de las Autonomías ever since its establishment in that first initial period. At different moments, those negotiations and the specific electoral support for one option or the other introduced changes or reforms into the original structure. Moreover, this dynamic also explained how elements of different visions of how to best organise politically the country coexisted at the same time in the same system.

As seen before, the system of Autonomous Communities was characterised by recurrent rounds of increasing demands, where Galicia, the Basque Country and Catalonia would exert their identities in a way that set them apart from all other regional governments. The regions in turn responded with renewed demands that would bring them at par with the historical communities. The question here should be whether or not these cycles will ultimately make unrealistic the option of a multinational federal system. However, it can also be argued that these cycles were actually fuelled by unsatisfied demands coming from sub-national units, which should be addressed in order to make the polity legitimate. That is the paradox of multinational federalism.

I contend that the indeterminacy of the Spanish Constitution and the open nature of the Estado de las Autonomías must be related to the notion of federal trust and good faith that all the constituent units are supposed to develop. On this point, it is interesting to note that Erk and Gagnon (2000, 93-4) propose that ‘federal trust’ can be a mechanism through which a multinational federation avoids disintegration via constitutional ambiguity. This has been absolutely true for Spain during the first years of democracy where the very fragility and uncertainty that democracy presented back then was enough to hold all (or nearly all) political forces working together for a common goal. However, the authors stress that the more democracy is consolidated, the more disagreements may surface between political actors.
Those disagreements and contestations about the workings of the Estado de las Autonomías is clearly shown in the evolution of the system, from one stage to the other. This is an almost unavoidable risk in multinational polities, with the overlapping and crisscrossing projects held by each of the potential nations. In an extreme case, those projects may become mutually exclusive, threatening the polity itself with secession. Such an outcome appeared to be a possibility for Spain during the 2003-2010 period with initiatives like the Ibarretxe Plan or the New Statute of Autonomy for Catalonia\textsuperscript{53}.

Federal trust is certainly an elusive quality. It presupposes that the actors involved trust one another and establish relations of good faith with one another. This may very well not be the case in multinational polities. If political processes and overall agreements about the nature of the polity are not solid enough to sustain the future of a multinational polity, then the assertiveness of certain demands and right-claims will become a divisive political factor. Such conflictive scenarios can involve a vast array of demands and points of conflict, ranging from distribution of competences, to symbolic recognition of multinationality, to basic mechanisms of political representation and power.

This tensions and the dynamic that they imply for federalism in multinational contexts is an issue that has to be empirically assessed, looking at different concrete cases, politically and historically situated. I believe that the Spanish case illustrates both the possibilities that a federal institutional framework presents but it also displays its limitations. It provides reasons for hope in relation to the capacity of federal arrangements to accommodate multinationality. But it also shows the tensions and eventual conflicts that such a system may face.

\textsuperscript{53} Both these initiatives are analysed below.
Chapter 3

The Constitutional Court, Policy Areas and Political Identities in Spain

In this chapter I focus on different policy areas or issues that are the source of political controversy between Galicia, the Basque Country and Catalonia on the one hand, and the Spanish state on the other. Namely, these areas cover: a) constitutional recognition; b) territorial distribution of power (overall competences, with emphasis on language and education); and c) political identity of citizens.

The first area goes back directly to some of the arguments put forward in the first chapter, especially the proposed desirability of enshrining certain identity-based claims in the Constitution and granting special legal protection to them (i.e., they cannot be violated by political decisions taken by a circumstantial majority). Here, my analysis emphasises the standard readings of the constitutional text and the accepted interpretations in Spanish jurisprudence. I believe this is an important factor given the ambiguity and indeterminacy of fundamental aspects of the system of Autonomous Communities as expressed in the constitutional text. Related to this, the Constitutional Court (CC) has also been crucial, being both the ultimate interpreter of the Constitution and the arbiter of conflicts between the central government and the regional ones. The CC has been very important during the first years after the adoption of the Constitution, affirming decentralising competences and devolution in general. However, and more recently, the CC has been accused of losing the necessary independence of judgment and decision.

The second area I discuss in this chapter deals with the ways in which political devolution has developed in the thirty years since the establishment of the Constitution. This links with the previous analysis about the historical development of the territorial distribution of power across Autonomous Communities, paying special attention to two crucial policy areas: language and education. I take these areas as tests in which the theoretical, normatively-driven principles
about multinational democracies can be assessed in a concrete historical context. Moreover, each of these policy areas opens up the space for a series of institutions and decisions that are bound to be contested given the conflicting positions of regional and central authorities. This, interestingly enough, also plays out among the citizenry in all of the three historical communities often dividing them along nationalist and non-nationalist lines.

More generally, and fundamental to my discussion about multinational democracies, the ways in which language and education find expression in the Spanish political system also reflect underlying notions of membership (inclusion/exclusion) and participation (each of the historical communities as a system in itself and the possible relations between each of them with the rest of Spain as a whole). Therefore, I analyse the linguistic policies adopted in Galicia, the Basque Country and Catalonia and the ways in which these policies have been incorporated into the educational system in these regions.

The third area I discuss in this chapter is that of citizens' political identity in Galicia, the Basque Country and Catalonia. On this point, my analysis emphasises the historical dynamic that these three Autonomous Communities show in terms of sense of belonging and the impact that the nationalising agenda of regional governments may or may not have had on that. Moreover, I concentrate on three aspects of political identity. First, the positions held by regional parties regarding different forms of accommodation, defined basically in terms of support or rejection of them. My purpose here is to show a general sense of political discourse and toleration from relevant political actors in each of the three historical communities. Second, and related to that, I highlight the electoral performance and outcomes in Spain since the establishment of democracy in 1978. Third, I analyse the identity of the citizens of each of these regions through opinion polls and surveys that have been carried out on a regular basis. Here I attempt at identifying the evolution of exclusive and/or dual identities held by the citizenry of these regions at different moments in time.

Finally, I present a tentative normative assessment of the discussions so far, with an emphasis on the possibilities (or not) for the accommodation of nationalist demands in Spain.
3.1 - Constitutional Recognition

In this section I deal with the extent to which the 1978 Spanish Constitution and the Estado de las Autonomías have acknowledged and protected multinational claims put forward by Galicia, the Basque Country and Catalonia. The key factor to identify is the notion that these three historical communities present specific characteristics worthy of constitutional enshrinement and special legal protection (i.e., they cannot be violated by political decisions taken by a simple majority).

The only antecedent of constitutional control in the country was the 1931 constitution, which created the Court of Constitutional Guarantees (Pascua Mateo, 2003). The 1978 constitution established a novel system of constitutional revision for Spain around the CC. This Court was invested with a double power: first, it was established as the ultimate interpreter of the constitution, judging on the constitutionality of the legal provisions of the country; second, it became the legal arbiter in cases of conflicts of jurisdiction between the central state and the Autonomous Communities (Article 161, Spanish Constitution).

The CC is composed by twelve members, four of which are nominated by the Congress (with a majority of three-fifths), four by the Senate (with the same majority), two by the Government, and two by the General Council of the Judicial Power. The members of the CC are selected from lawyers, university professors and other court judges; they are appointed for nine-year terms; and a third of the judges are renewed or replaced every three years (Article 159, Spanish Constitution).

---

54 The CC has exclusive jurisdiction over constitutional matters; all other legal controversies and conflicts are resolved by the Supreme Court, the highest judicial body in all branches of justice (Article 123, Spanish Constitution). This dual system of legal control has provoked some tensions between the two Courts (Perez Tremps, 2003: 15-18).
In general terms, the CC acts as a typical institution of constitutional control in federal countries, adjudicating conflicts between the different levels of government. However, in the case of Spain, the CC also assumed a “structural intervention”, which was made necessary by the open nature of model of territorial organisation of power established by the Constitution and its *principio dispositivo* (Albertí, 2007: 194). As discussed before, the open nature of the constitutional text left important issues unresolved. The CC was called upon to interpret and fix these issues, developing at the same time its doctrine of the Estado de las Autonomías. The final configuration of the political system was dependent on the creation of the Autonomous Communities themselves and the enactment of their respective Statutes of Autonomy. That necessarily took place after the adoption of the Constitution. For that reason, both these elements of the political system could not be fully defined by the Constitution, and the ways in which they fit with the other parts of the system to form a coherent whole and respect the integrity of the Constitution became a fundamental issue in the hands of the CC.

It became clear early on that the CC would play a crucial role in the development of the Estado de las Autonomías. By 1981-1982 the CC was already developing a doctrine around the division of competences between the central government and the regional ones. The crux of the matter during these years was “the competence of the State to establish the ‘base’ that constitutes the Spanish model of concurring competences” (Alberti, 2007: 207). The controversy here was made apparent by the capacity of the state to pass legislation for the whole country, necessarily affecting the executive capacity of the Autonomous Communities. Further, the CC had to rule on the conflict between the basic legislative function of the state and the State-Autonomous Communities coordination. In a landmark ruling, the CC established that:

“The constitutional guarantee [of political autonomy] enjoys a general character and configures a model of state; a corollary of this is that it is a function of the State to determine the basic general principles and criteria of organisation and competence to be applied to the State as a whole. The determination of basic conditions cannot imply in any case the establishment of a uniform regime for all local entities of the State; rather, it must
allow for diverse options... Certainly, it will not always be easy to determine what it is to be understood by regulation of basic conditions, or establishment of the basis of the judicial regime; moreover, the precise and a priori definition of this concept seems impossible. The Courts will have to establish what it is to be understood as basic, and if need be, this Court will be competent to affirm so as the supreme interpreter of the Constitution” (CCS, 32/1981)\textsuperscript{55}

In this ruling the CC started elaborating its doctrine of political autonomy, confirming the idea that the principle of autonomy enshrined in the constitution entailed a political dimension and did not limit itself to mere administrative decentralisation. Moreover, in its judgement of November 16, 1981 (CCS 37/1981) the Court asserted that the legislative power of the Autonomous Communities allowed for differentiation in the legal status of citizens; limiting the principle of equality to basic rights and liberties as defined by the constitution (Aja, 1996: 127; Beramendi and Máiz, 2004: 138). That is, the constitutional guarantee of equality of citizens regarding their rights and liberties enshrined in the Constitution is safeguarded by the existence of basic conditions shared by all. That would not preclude, though it would indeed limit, the diversity of positions and legislative acts of each Autonomous Community (Parejo, 1983: 156).

The clear demarcation of competences was one of the most fundamental issues that the CC had to face during the first years of democracy in Spain, a period marked by a high level of conflict between the central government and the regional ones (notably, the Basque Country and Catalonia).

This issue was also central to the controversial passing of the LOAPA (Organic Law for the Harmonisation of Autonomic Process). The initiative was part of political negotiations between the Spanish conservative and socialist parties (UCD and PSOE) with the aim of securing the coherence and general character of the whole system, adjusting the institutions of the central

\textsuperscript{55} For other important rulings regarding the issue of distribution of competences between the central government and the regional ones, see CCS 37/1981; 1/1982; 18/1982; 35/1982; 32.1983; 125/1984; 29/1986; 95/1986; 96/1990 and 242/1999
state to the rapid process of decentralisation occurring during those years (Parejo, 1983; Muñoz Machado, 1983). Critics interpreted the LOAPA as an attempt to force a centralising direction to the ongoing process of establishment of autonomy (Requejo, 2010: 156). The key concept here was that of “basic laws”, taken to mean that the central government could dictate rules in the form of laws passed by the central Parliament and going into detailed regulations of a wide array of policy areas. As one author who took part in the UCD-PSOE negotiations puts it:

“The competences of the Autonomous Communities are determined by the Constitution and the Statutes of Autonomy, both normative instruments of the distribution of competences. The Statutes especially specify, based on what the Constitution establishes, the competences of each Autonomous Community. Nevertheless, when it comes to delimiting competences there is no absolute reserve favouring the Statute (Muñoz Machado, 1983: 130)

“A State law, basic or not, can define and specify the competences of the State, but, obviously, not the competences of the Autonomous Communities, even less in an express and positive way, as LOAPA intended to, not only by delimiting the scope of some autonomous competences but also prohibiting the exercise of others” (Muñoz Machado, 1983: 131; emphasis original)

Put it simply, even though the state clearly should act according to the powers bestowed upon it by Constitution, it could not do so in a way that would curtail (or even deny) the powers of the Autonomous Communities, also bestowed upon them by the Constitution.

---

56 In general terms, both Basque and Catalan nationalists saw the LOAPA as pursuing a generalised and limited level of power for all Autonomous Communities (Parejo, 1983: 149-150). In practical terms, this meant the open denial of the claimed distinctiveness of the three historical communities (that is, the controversial difference between nationalities and regions).
Related to this point, the doctrine of the CC also proved to be crucial by clarifying the legal status of the Statutes of Autonomy and the system of legal sources that sustain the constitutional order of Spain. The CC established that the principle of autonomy was inherently political, and not merely administrative (CCS 4/1981); further, the Statute of Autonomy of each Community represented the realisation of that principle and was constitutionally protected, meaning that it could not be unilaterally altered by the central government, nor reversed by a State law. As for the legal sources of the Estado de las Autonomía, the CC defined a “constitutional block” composed by “parliamentary legislation without constitutional weight but with a constitutional role. This constitutional role resides in the fact that each Act or Bill of this legislation specifies certain political issues left undefined by the Constitution in 1978, or helps to define constitutional abstract concepts, needed for legislative and/or judicial construction” (Alaez Corral and Arias Castano, 2009: 604). Clearly, the Statutes of Autonomy, as laws passed by regional Parliaments and ratified by the central Parliament enjoyed this particular status (i.e., hierarchically superior to ordinary law).

Other important contributions of the CC to the Estado de las Autonomías included the notions of mutual institutional loyalty among Autonomous Communities and the central government as a corollary of the principle of solidarity enshrined in Article 2 of the Spanish Constitution (CCS 25/1981; CCS 64/1990); the duty of reciprocal help among them (CCS 18/1982; 96/1986); and the principle of loyalty to the constitution (CCS 11/1986). These rulings pointed to the idea that both the central government and the regional ones must collaborate positively and negatively. In the former case, the Spanish State and the Autonomous Communities must respect (i.e., not encroach upon) their respective prerogatives and the shared interests of the polity as a whole; in the later case, both levels of government must help and support each other in order to effectively exercise their respective powers (Aja, 1999: 143).

All these rulings provided a complex doctrine that ultimately attempted to strike an uneasy balance between unity and diversity, between the central role of the Constitution as the single, all encompassing legal document of the polity and the various Statutes of Autonomy of each of the seventeen Autonomous Communities.
However, the CC faced a number of criticisms, either based on the doctrine itself or the regulations that the Court follows. In the first case, the critics may articulate their disagreements with the legal reasons that the CC provided in its rulings or they may develop more overtly political arguments (the preferred option for nationalist parties in the Basque Country and Catalonia). In the second case, the CC was criticised as reflecting part of a federal deficit of Spain insofar as the Autonomous Communities did not participate in the appointment of its members. This last element was addressed by a 2007 Amendment to the Organic Law of the Constitutional Court. Article sixteen, second paragraph, stated: “[t]he Judges proposed by the Senate will be chosen among the candidates put forward by the Legislatures of the Autonomous Communities”.

The workload of the CC during the first years after the establishment of the Constitution (and of the Court itself) was immense, peaking at more than one hundred cases a year between 1984 and 1988 (Aja, 1999: 131-132). Catalonia and the Basque Country were major protagonists in the cases brought before the Court; through their main nationalist political parties, CiU (Convergencia i Unio) and PNV (Basque Nationalist Party) respectively. Starting in 1990, however, the PNV and the successive regional Basque governments decided not to appeal to the CC, considering it an actor favouring centralisation and an instrument of Spanish political parties to force the primacy of the State over the Autonomous Communities (Aja, 1999: 135). To be sure, this attitude extended the general challenge that Basque nationalists display regarding the overall Spanish institutional framework, targeting in this case the very institution whose purpose is to solve conflicts (Perez Tremps, 2003: 19-20).

As an example, see Parejo (1983), Muñoz Machado (1983) and Alonso de Antonio (1984) and their (partial) disagreements with the CC ruling on the LOAPA case. For a general assessment of the CC highlighting his personal disagreements, especially in cases of distribution of competences see Fernández Farreres (2005).

This did give a say to the Autonomous Communities in the process of appointment of members of the CC. However, it did not formally incorporate regional representation in the CC, as some nationalists demanded (for example, the reserve of quotas or a rotating system among the Judges) (Beramendi and Máliz, 2004: 142).

They continued to appear before the CC, however, to defend their positions when an action was brought against them.
Another strand of criticism against the CC was that it risks politicisation of an institution that is supposed to act in strict accordance with judicial reasoning and doctrine. As Alaez Corral and Arias Castaño (2009: 606) stress, the Court decides the timing of its ruling in accordance to its internal organisation. This implies that given a political crisis or the divisive nature of a ruling, the CC may choose to delay its sentence until it considers that the political conditions are more favourable. This clearly would entail a stretch of the notion of political activism from the CC that is neither contemplated in the spirit of the constitution nor implied in the Organic Law of the Constitutional Court.\(^{60}\)

The legitimacy of the CC declined in recent years, due to a combination of factors. First, there was the above mentioned sporadic use of delaying tactics that damaged the image of the CC as an impartial and just arbiter among disparate and sometimes opposing political interests. Second, the Spanish conservative party (PP) made partisan use of the process of appointment of Judges, favouring candidates who do not necessarily had the best credentials or who explicitly endorsed extremely conservative views. Third, both main Spanish political parties (PP and PSOE) adopted the practice of dividing up the list of acceptable candidates according to their respective numbers in Parliament; the obvious effect of this was that Judges were clearly identified with one or the other party and, as a consequence, the CC was neatly divided along partisan lines (López, 2008: 536).\(^{61}\)

A large number of authors have rightly emphasised the crucial role that the CC played in the construction of the Estado de las Autonomías. It seems clear to me that it could not have been otherwise, given the indeterminacy of the constitutional text and the principio dispositivo. Both these elements meant that the territorial organisation and distribution of power were left unresolved in the constitution. The CC has not only played the role of ultimate arbiter signalling the limits of constitutionality of legal decisions in Spain, but has also erected itself as the

\(^{60}\) Accusations of this sort, together with the acting of Judges whose mandate was already over, were thrown at the CC during the recent ruling over the constitutionality of the Catalan Statut. See below, Chapter 4.

\(^{61}\) Moreno however, made the opposite point stating that the supermajority required to appoint a CC Judge (three fifths of total members) forces inter-party agreements which translates into authority and independence of the Court (Moreno, 2001: 63, 142).
interpreter of the Constitution. This is of the utmost importance given that the constitutional text did not specify in any detail many of the fundamental characteristics of the system. As shown above, even though the CC as an independent judicial body cannot actively prescribe specific political options, it is certainly called upon to provide legal reasons for pursuing one interpretation of the Constitution as the most coherent and logical one. By doing so, it seems undeniable that the CC has significantly contributed to the current defining features of the Estado de las Autonomías.\(^{62}\)

Moreover, critics of the CC also emphasised the body of jurisprudence of the CC regarding the constitutional status of the Autonomous Communities and the limits that it established in relation to the possibilities of accommodation of the multinational character of Spain. Ferran Requejo and Enric Fossas are notable examples of this position. As shown supra, that position goes hand in hand with their assessment of federalism in Spain (i.e., in order to accommodate a multinational polity like Spain, the political system should clearly incorporate asymmetrical elements, if not confederal ones, conducive to the political and legal recognition of the Basque Country, Catalonia and Galicia as distinct communities, qualitatively different from the ‘regions’). Fossas (1999) asserts that this is precisely the difference between a model of territorial federalism and multinational federalism.

The Court is mandated by the Constitution to guarantee the political unity of the polity and to protect constitutional values like solidarity, cooperation and mutual institutional loyalty; however, it is also expected to defend the principle of political autonomy and the institutional and policy variance that that entails. As an example of the tensions involved around the performance of the CC and the impact its evolving jurisprudence has had on the evolution of the Estado de las Autonomías, it is worth reiterating its notion about the legal status of the Statutes of the Autonomous Communities. Beramendi and Maiz (2003) and Aja (1999: 65)\(^{62}\)

---

\(^{62}\) Taken together, the recent proposals of reforms of Statutes of Autonomy in a number of Spanish Autonomous Communities seem to indicate a push for a renewal of the system as a whole. Of special importance in this process are the Basque and Catalan proposals, which to different degrees challenge some of the basic assumptions of the Estado de las Autonomías. Given the multiple legal challenges launched against both proposed Statutes it is important to analyse the ways in which the CC has reacted to them. See below, Chapter 4.
interpret the position of the CC as having guaranteed (especially in its sentence of 1983 dealing with the LOAPA) the constitutional protection of political autonomy by declaring that the Statutes enjoyed a higher position in the legal system than any other ordinary law. Contrary to this, Fossas (1999: 7) insists that the principle of political autonomy is not properly guaranteed by the CC insofar as its doctrine affirmed that the block of constitutionality not only includes the Constitution and the Statutes but also incorporated a series of State basic laws which have the potential to directly conflict and eventually alter the powers and competences of the Autonomous Communities. I am inclined to agree with Beramendi and Maiz, and Aja, for it seems to me the CC has routinely asserted the constitutional status and guarantees of political autonomy for the Spanish Communities. Granted, the use of State basic laws may affect this and indirectly attack the principle of political autonomy. However, that in itself must be subjected to the constitutional control of the CC.

The delicate balance between these two poles is not easy to achieve and the CC is yet another confirmation of this seemingly irresolvable tension between unity and diversity that any multinational polity must face.

3.2 - Competences of the Autonomous Communities: language and education

In this section I identify the evolution of two fundamental policy areas, namely language and education. I also present an analysis of their importance for the overall assessment of multinationality. I take language and education as fundamental expressions of people’s identity and sense of belonging. These clearly present political consequences. I therefore analyse both the ways in which language and education was defined in all three historical communities, and the response of the Spanish state in light of these developments including judicial challenges to them.
Since the establishment of the 1978 Constitution there was an ongoing process of transference of powers and competences from the central government to the regional ones. Among these competences, language and education became the heart of disputes and conflicts between both levels of government. Language was a contentious issue in the relation between Spain and the three historical communities in large part because it is one of the fundamental traits that define the identity of national communities. Castilian was the language spoken by the majority of Spaniards, but there were three other important languages associated with particular regions in Spain: Catalan in Catalonia, Galego in Galicia and Eusker in the Basque Country. The languages spoken in Spain other than Castilian were recognised by the constitution as part of the cultural heritage of the country and given special respect and protection, bringing the discussion under the domain of the Constitutional Court.

The second major area of dispute, education, was closely associated with these conflicts around language, since the debates surrounding education was concentrated on the use of language at school. In some models of education, Castilian was the preferred means of instruction, in others it was the regional language, and in still others, it was a combination of both.

Article 3 of the Spanish Constitution states:

1) Castilian is the official Spanish language of the State. All Spaniards have the duty to know it and the right to use it.

2) The other Spanish languages shall also be official in the respective Autonomous Communities in accordance with their Statutes.

3) The richness of the different linguistic modalities of Spain is a cultural heritage which shall be specially respected and protected.
This formulation raised the difficult question of how best to reconcile the legal protection (and co-official status) of some regional languages with the equally constitutional right and duty of knowing and using Castilian.

Language is often used to determine membership of a national community, creating a division between ‘us’ and ‘them’. As such, language can become a tool of nationalist movements in order to reinforce the collective identity of a group and/or depict it against outsiders (Kymlicka and Patten, 2003; Van Morgan, 2006). Therefore, it is not surprising that nationalist forces in all the three historical communities wholeheartedly embraced the recognition and protection of “the different linguistic modalities of Spain”. Moreover, both language and education also provoked tensions among the population of these regions, which can easily be divided along nationalist and non-nationalist lines. The former group tended to endorse a pre-eminence of the regional language over Castilian whereas the latter group preferred the opposite option.

The constitutional recognition of the linguistic variety of Spain was realised further by the Statutes of those regions in which more than one language was spoken. The Basque Country, Catalonia and Galicia all incorporated in their respective Statutes of Autonomy their regional languages as co-official in their regions. They did so by declaring Catalan, Galego and Euskera a co-official language, together with Castilian, in their respective regions. Further, they recognised the right to use those languages, though without a duty to know them (Delgado-Iribarren, 2005). This was based on a CC ruling (CCS 82/1986) according to which only Castilian imposed to all Spaniards an individual and constitutional duty to know it, and this could not be extended to other languages in those regions with co-official status of more than one language (also CCS 84/1986).

---

63 As Van Morgan points, “...language may also serve as a means by which ethnic entrepreneurs construct grievances, where a particular language is perceived as marginalized or threatened by a competitor language” (2006: 454)

64 Catalonia also recognised in its Statute of Autonomy the Aranes language. Other cases include the Balearic Islands (Catalan), Navarra (Euskera), Valencia (Valencian), Asturias (Bable) and Aragon (different linguistic variations) (Delgado-Iribarren, 2005)
Catalonia, Galicia and the Basque Country embarked on further linguistic politics by passing laws in their regional Parliaments with a view to establishing the normalisation of the regional languages, securing the protection of those languages and stipulating their use in a variety of contexts, notably the educational system, public administration and social spaces.  

Language in Spain was a long-standing divisive element. On this point, it is important to highlight the persecution and repression of regional languages during the years of the Francoist dictatorship (1939-1975). For decades, the regime worked to halt the progress made in terms of regional autonomy (which included a degree of official use of regional languages) during the Second Republic, and then to ensure the imposition of a homogeneous Spanish identity around history, culture and of course, language. Castilian became the official language of the state and the exclusive means of instruction at schools throughout the country (Beswick, 2007: 69-70).

The Francoist regime openly attacked the impulse that cultural and linguistic activities as expressions of national identities in Catalonia, Galicia and the Basque Country found at the end of the nineteenth century and beginning of the twentieth (Roller, 2001; Guibernau, 2004; Zalbide and Cenoz, 2008: 7; Beswick, 2007: 69-71). Nevertheless, the respective linguistic communities preserved their languages as part of their identity through its use at home, and the promotion carried out by diasporas of these regions in countries like Argentina or Mexico (Beswick, 2007: 70).

The 1978 Spanish Constitution came to rectify this situation by both granting regional languages a co-official status in their regions, and recognising the associated rights and entitlements stemming from that status. Therefore, all the three historical communities incorporated their respective languages in their Statutes of Autonomy and, further, passed laws with a view to promoting and protecting those languages. The Basque Country passed the Basic Law of Normalisation of the Use of Euskera in 1982; Catalonia passed the Linguistic Normalisation Act in 1983 (subsequently modified by the Language Policy Act of 1998); and Galicia passed the

---

65 A legal development of linguistic politics along similar lines was also present in those other regions mentioned above.
Linguistic Normalisation Act in the same year (later extended to local entities, in 1988). All these Acts are very similar and pursue the same broad objective:

“...the preambles in all acts entrust each government with the responsibility to promote the language learning and use by compensating the situation of inferiority of the language, and by making effective the right to use it in any circumstance” (Huguet, 2007: 74)

This meant that regional governments started to employ a series of measures conducive to the promotion and protection of the regional languages as defined in those language Acts. These measures were regularly justified as a means to realise the cultural and linguistic plurality recognised by the constitution (Roller, 2001)

There are two crucial elements regarding the politics of language in multilingual countries like Spain, where more than one language is granted constitutional recognition and protection. The first one is the legitimisation of a given language by the state apparatus which typically establishes a given language as official in certain territory.66 The second element is the institutionalisation of a given language by civil society which takes the form of wide-spread social use of it.

The social use of a language calls for its standardisation: the preference for a particular linguistic variety (usually determined by the most socially and politically powerful groups); the homogenisation of the language around clear grammatical and syntactic rules; the widespread functional use of that language as a normal means of expression, and finally the promotion of it, fostering a sense of commitment to it among a given population (May, 2001: 150).

66 More often than note, the language in question will be co-official with other language(s), depending on the linguistic map of the polity.
However, apart from being granted official status in a territory, a language has to be “accepted, taken for granted in a wide range of social, cultural and linguistic domains or contexts, both formal and informal” (May, 2001: 151). Put it simply, the vitality of a language cannot be decreed by law, but has to be ratified by qualified, active speakers of the language who recognise it as their everyday, ordinary means of communication.

Linguistic legitimisation in Spain was carried out by the Spanish Constitution and the respective Statutes of Autonomy, establishing the co-official status of some languages for particular territories, and defining an emerging legal body of measures regarding the use of the different languages in the respective regions. Linguistic institutionalisation, however, proved to be more problematic, especially for Euskera. This was due to four factors: 1) the relative position and status of the regional languages; 2) the extent to which regional governments decided to implement active policies of promotion and use of those languages; 3) the introduction and implementation of these policies in the educational system; 4) the judicialisation around the politics of language in those regions that had two official languages.

As for the first factor, both Catalan and Galego benefitted from their proximity to Castilian, making it relatively easy for speakers not only to understand each other but also to acquire one or the other as a second language. This was something that worked against Euskera, a non-romance language that did not share any semantic or grammatical rules with Castilian, making mutual understanding (Euskera-Castilian) impossible without formal training.

This factor was reflected in the rates of language competency. For example, more than 90% of respondents in Galicia claimed to understand Galego and more than 80% claimed to speak the language, while around 60% of Galicians claimed to employ the language as their primary means of communication (Beswick, 2007: 165-168). The proportion of people in Catalonia who could comprehend Catalan (97%) or regularly use the language (79%) followed the same pattern. Huguet stresses this point “...a big portion of those who consider themselves as Castilian speaking can understand or even speak the local language [i.e., Catalan]” (2007: 72). In the case of the Basque Country, the picture was very different: not only was the proportion of speakers of Euskera dramatically lower than in these other two regions (20%) but also the
proportion of those who can understand and/or use Castilian and Euskera was equally low (46%). This is partially explained by the greater difficulty in understanding and learning a non-Latin language like Euskera (Huguet, 2007: 73).

The second factor involved linguistic promotion and protection. The objective of linguistic promotion laws in Spain took the form of adopting the use of regional languages in the public administration and government structure of the Catalan, Basque and Galician governments. Also, this strategy was favoured by the control exerted by these regional governments on mass media, broadcasting television and radio shows in the vernacular language (Mateo, 2005: 11-12; Beswick, 2007: 182-186). The overall goal of these measures was to extend the knowledge of Catalan, Euskera or Galego among the population in these regions, and foster the social use of those languages as widely as possible.

Linguistic protection laws were passed with the objective of institutionalising programmes that would address the inferior status of the regional languages vis-à-vis Castilian. The protection of Catalan, Euskera or Galego was regularly justified by regional Parliaments based on the minority status of these languages and the special status granted to them by the Constitution. Moreover, nationalist governments presented their respective languages as a valuable part of their identity, claiming to be their “own language” and as such worthy of a preferential treatment.67

The third factor was the implementation of language in education. The educational system in the Basque Country, Galicia and Catalonia became bilingual given the linguistic policies and planning adopted by these governments. The Basque Country followed a complex model of bilingual education: in primary and secondary schools there were three choices, 1) A, all subjects except Euskera language were taught in Castilian; 2) B, both Castilian and Euskera were used for teaching other subjects; 3) D, all subjects, except Castilian language were taught in Euskera (Zalbide and Cenoz, 2008: 8-9). The overall objective, according to the Law of Normalisation of the Use of Euskera was that “[t]he public authorities have to guarantee that all

67 For a sympathetic view of the Catalan linguistic policy, see Costa (2003).
students have a sufficient practical knowledge of both official languages by the time they finish their compulsory studies” (Article 17).

Another important aspect of the Basque educational system was the recognition that students’ parents had the right to choose the language of instruction (Sierra, 2008: 40). This meant that Basque authorities were committed to facilitate education in the language that the parents prefer, which created two parallel lines of education, along linguistic communities. This was usually called elective separation (Alberti, 1995: 249-250). It is for this reason that the alternative models are specifically publicised across communities: “...for Euskaldunes (Euskera speaking people), model D is promoted, and for Erdaldunes (Castilian speaking people) model A and model B are promoted” (Huguet, 2007: 77-78). Thus, there was a general tendency to adopt the educational model that reflected the existing speaking patterns of the population (either Euskera-based or Castilian-based) (Ruiz Vieytez, 2005).

However, taken all these measure as a whole, the overall tendency presented a dramatic increase in the use of Euskera as a means of instruction in primary schools; from a mere 20% of students in model B and D in 1982, to almost 80% in 2006 (Zaldibe and Cenoz, 2008: 10). Nevertheless, Basque language continued to be a minority when taken the population of the region as a whole, and did not enjoy a pre-eminent status regarding the whole array of social circumstances and uses (Zalbide and Cenoz, 2008: 16).

In the case of Galicia, the government expected all students to acquire similar levels of proficiency in Galego and Castilian. This was usually referred to as harmonic bilingualism (Van Morgan, 2006: 462). However, the Linguistic Normalisation Act of 1983 established Galego as the official language in all levels of education, albeit reserving the children’s right to receive their elementary education in their mother tongue. The overall goal of the Galician government was to achieve an equivalent oral and written command and knowledge of both languages (Castilian and Galego) by the end of their education (Consejo Escolar del Estado, 1998)

Despite the legal requirement of the use of Galego as the means of instruction, by 2004 only 38% of schoolchildren were taught primarily in that language; with 46% of students receiving
their education primarily in Castilian (Beswick, 2007: 169-170). This seems to point to the diminishing position of Galego in relation to Castilian. The former was only dominant in rural areas and among older segments of society and uneducated, lower classes. In general terms, “[t]he overriding reality is that Galego is currently experiencing a noticeable shift from first language to bilingual status” (Van Morgan, 2006: 460).

In the case of Catalonia, this region adopted a system called integral bilingualism which ensured a predominant role for Catalan as the language of instruction for those educational levels beyond elementary school. However, it did pursue, like the Galician and Basque cases, the objective of securing an equivalent command and comprehension by students of both languages (Catalan and Castilian) at the end of their education (Alberti, 1995: 250; Millian i Massana, 2007: 340).

The measures taken by the Catalan government improved the status and overall command of the regional language. The comprehension level of Catalan increased from 93.76% to 94.97%, and the expression level also moved upwards from 68.34% to 75.30% and the written modality increased as well, from 39.94% to 45.48% (Huguet, 2007: 80). Moreover, the command of Catalan was significantly improved among young generations who have been through the bilingual educational system. In general terms, “[t]eaching is organised in Catalan, with Castilian as a language, or as a bilingual programme where both languages progressively reach the same position in the curriculum” (Huguet, 2007: 81). These objectives took the form of a model of immersion that became widespread throughout the Catalan educational system, in line with bilingual education, considerably favouring the use and command of the regional language.

Against these attempts by the Galician, Basque and Catalan governments to promote and protect their respective languages, there were opposition and criticisms. This conflict brings back into the analysis the tension implicit in Article 3 of the Spanish Constitution where, on the one hand, Euskera, Catalan and Galego were granted constitutional protection (associated to their status as co-official languages in their respective regions) and, on the other, Castilian was recognised as the official language of Spain as a whole and all Spaniards had the constitutional right and duty of knowing and using that language.
In this context, there were a number of organisations publicly condemning the linguistic policies pursued by these regional governments, especially the Catalan one. Although these organisations were very active, their public support is not that strong. One of these organisations was Foro Babel, an association created in 1996 denouncing the “transformation of the emotional content of identity [of which language is a fundamental element] into exclusive political ideologies”. Moreover, they accused the Catalan government of institutionalising a nationalist ideology, in detriment of the interests of non-nationalist Catalans (Roller, 2001: 48). In a similar line, the organisation Convivencia Cívica Catalana argued that the protection of the regional language pursued by the Catalan government caused a dangerous division in Catalan society along linguistic lines, something that ironically was the result to avoid according to those very measures taken by the Catalan authorities (Roller, 2001: 49).

The fourth and final factor regarding the normalisation and institutionalisation of regional languages in Spain has been the legal challenges presented against these measures. The CC acted as the arbiter in some of these disputes and developed its own doctrine in relation to these issues. In a landmark ruling (CCS 337/1994), the Court has affirmed that:

“[t]his model of linguistic conjunction inspired by Law 7/1983 of the Catalan Parliament is constitutionally valid insofar as it responds to a purpose of social integration and cohesion of that Autonomous Community, independently of the habitual language of each citizen. Likewise, it is valid that Catalan, as the object of linguistic normalisation of Catalonia, be the centre of gravity of this model of bilingualism, as long as that does not determine the exclusion of Castilian as a means of instruction so as to guarantee its knowledge and use in the territory of the Autonomous Community... [Moreover], being Catalan a curricular subject and language of communication in education, this ensures that its co-official status translates into an effective social reality; which will allow for the rectification of situations of disadvantage coming from history, and preclude that that language is kept in a marginal and secondary position” (as quoted in Milian i Massana, 2007: 341).
Therefore, the CC endorsed the idea that, in order to protect and promote a regional language, some preferential measures could be introduced. However, there were limits to these measures: a) they could not mean the exclusion of Castilian as the official language of Spain; b) and they should present a progressive implementation of the model and respect a principle of proportionality in relation to the objectives (Alberti, 1995: 252).

This ruling complemented a previous one (82/1986) according to which the right and duty to know Castilian (Article 3 of the Spanish Constitution) did not establish an equal right to receive education solely and exclusively in that language (which would in turn create the possibility of refusing to learn the regional language) (Alberti, 1995: 254-255). Equally important was the CC ruling 84/1986 in which the Court considered unconstitutional the claim included in the 3/1983 Law of the Galician Parliament declaring a duty of all Galicians to know Galego (Milian i Massana, 2007: 320-321). As Regueira put it, this established an asymmetrical model of co-official languages: “[w]e have a right to ‘know and use’ Galego, but we have a duty according to the Constitution to know Castilian” (2006: 69).

All these different aspects of linguistic politics in Spain show the ways in which language, and education find expression and also reflect underlying notions of membership (inclusion/exclusion) and participation (each of the historical communities as a system in itself and the possible relations between each of them with the rest of Spain as a whole). In the former case, language can be used both as a reaffirming element of an identity and as a potential cause of division of a society along linguistic communities. In the later case, language can be conducive to a cohesive society insofar as it enjoys a widespread level of acceptance and knowledge from a society and a generalised social use as a means of communication in everyday life.

I believe that the CC managed to present a delicate balance between the duty to know Castilian and the right of those regions with a different language, to promote and protect those languages. The accommodation of these demands may result in occasional conflicts, especially regarding the ways in which planning and policy implementation are carried out. However, in terms of political recognition, I believe that both the Spanish Constitution (together with the
respective Statutes and their linguistic Laws) and the CC offered an adequate level of protection to the languages in question and acknowledged their value regarding the identity of Catalans, Basques and Galicians.

3.3 - Political identities: the emergence of dual identifications

I believe that an important way to evaluate the development of the Estado de las Autonomías and the ways in which this allowed for the accommodation of nationalist claims in Spain is to assess the evolution of political orientations held by the citizenry, taken both Spain as a whole, and particular communities (namely, Galicia, the Basque Country and Catalonia). Therefore, in this section I focus on three key elements that can be highlighted in this regard: a) the identity of citizens, based on opinion polls and survey data; b) the party system and electoral offers; c) the positions held by those political parties in relation to the model of state and the possibilities of accommodating nationalistic claims.

As for the first factor, the expression of identities held by the people can be defined in terms of their sense of belonging to one or more communities. There are three basic possibilities: that some of the citizens think of themselves as members of their nationality/region (exclusivist identity); the possibility of claiming a dual identity, combining loyalty to and identification with both Spain as the all encompassing polity and their respective community (balanced identity); the option of defining their political identity around a sense of belonging to Spain as a whole in detriment of any regional identification (españolista identity) (Moreno, 2001: 114-117).

When looking at the different polls and surveys measuring political identities in Spain since the establishment of the 1978 Constitution, it became clear that these identities presented some variations across communities and time. In a country divided by different and opposing nation- and state-building projects it was of the utmost importance to understand the extent to which those projects find social support among the respective populations. In order to measure the
degree of that support and the political impact it may have I consider and analyse the identities held by Catalans, Basques, Galicians and Spaniards.

Taking Spain as a whole and following a 2002 survey conducted by the highly respected *Centro de Investigaciones Sociológicas, CIS* (Centre for Sociological Investigations) there seems to be a clear trend towards dual identities, where the majority of Spaniards identify themselves with some combination of belonging to their respective community (be it a nationality or a region) and to Spain:

<table>
<thead>
<tr>
<th>Identity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>I feel only Spanish</td>
<td>14.2</td>
</tr>
<tr>
<td>I feel more Spanish than (Catalan, Basque, Galician, etc)</td>
<td>8.5</td>
</tr>
<tr>
<td>I feel as Spanish as (Catalan, Basque, Galician, etc)</td>
<td>53.6</td>
</tr>
<tr>
<td>I feel more (Catalan, Basque, Galician, etc) than Spanish</td>
<td>13.8</td>
</tr>
<tr>
<td>I feel only (Catalan, Basque, Galician, etc)</td>
<td>6.4</td>
</tr>
<tr>
<td>Do not Know</td>
<td>1.1</td>
</tr>
<tr>
<td>Do not Answer</td>
<td>2.4</td>
</tr>
</tbody>
</table>

*Source: CIS Estudio No. 2455, Instituciones y autonomías II, septiembre 2002 (quoted in Uriarte, 2002)*

This data suggests that a majority of Spaniards did not see a conflict in identifying themselves as belonging at the same time to their national community/region and the overall polity. It is interesting to note a double trend in relation to the political identities of the Spanish people
since the establishment of the Estado de las Autonomías: on the one hand, there was a downward movement in the number of people who identified themselves in exclusive terms to Spain (the españolista identity); on the other, the percentage of people who held dual identities remained largely the same throughout the years. However, it is also worth noting that the percentage itself is very high for a country characterised by multinationality. This double movement represents a “legitimisation of both the autonomous communities and the decentralised ‘state of autonomies’ as a whole” (Martinez-Herrera and Maley, 2010: 18; emphasis original).

Table 2 - Relative weight of Spanish and Regional identities in Spain at large

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Primarily Spanish</td>
<td>32%</td>
<td>25%</td>
<td>23%</td>
<td>20%</td>
</tr>
<tr>
<td>Equally Spanish and</td>
<td>38%</td>
<td>53%</td>
<td>52%</td>
<td>58%</td>
</tr>
<tr>
<td>(Catalan, Basque, Galician, etc)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mainly (Catalan, Basque, Galician, etc)</td>
<td>24%</td>
<td>18%</td>
<td>21%</td>
<td>19%</td>
</tr>
</tbody>
</table>

Source: Adapted from Martinez-Herrera and Maley (2010)

These figures however, could be deceiving insofar as they reflected the political identification of all Spaniards, without disaggregating the data to particular regions. The comparison of this pattern of identifications with the cases of Catalonia, the Basque Country and Galicia would provide a better understanding of this evolution since these three regions were the ones who could present alternative views to the overall political identity of the Spanish people.
Table 3 - Relative weight of Spanish and Regional identities in the Basque Country and Catalonia

<table>
<thead>
<tr>
<th></th>
<th>CATALONIA</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1986</td>
<td>1998</td>
<td>2005</td>
</tr>
<tr>
<td>Exclusively Spanish</td>
<td>11%</td>
<td>13%</td>
<td>7.7%</td>
</tr>
<tr>
<td>Dual Belonging (Spanish/Community)</td>
<td>75%</td>
<td>74.1%</td>
<td>76.4%</td>
</tr>
<tr>
<td>Exclusively Community</td>
<td>11%</td>
<td>11.5%</td>
<td>14.3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>BASQUE COUNTRY</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1986</td>
<td>1998</td>
<td>2005</td>
</tr>
<tr>
<td>Exclusively Spanish</td>
<td>10%</td>
<td>4.9%</td>
<td>5.6%</td>
</tr>
<tr>
<td>Dual Belonging (Spanish/Community)</td>
<td>60%</td>
<td>65.9%</td>
<td>60.6%</td>
</tr>
<tr>
<td>Exclusively Community</td>
<td>28%</td>
<td>24.1%</td>
<td>24.3%</td>
</tr>
</tbody>
</table>

Source: Adapted from Moreno (2009)
Percentages are not 100% given proportion of ‘Don’t know-don’t answer’

In the case of Galicia, it exhibited the following numbers:

Table 4 - Relative weight of Spanish and Regional identities in Galicia

<table>
<thead>
<tr>
<th></th>
<th>GALICIA</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1979</td>
<td>1986</td>
<td>1996</td>
</tr>
<tr>
<td>Exclusively Spanish</td>
<td>--</td>
<td>5%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Dual Belonging (Spanish/Community)</td>
<td>--</td>
<td>86%</td>
<td>87.2%</td>
</tr>
<tr>
<td>Exclusively Community</td>
<td>--</td>
<td>6%</td>
<td>7%</td>
</tr>
</tbody>
</table>

Source: Adapted from de la Granja et. al. (2003)
Percentages are not 100% given proportion of ‘Don’t know-don’t answer’
The decrease in the number of people identifying themselves as ‘exclusively Spanish’ reflected the trend seen in Spain as whole, although in this case the figures were more pronounced when looking at Catalonia, the Basque Country and Galicia. Further, the number of people holding this exclusively Spanish identity was significantly less in all three regions when compared to the national average. Nevertheless, in all the three historical communities, despite some difference in the numbers, dual identities were dominant, especially so in the case of Galicia. The Basque Country was the only region in which the exclusive identity centred on the Autonomous Community reached values higher than 20%. However, this group showed a relative decline in their numbers, and even in the face of a polarised region marked by strong conflicts with Spain, dual identities constituted a clear majority.

Another important series of data that has been regularly collected in the Basque Country and Catalonia had to do with the identification of these populations between the option of considering their communities as a ‘region’ or a ‘nation’. Between 1990 and 2005 the result has been remarkably consistent, with an historical average in both regions of 35% favouring the option of ‘nation’ (Martinez-Herrera and Maley, 2010: 20). This, relatively speaking, is a high number though one that is far from overwhelmingly favour a denial of some form of belonging to Spain as the encompassing polity.

A second factor I take into consideration in order to evaluate the relation between the Estado de las Autonomías and its capacity to accommodate nationalist claims is the party system and electoral offers/support that nationalist parties enjoy. The Spanish party system ever since the process of democratisation in the period 1978-1981, “has been progressively moving towards an imperfect model of bipartidism at the national level”68 with a significant presence of territorially-based political parties. This latter group is characterised by seven or eight

---

68 The system was dominated by the socialist Partido Socialista Obrero Español, PSOE (Spanish Socialist Workers’ Party) and the conservative Partido Popular, PP (People’s Party), formerly Alianza Popular, AP (People’s Alliance). The Unión de Centro Democrático (Union of the Democratic Centre) led the transition to democracy under the leadership of Adolfo Suarez, but after internal conflicts and political disagreements the party was dissolved by 1982. There was a minority third party in the system, the Izquierda Unida, IU (United Left), which had presence in the Central Parliament, although it is absent in many of the Autonomous Communities (Llera, 2004: 22)
regional/nationalist parties whose historical electoral support fluctuated around 10% of the electorate, and became crucial for the stability of the Spanish system by forming coalition governments with either PSOE or PP in times where neither of these parties gained a clear majority (Llera, 2004: 22).

The incorporation of these nationalist parties in coalition governments (especially the cases of PNV and CiU, during the period 1993-2000)\(^6^9\) could be seen as a positive development insofar as these political parties representing the Basque Country and Catalonia respectively were given a direct participation in governing the whole country. This could foster a sense of political and institutional responsibility in relation to Spain, and not exclusively to their respective communities. However, the ways in which the two Spanish political parties related to PNV and CiU was also problematic, failing to develop a true coalition strategy with these nationalist parties. The reason for this failure rested on ideological disputes between PSOE and PP, and their seemingly irreconcilable differences regarding a shared vision of Spain and the best strategy to address the challenge of precisely substate national forces like PNV and CiU (Llera, 2004: 27-28). As a result, these coalition governments were more the product of electoral calculus and political advantage than a genuine effort to consolidate mechanisms of inclusion and participation of regional parties that could express nationalist demands and count with solid support in their regions.

This situation where the adversarial logic dominated the possibility of agreements and consensus around fundamental issues of the political system was also complicated by the fact that the leadership of the nationalist parties itself used their relative powerful position to exert political benefits through instrumental and extractive compromises with either PSOE or PP (Llera, 2004: 28). Therefore, the incapacity of the central Spanish political parties to foster genuine mechanisms of inclusion and participation for Basque or Catalan parties at the level of the central government was mirrored by the strategy of these same parties according to which

\(^{69}\) *Partido Nacionalista Vasco, PNV* (Basque Nationalist Party) was the main nationalist party in the Basque Country and has been in control of the government in that region from the first electoral process (1980) until 2009; *Convergència i Unió, CiU* (Convergence and Union) a coalition of liberals and social democrats who formed government in Catalonia without interruption from 1980 to 2003.
they downplay eventual government responsibilities and concentrate instead on the possible benefits they can get in relation to their nationalist audiences. A possibility of mutual understanding and loyal interactions was thus replaced by electoral gains and conflictive relations.

The basic PSOE-PP conflict in relation to both the model of state and the general direction that the Estado de las Autonomías should follow was a manifestation of the ideological distance that separated these two parties. The conservative PP traditionally oscillated between the outright rejection of the demands of substate nationalism and a reaction to them within the existing democratic order. Such position accepted minimum level of recognition and accommodation, but remained fearful of possible attacks to the unity of the Spanish nation. Ultimately, a certain degree of multinational accommodation was accepted but always and explicitly subordinated to the unquestioned supremacy of the Spanish state as the form of organisation of the polity and the Spanish people as the exclusive depository of sovereignty (Núñez Seixas, 2001: 728-735; Gilmour, 2006, 26-29).

The Spanish Left in general, and PSOE in particular, adopted either the ideal of civic nationalism, or a position much more inclined towards substate nationalisms. In the first case, the sense of political belonging and participation in the Spanish political system is associated with civic values, which made possible the combination of a political nation and diverse cultural nations (or ethnoterritorial identities, as Moreno puts it (2001). However, according to PSOE the Spanish people remained the only object of sovereignty. Cultural and linguistic claims were

---

70 The PP has also formed government in regions where, on the one hand supported moderate cultural and linguistic policies but, on the other, it attempted to downplay (or deny) any separatist character of such policies. Insofar as self-determination was not part of the discussion and/or aspiration of regional/nationalistic claims, the PP could accept them as a form of ‘healthy regionalism’. The best example of this strategy was the performance and success of the Galician branch of the conservative party (PPG) in Galicia.

71 The rhetoric commonly used stressed this ‘civic’ idea (in opposition to the ‘ethnic’ character of substate nationalisms) even though it often also appealed to ethnic elements on its own (Muro and Quiroga, 2005: 25).

72 This reflected the fundamental democratic consensus, despite their many differences, between the two major Spanish political parties, and it was usually presented as a defense of the existing constitutional order with explicit references to Articles 1 and 2.
granted political legitimacy and eventual accommodations in the democratic institutions and practices of the polity but they could not put into question the supremacy of Spain as a nation (Kennedy, 2006: 55-61). In this reading, Spain is a “multicultural nation politically bounded by a ‘democratic contract’, as established by the 1978 Constitution” (Muro and Quiroga, 2005: 22). The strategy supported by PSOE is informed by a sense of civic patriotism (although avoiding talking in terms of nationalism) around universal principles and democratic values. This position was often criticised insofar as it seemed to accept implicitly a pre-political, essentialist notion of Spain as a nation; whereby the political legitimacy of Spain as a political community stems from its history and traditions, independent of the will of the Spaniards (Núñez Seixas, 2001: 736-740; Muro and Quiroga, 2005: 23).73

Looking at the electoral performance of political parties at the level of the Spanish state and their representation in government, the figures are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>UCD</th>
<th>PSOE</th>
<th>AP/PP</th>
<th>PCE/IU</th>
<th>CiU</th>
<th>PNV</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977</td>
<td>34.4%</td>
<td>33.8%</td>
<td>8.2%</td>
<td>9.3%</td>
<td>3.8%</td>
<td>1.6%</td>
</tr>
<tr>
<td>1979</td>
<td>34.8%</td>
<td>30.4%</td>
<td>6.1%</td>
<td>10.8%</td>
<td>2.7%</td>
<td>1.6%</td>
</tr>
<tr>
<td>1982</td>
<td>6.8%</td>
<td>48.1%</td>
<td>26.4%</td>
<td>4.0%</td>
<td>3.7%</td>
<td>1.9%</td>
</tr>
<tr>
<td>1986</td>
<td>44.1%</td>
<td>26.0%</td>
<td>26.0%</td>
<td>4.6%</td>
<td>5.0%</td>
<td>1.5%</td>
</tr>
<tr>
<td>1989</td>
<td>39.6%</td>
<td>25.8%</td>
<td>34.8%</td>
<td>9.1%</td>
<td>5.0%</td>
<td>1.5%</td>
</tr>
<tr>
<td>1993</td>
<td>38.8%</td>
<td>38.8%</td>
<td>38.8%</td>
<td>9.6%</td>
<td>4.9%</td>
<td>1.2%</td>
</tr>
<tr>
<td>1996</td>
<td>37.6%</td>
<td>44.5%</td>
<td>44.5%</td>
<td>10.5%</td>
<td>4.6%</td>
<td>1.2%</td>
</tr>
<tr>
<td>2000</td>
<td>34.2%</td>
<td>37.6%</td>
<td>37.6%</td>
<td>5.4%</td>
<td>4.2%</td>
<td>1.3%</td>
</tr>
<tr>
<td>2004</td>
<td>42.6%</td>
<td>37.6%</td>
<td>37.6%</td>
<td>5.0%</td>
<td>3.2%</td>
<td>1.6%</td>
</tr>
</tbody>
</table>

*Source: Llera (2004)*

73 Other expressions of the Left openly demanded full sovereignty for the regions, portraying Spain as a multinational unit and pursuing the Constitutional enshrinement of the nationalities’ right to secede. However, this position was by far not the dominant one within this ideological space.
At the regional level, the Catalan party system was dominated by CiU, a coalition of *Convergència Democràtica de Catalunya* (centre-right liberals) and *Unió Democràtica de Catalunya* (social democrats). CiU was in charge of the Catalan government from 1980 to 2003, under the leadership of Jordi Pujol, and traditionally combined a position favourable to self-determination with more pragmatic positions, depending on the political circumstances both in Catalonia and Spain as whole (especially during those years in which it formed government at the Spanish level). The *Partit dels Socialistes de Catalunya, PSC* (Socialist Party of Catalonia) also had significant presence in Catalan politics ever since the establishment of the regional government in the early 1980s. Its position has been a combination of social-democratic ideas with a defence of Catalan interests along federal lines. A third significant party in Catalan politics is *Esquerra Republicana de Catalunya, ERC* (Catalan Republican Left), which moves between federal alternatives and outright independence of Catalonia (Etherington and Fernandez A., 2006).

The party system of the Basque Country was dominated by the *Euzko Alderdi Jeltzalea* (Basque Nationalist Party), a broad nationalist party that defended both the realisation of political autonomy for the Basque Country and the aspirations to independence of those territories (de Pablo and Mess, 2005). The PNV has been in office since the first electoral process at the regional level in 1980 until 2009, when it was replaced by a coalition of PSE (Socialist Party of Euskadi) and the Spanish conservatives of PP. The PSE, under the *lehendakari* Patxi Lopez, advanced centre-left ideas and a moderate version of Basque nationalism along the lines of the Spanish Constitution and the realisation of the potential of the Statute of Autonomy. Other significant forces included a series of small parties that openly endorsed the goal of

---

74 PSC acted as an independent party though associated to the Spanish PSOE, integrating the same bloc at the central Parliament.
75 Usually ERC adopted a pan-Catalan position demanding independence for the *Països Catalans*, a claimed political unit defined by the use of the Catalan language which includes Catalonia, Valencia, the Balearic Islands and Andorra.
76 That is the title of the President of the Basque Government; a Basque term that means ‘the person who has pre-eminence’.
independence for the Basque Country. Notable among these are Batasuna and Arrear (formerly, Herri Batasuna and Euskal Herritarrok) which expounded radical nationalist positions and socialist ideas (Letamendia, 2006). They are known as izquierda abertzale (nationalist Left), and have historically claimed to defend the ideals of the Basque Country, sometimes with positions close to the political violence of ETA.\(^77\)

ETA constituted a highly disruptive factor for Basque politics. Its actions and terrorist attacks found expression in radical left-wing political parties defending an exclusivist brand of nationalism and outright denying legitimacy to the existing constitutional order of the polity.\(^78\)

The party system of Galicia was characterised by a strong presence and hegemony of conservative Spanish forces, first as People’s Alliance (AP) and then as PPG (People’s Party of Galicia). Manuel Fraga Iribarne exerted a decisive leadership in the region, being the President of the Xunta (Galician regional government) from 1989 to 2005.\(^79\) The PPG defended conservative, right-wing ideas combined with a strong sense of regionalism. However, the interests of Galicia were defined along a notion of ‘region’ in the context of the Spanish nation and rejecting any explicit goal of independence. ‘Autonomism’ was the ultimate position to defend, which implied a rejection of ‘nationalism’ for Galicia. The nationalist forces in Galicia were historically fragmented, presenting divergent ideas about how to best realise Galician interests and claims: from a moderate nationalist discourse to radical positions denouncing the current autonomous structure of government (Keating, 2006). As a result of this atomisation and the predominance of Spanish political parties in the region supporting conservative views, Galician nationalism did not enjoy a significant electoral support (Maiz, 2001: 299-301).

Clearly, the nationalist political parties in their respective Autonomous Communities exhibited considerable influence if not domination, with the notable exception of Galicia. However, their

\(^77\) These organisations were banned in recent years from electoral processes, given their contacts and implicit/explicit support to political violence in general and the actions of ETA in particular. On this, see below.

\(^78\) For an assessment of the lethality of ETA throughout the years, see Sanchez Cuenca (2009), Esser and Bridges (2011),

\(^79\) In the elections of that year the PPG lost the government only to gain it back four years later, with a change in leadership: Fraga was replaced as President of the Xunta by Núñez Feijoo.
participation at the central Spanish government, as shown above, was limited and dictated more by partisan interests than genuine compromise and involvement in the future of the polity as a whole.

It seems to me that the combined effect of institutionalisation and legitimisation of the Estado de las Autonomías, and the significant percentage of people who identify themselves as having a dual identity represent a limit to the aspirations and demands of nationalist parties. Thus, they are seen as legitimate and valued political actors, but are not necessarily given the power to change the definition and organisation of Spain as a polity.

3.3 – Multinationality and political recognition: a preliminary assessment

The political evolution of Spain since the establishment of the 1978 Constitution has been dramatic. Not only did the country leave behind a long and terrible dictatorship but also managed to create a robust and well functioning democratic order. However, that outcome was neither smooth nor without limitations.

The 1978 Constitution is usually described as a balancing act between the unity of the Spanish people and the conflicting demands and aspirations put forward by its ‘nationalities’, namely the Basque Country, Galicia, and Catalonia. In light of this, I believe that the Spanish Constitution is a well-crafted solution born out of mutual compromises, dictated by the historical circumstances. That is, the constitutional text is far from being perfect but it did provide the springboard for Spain to move forward in terms of multinationality and political recognition. Taking into consideration the historical context and the surrounding circumstances that led to the establishment of the 1978 Constitution, I believe the text represented a major improvement. Granted, the position and status of the three historical communities was not solved but the Constitution did provide the basic mechanisms for a progressive accommodation
of national demands through both the acknowledgement of Spain’s cultural diversity and the
enshrinement of the principle of political autonomy.

Clearly, the movement from a dictatorship to a democracy is a triumph in itself. But, in the case
of Spain, that begs the question: what does it mean to be democratic in a multinational
country, divided by conflicting state- and nation-building projects? For starters, the Constitution
enshrined the principle of political autonomy (and not mere decentralisation) and provided the
constitutional guarantees for its exercise. Secondly, it openly recognised the multilingual
character of the polity and created the possibility of appropriate legal mechanisms of
promotion and protection of that linguistic diversity. Thirdly, it established a Constitutional
Court, guarantor and protector of the values of the constitution.

I do not want by any means to imply that the Constitution has no faults. As a matter of fact,
each of the previous points can be vigorously contested. For example, the principle of political
autonomy is ill-defined in the constitutional text and had to be spelled out by the CC in a
number of rulings. These in turn provoked lively debates about the soundness and firmness of
the arguments put forward by the CC. The multilingual reality of Spain as defined by the
constitution can equally be criticised. Galego, Catalan and Euskera were granted co-official
status in their respective territories, but that is tied to the status of Castilian as the official
language of the whole polity. The promotion and protection of regional languages has therefore
not been free of controversies and contested decisions. Finally, the CC itself has been strongly
criticised because of some of its rulings and, more recently, because of the judicialisation of
politics and the partisan influence of Spanish-wide political parties in the judges’ appointment
process.

What all this shows is that the accommodation of nationalist demands in a multinational polity
is far from being straight-forward and free of contestation. It is true that the constitutional text
falls short of an ideal solution for the existing conflicting views and demands. But it is also true
that the 1978 Spanish Constitution was a remarkable achievement if we take into consideration
the historical evolution of the country. I believe that this makes apparent two interrelated
factors. First, that any attempt at accommodating multinationality and enshrining some
principle of political recognition must necessarily be assessed in light of the historical and political context. Its effectiveness and long-term effects must be measured not by some abstract and perfect ideal but rather, by a contextually-sensitive analysis of the conditions under which these developments took place. Second, these attempts must be thought of as processes, as a result of a political dynamic that is, by definition, open to contestation and challenges. Put it slightly different, the accommodation of multinationality and establishment of political recognition are not an overnight decision. They are the product of time, and reflect conflicting views and arguments.

In the next chapter I further develop these ideas paying special attention to two important challenges to the existing order of the Spanish political system, namely the attempts by both Catalonia and the Basque Country to reform their Statutes of Autonomy. I also discuss other attempts at re-defining the political organisation of Spain and the ways in which the polity can adopt a multinational framework around the principle of political recognition. In this case, I will focus on the failed New Statute of Galicia and the possibilities of constitutional reform.
Chapter 4
Possibilities of Reform of the Spanish Political System

So far I have been describing and analysing political processes and policy areas in relation to the establishment, realisation and development of the Estado de las Autonomías. In this chapter I will concentrate on recent attempts to redefine the status of the Basque Country and Catalonia in Spain, and their relations with the rest of the country. I will center the discussion on the proposed new Statutes of Autonomy of both these communities, and the reactions they provoked.

In the first case, the draft of the new Statute of Autonomy for the Basque Country was very controversial, for many reasons. First, it proposed an association status of the Community with the Spanish state, and at the same time claimed original sovereignty. This obviously went against the interpretation of the Constitution and its basic principles, according to which even though ‘regions and nationalities’ had the right to autonomy, sovereignty rested exclusively on the Spanish people as one and indissoluble political actor (Articles 1 and 2). Second, Ibarretxe (the then President of the Community) acted aggressively throughout the process of drafting the Statute and the subsequent approval of it in the Basque Parliament; he even threatened to hold a referendum (defined unconstitutional by both the central government and the Constitutional Court) if their claims were not duly recognised. In the end, the central government rejected the proposed Statute without even reading it in Parliament and the Basque government had to tone down their discourse. This process was very important since it showed a clear attempt from the Basque Country to radically transform both its status in the country and its relation to the Spanish state. Moreover, I believe it constitutes a crucial test to analyse the reasons presented by all relevant actors (either supporting or rejecting the Statute) since they portray the terms of the discussion and the limits to accommodate claims in a multinational democracy (or, as the case may be, the reasons for rejecting the granting of recognition to such claims).
In the second case, the new Statute of Catalonia followed a very different path. Although in its rhetoric the Catalan government was not as aggressive as the Basque one, the contents of the Statute also represented an attempt to redefine the role and status of Catalonia vis-à-vis Spain. One main factor that explains this difference was the fact that the Catalans in general did not supported arguments in favour of original sovereignty for their region (the absence of political violence in Catalonia also helps explain the differences between these two processes). However, the Statute did advance Catalonia’s interests especially in the realm of competences. This is an important factor since it can be seen as an indirect way of acquiring constitutional protection for new competences and powers via not a reform of the Constitution, but a regional Statute. Moreover, another controversy spurred by the proposed new Statute of Catalonia was the statement according to which Catalonia is ‘nation’. One other aspect that was drastically different from the experience in the Basque Country had to do with party politics. The Catalan government was needed by the Spanish socialist party (PSOE) in order to form a majority and govern the country in coalition. On top of that, the Socialist party –both its central and its Catalan divisions- showed a strong affinity regarding these issues which secured the initial support of the central government to the whole project.

However, the Statute was called into question, especially by the Conservative Party, and was under revision by the Constitutional Court for a number of years. With its 2010 historic ruling, the CC attempted to identify a middle-ground between Catalan maximalist positions and Spanish centralist reactions. I believe that the risk here has been to adopt a half-way solution that kept everyone equally dissatisfied with the whole process. The precise meaning and long-term consequences of this historic ruling remain to be seen. However, the process of reform of the Catalan Statute has clearly shown the tensions and the conflicting perspectives that relevant political actors had about basic concepts like ‘nation’ and ‘state’ and the ways in which these should be interpreted in a country like Spain.

In this chapter I also discuss the failed attempt at reforming the Galician Statute, as part of a widespread initiative of the Spanish government (Socialist) to endorse these processes of reform. The relatively weak position of nationalist Galician political parties and the lack of
consensus to define the terms of a proposed new text for the regional Statute had been the main reasons for the unsuccessful attempt at arriving at a new status and position of Galicia within Spain. Finally, the chapter concludes with an analysis of the proposed reform of the Constitution, based on the Report of the Council of the State. The Report weighted the possibility of reforming the Constitution in order to provide a legal and institutional ‘closure’ to the recurrent waves of claims coming especially from those regions with a nationalist identity. I believe it is quite interesting to highlight the specific reasons why this Report and the eventual reform of the Constitution were not successful. This way, I intend to identify the limits to recognise and accommodate multinationality in Spain.

4.1 - Reform of the Statute of the Basque Country

The Ibarretxe Plan: the radicalisation of Basque nationalism

The Ibarretxe Plan constituted a serious political challenge to the Estado de las Autonomías. In this section I present the antecedents, terms of the discussion and overall result surrounding the proposed new Statute of the Basque Country. I believe the Plan represented an especially important process for my analysis of political recognition and multinationality in Spain since it precisely pushed for a redefinition of Spain (and the Basque Country) along these lines. I highlight the reasons why it was ultimately a failure as a way to identify the basic conditions under which the processes of ‘disclosure and acknowledgement’ should take place. By connecting those conditions to the failure of the Ibarretxe Plan I expect to better understand both the empirical and normative considerations at play when it comes to not only advancing claims for recognition, but also granting those claims such status.
The process leading up to the Basque Parliament passing the “Proposal of Political Statute for the Basque Country” in December 2004 actually started three years earlier. During those years Basque nationalist forces renovated their discourse regarding the position of the Basque Country in relation to the rest of Spain and advanced renewed claims for the formal recognition of a special status for that community.

Public debate in the Basque Country was dominated by ideas about the right to self-determination and the possibility of the Basque people deciding their own future. These ideas in turn reflected a doctrinal and political reading of the Constitution according to which the Basque Country had historically constituted a people (i.e., demos) in virtue of its tradition and previous pacts with the Spanish Crown. The 1978 Constitution recognised in its First Additional Provision the following:

“The Constitution protects and respects the historic rights of the territories with traditional charters (fueros).

The general updating of historic rights shall be carried out, where appropriate, within the framework of the Constitution and of the Statutes of Autonomy” (Spanish Constitution)

The spirit of this provision was generally understood to be a concession to Basque nationalist demands within the ample consensus sought during the transition to democracy and the drafting of the constitution. The final wording of the Provision was trying to strike a difficult balance between two opposing realities. On the one hand, the Constitution protects and respects traditional prerogatives of these territories but, on the other, the ways in which these rights can be acknowledged and exercised must be in accordance to the constitutional bloc.\(^{80}\)

---

\(^{80}\) As defined by the CC, which includes the Constitution itself and (in this case) the Statute of Autonomy of the Basque Country.
That is, logically, the historic rights that the Basque Country could claim could not contradict the constitution.

However, the recognition of these historic rights by the constitution was interpreted among Basque nationalists under a different light. Indeed, the Basque Statute of Autonomy made an odd reservation:

“The acceptance of the system of autonomy established in this Statute does not imply that the Basque People waive the rights that as such may have accrued to them in virtue of their history and which may be updated in accordance with the stipulations of the legal system”
(Additional Provision, Statute of the Basque Country Autonomous Community)

The ambiguity laid in the reservation of possible rights that the Basque People could have enjoyed in the past and the ways in which such rights could find expression in the current democratic legal and political order of Spain. Moreover, the wording of the text could lend itself to a reading favourable to independence insofar as the subject of those rights was simply the ‘Basque People’. These legal specifications gave way to a nationalist discourse that understood the granting of political autonomy not as a stable working solution to the distribution of territorial power and identity politics in Spain, but as a mere instrument through which the original right to sovereignty of the Basques could be achieved.

Along these lines, Herrero de Miñón\(^81\) defended a historicist conception of Law tying the notion of a series of ‘historic rights’ to the Basque Country as a nation, a collective bearer of political rights, which included the original and inalienable right to self-determination (in Laporta, 2006: 33-35). This possibility of claiming self-determination inspired some sectors of Basque nationalism, chronically dissatisfied with the level of self-government that the principle of political autonomy implies.

\(^81\) An influential constitutionalist who participated in the drafting of the constitution itself, as one of the seven-member panel usually considered the “fathers of the Constitution”.

118
In this context, the proposal to reform the Statute of the Basque Country was presented not only as a way to bring up to date the meaning and content of autonomy as reflected in the Guernica Statute (1979) but also as the appropriate means through which the Basque Autonomous Community would enjoy a special status. That is, it would be formally recognised as a distinct community, different and separate from the other regions that compose Spain. In more general terms, the discussion about the proposal of the text for the new Basque Statute at the regional Parliament during 2003-2004 subscribed to the notion of abandoning the homogenising tendencies of the system (the strategy of café para todos) and fully acknowledging that the Basque Country has a right to self-determination (Muro, 2009: 455).

The PNV decision to propose and negotiate a new Statute of Autonomy revealed its interest in attracting the support of the more radical sectors of Basque nationalism (especially some forces included in the izquierda abertzale) and presenting itself as the genuine interpreter of the interests of the Basque people. The PNV position even before this process had gradually moved from its usually moderate nationalist stance to a much more radical discourse, blurring the partisan division of political representation of Basque interests. As a consequence, there had been a double development: first, pro-independence positions gained substantial currency in public debates in the Basque Country (to the detriment of more autonomist claims); second, there was a hardening of claims and demands from all Basque political forces around independence, presenting lately a more united front (Uriarte, 2002: 266-267). On the other side of the emerging debate about the new Statute of Autonomy, there was the opposition of the Spanish political parties (both Socialists and Conservatives) and the extreme nationalist Basque party Sozialista Abertzlaeak (Socialist Patriots, SA).

---

82 Uriarte defended the idea that this radicalisation of the discourse and political positions of Basque nationalist parties was a risky move insofar as it mainly “responds to the attitudes of nationalist political elites that have made their confrontation to the Spanish state a rather effective electoral asset and, also, an instrument for the perpetuation and permanence of the immense social and political power that they have secured in their territorial circumscriptions” (2002: 267). This interpretation would point to the activation of right-claims based on the personal or partisan interests of politicians, and not necessarily the actual demands of the people.

83 The first group opposition came from constitutional considerations and a general understanding that the new Statute made unreasonable excessive demands; the second group opposition came from a
Taken as a whole, the Basque political system and, to a large degree, Basque society itself faced the risk of being neatly divided between two distinct camps. On the one hand, there were the vociferous positions of both moderate and radical\textsuperscript{84} political forces, moving away from the possibility of building consensus around the most salient political issues and openly embracing an agenda of independence where no compromise was possible (Llera, 2004: 32). On the other, there were political forces that presented different ideas to accommodate the distinctiveness of the Basque Country but that, insofar as they do not define themselves as nationalists, are portrayed as instrumental to Spanish interests or, worse, as dishonest representatives of the real demands of the Basque people.

In this polarising context the President of the Basque Country (\textit{lehendakari}) Juan José Ibarretxe presented his proposal of reform of the Statute of the Basque Country, hoping to gain enough support to get it approved at the regional Parliament\textsuperscript{85} and forcing at the same time a broad discussion about “...sovereignty and self-determination; nationality and identity and borders and boundaries” (Keating and Bray, 2006: 348). The requisites to pass a reform of the Statute are severe: first, it must gather an absolute majority in the regional Parliament (38 out of the 75 possible votes); second, the proposal must be sent to the Spanish Parliament which decides whether to accept it and approve it through an organic law (which, given the special legal status of such laws, also requires an absolute majority); third, the Basque population must approve the reform via a referendum to that effect (Statute of Guernica, Article 46).

Two distinctive blocks were formed during the process of voting for the reform of the statute of autonomy at the regional Parliament. The first included the coalition Basque Government of PNV-EA and IU, which was just short of the absolute majority required (with 36 votes in total). The second was integrated by the opposition of Basque formations representative of the state-

\textsuperscript{84} Some of these parties were suspected to have links to the terrorist organisation ETA or, at least, shared at the discursive and rhetorical level its agenda of political violence. This opened up a protracted legal controversy, following the Law of Political Parties of 2002, about the legality of part of the \textit{izquierda abertzale}, which ended up in the banning and dissolution of a number of political associations.

\textsuperscript{85} The Basque Parliament discussed the proposals of reform from October 2003 to December 2004.
wide Spanish political parties (the socialists PSE-EE and the conservatives PP) together with Union Alavesa (UA). The stalemate was broken by the radical nationalist Basque party Sozialista Abertzlaeak which modified its original position and brought the support for the reform of the statute to 39.

Once the Plan was approved by the Basque Parliament, it was sent to the Spanish Parliament which in February 2005 rejected it without even discussing the particulars of the proposal. That decision was based on the open challenge of many provisions of the proposal against the constitutional order. The voting found a strong united opposition to the Plan among PSOE and PP but also Izquierda Unida, Canarian Coalition and the Chunta Aragonesista (313 votes in total). The Plan received the positive votes of not only the Basque political parties with presence at the Spanish Parliament (PNV and Eusko Alkartasuna) but also the Catalan ERC, the Navarrese NB and the Galician BNG (with a total of 29 votes). This is significant insofar as these political parties represented their own nationalist interest in their respective regions.

The final stage for the approval of amendments to the statute of autonomy called for a referendum. This was clearly not necessary after the Spanish Parliament rejected the proposal. However, Ibarretxe repeatedly endorsed the idea of holding a popular consultation to the Basque people about this process. According to the lehendakari there should be “an explicit recognition of the right of the Basque people to decide freely and democratically their own future”. This sparked an intense political and legal conflict both between Basque political forces (nationalist and non-nationalist) and between the Basque region and the rest of Spain.  

---

86 A political party formed in the Basque province of Alava, which opposes the nationalist positions of the PNV and izquierda abertzale, defending instead the historic rights of Alava and the links of that province to Castile.

87 For an analysis of the content and significance of this debate and the ways in which it played out politically and judicially, see below.
The Ibarretxe Plan was an attempt at redefining the status of the Basque Country and providing an adequate answer to Basque claims. Therefore, I believe it is worth discussing the actual contents of the proposed new Statute, highlighting the main elements it contained and identifying the arguments put forward as part of the public debate in support of it. By doing so, I intend to show the reasons why in this particular instance it was not possible to grant recognition to the right claims being advanced by the Basques.

Basque nationalistic discourse and projects and those of the major Spanish political parties presented quite opposing positions in relation to the definition of Spain, its composition in different units and the level of power and competences that those units should enjoy. Both PSOE and PP, despite their ideological and political differences, were truly united around a ‘constitutional consensus’ that the Proposal attempted to radically change. Particularly sensitive were two related arguments: the possibility of an ‘original sovereignty’ of the Basques; and the proposals of confederal arrangements of some sort that would actualise the principle of shared or original sovereignty.

The Ibarretxe Plan was an ambitious idea according to which the Basque Autonomous Community would negotiate its position and status in Spain with the Spanish government. It constituted a radical departure from the existing constitutional order, incorporating novel ideas around sovereignty, membership and political participation. The following were the main elements of the Plan:

a) Recognition of the historic rights as a legal source for the current rights and powers of the Basque Community and people

b) Unity of all Basque territories: the three Basque provinces, plus Navarre and the three French-Basque provinces (what is called “Euskadi” reflecting the 3+1+3 formula)
c) Self-determination expressed in the right of the Basque People to freely and democratically decide its own future

d) Status of “free association” with Spain. This is a corollary of the principle of self-determination and sovereignty with which the Basque People are invested

e) Bilateral relations between the Euskadi Community and Spain, regulated by the principles of mutual institutional loyalty and cooperation

f) Citizenship is established based on residency, in the framework of a multinational Spanish state. The requisites, rights and duties associated to citizenship will make Basque and Spanish citizenship compatible

g) Constitutional protection and regulation of the Euskadi Community in its relations with Spain. To that effect, a six-member Euskadi-Spanish State Conflict Court is established (three from the current Constitutional Court, three proposed by the Euskadi Parliament)

h) Euskadi judicial power covering the whole legal system of the Community, independently of the eventual jurisdiction of the Spanish Constitutional Court and the European Court of Human Rights

i) Bilingual regime where Euskera and Castilian are the official languages of the Euskadi Community

j) Absolute economic and fiscal autonomy, preserving exclusive powers to the Euskadi Community in terms of regulation of the economy and taxes

k) Representation and voice in foreign affairs, especially the European Union in which the Euskadi Community will enjoy direct participation
Thus, based on the free association status and claiming original sovereignty for the Basque people, the Proposal of Political Statute of the Euskadi Community represented an openly unconstitutional challenge to the existing Spanish legal framework (Fernandez Farreres, 2009: 148-149). The legality and political viability of the Plan was rather weak, given a series of factors. First, the interpretations and positions advanced by Basque nationalist parties (especially the lehendakari Ibarretxe and the PNV) and Spanish political parties (i.e., PSOE and PP) seemed extremely at odds with each other and no easy compromise appeared to be possible. Second, the approval of the Plan at the regional parliament by a very narrow margin represented the triumph of the PNV position but did not enjoy widespread support, especially among all non-nationalistic Basque political forces. Third, the principled and non-negotiable claim around the principle of the Basque people to self-determination certainly did not help to generate the appropriate climate for mutual understanding. Moreover, it ended up associating the Plan itself with a more or less overt and unilateral break from the constitutional order of the polity (Muro, 2009: 458).

Looking at the principles and concrete proposals that inspire the Plan (especially the Preamble and Articles 9-11), it seemed clear that the initiative advanced a civic, not ethnic, definition of citizenship and nationality and a construction of a democratic order in which the freedom and liberties of the citizens is paramount (Jimenez Sanchez, 2006: 542). However, it did so by associating the composition of the demos and the exercise of its sovereignty with the Basque people, openly confronting the existing understanding of the foundation of the democratic legal order of the polity around the Spanish demos and the free and democratic will of the Spanish people as enshrined in the Constitution.

The Plan can be seen as a “new way between the old alternatives of restricted autonomous self-government within a larger nation state and full-blown independence” (Keating and Bray, 2006: 361). Further, it can be argued that the proposal is grounded on the same legal and political values as the constitution itself, namely democracy and rule of law (Jimenez Sanchez, 2006: 543). However, the initiative was doomed from the very beginning for a number of reasons. First, the highly personalised support of the lehendakari Ibarretxe and the more
institutionalised support of the PNV coexisted with ambiguous positions from other Basque nationalist parties and outright opposition from all non-nationalist parties. Taken as a whole, the Plan represented an articulate and challenging vision of Basque society and its political future, but at the same it was seen as a vision that pertained exclusively to Basque nationalists and it neither reached out to other sectors of Basque society, nor it engaged with the rest of Spain (Perez Calvo, 2004). Second, the Proposal was openly and deliberatively unconstitutional, ignoring or challenging a number of values and provisions of the constitutional text\footnote{Among the sections of the Spanish Constitution that the Plan ignored are worth signalling the following ones: 145 (which prohibits the federation between Autonomous Communities), and 155 (which reserves to the central government to power to take measures against an Autonomous Community that does not follow the constitutional order). Moreover, the Plan called for the establishment of a Basque citizenship and nationality, the creation of a Special Constitutional Panel for disputes between Euskadi and Spain, among others. All of these provisions, again, run contrary to the constitutional order of the polity. All in all, as Fernandez Farreres put it “[t]he deliberate unconstitutionality of the Proposal was more than evident, articulating, in this way, a radical alternative to the current constitutional framework” (2009: 149).} in order to realise the self-proclaimed principles of self-determination and democratic will of the Basque people. As such, it was seen as an exclusivist initiative that was being pushed unilaterally and presented almost as a \textit{fait accompli}. Third, related to this last point, the Plan was formulated and debated from dogmatic and principled positions, closing the door to any meaningful compromise and negotiations among all relevant actors, both at the Basque and Spanish levels.

It is the case that the Constitution does not preclude the discussion of initiatives that in principle run against some of the provisions of the constitutional text itself. However, if it comes to such initiatives, it is evident that the formulation and debate of these must be in line with the procedure contemplated by the Constitution in order to open up the possibility of its amendment. As Solozabal asserts: “[t]he constitutional order... does not impede pursuing any and all objectives, as if it were limits to public debate... What it is indispensable is the adherence to the procedures established by the Constitution itself for its reform” (2004: 228-229). Therefore, according to Solozabal, if such adherence were not forthcoming then the proposed change would be in contradiction to the Constitution and, as a result, impossible to defend or justify within the existing constitutional order of the polity.
The whole process around the ‘Ibarretxe Plan’ provoked a dramatic series of events in the Basque Country and in Spain as a whole. First, there was an intense and highly politicised debate between the Basque government and the Spanish government in which the former expressed a desire to let the Basques speak for themselves in a democratic manner, whereas the latter appealed to the Constitutional order and the lack of legitimacy of the Basques to take such a unilateral decision. Important to this point has been the action of the Spanish Constitutional Court, brought into the political dispute by a series of challenges from several of the political actors involved in this process.

Even from the very beginning, the Plan was the target of legal challenges. As early as 2003 the Spanish government (conservatives, PP) decided to bring before the Constitutional Court the Proposal being debated then at the Basque Parliament on the grounds that it was unconstitutional and represented an attempt at indirectly reforming the Constitution. The overall strategy of the government was to impede the discussion of the Proposal at the regional parliament, arguing that given the nature of the initiative being debated, the Basque Parliament should have proposed instead a constitutional amendment (Acierno y Baquero, 2005: 689). However, the CC made it clear that it cannot rule on ongoing debates of regional parliaments, since that would deny the power of those legislatures to initiate and discuss amendments to their own statutes. Moreover, accepting the rationale of the Spanish government would fail to “recognise the logic of the parliamentary democratic system” (quoted in Acierno y Baquero, 2005: 691). Therefore, the CC refused to act on those early stages of the process, reserving its status as interpreter of the Constitution to possible later challenges, once the proposal has been passed (if such was the case) both at the regional and national levels and also ratified in a referendum.

---

89 This is providing that the process itself is respectful of the procedural rules of the regional parliament.
90 The CC also refused to comment on the contents of the Ibarretxe Plan, for the Court considered that irrelevant to the issue at hand.
Once the already approved Plan by the Basque Parliament was rejected by the General Courts in Madrid, new legal controversies ensued. At this point, the conflict soon enough changed from a political dispute to a matter of judicial interpretation, given the firm decision of Ibarretxe to hold a referendum and ask the Basque population their opinion of the Plan (independently of the previous decision taken by the General Courts). To this end, the Basque Parliament passed a law on July 28, 2008 calling for such a referendum. Both the legitimacy and legality of the process was called into question by the two central Spanish political parties (PSOE and PP) who appealed that law from the Basque Parliament before the Spanish Constitutional Court. A decision was made on 11 September 2008, whereby the CC declared the Basque Consultation Law unconstitutional given Article 149.1.32 of the Spanish Constitution (BOE, 2008). According to the CC, it was an exclusive competence of the Spanish State to authorise a popular consultation in the form of a referendum. Moreover, the law in question also assumed that the Basques were the titular of a sovereign power, which, constitutionally, can only be exercised by the national state (BOE, 2008).

Although Ibarretxe accepted the CC ruling, he called it “an infringement of freedom of thought and expression, and an infringement of the right of political participation of the Basques” (El Pais, September 12, 2008). Furthermore, Ibarretxe and his party (PNV) launched a campaign to appeal the CC decision before the European Court of Human Rights. During the campaign 63.128 signatures were collected, and a series of formal appeals were presented before the ECHR by the PNV and other nationalist Basque parties (like ERALAR and EA), since they considered themselves to be “victims of a violation of a fundamental right” (El Pais, February 10, 2009). They based their appeals on Article 10 of the European Convention of Human Rights, which protects freedom of expression (in this case, according to the claimants, that freedom should be extended to freedom of opinion).

In February 2010, the ECHR has declared that the CC ruling has not affected any fundamental rights, as the claimants sustained (ECHR 2009). Therefore, the ECHR ruled that “the appeal is incompatible -given its subject matter- with the dispositions of the European Convention of
Human Rights” (Press Release ECHR 2009). The same decision was reached regarding the other appeals from ERALAR and EA. (Press Release ECHR 2009). As it was the case with the CC, Ibarretxe and other Basque political organisations expressed their dissatisfaction with these rulings even when they committed themselves to respecting them. I believe this is an important moment in the development of the disputes between the Basque Country and the rest of Spain. On the one hand, those Basque political parties and leaders supporting their right to advance their claims in this manner felt frustrated by their failure to get those rights properly recognised. On the other hand, even though the end result was the opposite of what they intended, the constitutional and legal order of Spain was deemed as worthy of respect. Overall, even in the face of a failed proposal that, according to their supporters, rightly stated and defended their claims, Basque political parties and leaders accepted the conditions and end result of the process.

In a parallel development, both the Supreme Court and the Constitutional Court had already been active in the Basque Country applying and confirming the extension of the Law of Political Parties (2002), used during those years to effectively ban a big portion of the izquierda abertzale (i.e., radical left-wing nationalist political parties) once their links to the terrorist organisation ETA were proved. This was seen as a response from the Spanish state to the situation of political violence, especially in the Basque Country. As I show below, this is also controversial, since the attempts at curtailing political activism of leaders with proven links to the terrorist organisation ETA could also be interpreted as a way to silence and effectively prohibit the political participation of the radical sector of Basque nationalism.

In June 2002, the General Courts passed a new law regarding political parties, with especial consideration to the grounds on which these organisations can be considered illegal and therefore must be banned from political activity (and obviously forbid them to run for office). The self-declared main objective of the law was to “establish a judicial procedure for the illegalisation of a political party given its concrete and effective political backing of violence or terrorism” (Organic Law of Political Parties, 2002). More generally, the purpose of the law was
to clearly define the difference between political parties and other organisations that, no matter what their ideas and programmes, rigorously recognised and obeyed the democratic methods and principles, from political parties and other organisations that sustained their political activities in connivance of violence, terror, discrimination, exclusion and violation of human rights (Organic Law of Political Parties).  

In line with the new Organic Law of Political Parties (OLPP), more than 200 candidacies associated to the political parties Herri Batasuna (HB), Euskal Herritarrok (EH) and Batasuna were banned from participating in the electoral process of that year (El Mundo, 4 July, 2002). All three political parties were accused of being directly and systematically linked to the terrorist organisation ETA, and pursuing the ultimate goal of destabilising democratic institutions and supporting terrorism (CC Sentence, 2003: 4-9). Batasuna on its part (both HB and EH did not take part on the proceedings) claimed that the OLPP restricted fundamental rights recognised by the Constitution, such as freedom of association and political participation. Moreover, in line with a previous appeal about the constitutionality of the OLPP promoted by the Basque government in 2003, Batasuna also called into question the OLPP itself.

The Supreme Court found that all three parties engaged in a behaviour (not an ideology) that aimed at “deteriorating and destroying the [current] regime of freedoms...[and] making impossible or eliminating the democratic system”, in line with the prohibition set up in the

---

91 Moreover, the Law made an important distinction between the prohibition of ideas or doctrines that are linked to violence and terrorism (i.e., outside of democratic principles and practices) and the guarantee of freedom of expression and association implicit in different political views and ideals. In other words, the Law did not ‘freeze’ the constitutional order but simply put limits to the form and method of engaging in politics (Organic Law of Political Parties, Article 9). Professor Perez Royo stressed the same point in his article “The End of the Road” (El Pais, July 04, 2009). This is related to the idea of “militant democracy” that the Spanish constitutional order does not subscribe to.

92 The legal action against these parties was prompted by the Spanish government itself, through the Ministry of Justice and the General Attorney of the State, at a request of the General Courts (and as established in Article 11 of the OLPP itself).

93 The isolated expression in support of violence or terrorism is not enough to declare a political party illegal; a position adopted by both the Spanish Constitutional Court and the European Court of Human Rights. Rather, it is needed a “conscious division of labour between terrorism and political action”, or a “grave and reiterated” pattern of behaviour (Tribunal Supremo [Supreme Court Sentence], 2003: 31, 70).
OLPP, Article 9 (Tribunal Supremo, 2003: 69). Moreover, all three parties were also found to “foment, propitiate or legitimise violence” (Tribunal Supremo, 2003: 69). Furthermore, the ST stressed the intention of these political parties “[t]o complement and support politically the actions of terrorist organisations with a view to achieving their goals of subverting the constitutional order or gravely alter public peace” (Tribunal Supremo, 2003: 72). This is precisely a main case or justification for the illegalisation of a political party according to the OLPP, in its Article 9.

As with the previous case, these political organisations run out of options at the national level and, given that their illegalisation was ratified by the Spanish courts, they decided to appeal to the ECHR. The main argument for them was that the illegalisation supported by the Spanish legal system and courts constituted an infringement of Articles 10 and 11 of the European Convention of Human Rights. That is, that they were the victims of a violation of their right to freedom of association. Moreover, they also considered that their illegalisation could not be deemed as appropriate in a democratic context, or compatible with the principle of proportionality (ECHR Registrar Press Release, 2009).

However, the ECHR found that the dissolution of the applicants’ parties was in line with the law and “pursued a legitimate end within the meaning of Article 11 of the Convention” (ECHR Registrar Press Release, 2009). Further, the measures taken were deemed by the ECHR as proportionate to a “pressing social need... [and that] those links [to the terrorist organisation ETA] could objectively be considered as a threat to democracy” (ECHR Registrar Press Release, 2009). All in all, the ECHR strongly affirmed that the illegalisation of these political parties was an imperative of a democratic society insofar as their links to violence and terrorism were proved during the proceedings before the national courts.

As a whole, the illegalisation of these political parties and the subsequent legal rulings provoked a debate among left-wing Basque political organisations, traditionally associated with the same political space of ETA. The terms of this debate centred on the possibility of rejecting explicitly both violence as a political method and the actions of ETA as an illegal (terrorist) organisation. The position held by the radical Basque political parties tended to be a rejection
of political violence in a democratic society; however, an outright denunciation of ETA (and the associated political goals pursued by it) was not publicly endorsed by organisations like Batasuna.94

Moreover, the major nationalist Basque party, PNV, lost the 2009 regional elections and for the first time in democratic Spain a non-nationalist coalition of socialists and conservatives (PSE-EE and PP) was in charge of the regional government. In this context, the PNV subscribed to the idea that the OLPP’s main purpose was to ban those left-wing Basque political parties, enabling an alliance between PSE-EE and PP to secure the government in their hands. PNV went so far as to express that the new socialist-led regional government was the product of judicial decisions and did not reflect the popular will of the Basque people. This was a serious stance, for it called into question the very legitimacy of the political process and the nature of the constitution and legal system of the country, as interpreted by the courts. Both the failed process of the Ibarretxe Plan and the OLPP were thus presented as ways in which the main Spanish political parties systematically ignored the claims of the Basque, and denied the possibility of recognising their distinctiveness and status within Spain. For their part, both PSOE and PP argue (despite their differences) that the Ibarretxe Plan was not successful simply because it pursued an indirect reform of the Constitution, which clearly cannot be decided unilaterally by the Basque Parliament; and that OLPP was an adequate response from the Spanish state to address the issue of ETA and political violence in the Basque Country.

I believe that these disputes seem to be better addressed through political negotiations and pacts between the main political forces, in a context of a publicly sustained debate with active participation of the citizenry. Neither in the case of the Ibarretxe Plan nor in the case of the illegalisation of some Basque political parties were such deliberation and negotiation met. The alternative was the judicialisation of politics, through the direct intervention of Courts ruling on highly sensitive political disputes. From a democratic point of view, this was far from ideal, but

94 The debate has repeated itself recently when these political forces created a new political party called SORTU. Once again, it was brought before the Supreme Court who ruled against the organisation in an unprecedented split vote.
perhaps also inevitable once political negotiations and compromises were ruled out as a possibility.

Assessing the Ibarretxe Plan

The overall process of the proposed reform of the Basque statute of autonomy triggered a series of interesting challenges to the definition of the political order of Spain. Apart from the failure of the initiative given its overt unconstitutional provisions, the Plan was used as a means through which different political actors and forces could express their views and engage in heated discussions about fundamental issues. These included the status of the Basque Country within Spain, the alternatives to accommodate nationalist claims in a democratic manner, and the limits of innovation in the Estado de las Autonomías.

In order to better understand the different positions held by all relevant political actors and the ways in which these were presented and defended in the ongoing public debate, in this section I incorporate into the discussion the following criteria: a) nationalist and non-nationalist positions; b) inter-party politics; c) social support. By discussing these elements in some detail, I intend to provide an assessment of the process of the Ibarretxe Plan and the potential it had (independent of its end result) for the accommodation of multinationality in a democratic manner.

Looking at nationalist and non-nationalist positions, the political parties involved displayed a series of attitudes and discourses that range from maximalist or dogmatic positions to more pragmatist or realistic ones. And this took place both among Basque political parties, and Spanish political parties. To put it slightly different, they could choose to frame the discussion along constitutional lines or they could choose to frame discussion as open to different interpretation of the existing legal order. The difference between one position and the other would be in how to deal with Basque right claims. In the first case, these claims would be
thought of as a radical challenge to the constitutional order which in turn would call for a series of significant changes of the political order of the country. In the second case, these claims would be understood as a legitimate source of conflict that should be accommodated within the flexible model of political autonomy that the constitution made possible. From a multinational perspective, I believe this second option would be more amenable to the accommodation of nationalist claims, since it would acknowledge the possibility of opposing views and accept negotiation and compromise as part and parcel of politics.

All Basque political parties adopted clear positions regarding the Plan, both in the public deliberation leading up to the voting on it at the regional Parliament and the actual decision when casting the votes. The PNV defended the notion that the Plan was a unique opportunity to ‘normalise’ politics in the Basque Country and advance Basque interests in general. At the same time, PNV used the Plan to gather support among Basque nationalists in detriment of other, more radical, forces. The Basque Socialists (EE) dismissed the Plan as they considered it an exclusivist proposal, almost an internal document of a Basque nationalist party. EE also refused to actively participate in the deliberation of the Plan at the regional Parliament, highlighting its unconstitutional character. Interestingly enough, EE did react by presenting their own ideas about possible alternatives to address Basque interests and claims in a framework of a ‘plurinational Spain’ and defining the Basque Country as a national community within it

95 ‘Normalise’ in the Basque Country usually means to move away from the scenario in which politics in that region is marked by the presence of political violence and ETA, and depicted as a scenario where basic Basque demands remain unrecognised. By the same token, it represents the idea according to which the Basque Country would finally find satisfaction regarding the series of claims perceived to have been wronged by the Spanish state. Obviously, the use of this word and its precise meaning will change according to the particular nationalist position of the different political forces (from moderate to radical).

96 It is interesting to note that by doing so, the PNV may have gained some currency among Basque nationalist supporters but also forced himself to defend a Plan that was widely seen as a proposal exclusively thought by and for nationalists. This in turn could explain the accusations against the Plan of being exclusivist and trying to impose one position over all others.

97 The socialist government under the leadership of Rodríguez Zapatero (especially in the 2004-2008 period) endorsed the notion of a ‘plural Spain’, an ambiguous idea according to which nationalist claims could be accommodated within the flexible framework established in the 1978 Constitution. This seemingly entailed a pro-federal understanding of Spain; however, the concrete implications of this position remained highly undefined.
For their part, the conservatives (PP) rejected the Plan simply because it was illegal. They saw it as an attempt to secede from Spain and objected to the need of such radical stance arguing that the constitution allows for enough flexibility to address Basque claims within the existing legal order and no reform of the Statute was actually needed. Finally, the radical Basque nationalist party *Sozialista Abertzlaeak* rejected the Plan for the opposite reasons: it did not go far enough and simply perpetuated the situation of political domination that the Basque Country was in, both from the Spanish and French governments. SA would have preferred a Plan openly demanding for the establishment and independence of a new state (Euskadi).

All in all, the discussion in the Basque Country around the Ibarretxe Plan reflected the long standing positions of all relevant political actors. Nationalist forces could not agree on the autonomy/independence divide. Ibarretxe would have liked that his Plan were seen as a clever bridge between these two objectives, but soon enough it became discredited from both sides: radical nationalists accused him of not having gone far enough whereas Basque socialists and conservatives accused him of having gone too far. These latter parties also disputed about the best way to respond to the Plan. EE chose to dismiss the Plan and welcome Basque claims and demands within the existing constitutional order; PP, although agreeing with this line of reasoning, articulated a more critical view according to which the Plan should not have been even discussed at the regional Parliament given its unconstitutional character.

A second element of importance for this analysis was inter-party politics, both at the regional and Spanish-wide levels. The reason why the proposal of reform of the Basque Statute was popularly known as Plan Ibarretxe was due to the fact that it represented a personal initiative of the *lehendakari* with the backing up of the PNV. As shown supra, this meant that from the very beginning the proposal was discussed and seen as an exclusive project of the major Basque nationalist party. In light of this, the reaction of the Basque socialists and conservatives ranged from alternative proposals to further realise the principle of political autonomy from within the current Statute and a denial to engage in a process widely seen as forcing the constitutional
order of the polity. Therefore, the possibility of striking a wide consensus around the proposed amendments was simply not there.

From nationalistic quarters, the attitude of SA was crucial since their votes were needed to reach majority at the regional Parliament. Basque radical nationalists were torn about the Plan: on the one hand, they did not want to obstruct a proposal that would lead to higher levels of autonomy or even independence, and firmly recognise the right of the Basque people to decide their own future. But, on the other hand, they rejected the Plan since they branded it an unacceptable compromise and, more importantly, another failure to realise the genuine Basque interests since it reproduced the order of a Statute determined and controlled by the Spanish State. As a consequence, they facilitated the votes to get the Plan passed at the regional Parliament but denied at the same time the legitimacy that the PNV was looking for.

At the Spanish-wide level, PSOE and PP rejected the Plan for a variety of reasons. These included its potential right of secession of the Basque Country; the overt unconstitutionality of many provisions of the Plan; the support from radical nationalists which was presented as evidence that the terrorist organisation ETA was endorsing the proposal; and the unilateral character of the initiative. This last element was stressed by PSOE which was in favour of reforming the Statutes of Autonomy in a number of regions but rejected both the way it was carried out in the Basque Country and the specific contents of the Plan. For their part, the unconstitutionality of the Plan was the crucial element for the opposition of PP to the initiative. When their attempt to stop the discussion at the regional Parliament was denied by the CC, the PP mobilised public opinion against the Plan, presenting it as an imposition of exclusivist and radical Basque organisations that put into question the very unity of Spain.

When taking into account Basque-Spanish party dynamics, the Plan also failed to create the minimum conditions for deliberation and exchange of ideas. Instead, the discussion around the

---

98 Interestingly, the same proposal that was described as a capitulation of Basque interests by nationalists was considered an unacceptable break away from the existing constitutional order by socialists and conservatives (Basque and Spanish alike). This clearly reflected the underlying objectives and goals of these political parties regarding the nature of the political system and the limits to build a minimum consensus in order to accommodate nationalist demands.
proposed amendments was characterised by mutual accusations and a striking lack of good faith to engage in a genuine dialogue about the alternatives to accommodate Basque claims and demands. Such an outcome was very likely given the combination of two factors: first, the actual contents of the Plan and its overt unconstitutional character; and second, the pre-existing conditions and positions of all relevant political actors, which acquired visibility from the very beginning of the process.

Finally, there was the issue of social support in relation to the Iberretxe Plan. The Plan touched upon a series of important issues of Basques’ self-identification and aspirations. The first of these issues pertained to the divide between nationalist and non-nationalist camps in Basque society, and how they reacted in light of the Plan as an interpretation of what Basque should demand. The second issue expressed the satisfaction or not regarding the Statute of Autonomy and the extent to which it realised Basque demands. A third issue referred to the consensus around and constitutionality of the existing political order and the conditions to change it. Finally, there was the desire for independence vis-a-vis autonomy as the proper way to define the status of the Basque Country.

As for the first, the divide around nationalistic sentiments in the Basque society has been relatively steady with a majority of non-nationalists. At the beginning of the process of the Ibarretxe Plan the non-nationalists represented 57% of the Basques, whereas nationalists stood at 36%. By 2006 the figures showed a decrease of non-nationalists (50%) and an increase (43%) of nationalists. However, by 2008 the percentages (54% and 39% respectively) confirmed the division and majority of non-nationalists (Euskobarometro (2006, 2008)).

Looking at the satisfaction of Basques regarding their Statute of Autonomy, in 2002 there was an overwhelming majority satisfied with it (73%). The figures for 2006 and 2008 reaffirmed this tendency (68% and 75%). Moreover, changes to the Statute are deemed as legitimate insofar as they reflect a broad democratic consensus and a respect for the constitutional order. In 2008 a clear majority supported this position (72%) (Euskobarometro (2006, 2008)).

99 This figure can be further broken down along nationalist and non-nationalist identifications of respondents: for the former group, the percentage was 37%; for the latter, 80%. Even though the
Finally, a desire for independence in 2002 stood at 31%; in 2006 that figure was 37%.\footnote{Another categories included in the surveys were ‘little desire for independence’ and ‘very little desire for independence’ which, if taken together with the previous figures, gave a clear majority in each of these years: 66%, 62% and 61% respectively.} By 2008 the percentage of those favouring independence was of 30%. However, when asked about the form of the state, the Basques has supported ‘autonomy’ over ‘independence’ (2002: 34% and 31%; 2006: 37% and 32%; 2008: 33% and 29%) (Euskobarometro (2006, 2008)).\footnote{There was an anomaly in the wording of this question since it included ‘federalism’ as an alternative between independence and autonomy. If autonomy and federalism were taken together, the independence option, significant in itself, would remain a clear minority.}

More specifically about the Ibarretxe Plan, the Euskobarometro (2008) conducted a series of questions that reflected the social attitudes towards it. When asked about the impact of the Plan, a 49% of Basques affirmed that it brought about instability and division (against 26% who deemed the Plan as a stabilising factor). However, a clear majority (52% versus 26%) was against the decision of the Constitutional Court to forbid the popular consultation proposed by Ibarretxe (Euskobarometro (2006, 2008)).

All in all, the Plan contributed to divide Basque society even further along nationalist and non-nationalist lines. Even though there was a clear sentiment towards independence, this did not necessarily translate into support for the Ibarretxe Plan, nor did it directly adhere to an independent Community of Euskadi. More generally, Basque society clearly presented significant claims and unsatisfied demands, at least for some sectors of it. However, this situation did not meant an automatic support for the contents of the Ibarretxe Plan or the specific ways in which it was presented and debated.

By forcefully endorsing an overtly unconstitutional proposal, Ibarretxe was fully aware that it would not go through. The seemingly contradiction of this strategy laid in the ultimate political objective sought with this course of action. On the one hand, his intention seemed to have been forcing a political and public debate about the situation of the Basque Country, trying to articulate a position according to which a series of demands should be addressed in one way or another, and support for a proposal respectful of the constitutional order among nationalist sympathisers was low, it did indicate that there might be room to arrive at a negotiated solution.
another. At the same time, he did so by presenting his positions in a clearly principled manner, hoping to gather the support of all Basque nationalist quarters, and claiming certain legitimacy as the true defender of Basque interests. On the other hand, this dogmatic stance regarding Basque claims and the possible relations to Spain pushed him to a non-negotiable position since all claims were presented as a matter of principle, if not honour. Therefore, even if the process could lead to a healthy dialogue and an explicit articulation of the concrete problems of the Basque Country (something in itself dubious), the very way in which he attempted to accomplish this precluded the necessary and minimum conditions to facilitate negotiations and arrive at satisfactory compromises. Therefore, the conditions that should regulate the double process of disclosure and acknowledgement of nationalist claims were not met. Respect for minorities, reciprocity, feasibility and public reasoning were all seriously impaired and, what is more important, this was true on both sides of the dispute (that is, Basque and Spanish political parties and leaders alike).

For sure, the dialogue implies two parties engaging in good faith about the relative merits of the arguments put forward. If it is true that Ibarretxe failed to generate the right conditions for a fruitful political debate around the Plan, it is also true that PSOE and especially PP did not collaborate either. What it should have been an exercise of public deliberation soon enough became a broken dialogue in which the parties would talk past each other and no understanding, let alone compromise, could be reached.

Taken as a whole, I believe that the Ibarretxe plan showed possible alternative ways to think about fundamental political principles like sovereignty, inclusion and participation. This in itself is a good element when considering the series of claims and demands that the Basque Country posed in relation to the political order of Spain. However, the way in which public debate was conducted and the attitudes displayed by both regional (Basque) and central (Spanish) political parties also showed the limitations to engage in genuine deliberations around these ideas and the significant inability of all involved in striking a middle ground where negotiations and compromise could be possible.
Normatively speaking the four conditions for the double process of right of disclosure and duty of acknowledgement were by and large absent in this process. Reciprocity and respect for minorities were ignored by the attempt to define a Basque identity in narrow terms; public reasoning was systematically avoided by all parties involved, talking past each other in the midst of cross accusations of manipulation and bad faith; and the feasibility of the proposed reforms was almost inexistent given the open unconstitutional character of the Ibarretxe Plan, which denied any possibility of a negotiated solution or compromise.

The alternative was to take refuge in principled, non-negotiable positions and/or victimise oneself claiming the lack of understanding or bad faith of the other actors. This also led in some occasions to the judicialisation of highly divisive political disputes, something that may produce a certain outcome in an otherwise deadlock situation but that cannot substitute the need of open and fair consideration of mutually acceptable arguments.

4.2 - Reform of the Statute of Catalonia

*l’Estatut de Catalunya and the ‘second round’ of the Estado de las Autonomías*

Following the divisive and conflicting process of reform of the Basque Statute and its ultimate failure, there were in recent years a series of attempts at redefining the nature and composition of the Spanish political system. After thirty years of evolution of the Estado de las Autonomías, it was felt that the system should be modified so as to reflect broad political changes in Spain and Europe. In relation to Spanish politics, regional or nationalist political parties recognised that the establishment and institutionalisation of political autonomy in all seventeen Spanish communities was a success; however, they argued, the system should also
be open to a deepening of that process by further realising the powers and competences of self-government that the Spanish regions and nationalities enjoyed.

During the first period of the socialist Rodriguez Zapatero (PSOE, 2004-2008) these claims paved the way to complex political negotiations and laborious compromises between regional and central political parties alike, leading up to the approval of a series of proposed reforms (Muro 2009: 453). I think it is worth noting here that Zapatero endorsed a policy based on mutual compromises and negotiations, in stark contrast with the way the process was conducted in the Basque Country. By the same token, this initiative was presented as a more inclusive and alternative model to deal with regional and nationalist demands. 102 The regions that succeeded in reforming their statutes include: Valencia (April 2006), Catalonia (July 2006), Balearic Islands (February 2007), Andalusia (March 2007), Aragon (April 2007) and Castile-Leon (November 2007).

The cases of these six Autonomous Communities share distinctive characteristics (Muro, 2009: 462-466). First, there was an attempt at defining in detail the competences of the region/nationality and the division of powers between the different levels of government. The overall aim was to minimise the effects of the constitutional principio dispositivo and clarify as much as possible the criteria according to which competences were to be divided (i.e., exclusive or shared) between the regional and the central governments. A second element was the adoption of the ‘nationality’ label by some regions (notably, Aragon, Andalusia and the Balearic Islands) explicitly challenging the alleged division between ‘regions and nationalities’ that the 1978 Constitution established. This move reflected the deep, ongoing tension among Spanish communities ever since the establishment of the Estado de las Autonomías and it was seen both as a platform for the legitimacy of more substantive powers and as an important symbolic element for these communities to address their feelings of comparative grievances. Moreover, the blurring of this distinction between nationalities and regions was a clear manifestation of

---

102 To be sure, consensus and open negotiations were by and large present among the regional political parties and leaders of the regions in question. However, as shown below, the basic and smooth consensus about the pace and direction of reforms were not present (or at best, rather weak) between the socialist and conservative Spanish political parties.
the ethnoterritorial competence that characterised the system as a whole (Moreno, 2001). Third, all these regions developed a variety of institutional and political mechanisms for a more direct and powerful participation of their Autonomous Communities in foreign affairs, especially at the European Union level. The new Statutes thus contemplated a series of instances in which their governments were expected to have a voice and coordinate with the Spanish government the implementation of policies that directly affect their interests. Fourth, all approved Statutes have involved a complex series of negotiations reflecting diverse political interests and partisan positions, and also the active participation of civil society organisations. All in all, “the depth of the statute reforms involved a higher level of coordination than in previous phases” (Muro, 2009: 463). Fifth, all the initiatives reflected a reasonable consensus among political forces at the level of the community; however, this was not the case at the Spanish level between PSOE and PP. This last party questioned numerous provisions adopted in the proposed texts of reform, widening the gap between the two major Spanish political parties regarding the pace and direction of the process. This tension took the form of a “growing polarisation between these parties on the territorial dimension...[where] PSOE leader Zapatero has tolerated asymmetry in the distribution of regional competences, while the PP leader Rajoy insists on symmetry as the only way to guarantee the centrality of the Spanish state” (Keating and Wilson, 2009: 543). Finally, there was a revalorisation of horizontal and vertical cooperation; that is, between the central government and the communities, and among the communities themselves to coordinate and implement policy decisions in a wide array of areas.

Therefore, by 2004 Catalan political parties were aware of two main factors. On the one hand, there was the aggressive non-negotiable attempt of reform of the Basque Country that ended

---

103 It will be interesting to see if the adoption of these mechanisms proves to be an initiative strong enough to steer the Estado de las Autonomías towards a more federal system, incorporating classic elements of ‘cooperative’ federalism. For an analysis of this potential and the tension between bilateral and multilateral modes of cooperation, see González Ayala (2009).

104 This was especially true for the cases of Andalusia and the Basque Country (Keating and Wilson, 2009).
up in a political deadlock and constitutional challenges ratified by the CC. On the other hand, Zapatero was extended an invitation to discuss possible reforms of regional statutes along mutually accepted principles and cooperation.

In this section I discuss in detail the proposed reform of the Catalan Statute so as to identify both the contrasts between it and the previous experience of the Basque Country, and the different outcomes of the process in both cases. This will help me assert the importance of the four basic conditions that regulate recognition (in the double process of right of disclosure and duty of acknowledgement) and the ways in which they affect concrete proposals and eventually lead to specific results. I proceed in the following manner: first, I present a historical account of the process; then I discuss the concrete proposals and their content assessing the significance of them for the Spanish political system; then I analyse the reaction of Spanish political parties and the actions of the CC. Finally, I present a normative assessment of the whole process.

The process leading up to the proposed new Statute of Catalonia (late 2003 to mid-2006) involved a number of complicated and delicate political negotiations between the Spanish socialist party PSOE – and in particular its leader Rodriguez Zapatero- and a coalition of Catalan forces that supported the text. The discussion, adoption and ultimate ratification of the reformed statute went through a series of steps: from the original draft of the document to the final vote and passing of the Proposal by the regional Parliament, to the reception and eventual approval of the central Parliament and a final popular referendum. In each of these stages, there were tensions and partial disagreements, both at the regional and the Spanish levels. In the first case, they reflected either different degrees of support for the Proposal or competing ideas about the desired contents that it should include. In the second case, the position of the Spanish conservative party significantly clashed with that of the socialists. The latter widely endorsed the need of statutory reforms whereas the former considered the proposed Catalan Statute unconstitutional throughout the process. Here again, the tension revolved around renewed claims and demands from Catalan nationalist political parties and the ways in which these may affect the current features of the Spanish political system as a whole.
The first legislature of Rodriguez Zapatero was characterised by his compromise to “look favourably on reforms of regional autonomy statutes that had the backing of a majority of parties represented in regional parliaments as long as they did not violate the Spanish constitution” (Muro, 2009: 460). The Catalan case was of the utmost importance, given its demographic, social, economic and political weight compared to other Autonomous Communities. More importantly, the Catalan experience was taken as a leading case and, for some, a model to follow in order to succeed in reforming other statutes. Zapatero himself was personally involved from the very beginning of the discussion to reform the Catalan Statute when in 2003 he declared that he would support the text approved by the Catalan Parliament. This decision responded to a double element: first, Zapatero endorsed the campaign of the Catalan socialists that that year would form the Catalan government after more than 20 years of CiU domination; second, he thought that the amendment to the Catalan text would be the beginning of his own proposal of a ‘plural Spain’. Zapatero’s strategy, although it remained highly undefined and ambiguous, seemed to have been an impulse for a more open recognition of the distinctiveness of Catalonia within the framework of the Spanish political system.

In the 2003 Catalan elections CiU won the first minority but could not form government due to the coalition between Catalan socialists and nationalists. These parties formalised their compromise in the Pact of Tinell which stipulated an ambitious agenda, including extended self-government, better democratic quality, and a new environmental and territorial policy. The new government was formed by the Catalan Socialist Party (Partit dels Socialistes de Catalunya, PSC), the nationalist pro-sovereign Esquerra (Esquerra Republicana de Catalunya, ERC) and a green-socialist coalition (Iniciativa per Catalunya Verds-Esquerra Unida i Alternativa, ICV-EUiA).

---

105 Obviously, this was not due to a supposed inability to define the concept; rather, it showed the political benefits that Zapatero sought to exploit, using a deliberately ambiguous formula which could mean different things to different people at different times. Be that as it may, the idea of a ‘plural Spain’ was also the blueprint for the failed Spanish government’s proposal of constitutional reform (see below).

106 In principle, this could also be extended to the other two historical communities. The formula of a ‘plural Spain’ then would be close to an asymmetrical model of federalism. However, the difficulties and ultimate failure of reform in the Basque Country and the inability to even propose a serious plan of reform in Galicia made this characterisation only conjectural.
Three months after this, in February 2004, the discussion about a proposed amendment to the
text of the 1979 Catalan Statute was formally initiated at the regional Parliament, which
extended until October 2005.

Any reform of the Catalan Statute has to follow a complex process, which includes: a) approval
by the Catalan Parliament (supermajority of two thirds); b) approval of Spanish Parliament in
the form of an Organic Law (absolute majority); c) ratification in popular referendum¹⁰⁷ (1979
Catalan Statute, Article 56.b). If any of these three stages fails, the whole process is put on hold
for a year before a new initiative can be adopted.

The voting of the Proposal at the Catalan Parliament showed an overwhelming majority in
support of it: 120 votes in favour and 15 against it. The former group was composed by the
tripartite left-wing Catalan government (PSC, ERC and ICV-EUiA) plus CiU; whereas the latter
group showed the isolation of the Catalan conservatives (Partit Popular de Catalunya, PPC). It is
interesting to note the support of Convergencia i Unio, given that that party was the first
minority in opposition. Its leader Artur Mas defended the text and even participated actively in
the drafting of it, pushing for a financial reform that would defend Catalan economic interests
(Sevilla, 2006). On the opposing side, the Catalan conservatives deemed the proposal as a
threat to national sovereignty and the unity of Spain, as defined by the 1978 Spanish
Constitution.

Once the proposal was passed by the Catalan Parliament, it was sent for consideration to the
Spanish Parliament.¹⁰⁸ Two contentious issues divided opinions in Madrid; the first one had to
do with the proposed power of Catalonia to collect its taxes, mirroring the system in place for
the Basque Country and Navarre. The Spanish Parliament established a greater proportion of
taxes for Catalonia, reflecting more closely its contribution to the Spanish economy but denied
the power to decide the amounts of transferences from that region to the centre and the
creation of its own taxing agency. The second issue was the sensitive use of the word ‘nation’ to

¹⁰⁷ Once the Spanish Parliament approved the text sent to it by the Catalan Parliament, it authorised the
regional government to celebrate the referendum.
¹⁰⁸ The text was amended by the Parliamentary Constitutional Commission, chaired by the influential
politician Alfonso Guerra.
define Catalonia. The proposed Statute established that “1. Catalonia is a nation. 2. Catalonia exercises its self-government through its own institutions, constituted as an autonomous community according to the Constitution and the present Statute” (Article 1).

However, the Spanish Parliament introduced changes to the national definition of the region by recognising the desire of Catalonia to be called a nation without stating that it is, indeed, one:

“The Catalan Parliament, assuming the sentiment and will of Catalan citizenry, has defined with an overwhelming majority Catalonia as a nation. The Spanish Constitution, in its Article 2, recognises the national reality of Catalonia as a nationality” (Preamble; emphasis added)\(^{109}\)

Although this may appear a question of semantics, the possible definition of Catalonia as a nation obviously would have deep consequences from a symbolic point of view. Naturally, then, the issue was the most divisive one in the whole process of reform of the Catalan Statute. The text finally approved by the Spanish Parliament recognised the use of the word ‘nation’ in reference to Catalonia but also reserved the normative and judicially effective definition of nation exclusively to Spain.

After introducing these changes, in March 2006 the proposal was passed by the Spanish Parliament with the support of the socialists (PSOE), the Catalan CiU, the Basque nationalist party (PNV), the left-wing formation of IU/ICV, the Canarian party CC-NC and the National Block of Galicia. This group reached the required absolute majority with 189 votes. The opposition was represented by the conservatives (PP), the pro-independence Catalan party ERC and the radical Basque nationalist party EA (154 votes).

\(^{109}\) Article 1 of the 1979 Catalan Statute affirmed: “Catalonia, as a nationality and to establish its self-government, constitutes itself as an Autonomous Community in accordance with the Constitution and the present Statute, its basic institutional norm” (emphasis added).
The final stage of the process of amendment called for the ratification of the new statute by referendum of the Catalan people. The referendum was celebrated on June 2006 and the text approved by the Spanish Parliament was supported by 74% of the votes. However, the voter turnout was significantly low, at 49.4% of the population. The results were seen by Catalan nationalists as a clear support for the new statute, even after the modifications introduced at the Spanish Parliament. Critics, however, pointed out that that level of participation meant that only 36% of Catalans endorsed the proposal. The low turnout could be interpreted either as a lukewarm support for the statute or as a sign of indifference by large sectors of Catalan society.

Catalonia is not the Basque Country and yet...

Although in its rhetoric and public discourse the Catalan government was not as aggressive as the Basque one, the contents of the proposed New Statute represented an as serious attempt to redefine the role and status of Catalonia vis-à-vis Spain as the Plan Ibarretxe. One main difference remained though: the Catalan political parties in general did not support arguments in favour of original sovereignty for their region. However, the Statute did affirm that the Catalan self-government was founded on the Constitution and the ‘historic rights’ of the Catalan people, which substantiated the special position of the Generalitat (Preamble). This meant that, although the Catalan Statute did not endorse the principle of shared or dual sovereignty, it did reserve to Catalonia a special position vis-à-vis other Spanish regions.

Another significant factor has been the absence of political violence in Catalonia which helped explain the differences between these two processes. However, looking at the specific contents of the approved statute, it certainly advanced Catalonia’s interests especially in the realm of competences. For some, this amounted to a covert constitutional reform insofar as it

---

110 The ‘yes’ option received 1,881,765 votes; the ‘no’ option, 528,472. There were also 135,998 (5%) of blank votes. From a comparative perspective, the previous referendum to approve the 1979 Catalan Statute had a 59.7% turnout and an 88.15% of positive votes.
represented an indirect way to enshrine powers at the regional level using the Statute as part of the constitutional corpus of the country (i.e., the ‘constitutional block’ as defined and accepted by the Constitutional Court). Another much debated issue has been the above-mentioned controversial statement in which Catalonia was defined as a ‘nation’. Such definition was either seen as a just claim or a threat to the current constitutional order.

One other aspect that was drastically different from the experience of the Basque Country had to do with party politics. The support of Catalan parties was during those years needed by the current central government in order to form a majority and get their support to pass crucial legislation, which naturally led to different, friendlier, relations between Catalan parties and the governing PSOE. On top of that, the Socialist party –both its central and its Catalan divisions- showed strong affinity regarding these issues which secured the support of the central government to the whole project.

However, looking at the specific contents and changes introduced by the new Catalan Statute, it was hard to ignore the far-reaching implications that it represented. These can be grouped in five categories (Colino, 2009: 274-277):

1) **Identity and symbols:** Catalonia was defined as a nation, which the Spanish Parliament recognised as a declaration of the Catalan Parliament, denying at the same time any juridical effects to it. Another novel element was the recourse to ‘historic rights’ (something common in Basque nationalist discourse) as a source of identity and justification for self-government claims.\(^{111}\) Also, language appeared prominently in the text, emphasising the role that Catalan had as the ‘proper language’ of the region, and establishing a certain preeminent position to it, vis-à-vis Spanish. Notably among other provisions was the duty of citizens to know Catalan which put that language on a par with Spanish.

\(^{111}\) This, as it was the case with the word ‘nation’, proved to be very controversial (see Laporta, 2006 and Saiz Arnaiz, 2006).
2) **Bill of Rights:** a series of rights were recognised and protected by the new Statute, which included participatory and linguistic rights. Social rights and others like gender equality, environment, minimum income, were also incorporated into the text and given better protection. All in all, these provisions pointed to the emergence of a Catalan citizenship.

3) **Clarification and separation of powers:** the Catalan Statute used a technique called ‘shielding’ whereby the division, content and specification of competences enjoyed by the central government and the regional one were given a detailed treatment (Albertí, 2005). The overall aim of the extended enumeration of competences was to guarantee its exercise by the regional government, avoiding at the same time any encroachment from the central government.

4) **Funding:** Catalonia was to enjoy greater taxing and fiscal responsibility powers, by increasing both its share in tax collection from the central government and its control over spending. Another element was the redistribution among territories (i.e., the principle of solidarity among nationalities and regions; Article 2, Spanish Constitution) which must not represent a worsening of Catalonia’s position among regions, measured by per capita income. Equally, the central government was committed to investing in Catalan infrastructure according to its share of the Spanish GDP for seven years.

5) **Participation and Bilateralism:** two new bilateral Spanish-Catalan Commissions were created, one for general shared interests and objectives, one for fiscal matters. The Statute also created other institutions, notably a regional tax agency and the Council of Justice of Catalonia (a decentralised body of the Spanish Council of Judicial Power). As for participation, the Statute created space for Catalan involvement in central institutions\(^{112}\), both at the level of Spanish policy implementation and in those EU matters that affect the region.

---

\(^{112}\) Notably was the claim to participate in the appointment of members of Spanish constitutional bodies.
Given these major changes introduced by the New Catalan Statute, I analyse in the next section the reception of them and the reaction of the Spanish political system.

The Constitutional Court in the spotlight

The drafting, approval and subsequent reception of the new Catalan Statute of Autonomy enjoyed both widespread support among Catalan political parties and sympathetic backing from the socialist government of Zapatero. However, it also provoked strong opposition from the conservatives and some other Autonomous Communities. Given its far-reaching implications and the ambitious contents of the Statute, the polarising effect that it had on Spanish politics as a whole came as no surprise.

Even though the wording and specific contents of the proposed statute suffered various modifications due to inter-party interests and positions both at the regional (Catalan) and national (Spanish) levels, the final text approved by the Catalan Parliament, the Spanish Courts and the Catalan people through a referendum was challenged before the courts on a number of provisions.

The legal challenge against the Catalan Statute advanced a serious accusation of indirect constitutional reform, through the modification of a regional statute that necessarily affects the competences of the Spanish state. PP leaders went as far as to point out that, in practice, this was a situation where a ‘parallel’ constitution was being erected (Salazar Benitez, 2006). All in all, there were seven cases brought before the Constitutional Court against the Catalan Statute. The conservative party PP articulated the most serious challenge to it, advancing eight major arguments of unconstitutionality, directed at the Preamble, 124 articles, and a number of additional and final provisions of the text. The Ombudsman presented another legal challenge to the Statute, calling into question 68 articles and 4 additional provisions. Finally, the Autonomous Communities of Murcia and La Rioja objected to competences claimed by the
Statute regarding water resources, and some aspects of the proposed fiscal arrangements; on
their part, Aragon, the Balearic Islands and Valencia also challenged water resources, financial
powers and the ownership of the historical archive of the Crown of Aragon. (Salazar Benitez,
2006, Muro, 2009).

Between September 2006 and July 2010 the Constitutional Court become part and parcel of the
controversies surrounding the Statute of Catalonia. A number of Judges were accused of
partiality and/or conflict of interests, and the rhythm with which the CC dealt with this highly
sensitive issue represented a crisis to the prestige and legitimacy of the Court. In a volatile
context, the composition of the Court became the centre of political disputes with wide media
coverage. The conservatives impugned Judge Perez-Tremps given his involvement in a previous
study assessing the constitutionality of an early draft of the Statute. They also claimed that the
President of the Court, Judge Maria Emilia Casas behaved in a partial manner due to the fact
that her husband was also involved in the early stages of the drafting of the Statute. The
Generalitat and the Catalan Parliament also sought to impugn Judges Garcia-Calvo and
Rodriguez-Zapata for alleged lack of impartiality. Of all these actions, only the first one against
Judge Perez-Tremps was successful. Moreover, the Court faced an internal crisis given the fact
that four Judges were allowed to extend their appointment beyond the original mandate
(December 2007), and Judge Casas’ mandate was also extended as President of the Court
through a reform of the Organic Law of the Constitutional Court.  

The disputes surrounding several Judges, their extended mandates and the Presidency of the
Court were all a manifestation of the serious discrepancies between socialists and conservatives
on the one hand, and conservatives and Catalan political forces on the other. At stake was the
distribution of votes and the clear division of the Court between progressive and conservative
Judges, pending the legal challenges against the Catalan Statute. As Fernandez Farreres put it:
“...there has been an unusual dance of impugnation that clearly shows the tension to which the
Court has been exposed to” (2009: 163). Clearly, partisan divisions and influence on the Court

---

113 On top of that, another Judge, Garcia-Calvo unexpectedly died in 2008, and no replacement was
appointed during the proceedings against the Catalan Statute.
were detrimental to its effectiveness and legitimacy, even more so given the importance and far-reaching consequences of such a delicate matter.

In June 2010 the Court finally reached a consensus and issued its much expected ruling on the Catalan Statute. The sentence was the result of four years of deliberations and expressed the complex arguments and challenges brought before the Court in almost 900 pages. The ruling answered the PP claims of unconstitutionality of the Catalan Statute, addressing important aspects and articles of the text. The sentence of the Constitutional Court covered the following issues:

1) *Identity and symbols:* the much debated definition of Catalonia as a ‘nation’ was deemed by the Court as a declaration by the Catalan Parliament reflecting the sentiment of that region. However, the Court ruled that the term ‘nation’ did not have any judicial effect. In other words, independently of the term, Catalonia remained within the provision established in Article 2 of the Spanish Constitution: Spain is the only nation, composed by a number of regions and nationalities. This constituted a clear victory for the conservative wing in the Court, imposing the traditional view of Spain according to which its diversity cannot challenge in any way the unity of the polity.

2) *Bill of Rights:* the most controversial issue here was the ‘preferred’ status given by the Statute to the Catalan language. The ruling, although neither did it attack the Catalan linguistic policy nor it denied the Generalitat’s powers on education, it deemed the new linguistic provisions introduced by the Statute as unconstitutional (i.e., against the spirit of Article 3 of the Spanish Constitution). The Court considered that the people living in Catalonia cannot be obliged to know Catalan. Or, to put it slightly different: no one could suffer sanctions due to that fact. Further, public entities, commercial establishments and the Public Administration should be able to provide services in both languages (Spanish and/or Catalan) according to the preference of the citizens.
3) **Clarification and separation of powers:** the Court recognised the capacity of Catalonia to participate in the elaboration of policy in conjunction with the Spanish state even on exclusive competences of the former level of government. The other important element regarding powers and competences claimed by the Catalan Statute had to do with the proposed creation of the Catalan Council of Justice. The Court stated that this was unconstitutional, since that institution would mean a de facto Catalan autonomous judicial power.

4) **Funding:** the ruling of the CC also curtailed the financial claims of the Statute. Notably, it declared unconstitutional the provision according to which all Autonomous Communities should realise the same financial effort in order to qualify to the inter-territorial solidarity funds. Further, the Catalan government was denied the capacity to establish and regulate taxes at the local level.

5) **Participation and Bilateralism:** Bilateralism was accepted as a valid mechanism of participation, although Catalonia as a Spanish region was politically and judicially subordinated to the Spanish state. Also, it was recognised the right of Catalonia to directly participate in European Union matters that affect the region.

All in all, the Constitutional Court found unconstitutional 14 articles (of a total of 223, of which the conservative PP challenged 124), and subjected another 27 to the interpretation of the Court itself.

The reception of the ruling showed the ongoing tensions and conflicts between a certain sector of Catalan society (and especially Catalan political elite) and the rest of Spain, especially the conservative camp. The CC attempted to chart a middle-ground between Catalan maximalist positions and Spanish centralist reactions. The ambivalence was clear when looking at the ruling and all its implications: on the one hand, the most ambitious demands of the Statute (i.e., definition of Catalonia as a nation, enhanced fiscal autonomy and powers, preferred status of Catalan) were denied; on the other, an important number of competences and powers, the
right to participate both in policy-making mechanisms at the Spanish level and institutions and forums at the European level, and the educational system, were all either explicitly recognised or reaffirmed.

Overall, the political conflict that the Statute provoked nicely showed not only the differing models of state and territorial distribution of powers and competences, but also the still active role of the Court as final interpreter of the Constitution in these crucial matters. However, the Court itself was damaged by the whole process. In this regard, there was a series of irregularities and political struggles around the extension of mandates of current members, with the direct implication of both PSOE and PP trying to affect the composition of the Court and securing a majority supposedly in favour of their own interests (progressives against conservatives).

The risk involved in the ambivalent outcome of the CC ruling on the Catalan Statute was to keep everyone equally dissatisfied with the whole process. The precise meaning and long-term consequences of this historic ruling are still to be seen. Be that as it may, the process did show the tensions and the conflicting perspectives that relevant political actors had about basic concepts like ‘nation’ and ‘state’ and the ways in which these should be interpreted in a country like Spain.

This is important for the present analysis as it demonstrates both the alternative ways of advancing claims based on nationalist demands, and the different models of state and nation on which they are based. In the next section therefore, I discuss the normative implications of this case with special consideration for the conditions and limits of political recognition of multinationality.
Assessing the new Catalan Statute

The ultimate outcome of the process of reform of the Catalan Statute was considered a crucial issue by all actors involved. This was so due to a number of factors: first, the tradition of claims for self-government in Catalonia and the special status conferred to it by the Constitution itself (or, rather, the jurisprudence of the CC) as a ‘nationality’ within the framework of the Estado de las Autonomías. Second, the Catalan Statute was soon enough taken as a leading case to test the limits of accommodation of the Estado de las Autonomías. This meant that, in significant ways, the provisions and sometimes even the wording of the Catalan Statute was adopted as a model to follow by other Autonomous Communities embarking in their own processes of reform (Muro, 2009). Third—and connected to the previous points—both PSOE and PP understood that the Catalan Statute was not a simple reform of the basic norm of a region exercising its right to political autonomy and self-government. Rather, both parties presented the Statute as a serious challenge to fundamental elements of the political order of the whole polity.

Questions of institutional power and competences, the principle of solidarity among regions and nationalities, fiscal arrangements, the relation between regional and national governments, and the participation of regional units at the European level, they all became an indissoluble part of the discussions and debates surrounding the Statute at all different stages of the amendment procedure. Further, both PSOE and PP articulated their positions in accordance to their traditional standings regarding the territorial organisation and distribution of power that the Estado de las Autonomías represented (or should represent, given the ambitious changes that the Catalan Statute seemed to be introducing).

The conflictive perspectives of the Spanish political parties and their struggle to impose one vision over the other, led to a protracted debate around the so called second wave of reforms in the Estado de las Autonomías. The debate between socialists and conservatives, however, was not necessarily inspired by long-term definitions of the polity and the justice of the existing
political order. Rather, their public attitudes in relation to the Catalan Statute were often dictated by electoral and strategic calculus. Notably among these, there was the differing position that the PP opted regarding the proposed text of reform of the Andalusian Statute. That proposal presented a resemblance to the Catalan text, and yet the conservatives (following a strict electoral logic) chose to support it. On the other hand, the socialists and especially Zapatero were more or less vociferous defenders of the Catalan Statute depending on the political context and nature of the inter-party alliances between Madrid and Barcelona.\textsuperscript{114} This showed that the debate and terms of discussion surrounding a fundamental change in the political order of the polity was not necessarily dictated by normative and justice considerations. This would have implications to the possibilities of realising and institutionalising the principle of political recognition in a multinational polity. That is, if negotiations and compromises are subjected to electoral calculus, then they would stand or fall based on that calculus and not the intrinsic legitimacy of the claims being advanced.

The double process of right of disclosure and duty of acknowledgement (in contrast to the Basque case) were exercised in this process by the parties involved. However, in order to better assess these developments, I emphasise the minimal conditions of respect for minorities, reciprocity, feasibility and public reasoning. As for the first, some provisions of the New Statute were challenged, especially those regarding language and ‘Catalan citizenship’. The reasoning here was that Catalan nationalism was trying to impose a specific definition of ‘Catalanness’ which ignored the legitimate interests of those sectors of Catalan society that did not share the same definition. This position was backed up by the CC in its ruling. I am inclined to interpret the Statute as meeting this condition, with some reservations about the adequate equilibrium in the public use of Catalan language and its implementation in schools and the educational system. That is, I believe there is a delicate balance between securing the expression of a regional language and guaranteeing the use of a national one. It is not clear to me the extent to which the New Statute would fail to secure that balance. As for reciprocity, the New Catalan

\textsuperscript{114} If one were to look at the Catalan political scenario, the picture would not be very different. CiU and ERC changed several times their position regarding the Catalan Statute, depending on their chances or not to form government.
Statute tried to enhance the relative position of Catalonia and guaranteed its powers and competences. I see in this regard the Statute as meeting this condition. As for feasibility, the Statute posed some challenges insofar as it established and created new institutions, commissions and powers. I believe all these provisions were within the realm of what was possible. However, political feasibility was reduced by an interpretation of conflict between the provisions of the Statute and the Constitution. I agree with the CC about the unconstitutionality of the Catalan Council of Justice. That is, changes like this one could not be done through the reform of regional Statute; rather, they would need a proper constitutional reform. Finally, public reasoning was present throughout the process, with more or less open dialogue among all relevant actors, the exception being the conservative Spanish political party. In this case, I believe that the actions of the PP were detrimental and not on par with its duty of acknowledgement. That is, I think a proposal like the New Catalan Statute deserved serious consideration and should not be dismissed lightly as an attack to the unity of Spain; rather, it should be discussed openly and in detail with a spirit of good faith.

All in all, the developments leading up to the reform and subsequent ratification of the New Catalan Statute met (partially) the minimal conditions for the double process of right of disclosure and duty of acknowledgement that political recognition requires. I think it is also important to remember that, even under reasonably favourable conditions, not every demand will be granted. This is unproblematic insofar as these conditions are met and the actors involved are open to mutually acceptable compromises and good faith negotiations. With the notable exception of the conservative PP, I believe this was the case with the New Catalan Statute.

There is one last element that was not so positive in this process: the role and status of the Constitutional Court. The CC was dragged into the partisan conflicts as soon as the conservatives brought the Statute before it. The government of Zapatero and the opposition alike (plus the Catalan government and Parliament) extended their political agendas to the decision-making and working of the Court. They managed to do so by blocking the appointment

---

115 On the need and feasibility of a constitutional reform, see below.
of new members (as the Constitution established, it should have been made at the end of 2007), attempting to veto a number of Judges and overexposing the position of the Court on the media. As a result, the Spanish highest court saw its prestige and authority diminished throughout the process of amendment of the Catalan Statute (Fernandez Farreres, 2009).

Although the legitimacy of the Constitutional Court and its standing as the ultimate interpreter of the constitution was not challenged, its authority deteriorated given the undue pressures and meddling of all political actors involved.

The damaging effect on the CC by selfish actions from almost all political parties showed a strict limit to political recognition. Ideological discrepancies and commitments to specific nation- and state-building projects drew a clear line in relation to how far Spain could go in terms of accommodating multinationality.

4.3 - Galicia: between identity claims and lack of consensus

The different processes of statute reforms in Spain dominated the political reality of the country in recent years. This was encouraged to a large extent by the ruling PSOE and the leadership of Rodriguez Zapatero, who publicly welcomed and endorsed a series of political initiatives conducive to the updating of the Estado de las Autonomías after more than twenty years since the establishment of the 1978 Constitution. However, Zapatero’s position moved from acceptance of the proposed amendments to the basic laws of regional self-governments to the imposition of strict limitations or conditions that would make those initiatives possible. In the first case, it was accepted the need to reform different Statutes in order to better solve tensions and problems not necessarily anticipated by the Constitution (notably, the proper mechanisms for the involvement and direct participation of the Autonomous Communities both at the level of the Spanish state and the European Union). In the second case, it was stipulated that any political initiative to reform the existing statutes of autonomy that Spanish
Autonomous Communities enjoy should meet two requirements: first, the proposed amendments should clearly and explicitly respect the limits of the Spanish Constitution; second, these processes should be the result of a wide consensus among all relevant political forces.

The Basque Country has been the only case so far in which a proposed new statute approved by the regional legislature was rejected by the central Parliament. However, other regions during the same period failed to successfully negotiate and approve a new statute, even at the first stage of reform (i.e., the regional Parliament). These include Castile-La Mancha, Cantabria, Canary Islands and Galicia (Muro, 2009). I believe that the case of Galicia is worth mentioning since that region, together with Catalonia and the Basque Country, form the group of ‘historical communities’ and in principle they could be expected to lead the way in this second wave of redefinition of the Estado de las Autonomías. For their part, both the Basque Country and Catalonia, presenting very different characteristics and amended texts, displayed strong initiatives and challenging positions in relation to the nature and characteristics of the Spanish political system and the role their communities should play in it. However, Galicia was left behind in this round of reform of the territorial dimension of Spanish politics.

I briefly discuss in this section the Galician case in order to show the contrasts and similarities of a series of claims based on a national sentiment, just like in the Basque and Catalan cases. Furthermore, even though in principle all these three regions (or, more properly, ‘historical communities’) share certain distinctiveness vis-à-vis other regions in the country, the Galician experience stands out presenting a very different path and dynamic when compared to the other two. It is therefore worth analysing the reasons for this, and assessing its importance in terms of the possibilities of accommodating multinationality in a democratic manner.

As logical as this requirement may seem, it proved to be very controversial as shown by the Catalan case. This was particularly acute given the much commented on ambiguity and lack of definition of the constitutional text regarding such important matters like the precise distribution of powers among different levels of government, or the institutional mechanisms through which national (Spanish) unity should be reconciled with regional (Basque, Catalan, etc) identities and claims. Given this context, issues such as the definition of the region (i.e., historical nationality, national reality, nation…) or the number of linguistic policy-making powers claimed by some Autonomous Communities inevitably became part and parcel of contested debates and political disputes.
Although Galicia is indeed widely recognised as one of the three historical communities in Spain, it is also true that the level of political representation and electoral support of nationalist demands in that region tended to be markedly weaker when compared to those in Catalonia and the Basque Country. Whereas the latter two were by and large dominated by nationalist political alternatives (both in the form of presence of strong nationalist political parties and electoral success in forming nationalist governments), Galician nationalist parties displayed a stark atomisation among a number of political parties and a wide array of ideological alternatives. Further, a broad sector of nationalist forces remained traditionally against the principle of political autonomy as set out by the Spanish Constitution since they saw that as a trap for the genuine goal of Galician claims: independence. As a consequence, some of the nationalist discourse and political forces in this region chose to not engage and participate in the political system (Maiz, 2001).

Moreover, the Galician conservative political party (first as Alianza Popular, AP (Popular Alliance) and then as Partido Popular de Galicia, PPG (Galician Popular Party)) enjoyed an impressive political record ever since the establishment of the Galician Autonomous Statute in 1981.117 As a result, even though a nationalist discourse was present in Galician society and enjoyed widespread legitimacy, it lacked the proper electoral support in order to control the regional government and advance a clear agenda along nationalist demands.

The dominance of the conservative party in Galicia can be explained in part by the personal impact and influence of Manuel Fraga Iribarne (President of the Galician Xunta from 1990 to 2005).118 Fraga was a prominent figure during the last years of the Franco regime and latter on a key leader who made the appropriation of a centre-right discourse sympathetic to Galician

---

117 The conservatives have formed government in Galicia during 1981-1987 and then again from 1990 to 2005. The nationalist forces took office during 1987-1990 and 2005-2009, in both cases as part of an alliance with the Galician socialist party (PSdeG).
118 Not unlike the personal influence and charisma of the President of the Generalitat in Catalonia, Jordi Pujol. The crucial difference was that Pujol represented a clear nationalist Catalan position whereas Fraga was the symbol of centre-right conservatism.
interests the domain of the PPG (Maiz, 2001: 306-307). This appropriation proved to be very successful and in line with Galician conservative society. The PPG under Fraga leadership was able to blend traditional conservative ideas about Spanish unity and respect for the Constitution with a mild defence of Galician interests and claims, framing the latter as ‘autonomism’ (and not nationalism). The meaning of this word would suggest a combination of recognition of the distinct character of Galicia and a strict safeguarding of the unity of Spain and the constitutional order.

At first, Galicia was associated with the demands and claims of Statute reform publicly endorsed at the beginning of the first Zapatero government. The initiative to reform the Galician Statute of Autonomy was adopted in 2005 by the newly-formed coalition government of that community: Partido Socialista de Galicia, PSdeG (Galician Socialist Party) and the Bloque Nacionalista Gallego, BNG (Galician Nationalistic Bloc). The initiative responded to a generalised feeling that the original text of 1981 was in need of being brought up to date, incorporating the new reality of the Estado de las Autonomías after all those years of development. The context was also favourable given the political agenda of the socialist government under the leadership of Zapatero, which was amenable to such reforms; a context that imposed among Galician political elites a certain fear of “being left behind” if they did not seize the opportunity (García Pérez, 2008: 69). This meant that Galicia should reform its Statute in order to reassert its position vis-à-vis the other regions which were already in the process of reforming theirs with the explicit aim of advancing new demands and competences. This of course reflected the ever present tension between regions and nationalities: Galician leaders could not afford not to reform the Statute of Galicia when other regions (supposedly with less grounds and legitimacy to demand new claims and competences) already embarked themselves in such processes.

119 “PP in Galicia has skillfully combined Spanish and Galician regional aspirations and has consolidated a power-base seemingly unbeatable by highlighting that hybrid discourse together with systemic client-oriented practices, of a traditional kind in rural areas and very modern one in the cities” (Beramendi et. al. 2003: 246).
The debate surrounding the initiative of reform thus stressed the status of Galicia as a ‘historical community’, enjoying a privileged position within the territorial division of Spain in regions and nationalities. Indirectly, it was argued that the need to reform the Galician Statute stemmed from that position and the context of other reforms taking place in a series of regions during those years.

The basic points pursued by Galician political forces can be summarised as follows (García Pérez, 2008: 58):

1) *Recognition of the ‘national character’ of Galicia.* This represented the ‘identity’ issue that characterised the overall process of reform across Spanish regions during this period. The debate in Galicia followed the same logic as in other regions (especially the Catalan case), where nationalist forces (BNG) claimed for Galicia the status of ‘nation’ or ‘national reality’ and the conservative party opposed to it on constitutional grounds. The position of the Galician socialist party (PSdeG) remained ambiguous about this point, endorsing it in principle but with reservations. This division among the main political parties proved to be a decisive source of conflict that eventually would lead to the failure to reach the required consensus at the Galician Parliament.

2) *Promote compulsory use of Galego.* In line with the wording of the Catalan text, the Galician proposal attempted to redefine the legal status of Galego, giving it a ‘preferential’ position. This meant that that language should enjoy a prominent position in Public Administration, the educational system and media. These linguistic provisions opened up a contested debate about the eventual constitutionality of such measures since, it was argued, would run against the co-official system established in Article 3 of the Spanish Constitution. Particularly thorny was the provision according to which Galicians have ‘a duty to know the Galician language’ (Gallego Fouz, 2005: 327-331). As with the Catalan proposal, the issue of the regional language soon became a divisive issue among all political forces and further alienated the possibility of consensus.
3) **Improve recognition of rights.** Incorporating the so-called second generation of rights was by and large unproblematic. This initiative was aimed at recognising social, cultural, economic and environmental rights not necessarily or explicitly enshrined in the 1978 Spanish Constitution. The discussion on this point was, rather, the ways in which this could be done in the Galician Statute respecting the constitutional order. Further, this initiative could not represent the establishment of a series of rights enjoyed by Galicians with no equivalent legal protection in the rest of the country, since that would create undue privileges (Gallego Fouz, 2005: 324-325).

4) **‘Shielding’**\(^{120}\) of exclusive competences. Again, following the Catalan initiative, Galician political parties proposed a redefinition of the distribution of competences between the Spanish and the Galician governments. It was felt that more explicit criteria for the adjudication of competences and powers (especially those of an exclusive nature by the regional government) were needed in order to avoid possible encroachments by the Spanish government (Gallego Fouz, 2005: 310-319).\(^{121}\)

5) **Direct participation at the European Union.** Spain became a member of the European Union in 1986 and obviously, the constitutional text of 1978 did not address the effects of such reality. For that reason, there was a strong case to be made for incorporating provisions in the regional statutes regarding the wide effects of that membership, especially in cases where regional interests would be directly affected by EU decisions. The issue, however, became a bit more problematic when analysing the ways in which those regions should be given a voice and/or vote in forming the Spanish decision at the EU. The proposal of Statute reform on this point tried to balance the exclusive competences of the Spanish state regarding foreign policy and the alleged legitimate

\(^{120}\) This is the vocabulary used by the Catalan Statute of Autonomy, now generalised to all other communities. To ‘shield’ (blindar) competences means to enumerate and reserve an explicit list of competences that are defined as exclusive to the Autonomous Communities and cannot be altered by the Spanish state, not even by Organic or Basic Laws.

\(^{121}\) This represented another round of the old debate about the power of the Spanish State to dictate basic laws on the one hand, and the *principio dispositivo* of the Constitution on the other, whereby significant areas of power-making decision and legislative activities were left undefined. On this and the position of the Constitutional Court, see supra.
claim of Galicia to be heard when EU decisions would have a direct impact on the region (Gallego Fouz, 2005: 331-332). This issue nonetheless was not part of the controversies surrounding the proposed amendment of the Galician Statute.

6) **Financial autonomy and other fiscal arrangements with the Spanish state.** Once again, following the Catalan debate, nationalist and socialist Galician parties proposed the establishment of a Galician Taxing Agency and a series of fiscal goals with the Spanish state, where the latter should invest a fixed amount of money for ten years in infrastructure projects. The tension here revolved around the relative position of the region in terms of fiscal contribution and investment taking Spain as a whole. Also problematic on this was the constitutional principle of inter-territorial solidarity and the ways in which it should be applied.

Any reform of the Galician Statute must go through a three-stage process (that is, a set of rules that apply to the first Autonomous Communities: Catalonia, the Basque Country, Galicia and Andalusia):

“The proposed amendment will require, in any event, approval by the Galician Parliament with a two-thirds majority, approval by the General Courts [that is, the Spanish Parliament] through an organic law and, finally, a favourable referendum of the electoral body”

(Galician Statute, Article 156.b)

Given the distribution of forces at the regional Parliament, no initiative of reform would go through without the support of all the main political parties.122 However, soon enough that

---

122 This worked in two different ways: first, it was a legal requirement whereby the initiative of reform should have the necessary number of votes; second, it was a legitimacy requirement, whereby reforming the regional basic law without a consensus among all relevant political parties would be
necessary consensus proved to be elusive. The main controversy, although by far not the only one\textsuperscript{123}, was the definition of the identity of Galicia.

For the socialist and nationalist political parties, it was clear that Galicia should be defined in the Statute as a ‘historical nationality’. For the conservative party, that was not a necessary condition; moreover, the conservatives held the view that incorporating such definition would entail the misguided idea of Spain as a multinational polity. In stark contrast, leaders of the BNG asserted that that was precisely one of the goals of the proposed reform of the Statute.\textsuperscript{124} The seemingly impossible compromise between these positions led to a deadlock in the negotiations, paralysing the work on the proposed text for amendment.

\textit{The impasse of the reform}

In the following years, there were repeated calls for new negotiations and compromises reinforcing the need for a reform of the Galician statute. These calls came from all relevant political parties, although one regularly accused the other from both the failure in the previous round of negotiations and the current difficulties to engage in new ones. Interestingly enough, the conservatives who were the least enthusiastic about the overall process of reform, won the 2009 elections. This in principle could express a disinterest of Galicians about the proposed reforms, supporting in that election precisely that political party most against such process. However, this can also be explained by the traditional ambiguous discourse of PPG, whereby the interests of Galicia are defended along the lines of the principle of ‘autonomism’. This would mean then that the interests of Galicia (and Galicia as a historical community) were problematic. This was Zapatero’s expectation of the reform processes following the widest consensus. It also seemed to be a guiding principle respected by all Galician political parties.

\textsuperscript{123} As pointed out above, disagreements also included the educational system, the role of religion, fiscal arrangements and bilateral relations, among others (García Pérez, 2008: 61).

\textsuperscript{124} Such is the title of the conference of BNG leader Guillerme Vázquez: “The Galician Nation in a Plurinational State” (March 2010).
legitimate and worthy of respect, but they could not be presented as claims that would go against the overall unity of the Spanish state or challenge the constitutional position of Galicia.

The conservative government, once it regained control of the regional government in 2009, reaffirmed its intention to advance a reform that would combine Galicia’s interests and powers with a strict respect for the constitution. On its part, the nationalist party BNG renovated its goals of enshrining in the proposed text of reform the definition of Galicia as a ‘nation’, reflecting the Galician nationalists’ understanding of Spain as a “multinational, multilingual and multicultural” reality (Vázquez, 2010). Adopting a similar position, the socialists (PSdeG) defended the notion that Galicia was being left behind given the successful processes of reforms in other regions, and that the status of that community should not be downplayed. Moreover, the socialist position was that nobody in the Estado de las Autonomías must be more than Galicia, clearly following up Moreno’s dictum of comparative grievance.

In general terms, since the beginning of the failed reform process of the Galician statute, all relevant political parties clashed around the same issues; and they displayed a lack of ability to move beyond those basic disagreements. Such disagreements centred on the definition of Galicia and the legal status of Galego as the most salient ones. An interesting feature of the political evolution of these debates in Galicia recently was the attention being paid at the Catalan case, especially the position taken by the Constitutional Court regarding provisions in that text that inspired some of the proposals at the Galician Parliament.

Especially relevant were two criteria established by the Constitutional Court. The first one stated that a declaration by a region/nationality of its status or definition as a nation did not have any judicial or legal effects. The second one affirmed that those regions in which the Spanish language was co-official with the regional language should respect the stipulations of the Article 3 of the Spanish Constitution. This meant that there cannot be ‘preferential’ treatment for the regional language. Taken together, these criteria represented an indirect attack to the more radical positions of Galician nationalist forces regarding the identity and language issues.
Assessing the proposed reform of the Galician Statute

The case of the proposed reform of the Galician Statute was clearly different from the previous experience in the other two historical communities. In principle, the possibilities of reform in this region were more favourable given the official endorsement of such processes by the Zapatero government. However, Galician political parties did not live up to the expectation of a broad consensus supporting the reforms, and the necessary compromises regarding the main contents of the projected New Statute.

As explained above, Galician nationalism was traditionally weaker when compared to Basque and Catalan nationalism. This in turn translated into a more limited influence in the Galician political system (notably, the short periods during which a Galician nationalist party has been in charge of the regional government). Moreover, related to this point, the influence of the Galician conservative party had a double detrimental effect for the aspirations of Galician nationalists: on the one hand, it endorsed and legitimised a version of reforms concentrated on minimum demand; on the other, it opposed maximalist positions, notably when it came to language and the definition of Galicia as a ‘nation’.

As a result, the debate lingered on with all parties holding the exact same positions since the beginning of these developments in 2006. Ultimately, this led to an impasse and political deadlock where no one party had enough power to approve its preferred proposals. Therefore, in the case of Galicia there was no radical plan to present a New Statute (as in the Basque Country), or a serious challenge to adequate new demands and competences in the Estado de las Autonomías after all those years since its establishment in 1978-1983 (as in Catalonia).

Normatively speaking, the double process of right of disclosure and duty of acknowledgement leading to political recognition failed insofar as Galician nationalist forces were not able to fully articulate their ‘right of disclosure’. As for the conditions that characterise this double process, I believe that public reasoning was present in the debate at the regional Parliament and public opinion, but was not enough to solidify a concrete plan or series of reforms that together would
demand a New Statute. Reciprocity and respect for minorities on the other hand, proved to be more difficult insofar as (following the lines of argument and proposals of the New Catalan Statute) Galego was seemingly given a preeminent position, in detriment of the Spanish language. Obviously, since there was no final text proposing the reform of the Statute\textsuperscript{125}, it is difficult to assess this condition. However, the position of Galician nationalist parties closely reflected that of their Catalan counterparts. Once again, this issue presented the delicate balance between protecting and promoting the regional language while at the same time guaranteeing the constitutional status of the common (national) language. Finally, I believe that the feasibility of the proposals was very limited due to the lack of consensus and deep disagreements among Galician political parties. Central to this last condition was the definition of Galicia as a ‘nation’ which was in contrast to the official position of the Galician conservative party.\textsuperscript{126} No agreement could be arrived at regarding this issue and therefore there were no developments about this, apart from the public debate and inter-party conversations that only served to highlight the lack of middle-ground between them.

All in all, these developments pointed to the limits for the accommodation of nationalist demands. However, in the Galician case this was not so much provoked by the intransigence of the relevant political actors (either nationalist ones of the region in question, or Spanish ones) or a failure on the part of the Spanish forces to exercise their duty of acknowledgement. Rather, the ultimate outcome (or ‘no outcome’) in the Galician case was determined by the inability of the Galician nationalist forces themselves to present a fully articulated proposal of reform and gather the necessary support for it.

\textsuperscript{125} That is, concrete and detailed provisions articulating the ways in which linguistic law in Galicia should be modified.

\textsuperscript{126} The subsequent interpretation of this same issue by the CC regarding the Catalan case just a few years later would reinforce the same idea, stripping the definition of nation of any judicial effect or right. However, the CC interpretation did not deny the possible political effects of such decision.
4.4 - The elusive consensus around Constitutional Reform

The need to reform the Constitution

So far in this chapter I discussed the experience of all three historical communities in their attempts at redefining their status within the polity, and accommodate their demands. In this last section, I turn to the initiative coming from the centre to reform the Spanish Constitution. In the same vein that the Basque Country, Catalonia and Galicia pursued (with different degrees of success) the modernisation of the Estado de las Autonomías after more than twenty years since its establishment, the Spanish state also contemplated the possibility of presenting its own proposal to respond to new challenges and reality that Spain faced after all those years. Clearly, the Spanish state initiative centred on a possible reform of the Constitution.

Favoured by support and endorsement that the Zapatero government showed towards the reform of regional statutes there emerged a debate around the idea of equally reforming the 1978 Constitution. However, most of the proposals put forward by politicians and academics alike readily acknowledged the historical value that the constitutional text had for the country in the last decades and stressed that their aim was to simply complement or refine perhaps areas that were not sufficiently dealt with or not anticipated at all. Therefore, the different proposals of reform of the constitution explicitly presented themselves as ‘partial and limited’, seeking the same kind of overarching consensus that characterised the original process. In line with this, on occasion of the twenty-fifth anniversary of the 1978 Constitution, its drafters declared that:

“the eventual amendments to the constitutional text that in the future could be deem appropriate must situate themselves within the rules established by the Constitution itself;
and must enjoy similar or even wider consensus than the one which presided over its elaboration" (Declaracion de Gredos, 2003: 2).

In this context, the Spanish government in 2005 asked the Council of the State to submit a Report over the eventual reform of the constitution, encompassing four different issues: a) the hereditary rights to the Crown; b) articulation of the European Union reality into the constitution; c) a nominal list of the Autonomous Communities; d) reform of the Senate.

Including an explicit enumeration of the Spanish Autonomous Communities was presented as a way to ‘close’ the open-ended nature of the Estado de las Autonomías and the principio dispositivo that the 1978 Constitution adopted. However, in order to do that, it might also be necessary to include more precise criteria for the distribution of competences and powers (something that the Constitutional Court has been developing throughout these years in its Jurisprudence and Doctrine). The eventual reform of the Senate with a view to transforming it into a genuine institution of territorial representation would amount to a potentially drastic change in the overall institutional and political dynamic of the Estado de las Autonomías. This would be so for a number of reasons; first, it could imply an explicit and formal change towards a full-blown federal arrangement whereby regions and nationalities are given not only a direct voice but also vote in a central institution of the Spanish state. Second, it could mean the formal and institutional incorporation of the Autonomous Communities at the level of the central government with considerable power to force specific decisions on matters affecting their interests. Third, it could reverse the predominant mode so far of relations between Autonomous Communities and the Spanish state, characterised by weakly institutionalised accords and policy-oriented meetings and dominated by bilateral relations between both levels of government.

Proposals to reform the Senate and bring it into line with the explicit characterisation of it made by the constitutional text as a chamber of territorial representation (Article 69.1 Spanish Constitution) have been debated for years. However, given the magnitude of the potential
changes this could entail, there has never been a consensus strong enough to realise those initiatives. Even since its creation, the Senate has displayed a weak link between its functions and powers and the presumed territorial representation that such an institution should have as a way to defend and incorporate the interests of the territorial units of the polity into everyday decisions of the central government (Carrasco Duran, 2005). In this regard, the Constitution displayed once again a compromise between opposing views, hotly debated during the drafting of the text: on the one hand, the members of the Senate were elected through constituencies based on the provinces (the old administrative division of the country) and not the Autonomous Communities, and its legislative powers were by and large subordinated to Congress; on the other hand, the Autonomous Communities, through their regional Parliaments, appointed one fifth of the Senators (51 out of 259)\(^{127}\) (Dictamen del Consejo de Estado, 2006: 222-224; Roller 2002: 6).

Attempts were made to shift the Senate towards a more robust territorial representation of the Autonomous Communities by amendments to its Organic Law (avoiding the difficult and thorny issue of a constitutional reform). In 1994 then, the General Commission of Autonomous Communities was created as a body where these units could have a voice in the debates taking place at the Senate. However, the dynamic, influence and power of this institution have been rather disappointing given the dominance of partisan interests and the privileged position of Congress (Carrasco Duran, 2005: 373-375; Aja, 2005: 4).

\(^{127}\) “The Self-governing Communities shall, in addition, appoint one Senator and a further Senator for every million inhabitants in their respective territories. The appointment shall be incumbent upon the Legislative Assembly or, in default thereof, upon the Self-governing Community’s highest corporate body as provided for by its Statute which shall, in any case, guarantee adequate proportional representation” (Spanish Constitution, Article 69.5).
The report of the Council of State was presented in February 2006, contemplating the convenience and modes in which a possible constitutional reform could be realised, in light of the four points advanced by the Zapatero government.

Regarding the inclusion of a list of the Autonomous Communities that comprise the Spanish polity, the Council of State remarked that this was not a simple matter of style or semantics (Consejo de Estado, 2006: 134). Rather, it represented the need to explicitly acknowledge the permanent reality of the Estado de las Autonomías and formally incorporate into the constitutional text the configuration that it adopted since its creation in 1978. A related, though much more difficult, issue had to do with the principio dispositivo and the openness of the system. ¹²⁸ That is, the Estado de las Autonomías and the existing Autonomous Communities did present a complete evolution in a specific direction among potentially different paths that the Constitution could have allowed. However, that did not mean that the system was closed and the principio dispositivo exhausted its efficacy: each Autonomous Community kept the power to redefine indefinitely the particular expression of its political autonomy, which was guaranteed by the Constitution, through its Statute and the eventual reforms that they consider appropriate. This, in turn, also added some fluidity to the division of competences and the distribution of territorial powers which, it is presumed, would be a central element of any proposal of reform of a regional statute (Consejo de Estado, 2006: 135-137).

The modifications that the Consejo de Estado considered appropriate in order to incorporate the denominations of the Autonomous Communities into the constitutional text basically referred to two different Articles of the Spanish Constitution. First, it could be established in

¹²⁸ The government initiative seemed to imply that the inclusion of a list of all the Autonomous Communities would mean the completion of the Estado de las Autonomías. However, the much debated status of, and difference between ‘nationalities’ and ‘regions’ remained the same, unless the proposed constitutional reform would also take a position on this (Aja, 2005: 3-4). This was something that the Report of the Consejo de Estado explicitly acknowledged while determining that it was beyond the scope of its current mandate (2006: 156).
Article 2 that political autonomy is not a right (to be exercised) but a constitutional principle of the Estado de las Autonomías (Consejo de Estado, 2006: 150-153). This would mean not acknowledging the potential to organise the Spanish territory along autonomous political units but rather, the reality of a process that already took place and constituted a permanent feature of the political organisation of the country. Second, it could be considered as part of Title VIII of the Constitution (“Territorial Organisation of the State”), incorporating the changes there in order to update the text to the reality of the Estado de las Autonomías. This would imply cancelling all those provisions that make references to the eventual establishment of Autonomous Communities and related articles regulating the initial stages of that process (this would also apply to a number of Transitional Provisions) (Consejo de Estado, 2006: 160-173).

Regarding the reform of the Senate the Consejo de Estado considered four different aspects: its functions as a chamber of territorial representation; its composition; its institutional position vis-à-vis Parliament; and its competences in relation to foreign affairs and the European Union.\(^{129}\)

The appropriate functions that the Senate should perform in order to become a genuine chamber of territorial representation included especially all those laws considered to be of ‘autonomous incidence’. That is, whenever the interests of the Autonomous Communities were directly affected by a piece of legislation, the Senate should be part and parcel of the debates allowing the autonomous units a voice in the deliberation and eventual decisions being made (Consejo de Estado, 2006: 244-247). Moreover, the Senate should constitute itself a space for deliberation and cooperation among Autonomous Communities themselves and among them and the Spanish State (Consejo de Estado, 2006: 264-266).

The composition of the Senate as a chamber of territorial representation was an issue hotly debated among constitutionalists and politicians alike.\(^{130}\) The Consejo de Estado openly acknowledged the controversy surrounding the number of Senators and the different possible

\(^{129}\) Given the fundamental importance of the first two issues discussed by the Report of the Consejo de Estado for the Estado de las Autonomías, the present analysis concentrates exclusively on those.

\(^{130}\) For a summary of diverse opinions and relative merits of the proposals being discussed, see Sevilla et. al. (2009: 90-91) and Carrasco Duran (2005: 373-377).
quotas that each Autonomous Community would enjoy, since clearly that distribution directly would translate into relative power positions. The general criteria considered by the Consejo de Estado to establish the composition of the Senate included: equal number to all the constituent units; proportional number based on population; territorial factors (i.e., taking into consideration the number of provinces in each Autonomous Community); minimum and maximum difference of numbers allotted among autonomous units to safeguard equality; and other conditions like insularity (in the Spanish case this would apply to Balearic Islands) and special arrangements (i.e., the case of the Autonomous Cities of Ceuta and Melilla) (Consejo de Estado, 2006: 278-286). Different combinations and ways to apply each of these criteria would entail differing compositions of the Senate. The Consejo de Estado weighted these considering the proposed goal of better representation and participation of the Autonomous Communities at the level of the Spanish State. However, its opinions remained rather technical, stressing the highly sensitive political issue that this represented. Ultimately, the Report of the Consejo de Estado presented different alternatives without establishing one of the options as indisputably better (2006: 278-295).

The Report of the Consejo de Estado constituted an analysis and discussion of the Estado de las Autonomías, paying special attention to those areas highlighted by the Zapatero government as in need of reform. Broadly speaking, the Report considered the challenges posed to the system after decades since its establishment, and discussed the eventual changes that could improve its democratic character and quality of decision-making.

However, the Report did remain a non-binding document and could not impose in any concrete way its conclusions, given its advisory nature. Ultimately, the possibilities of a successful reform of the Constitution rested on a widespread consensus around it and the necessary compromise among all relevant political parties (Spanish and nationalists alike).

Apart from this ‘government-sponsored’ Report, there were other initiatives claiming the need to reform the 1978 Constitution. These included numerous doctrinal works of
constitutionalists (Rubio Llorente and Alvarez Junco, 2006; Solozabal, 2005), but also political programmes, especially from leftist parties and the conservative PP. In this latter case, given the fact that that political party would be indispensable to reach the consensus required for any reform, I think it is important to briefly discuss its own understanding about the possibility of reforming the constitution.

The conservative party changed its official position from outright rejection of any amendment to the constitutional text to its own proposal of reform in 2006. Among the most salient provisions are (Sevilla et. al., 2009: 94-96):

1) Establish a higher threshold (a 2/3 majority) in regional and Spanish Parliaments to modify Statutes of Autonomy. The same principle would apply to attempts at modifying the organic laws of constitutional bodies.
2) Expressly incorporate in the constitutional text the principles of constitutional loyalty, coordination, cooperation and collaboration.
3) Establish a number of exclusive and inalienable competences of the Spanish State (with special emphasis on foreign affairs, defence, security and crisis management).
4) Empower the Spanish Parliament to enact laws guaranteeing the exclusive powers of the Spanish State and ensuring its prevalence in the Spanish constitutional and legal system.
5) Constitutionalise the object and content of Statutes of Autonomy, and the process of their reform.

All in all, the PP’s proposals go in a very different direction than that assumed by the PSOE-Zapatero. I think it is worth keeping in mind the ways in which the conservative-socialist

---

131 For a list of the most relevant names in this debate and their works, see Sevilla et. al. (2009: 94).
differences in terms of ideology, national identity and political autonomy may find expression in opposing (though perhaps overlapping) proposals of constitutional reform.

In ideological terms, the conservatives favoured a central, unified image of Spain where the expression of multinationality and nationalist or culture-based demands are simply tolerated at best. Moreover, the PP tended to see the demands of the three historical communities as a disruptive element to the Spanish political system, and even a threat to Spanish unity. For its part, the socialists were more sympathetic about multinationality, albeit with some ambiguity or indeterminacy about the ways in which the demands of the three historical communities could be accommodated within the framework of the Estado de las Autonomías.\(^{132}\)

Related to this previous point, the conservative party tended to associate Spanish national identity with Spain, with no direct reference to the multiple cultural realities present in the country (in terms of language, national sentiment, and political institutionalisation of them). The socialist party was more amenable to this, embracing those cultural differences especially in terms of language and the exercise of political autonomy (self-government).\(^{133}\)

Regarding political autonomy, the socialist party did not seem to have a serious problem with a federal Spain, whereas the conservative party seemed to favour a system more in line with decentralisation.\(^{134}\)

As a result, the proposed constitutional reform of the Spanish conservative party aimed at strengthening the position of the Spanish State, deemed as under threat by the degree of heterogeneity of the system in general (and the challenged posed by the reform of the Catalan Statute of Autonomy in particular). The overall goal of the conservative proposals was, then, to protect the unity of Spain and put a limit to the seemingly ever-expanding claims from regions like the Basque Country and Catalonia. Related to this, the contents of the provisions defended

---

\(^{132}\) A clear example of this position, as commented above, was Zapatero’s endorsement of reforms of regional statutes, and his rhetoric about a ‘plural Spain’.

\(^{133}\) As Article 3.3 of the Spanish Constitution asserts: “The wealth of the different linguistic forms of Spain is a cultural heritage which shall be especially respected and protected”

\(^{134}\) Or at least a minimally exercised political autonomy, since that principle was enshrined and protected by the Constitution (away from a model strictly defined by decentralisation).
by the conservatives also made clear that there would be no consensus at all to realise a constitutional reform. As a result, for all the ongoing and hotly contested debates surrounding possible amendments to the constitutional text, the actual possibility of reforming the Constitution remained clearly absent.

I believe that, in analytic terms, the position of the Spanish conservative party creates an obstacle to the exercise of its duty of acknowledgement. I stress again that this duty does not necessarily mean accepting any and all demands coming from the three historical communities (or the socialist party regarding a possible reform of the constitution, as the case may be). But rather, it implies meeting the four basic conditions that the principle of political recognition demands. I believe that the official position and public stance of the PP does not meet these conditions, systematically refusing to discuss in good faith and open manner either possible demands based on the national sentiment of some regions, or the eventual amendment of the Constitution in light of the multinational character of Spain.

Consequently, the public debate around possible reform of the Spanish Constitution presents two seemingly irreconcilable positions. First, there is the federalist option which favours a reform conducive to make the Estado de las Autonomías a formally federal system, with different degrees of asymmetry depending on the particular political parties in this camp: from some sectors of PSOE to some nationalistic parties in Galicia, the Basque Country and Catalonia. Second, the right-centre option would also favour changes to the constitutional text but, by and large, in the opposite direction. They prefer changes that would stress and reinforce the unity of the polity and the central position of the Spanish State and government vis-à-vis those of the regional authorities. Unsurprisingly, this is the position of the conservative PP.

Between these two positions, the respect for minorities, reciprocity, feasibility and public reasoning are partially met at best. Ultimately, the chances of fully incorporating the principle of political recognition of multinationality in the Spanish Constitution remain low.
Another related discussion is the extent to which the 1978 Constitution is deemed to be insufficient or lacking the necessary clarity; that is, the extent of the reform being proposed. Here, again, it is possible to think about differing degrees in the spirit of the reforms advanced by diverse political parties. For some, minor almost cosmetic changes might suffice; for others, more profound, radical changes are needed. Many of the Basque, Catalan and Galician nationalist parties might endorse this latter view, calling into question the current characteristics of the political system as defined by the Spanish Constitution. I think it is important to stress that, although these proposals deeply challenge the constitutional order and are prominently favoured by nationalist parties, they do not have the necessary social and/or political (electoral) support. Nevertheless, they may present an interesting line of reasoning insofar as they do constitute a self-understanding and a measure of the aspirations sustained by these forces.

Inevitably, the discussion about possible reforms of the constitutional text reflect the longstanding positions of all political actors regarding the desired overall structure of the Spanish polity and the best way to organise the territorial distribution of power among the constituent units.

At the centre of these debates there are the possible changes introduced regarding the composition and powers of the Senate. As Roller (2002: 14, 15-16) puts it: “Senate reform for nationalist parties is essentially another step towards the constitutional recognition of their cultural, linguistic and national distinctiveness”. Further, “[p]art of the problem is the constitutional indecision on the form the Spanish state would take”.

Ultimately, as suggested above, there were two basic obstacles that rendered any proposal of reform of the Senate ineffectual. First, there was a strong partisan logic from the Spanish-wide political parties which dominated the debate and decision-making mechanisms of the Spanish Parliament\textsuperscript{135}; second, there also was a strong bilateral logic favoured by nationalist parties

\textsuperscript{135} This is reinforced by the simple fact that any proposal of reform that is not supported by both parties (PSOE and PP) will not achieve the necessary votes to initiate the process. Even if this were not the case,
whereby, depending on the political context, they are able to exert significant influence and reach compromises with the Spanish government (Carrasco Duran, 2005: 378-380). Both factors taken together have worked against the possible conversion of the Senate into an authentic chamber of territorial representation. By the same token, this constitutes a strict limit to the further federalisation of that institution and, by association, the whole Estado de las Autonomías.

it would be highly dubious the legitimacy of a constitutional reform that did not enjoy widespread consensus among all political parties.
Chapter 5

Spain, Multinational Democracy and Political Recognition. An Assessment

In this chapter I discuss the implications of the Spanish case to the understanding of democracy and political participation. Moreover, I present and analyse a conceptual framework to identify the political dynamic involved in the double process of right of disclosure and duty of acknowledgement. Then I apply that framework to the specific features of all three historical communities, highlighting the main characteristics that political recognition assumed for each of them. In the final section I re-consider the case for federalism as an appropriate political and institutional framework conducive to the accommodation of nationalist demands in a democratic manner.

5.1 - Democracy and the Spanish case

The multinational composition of a given polity alters the meaning of democracy, both regarding its principles and its practices. Equally, the existence of a number of national minorities in a polity challenges the definition of the demos and the political principle of inclusion. Moreover, those existing national minorities contest the basic principles of sovereignty, self-government and political participation in collective binding decisions.

The Spanish case clearly showed these tensions. Basques, Catalans and Galicians, all claimed to have specific rights based on their historical, sociological and political reality of being national minorities. Therefore, they demanded certain recognition that would alter the ways in which the Spanish democracy should be understood and exercised. As a consequence, basic
fundamental issues of the political order like the criteria that defines the demos, or establishes the space for political participation conducive to legitimate binding decisions, become part of contested political debates and disputes.

The disagreements about the meaning and actual practices of democracy in Spain did not reflect mere power relations centred on the possibility of dominating a particular institution or imposing a specific decision. Rather, they express the deep divide among political elites in Spain regarding three important elements:

1) The composition of the demos and the exercise of sovereignty

2) The principle of political inclusion and right to political participation

3) The legitimacy of collective binding decisions

The first element refers to the basic question of who makes up the Spanish polity and, depending on the answer to it, how that political community organises itself and decides its own future. The drafters of the 1978 Spanish Constitution were fully aware of this problem. However, they attempted to strike an uneasy balance between two opposing and seemingly inadequate alternatives. On the one hand, they could have reasserted the notion of a single Spanish nation and the historical unity of it. This option was favoured by the Francoist dictatorship, strongly emphasising a model of homogeneity of Spain and seeing any claims from the three historical communities as a threat to that unity. This, in turn, is in line with the classic implicit assumption of liberalism about a single-nation state model which expresses the will of an undifferentiated demos. On the other hand, they could have adopted a fully-fledged

---

136 The Franco regime (1939-1975) was but the modern expression of a strong Spanish political tradition that conceived Spain as an untouchable and unchangeable reality throughout history. Although not the only political project defending the unity of Spain and rejecting any regional/national claims, the Francoist legacy embodied a political model of state and nation that was, by and large, avoided by the drafters of the 1978 Constitution.
federal or even confederal model, whereby the claims of Galicia, the Basque Country and Catalonia would find explicit recognition. This option was traditionally favoured by a whole array of political forces in the three historical regions, especially Catalan ones. Such an alternative implies the definition of the three Spanish historical communities as ‘nations’ with a legitimate claim to be fully incorporated into the political order of the polity. This federal (or confederal) alternative responds to a *multinational model of the state* where the existing national communities are granted specific rights based on their national character, changing in turn both the composition of the demos and the collective(s) onto which sovereignty is bestowed.

The drafters of the 1978 Constitution chose a middle course between these two options. Their solution was to combine the “indissoluble unity of the Spanish Nation” with “the right to self-government of the nationalities and regions of which it is composed” (Article 2, Spanish Constitution). This meant that the principle of sovereignty was established as an exclusive right of the Spanish people; whereas the principle of political autonomy and self-government was recognised for the units composing the polity.

I believe that the ambiguity expressed in the wording of Article 2 was justified given the previous political evolution of the country, the historical background, and the spirit of compromise informing the process of drafting the Constitution. However, there remained a fundamental tension that, soon enough, adopted a double form: first, the ways to combine the elements of sovereignty (Spain) and political autonomy (nationalities and regions); second, the actual distinction between, and specific political and judicial effects of ‘nationalities’ and ‘regions’. These two elements became the crux of all political disputes in Spain since 1978. In the first case, the tension took the form of conflicts between the central Spanish government and the Basque, Galician and Catalan governments. The former defended the centrality of the state and the overall integrity of the polity, whereas the latter pursued the political expression of their reality as national communities through increasing demands claiming a

---

137 Spanish political parties also contested the proper ways to pursue these objectives. As a consequence, different socialist and conservative governments were more or less amenable to the possible accommodation of national minorities.
series of rights conducive to it. In the second case, conflict revolved around the possibility or not of asserting a qualitative difference between ‘nationalities’ and ‘regions’, which led to a series of rounds of political negotiations where the nationalities claimed (and were granted) certain rights and powers and the regions responded by adopting the same strategy so as to be on an equal footing with them.

Ever since 1978, democratic rule in Spain has been challenged by this double tension. The constitutional formula of “sovereignty plus autonomy” was called into question by a series of proposals in line with the idea of shared sovereignty. Equally, the fact that the Spanish demos was composed of regions and nationalities fuelled deep disputes between equality among those units and some form of qualitative difference, source at the same time of a differentiated status from which to claim distinctive political rights.

These tensions also express the second contested element of Spanish democracy, namely the principle of political inclusion and the right to political participation. For the first time in the political history of Spain, the 1978 Constitution recognised and incorporated the historical communities of the Basque Country, Galicia and Catalonia into the constitutional order of the polity. This decision was inspired by the fact that those regions enjoyed regional political institutions in the past and that they all presented a considerable degree of nationalist sentiments. Therefore, the First Additional Provision incorporated the protection and respect of historic rights of territories with traditional charters (fueros), a clear reference to the Basque Country. Further, the Second Transitional Provision allowed for an expedite granting of political autonomy\(^{138}\) for those “territories which in the past have, by plebiscite, approved draft Statutes of Autonomy”, a clear reference to the Basque Country, Catalonia and Galicia (Spanish Constitution).

Not surprisingly, the relation between the right of political autonomy and the principle of political inclusion was a controversial one in Spain. In relation to this, the Basque Country,\(^{138}\) This is the source from which nationalist political parties claimed for their respective regions a qualitative superior level of powers and competences vis-à-vis the regions. The dispute usually took the form of the distinctiveness of the three historical regions and the question of asymmetry of the system. Both the Spanish government and the Constitutional Court regularly rejected this thesis.
Catalonia and Galicia enjoyed extensive powers and competences to organise themselves and implement a vast array of policies in their respective territories. The cases of language and education\textsuperscript{139} were notable examples of the ways in which these communities were able to imprint their own political objectives. The co-official status of the Spanish language and the regional languages (Euskera in the Basque Country, Catalan in Catalonia, and Galego in Galicia) together with the powers these governments enjoyed in these policy areas became the focus of nationalist governments eager to normalise and protect their languages as a way to affirm a particular identity.

However, the limits to the exercise of political autonomy also proved to be a focus of contested debates. For example, the regional languages should be protected and its use encouraged but that cannot be done in a way that undermines the position of Spanish as the common language of the polity as a whole. By the same token, education can be imparted using the regional languages as means of instruction but that cannot constitute an infringement of linguistic rights enjoyed by all Spaniards. The fine line between exerting one’s right to politically express one’s own identity (through language in this case) and the respect for others’ rights have been a regular feature of all conflicts between the central Spanish government and the regional ones.\textsuperscript{140}

Political participation in democratic Spain was secured through a double electoral process. Basques, Catalans and Galicians participated in elections for both regional and Spanish governments. However, the electoral unit in Spain was not the Autonomous Community but the Province, which introduced an element of distortion in the political representation of the interests of these regions. This also was one of the fundamental elements in the debate about the possible reform of the Senate and its transformation into a genuine chamber of territorial political representation. More broadly, it is often argued that the Autonomous Communities did not enjoy the proper institutional mechanisms at the level of Spanish government through

\textsuperscript{139} Communications and mass media can also be included here.

\textsuperscript{140} Related to the previous point, this tension can be reasserted as follows: the constitutional enshrinement of the right of political autonomy does not and cannot challenge the principle of sovereignty bestowed upon the Spanish people.
which they could defend and represent their legitimate interests. As such, the weak institutionalisation of formal direct participation of the Autonomous Communities in central government institutions and decision-making mechanisms diminished the chances of real political participation/representation of Catalans, Basques and Galicians in Spanish democracy.

One last element that characterised political participation in Spain was the fact that all three of these regions developed their own political party systems. Insofar as regional politics is dominated by nationalist parties and nationalist discourses and claims, political participation may adopt one of two forms. First, it can assume a confrontational tone, presenting regular conflicts as zero-sum games and fostering distrust and misunderstandings among political forces. Second, it can attempt at both expressing a nationalist agenda and respecting the position of one’s adversaries defending other political alternatives.  

The possible patterns of relation among political parties and the alternatives they express and defend is in direct connection with the overall nature of the nationalist identity in question and the specific ways in which it is exercised. This, in turn, affects the possibilities of accepting collective binding decisions, even in cases in which they run against one’s own interests.

In general terms, the nationalist identity and political expression of it in each of the three historical communities can be characterised as follows:

**Galicia**

Galician nationalism traditionally enjoyed widespread social presence among the population. However, it also displayed a high level of ideological differences and weak political organisation. There were some political radical forces challenging the legitimacy of the current political order

---

141 Certainly, it takes two to tango: the same should be applied to Spanish political parties (the socialist PSOE and the conservative PP). Unfortunately, on both sides, parties fell short of the desired spirit of fairness and compromise. For a more detailed analysis, see the section on Political Recognition below.
but they remained marginal. The lack of organisation, coupled with the conservatives’ endorsement of ‘autonomism’, was a fundamental reason why Galicia is the only one of these three regions whose governments were dominated by nationalist political parties.

**Basque Country**

The most salient particularity of Basque nationalism was the factor of political violence and a significant radical expression of nationalist options. The presence of the terrorist organisation ETA and its links to some of the *abertzales* (nationalist left-wing) forces imprinted Basque politics a unique character. Further, Basque nationalism presented different alternatives endorsing independence and a deep-seated criticism of the Spanish state, sometimes even calling into question its legitimacy. The regional party system was characterised by an almost absolute domination of nationalist political parties, around the centrist PNV.

**Catalonia**

Catalan nationalism was characterised by a strong social, political and electoral presence of different versions of ‘Catalanism’. These ranged from radical pro-independence options to more moderate and pragmatic expressions. The latter were much more prominent than the former, especially around the centre-right CiU. Catalan nationalist parties were able to strike different electoral alliances with Spanish governments, managing by doing so to advance their own interests and participate in a constructive way in Spanish politics. This, of course, did not deny recurrent tensions and a sense of grievance regarding particular issues.
It is worth noting that, despite the fact that Basque and Catalan governments were dominated by nationalist forces, Basque and Catalan identities and the common expressions of them did not adopt a clearly exclusivist character.\textsuperscript{142} Moreover, the overall relations of these regions with the rest of Spain were not dictated by secessionist options. Certainly, their relations were conflictive and furiously so at moments. However, dual identities among the populations in both regions remained relatively high even in the face of aggressive attempts of Basque and Catalan governments at ‘nationalising’ the electorate. Further, both levels of governments adopted fruitful mechanisms of mutual understandings and workable compromises.\textsuperscript{143}

Nevertheless, each of the nationalist parties and their supporters suffered decisions against their own interests. For example, some provisions of the normalisation of Galego were struck down by the CC; the failed attempt at reforming the Basque Statute also showed the limits to the accommodation of certain nationalist claims; and the same applied to the end result of the new Catalan Statute, modified by the Spanish Parliament and further re-interpretated by the CC.

These were not insignificant matters since they all involved crucial elements that both defined the position of each of these communities in relation to the rest of the polity, and expressed specific understandings of fundamental principles and rights. These included the social use and political regulation of language as a basic identity-marker for each of these communities, or the proper way to understand and define the principles of sovereignty and political autonomy. These processes, taken as a whole, showed the delicate balance between asserting one’s identity and creating the necessary room in which that assertion can be exercised in light of another, common, identity equally worth of respect and protection.

The present analysis tried to identify abstract normative principles, highlighting at the same time contextualised practices in which those principles are interpreted and contested by different political forces. The normative principles I suggested for a multinational democracy entailed the principle of political recognition, processes of citizenisation and federalism. One

\textsuperscript{142} On this, see the ‘dual identities’ figures in Chapter 2.
\textsuperscript{143} Clearly, the Catalan record is much better than the Basque one. However, even the different Basque governments have been able to explore venues of cooperation and mutual beneficial relations with Spanish governments at different moments in time.
would expect that both the constitutional order of a multinational polity, and broad formal declarations from both the central and regional governments and political parties would reflect the minimum conditions conducive to the realisation of those principles. Actual, contextualised practices show the political dynamic between governments and political parties in concrete institutional settings and power relations. Moreover, I expect the political and institutional interactions among the relevant political actors of a multinational polity to reflect a certain understanding and application of those normative principles in actual practices and behaviour.

Therefore, I contend that the interaction between normativism and political practice should realise a concrete definition of democracy, political inclusion and participation.

Further, the analysis aimed at incorporating the specific decision-making mechanisms and the question of legitimate collective binding decisions whereby majority and minorities would engage in political contestation through the existing constitutional, political and institutional framework of the polity.

Thus, in order to assess democracy in the Spanish case I take as fundamental factors the following ones: a) the political evolution of that polity since the establishment of the 1978 Constitution; and b) the overall patterns of interaction among political elites (i.e., Spanish, Catalan, Basque and Galician). This, in turn, I believe reflects the ways in which each of these elites holds a certain self-image, an understanding and expectations of interactions among them, and an overall conception of the nature of the polity.

The present discussion is further explored in the next section, where the principle of political recognition is analysed, together with the ways in which it has hindered or enhanced the possibilities of accommodation of Spanish national minorities.
5.2 - Political Recognition and the Spanish Case

I adopted the notion of political recognition as a useful concept when analysing the possibilities of accommodation of multinationality. I contend that political recognition can work both ways: when successful, it allows for the expression and incorporation of the right claims advanced by national minorities; when unsuccessful, it illustrates the obstacles and limitations that that accommodation faces in concrete political and institutional settings.

Political recognition is conceptualised in my analysis following Honneth’s and Tully’s ideas. In the first case, to grant recognition implies a series of practices conducive to a progressive realisation of a particular self-understanding of a society. This process is characterised by ongoing open debates understood as part of a historical learning and experiences of a society regarding the best way to accommodate identity-based (i.e., nationalist) claims. In the second case, political recognition is informed by a complex process of citizenisation, which includes three fundamental stages: a) sense (within group x) of misrepresentation; b) open discussion with other members/groups of the polity; c) engagement in public deliberation and identity-formation discussions (one’s own and others’). Further, political recognition is predicated on certain citizenship practices which basically entail, on the one hand, a right of disclosure (publicly sustain a specific cultural identity and related claims); and, on the other, a duty to acknowledge (impartial and serious consideration of such claims).

However, political recognition is not a smooth or automatic process. Not every claim so advanced will be recognised; further, all claims entail the potential of intense and divisive contestation of fundamental principles, institutions and practices. Precisely for these reasons, as I highlighted in the previous analysis, discussions surrounding political recognition and the associated processes of citizenisation must meet strict conditions. They include: a) respect for minorities; b) reciprocity; c) feasibility; and d) public reasoning.

Honneth complements this idea, arguing that political recognition should be seen as a series of struggles that informs politics in an ordinary sense. These struggles are necessarily open,
meaning that they constitute social and political discussions through which a society explores the appropriate ways to sustain cultural differences in a democratic manner. The overall process according to Honneth must remain indeterminate insofar as the outcome of these deliberations and dialogue between the groups in question cannot be solved once and for all establishing a formula outside of democratic practices. Political recognition then is presented not as a smooth and teleological process that inevitably will lead to a concrete and final solution; rather, it is composed of publicly sustained struggles that reflect power relations and arguments/claims advanced by the groups in question. As a consequence, the specific progress that a concrete society achieves at any moment in time in the form of acquired/enshrined/recognised rights can also be attacked, distorted or simply lost.

In order to ‘translate’ these abstract considerations to concrete historical experiences, I propose a conceptual framework that would help explain the processes and dynamic involved in accommodating multinational demands in a democratic manner. The aim of this conceptual framework is to present and discuss both the conditions and possibilities of advancing right claims based on a definition of national community, and the ability to normatively assess the justice and political feasibility of such claims.

The framework I am proposing consists of four interrelated factors, which are the following ones:

1. **Background conditions present in a national community**

   This first factor comprises the general situation that describes and defines the ways in which a given national community both sees itself and relates to the rest of the polity. The background conditions include the following elements: history, economic power, ideological spectrum, culture (especially language) and political institutions
2. **Political articulation of right claims based on those background conditions (right of disclosure)**

This second factor comprises the particular kind of demands a given national community advances in light of the previous background conditions. In turn, those demands express a certain self-image and understanding of the national community in question. Moreover, the demands and self-image sustain concrete national aspirations (in terms of a nation-building project and how that fits into the existing constitutional and institutional order of the polity). This factor represents the right of disclosure I discussed in chapter 1, according to which a national community has the right to present and advance specific claims. The crucial aspect of this process is whether the demands in question are in accordance to the four basic conditions of the right of disclosure: respect for minorities, reciprocity, feasibility, and public reasoning. To the extent that these conditions are met, there is a strong indication that these demands are fair and should be discussed seriously.

3. **Response and reactions of the political system (duty of acknowledgement)**

Once a series of demands are proposed and claimed by a given national community it is up to the rest of the polity to respond. The reaction of the political system as a whole to these demands corresponds to the duty of acknowledgement I discussed in chapter 1. Important elements here include national political parties and leaders, public opinion and other state institutions (notably, the national parliament and the Constitutional Court). This reaction can range from outright denial of the justice of the proposed demands to wholeheartedly acceptance of them. Ideally, I contend that the specific modality that this response takes will correspond to the presence of absence of the four conditions mentioned supra.
4. Feedback and mutual interactions between existing national communities within the same polity

This last factor takes into account the fact that these processes do not occur in the vacuum. Rather, the dynamic between a given national community and the rest of the polity is affected by history and the outcome of successive rounds of proposed claims. The reiterated interaction between a national community and the rest of the polity can either produce a cycle of mistrust and suspicion or, conversely, an emerging trust and mutual understanding. Ultimately, the specific pattern of relations regarding the dual process of right of disclosure and duty of acknowledgement will depend on the particular ways in which claims are advanced, received and discussed.

Also important for this factor are the possible interactions among the existing national communities themselves, and the eventual modes of relation among them. On the one hand, these can display a slow learning process whereby the success or failure of one set of claims advanced by a given national community is taken into consideration by other national communities, perhaps trying alternative ways or reinforcing successful mechanisms. On the other hand, different national communities can try and active a coordinated effort to advance their claims, based on the shared experience of national identity and relative position within the political system.

Two final considerations are also needed here. First, this is a schematic presentation of the mechanisms at play that only identifies the basic dynamic and interactions among relevant political actors, given certain background conditions. The outcome of the process is inherently indeterminate, insofar as it depends on several open factors:

- The background conditions, depending on the nature of the elements included here, would present one alternative in terms of ‘self-image’, ‘nation-building project’ and ‘demands’ among multiple possible ones. For example, a national community with a robust sense of identity and a clear distinctive national character embodied in long
standing and widespread cultural traditions will most likely strongly articulate pressing demands for recognition (i.e., right of disclosure). In the opposite end (that is, a weak sense of nationalist sentiment or lack of a clearly defined culture and traditions), a national community may not be able to fully exercise its right of disclosure. Related to this, I believe it is very important the ‘ideological spectrum’ present in a given national community. The broader and more polarised the ideological spectrum, the more complicated it will be to advance clear negotiable demands. Ideological polarisation can be present between nationalist and non-nationalist political parties, but also between nationalist political parties themselves.

- On the ‘duty of acknowledgement’ side of the process of recognition, I think it is important to highlight the ideological distance and overall interactions between political parties, both at the central government and the regional (i.e., regional community) one. This ideological position of the respective governments and their official positions on debates regarding political recognition, in turn, will depend on their respective nation-building projects and the possibilities of realizing one or the other (or a combination of both) in a multinational democratic framework.

- Finally, one last factor to keep in mind this is, I believe, time. The mechanisms of right of disclosure and duty of acknowledgement are part of ongoing discussions, debates, and political decisions. What happens in one particular round of negotiations will affect the dynamic of the following round. I think that time is also important in relation to the longevity of the political system itself, and how well institutionalized and effective existing institutions and decision-making mechanisms are. Again, I believe that, depending on the dynamic of these processes and the ultimate outcome in a given time, history plays a role here, either making possible improvements for political recognition of multinationality, or putting obstacles to the realization of that principle.
I believe it is helpful to apply this idealised process of political recognition to the Spanish experience. In what follows, I describe the four factors mentioned above to all three historical communities, taking into account the ways in which they played out in terms of political recognition.
The Basque Country

The Basque Country as a region had a rich history and distinctive cultural traditions, especially centred on the Euskera language. The political articulation of national identity was carried out by Basque nationalist parties, either the centre-right PNV, or the left-wing abertzale political parties. Basque nationalism tended to be aggressive and exclusivist, even in its moderate form. On top of that, the Basque Country presented a long standing element of political violence embodied in the terrorist organisation ETA and its numerous attacks and deaths throughout the years. A significant sector of Basque nationalist forces even remained suspicious about the legitimacy of the existing political order (i.e., 1978 Constitution, the Spanish State and the fit of the Basque Autonomous Community in that legal and institutional framework).

As a result, the type of self-image, nation-building project and demands that articulated the right of disclosure for the Basque Country in terms of political recognition tended to be disruptive of the constitutional and legal order, pursuing a radical re-definition of that Autonomous Community vis-à-vis the whole polity. An obvious example of this was the Ibarretxe Plan and the proposed “association status” between the Basque Country and Spain. However, this tendency was also present in other initiatives, notably the linguistic policy of protection and promotion of Euskera (in detriment of the Spanish language), or the legal limits of political participation and action for those organisations linked with terrorism, as defined by the Organic Law of Poltical Parties.

For their part, the central government and rest of the polity tended to exercise their duty of acknowledgement either with suspicion or outright rejection of the demands put forward. Even when there were deep disagreements between the Spanish socialist and conservative political parties, they were united on this issue: no demand coming from the Basque Country could be acceptable insofar as those demands were based on unconstitutional grounds, as defined by the CC. I agree with this stance, for two reasons: first, the duty of acknowledgement does not
imply an automatic acceptance of the demands in questions; rather, that would depend on the nature of the demands and the ways in which the debate surrounding those demands is carried out (i.e., the four basic conditions: respect for minorities, reciprocity, feasibility and public reasoning). As shown above, in these instances, the rejection of the Basque right of disclosure necessarily led to failure in terms of political recognition. Second, this rejection does not deny Basques rights; simply set limits to what is acceptable and legitimate to demand in terms of political recognition in a multinational democracy.

Moreover, not every single instance of demands coming from the Basque Country was rejected. Looking at the evolution of the Estado de las Autonomías ever since 1978, that region gained significant powers and competences that guarantee a strong exercise of political autonomy and self-government, as defined by the Spanish Constitution: from taxation powers to linguistic promotion and education, the Basque Country is by all accounts a self-governing Autonomous Community with the proper constitutional guarantees of a legitimate democracy. Surely this does not deny eventual future renegotiations and ongoing contestation of the existing situation. However, this must be thought of as part of the process of political recognition characterised by the four conditions mentioned above.

*Catalonia*

Catalonia also presented a strong sense of identity, a language of its own, and a powerful political past with a tradition of political institutions and a degree of self-government. However, the articulation of this self-image and national sentiment around a given nation-building project took a different path in Catalonia when compared to that of the Basque Country.

By and large, Catalonia advanced its own self-image and nationalist demands according to a combination of centrist and pragmatic vision embodied in the Catalan political party CiU. Catalonia gained progressive powers and competences as a politically autonomous community,
including a vast array of policy areas, from education to language, from public administration to local governments. This was in line with the enshrinement of political autonomy in the 1978 Spanish Constitution, and represented a way to recognise the distinctiveness of Catalonia.

The right of disclosure in Catalonia took the form of demands that would express and defend its own self-image as a historical community within Spain. Notably, as shown above, these demands addressed the issues of competences in general (i.e. self-government), and language and education in particular.

The last round of negotiations centred on the proposed, approved and then modified New Statute. In this instance, the right of disclosure of Catalonia included controversial provisions that would re-define its place and status within Spain. One of the most salient conflicts was the definition included in the New Statute according to which Catalonia is a nation. The duty of acknowledgement exercised by the Spanish state and political parties made room for many of the demands advanced by Catalonia. However, the definition of Catalonia as a nation was not accepted insofar as it contradicted the existing constitutional order. I believe this shows the limits and the extent to which political recognition is exercised in Spain. On the one hand, Catalonia claimed and was granted extensive powers and competences as an autonomous political community, realising its own self-government; on the other, some demands were deemed as unacceptable for they attack the existing legal and constitutional order of the polity. The last ones include the definition of ‘nation’, taxation powers and judicial institutions at the regional level. I think that the duty of acknowledgement and the limitations it imposed was justified on these grounds. That is, a reform of a regional statute cannot modify the Constitution. However, this should not preclude the discussion and serious considerations of those demands.
**Galicia**

Of the three historical communities, Galicia displayed a weaker version of nationalism and a lower level of nationalist demands. As with the Basque Country and Catalonia, Galicia benefitted from the recognition of the Spanish Constitution of Spain’s cultural and linguistic plurality. It also benefitted from the principle of political autonomy and the devolution of powers and competences from the centre to that region. However, the influence and power of the Galician conservative party, together with the atomisation and ideological fragmentation among Galician nationalist parties, led to the adoption of ‘autonomism’ as a political goal instead of strong nationalist objectives.

Nevertheless, Galicia did exercise its right of disclosure especially in policy areas like education and language, where a considerable level of promotion and protection for the regional language was granted. In more recent times, the failure to articulate a coherent and final proposal for the reform of the Galician Statute also showed the limitations that Galician nationalist political parties had. Given this situation, the duty of acknowledgement was not really necessary since Galician demands were not forth coming.

**Time and Learning**

One last element from the conceptual framework I am discussing regarding the process of political recognition involves time and the possibility of learning from one round of disclosure-acknowledgement to the other. Moreover, it is also possible that the experience of one region (with its successes and failures, deficits and virtues) serves as a lesson to the others, either by imitation or avoidance effect as the case may be.
Taking time into consideration I see a demonstration effect at work in the process of political recognition. On the negative side, the failed experience of the Ibarretxe Plan revealed the limits to accommodate demands regarding sovereignty and possible secessionist movements. On the positive side, the more moderate provisions included in the Catalan New Statute served as a model to adopt by Galicia (and other Autonomous Communities) given its likelihood of success. The subsequent CC ruling declaring unconstitutional some of these provisions also shows the limits for accommodation of multinational demands.

One last element is the attempt by all three historical communities to constitute a common front and advance concerted demands given their shared situation. There were limited initiatives in this regard, due to the dissimilar situations of each of the three historical communities, and the strong tendency they adopted favouring bilateralism when addressing the Spanish State. However, it is worth mentioning the Barcelona Declaration of 1998. This document called for an open an explicit recognition of the multicultural and multinational character of Spain, and suggested concerted actions including Galicia, the Basque Country and Catalonia (Beramendi et. al. 2003: 261-264). It was signed by the main nationalist political parties of the three historical communities (the Catalan CiU, the Basque PNV and the Galician Nationalist Bloc). It even hinted at the establishment of a nationalist bloc of members of Parliament in Madrid, including all nationalist regional political parties. However, given the ideological distance and divergent interests and goals pursued by the signatory parties, the Declaration remained a vague document with no real influence (Beramendi et. al. 2003: 261-264).

5.3 - Spain as a Multinational federal polity

The federal option in Spain was by and large met with suspicion and scepticism, due to two different but interrelated factors. First, the failed attempt at institutionalising some form of federalism during the First Republic (1873-1974) and then the Second Republic (1931-1939) led
to a period of instability and ultimately to the breakdown of an incipient democratic regime that was followed by the civil war and Franco dictatorship. Second, federalism was a long-favoured alternative for a number of Catalan forces\textsuperscript{144} who saw it as a way to organise the polity responding at the same time to their culturally-based claims. Broadly speaking then, federalism in Spanish modern history has been associated either with a dubiously working alternative or with the perceived dangers of openly acknowledging the heterogeneity of the polity represented by Catalonia (extending the logic to the Basque Country and Galicia too).

Therefore, it is not surprising that the drafters of the 1978 Constitution shunned away from the use of federal arrangements. However, interestingly enough, the ambiguity and indeterminacy of the constitutional text did allow for a number of possible evolutions regarding the political organisation of the country, leaving open the defining characteristics of the Estado de las Autonomías. Among the possible arrangements for the territorial organisation of power and the distribution of competences, certainly federalism was a viable option.

The extent to which Spain can be defined as a federal polity is in direct relation to the actual evolution of the Estado de las Autonomías since its establishment in 1978. Realising the constitutionally guaranteed principle of political autonomy for nationalities and regions meant creating two levels of government where the central political authorities exercised shared rule and the constituent units enjoyed a considerable degree of self-rule. Moreover, the amendment of the Constitution required a supermajority that made it impossible for the central government to take such a decision overriding or ignoring the interests of the Autonomous Communities.\textsuperscript{145} Reinforcing this last point, it is also important to stress that the constitutional order itself is composed not only by the Constitution but also the Statutes of Autonomy of each nationality and region, forming together the ‘constitutional block’.

\textsuperscript{144} Some sectors of the PSOE defended ideas along federal lines, but their support has been more intermittent and ambiguous compared to that of Catalan political parties.

\textsuperscript{145} Depending on which part of the Constitution is proposed to be amended, the requisites are: a majority of three-fifths of the Senate and Congress or, if they disagree, an absolute majority in the Senate and two-thirds in Congress (in either case, a tenth of the members can request a subsequent referendum); or two-thirds majorities of the members of each House followed by a referendum (Spanish Constitution, Articles 167, 168).
Other features of the Estado de las Autonomías in line with a broad definition of federalism included: the existence of an impartial arbiter and final interpreter of the Constitution in the form of the Spanish Constitutional Court; a constitutional distribution of legislative and executive authority and of revenue resources; the representation of distinct regional views within the central policy-making institutions; and processes and institutions to facilitate intergovernmental relations (Watts: 2009).

Certainly, many of these elements are imperfectly or only partially present in the Spanish political order. For example, the degree to which the Autonomous Communities meaningfully participate in central government institutions and their interests are adequately integrated and expressed through decision-making mechanisms is part of an ongoing debate that moves from cautiously optimistic analysts to increasing sceptical ones. The latter group points out the shortfalls of intergovernmental relations in Spain and the lack of effective and institutionalised channels of participation for the Autonomous Communities in the elaboration and implementation of policies at the central government level (Requejo 2005, Fossas, 2009). The former group acknowledges that this is an element that still needs further improvement but they also stress that cooperation and collaboration in a wide range of policy areas is firmly taking place and improving (Colino, 2009: Borzel, 2000; Moreno, 2007). The same contrasting views can be found regarding other supposedly defining features of Spain as a federal country. They include: the support or criticism in relation to the Constitutional Court; the fiscal arrangements and solidarity principle among regions; or the distribution of power between different levels of governments.

I believe that these shortcomings of Spain regarding some elements traditionally associated with a federal polity are a product of time. As Moreno put it, Spain is a federalizing country, whereby the defining elements of federalism slowly take root and become an ingrained part of the political system. I think that, from a normative point of view, Spain should move to a more fully and open federal system. However, having said that, it is remarkable the progress achieved so far since the end of the Francoist dictatorship and the establishment of the 1978 Constitution.
Taken the overall evolution of the Estado de las Autonomías since its establishment, I identify three crucial elements. First, there is the institutionalisation of the principle of political autonomy enshrined in the Constitution. During this process, the nationalities and regions referred to in the constitutional text created Autonomous Communities and established their own political authorities (regional Parliaments and Executive branches). Second, there is the tension between symmetry and asymmetry stemming from the lack of precise definition of the Constitution regarding the concepts of ‘nationalities’ and ‘regions’, and its indeterminacy as to whether or not there is a qualitative difference between these two categories. Such tension played out in a series of struggles whereby Catalonia, the Basque Country and Galicia advanced specific claims in areas like education, language and media asserting their claims to be recognised as nationalities, by which they implied a distinctive character and superior claim vis-à-vis the regions. Third, there is a series of reform of statutes of autonomy in a number of regions that push for further recognition of political autonomy and inclusion/participation in central government institutions and decision-making mechanisms.

Federalism as a normative principle combines unity and diversity by endorsing not only shared-rule but also self-rule. However, the ways in which that combination is realised at an institutional level presents wide variation across different federal countries (Elazar, 1987; Watts, 1994). This is especially so in the Spanish experience given the historical reluctance to embrace federal options and the fact that the Constitution merely made federalism a possibility without endorsing it in any way. As a result, the political evolution of the Estado de las Autonomías adopted a broad general tendency towards federalism, although this was not without problems and tensions. The progressive adoption of institutions and practices that can be described as federal led to prominent analysts to talk about a ‘multinational federation in disguise’ (Watts, 2009); or a ‘federalizing polity’ (Moreno, 2001); or ‘the making of a federation’ (Guibernau, 1995). These analyses point both to the character of Spain as a federal unit but also to the limitations of that development in terms of federal ideas.

As discussed in Chapter 2, the two Autonomous Pacts (1981 and 1992) were the landmarks of this process characterised by a permanent tension between uniformity across the component units and heterogeneity of them by asserting the distinctiveness of the three historical regions (or ‘nationalities’).
As Watts (2009, 26) puts it:

“Some of its features [of the Estado de las Autonomías] like the use of Statutes of Autonomy and the form of asymmetry are unique. But as we have noted there is no single pure model but rather a wide range of different specific arrangements implementing the basic features of federations elsewhere. While critics may point in Spain to the weaknesses of the Senate and the reliance instead upon political parties for regional influences in central policy-making and to deficiencies in intergovernmental relations, nevertheless in functional terms the Spanish political processes meet all six of the basic criteria of a federation. Thus, I would conclude that Spain is ‘a federation in practice if not in name’”

I believe there are two elements worth stressing here: first, the notion that federalism does not present a unique ideal type that existing concrete federal countries should live up to. Rather, the institutional framework and political practices of a federal polity exhibit ample variations of what can be classified as federal. As such, Spain – despite the alluded shortcomings – constitutes a federal unit. Second, the adoption of institutions and decision-making mechanisms in Spain along the lines of federalism has been slow and not without problems. It seems appropriate then to think of federalism as an ongoing process characterised by learning experiences and the fundamental open-ended nature of the system. Improved and further institutionalisation of federal practices is certainly needed in Spain; however, that does not negate the basic federal structure that the country has adopted as a way to realise the principle of political autonomy.

Nevertheless, it is worth exploring some other related issues regarding the notion of federalism and the ways in which it is adopted in order to facilitate the accommodation of multinationality. Three controversies are of importance in this regard: first, the tension between decentralisation and devolution; second, the issue of what is called ‘the paradox of multinational federalism’; third, the existence or not of federal trust and loyalty.
The first element points to the fact that Spain was highly successful at decentralising the political process by establishing a robust second level of government around the nationalities and regions. As a result, Spain in a very short period of time (1978-1983) moved from being a highly centralised state under the Franco dictatorship to one of the most decentralised countries in Europe. This process allowed for better participation and inclusion of the regions in relation to their own populations, by bringing representative institutions and political authorities closer to the people. The taking over of policy-making powers and competences by the Spanish regions also meant that those governments can be better held accountable for their decisions. However, critics argue, decentralisation is not the same as devolution. The progressive importance of regional governments in terms of number of employees and resources at their disposal does not necessarily mean that these governments are better equipped to advance the claims of national minorities. In order to do so, the argument goes, those regions characterised by a strong nationalist sentiment should be recognised as such and be granted special powers that would affirm their distinctiveness vis-a-vis other regions. The extent to which this was done or the ways in which this should be adopted are open to debate. Analysts do not agree on this point, presenting very different interpretations regarding the Spanish record in terms of devolution. For some, the Estado de las Autonomías created enough and adequate room to acknowledge the claims being advanced by national minorities. The powers and competences assumed by Basque, Catalan and Galician governments in areas like education and language seem to point in that direction. Nevertheless, the tension remains in relation to the limits imposed by the political process and the Spanish Constitutional Court when exercising those powers and competences.

Others, more critical of this process, point to the ambiguous status of ‘nationalities’ within the constitutional order established by the Spanish Constitution, calling for a redefinition of the territorial organisation of the country and the distribution of powers between the central and regional levels of government. The preferred option by those expressing this dissatisfaction has
been some form of accentuated asymmetrical federal arrangements or openly confederal options.\textsuperscript{147}

I agree that multinationality \textit{may} call for a strong asymmetry and/or confederal arrangements in order to accommodate the demands and aspirations of the nationalities that compose the polity. Having said that, I also believe that, from an empirical perspective, this may not necessarily be feasible or even desirable. Such changes in order to be successful should enjoy wide-spread support and be adopted as a result of the sort of mutual contestation and dialogue pointed out by Tully and the double process of right of disclosure and duty of acknowledgement.

The second element revolves around the ‘paradox of multinational federalism’, whereby the fact of adopting federal institutions and practices conducive to the recognition of the multinational character of the polity can itself become a source of instability for the system as a whole. Thus, multinational federalism can lead to its own demise by making it possible successive increasing rounds of demands advanced by national minorities. The end, paradoxical, result of this process would be an open conflict between the national minority in question and the rest of the country where the former chooses to secede. However plausible that option may be, I believe that multinational federalism is by no means doomed to face such scenario. The point of no return that secession represents can be averted in a number of ways. It would depend on the implicit model of the state that political elites and relevant political forces hold; the overall patterns of interaction among them and the possibilities to reach minimum consensus; and the very learning possibilities that multinational federalism entails.

Regarding the model of the state and the normative understanding of the nature of the polity, all relevant political actors may hold one of two possible ideal types (or, more likely, a combination of them). On the one hand, they can subscribe to a single-nation model inspired by a state- and nation-building project around homogeneity and uniformity of rights and liberties.

\textsuperscript{147} From an academic perspective, Requejo (2005) strongly supports this position. From a political point of view, the Ibarretxe Plan and the failed amendment of the Basque Statute of Autonomy represent similar ideas.
whereas, on the other hand, they can defend a model of state that responds to a polycentric structure of power that combines the unity of the whole with the distinctiveness of some of the component units (Keating, 2001). This constituted a long deep tension in the Estado de las Autonomías ever since its establishment in 1978. The conflicts between nationalities and regions, the alternative symmetrical and asymmetrical character of the system, and the uniformity against distinctiveness of the three historical communities, they all represent competing models of the state. On one end of the spectrum, some sectors of the Spanish-wide conservative party (PP) endorsed the idea of a homogeneous polity where the distinctiveness of national minorities would presumably be tolerated but not fostered or encouraged. On the other end of the spectrum, a number of political parties in the Basque Country, Catalonia and Galicia favoured a confederal model of state where their claims would be constitutionally enshrined and their status as distinct societies firmly affirmed. In between, the Spanish-wide socialist party (PSOE) tried to strike an uneasy balance between these two options, advancing the idea of a ‘plural Spain’ and federal arrangements that would allow for a degree of asymmetry without jeopardising the unity of the polity.

I believe that there is no a priori reason to identify one option as inherently better than the other. As started above, political recognition should facilitate the discussion of these alternatives following the double process of right of disclosure and duty of acknowledgement.

The interactions among political elites and political parties in Spain also underwent a complex and long process in the more than three decades since the establishment of the Estado de las Autonomías. Periods of high levels of conflicts were followed by others characterised by some level of cooperation. I think this is a natural consequence from the creation of a completely new level of government to the progressive adoption of powers and competences by those governments and the realisation of the necessity to interact with one another. Concrete decisions like the Autonomous Pacts of 1981 and 1992 created new sources of conflict and reignited old controversies but it is also true that cooperation was an ongoing feature of the Spanish system. Intergovernmental relations and the degree of participation and representation of regional governments at central government decision-making mechanisms is
still relatively weak and could be improved in many ways. However, the number of meetings and collaborative initiatives between both levels of government increased in recent years indicating that the Spanish political system is slowly moving towards a more clearly defined model of cooperative federalism.

Finally, federalism also presents the possibility of a learning process for all actors involved. If it is true that by adopting institutions and mechanisms of representation supportive of minorities’ claims federalism may be creating the right conditions for secession, it is no less true that federalism also makes it possible to learn from the regular ongoing interactions that a complex structure of governance implies. The necessary interactions between both levels of government may lead to increasing adoption of cooperative initiatives, realising the possible mutual benefits for all involved in coordinating actions, sharing information and undertaking collective efforts. To be sure, this does not deny the inherent and permanent sources of conflict that a federal system would face in a multinational context but it does present a cautionary note when assessing the likelihood of secession as a natural outcome of such a system.

Conflict will be part of every-day politics for a multinational federal system. Moreover, by and large, that should not be taken as a necessarily bad thing insofar as conflict and divergent projects express the multiplicity of interests held by the component units. Federalism in this regard can provide enough room to accommodate that conflict within a stable institutional framework that combines unity and diversity, making sure that the defence of one does not represent the denial of the other.

In this relation, it is important to highlight the record of Spanish Constitutional Court acting as a final adjudicator of political disputes when these become judicialised and when the appropriate interpretation of the constitution is a central part of the conflict. Ideally, these conflicts should be solved through normal democratic deliberations and negotiations; however, having failed those, the Court offers a second-best solution: the dispute is adjudicated by an impartial institution based on the authoritatively interpretation of the fundamental law of the country.
The Court was an important factor for the overall direction of the Estado de las Autonomías and the current defining features it presents. As stated above, the CC produced a number of landmark rulings, defining and establishing the concept of constitutional block, the defence of the principle of political autonomy, the definition of the content of basic laws of the Spanish state, and the co-official status of regional languages. Equally, in more recent times, the mixed outcome of the amendment to the Catalan Statute of Autonomy and the subsequent Spanish Constitutional Court ruling showed both the guarantee that such a Court represents and the risks assumed by it when having to adjudicate highly sensitive and divisive issues.\textsuperscript{148}

One last element for the present purposes is the existence (or lack thereof) of federal trust and loyalty. This constitutes a fundamental value that is expected to inform the overall dynamic of political relations between levels of government and political authorities in general. As the Constitutional Court put it, institutional loyalty is the corollary of the principle of solidarity enshrined in Article 2 of the Spanish Constitution. As such, it calls for reciprocal help among the Spanish central government and the Autonomous Communities and it also entails the notion of constitutional loyalty. More broadly speaking, loyalty in a federal system involves a double duty of collaboration: negatively, both levels of government must respect their respective powers and competences as component elements of a complex though single state; positively, they must help and support each other to exercise in the most efficient manner possible their powers (Aja, 1999: 143). For sure, federal trust cannot be dictated by a court but, rather, should be the logical outcome of a structure of power that combines different levels of government ensuring at the same time a certain degree of collaboration and mutual respect.

Federal trust has also been proposed by some authors (Erk and Gagnon, 2000, 93-94) as a cementing factor in newly-institutionalised democracies where constitutional ambiguity and the overall status of democracy being consolidated are defining features of the process. In this scenario, the central and regional governments may find incentives to work together in order to

\textsuperscript{148} Related to that, of course, is the increasing criticism in recent years about the composition of the Court and the seemingly undue influence of overt partisan considerations in the process of appointment of new members. The possible damage here could be the lost of legitimacy and prestige of such a crucial institution.
secure a well functioning and strongly legitimised democracy. However, Erk and Gagnon also stress that the more consolidated democracy is, the more likely serious disagreements will emerge undermining the conditions for federal trust. This, to some extent has been the case of Spain, where the Catalan and Basque governments exhibited varying degrees of collaboration and mutual respect in relation to the Spanish central government. For example, the Basque government during the early 1990s decided not to appeal before the Constitutional Court (as an institution of the central government) denouncing a bias of that institution against Basque interests. However, that attitude was soon replaced by more friendly relations with the conservative PP when it needed to form a coalition government for the period 1996-2000. It can be argued that the participation of a Basque political party as part of a coalition of a Spanish government responds to strictly strategic reasons and short-term interests. Nevertheless, that fact also seems to indicate that the position of the major nationalist Basque political party (PNV) is amenable to working together with Spanish-wide forces, even the conservative PP. Put the other way around: even Basque nationalism as defined and defended by PNV is not necessarily so dogmatic and principled so as to deny out of hand the possibility of federal trust.

In broad terms, then, the Spanish case shows on the one hand, the possibilities for federal institutions and practices to accommodate the claims of national minorities in a context of a multinational polity. On the other hand, it equally shows the difficulty of arriving at stable definitive solutions. Spain as a multinational federal polity thus exhibits the promise of such a system to accommodate multinationality as much as it highlights the limits and inherent conflicts that the multinational nature of a polity like that presents.

---

149 The Galician case is different insofar as that region only had a nationalist regional government during the periods 1987-1990 and 2005-2009.
150 Certainly this is not the case with the abertzales, radical left-wing Basque political parties.
Conclusion

In this dissertation I attempted to build a bridge between normative discussions about multinational democracy and political recognition, and a contextually-sensitive empirical analysis of the Spanish case. I argued that by looking at the characteristics and political dynamic of Catalonia, the Basque Country and Galicia we can gain a better understanding of the definition, composition and viability of a multinational democracy.

In the first chapter I presented the normative discussions about the concepts of multinationality and political recognition, and how both of them can be applied to cases in which a polity is characterized by demands advanced by national minorities, in a democratic manner. I identify two key elements for the realisation of the principle of political recognition in multinational contexts. The first one refers to the double process of right of disclosure and duty of acknowledgement through which right claims and specific demands are not only presented for discussion but also accepted or rejected. The second element refers to federalism as a normative, political and institutional framework that can allow for the expression of multinationality.

In the second chapter I moved to a description and analysis of the Spanish case, starting with the historical evolution of the terms ‘nation’ and ‘state’ in Spain and the ways in which these constituted different and opposing political projects. I paid special attention to the 1978 Constitution and the combination it establishes between the unity of the polity, and the multilingual and multinational character of Spain, with the logical tensions and problems this presents.

In chapter three I focused on the constitutional recognition that the Spanish Constitution adopted and the subsequent political articulation and controversies such recognition triggered. I also emphasised the tension between regions and nationalities as defined by the Constitution and the ways in which that distinction provoked political conflicts between Catalonia, the
Basque Country and Galicia on the one hand, and the Spanish state on the other. As a way to assess political recognition and multinationality in Spain, I discussed education and language as key policy areas that illustrate these tensions and conflicts. Finally, I referred to the emergence of dual identities in Spain as a way to highlight the possibilities of accommodating people’s sense of belonging in a multinational democracy.

In chapter four I concentrated on the attempts at redefining the relative position and status of Catalonia, the Basque Country and Galicia within Spain through the proposed new regional Status, analysing the similarities and contrasts between one process and the other. I considered these developments of the upmost importance given the challenge they posed for the existing legal and constitutional order of the polity. Moreover, I took their eventual success or failure as an indication of the possibilities and limits for political recognition in a multinational democracy. I also briefly discussed the initiative to reform the Constitution, analysing the reasons why it eventually became ineffectual showing again some limitations in terms of political recognition.

In chapter five I highlighted the overall historical trajectory of Galicia, the Basque Country and Catalonia, paying special attention to their similarities and differences. Using those trajectories, I identified the distinct character and dynamic each of these regions presented and the specific challenges or tensions they advanced. In order to assess this I defended a conceptual framework conducive to the analysis of the dynamic of political recognition, encompassing both the right of disclosure and the duty of acknowledgement. I then concluded the analysis by incorporating a general perspective of the historical evolution of the Estado de las Autonomías and a consideration of Spain as a federal polity that can sustain political recognition processes favourable for the accommodation of multinationality.
Political Recognition and the process of Citizenisation

Political recognition is directly related to a specific notion of democracy which, in turn, creates the appropriate conditions for citizenisation practices. Both democracy in multinational contexts and political recognition share the same concern for (or explore the possible responses to) the accommodation of national differences. They complement each other, and one without the other will not suffice to establish and consolidate a multinational polity. Put it simple, Tully’s processes of citizenisation and Honneth’s struggles for recognition point to the conditions under which claims based on cultural/national differences should be advanced and eventually recognised. However, they do not guarantee in any way the outcome of it, either as an irrevocable end result or as an indisputable solution.\(^{151}\) Certainly, a normative assessment of these processes is concerned with the outcome and should critically evaluate them; however, that outcome remains open and can present different alternatives insofar as the procedural conditions are met.

The failure to accommodate some demands coming from national minorities in a multinational polity can be due to a number of reasons. The principal one is the lack of democratic conditions under which those claims are being advanced, or the lack of democratic conditions when considering those same claims. This entails the basic rule of engaging in deliberations with good faith and observing the principle of reciprocity and mutual respect. Failure to meet this condition can take the form of lack of respect for minorities-within-the-minority; manipulation of nationalist claims favouring a specific agenda; or the defence of dogmatic, principled positions that deny the validity of dialogue and compromises. In order to explore these

\(^{151}\) Hence, Tully’s stress on the possibility of advancing such claims through the double process of right of disclosure and duty of acknowledgement but not necessarily the success (i.e., recognition) of the process; or Honneth’s emphasis on the struggles that characterise political recognition, making it a non-teleological, undetermined activity.
important issues, the Spanish record in relation to practices of political recognition are analysed below.

The 1978 Spanish Constitution and the subsequent political evolution of the country since then constitute a serious attempt at addressing the issue of accommodating the nationalist claims of Catalonia, the Basque Country and Galicia. Not surprisingly, this issue has proved to be highly controversial and the overall assessment of Spain as a multinational democracy with adequate level of political recognition displayed a mixed record of success and failures.

The principle of political recognition implies a series of specific characteristics that the political order of a country should reflect. Therefore, I defend a three-level analysis in order to assess such characteristics. First, at the constitutional level there should be a number of basic rights and guarantees conducive to the expression and protection of nationalist claims explicitly enshrined in the constitution. Second, at the institutional level, there should be a series of rules and decision-making mechanisms that make possible an adequate inclusion and participation of all constituent units in collective binding decisions of the polity. Third, at the political level, there should be general patterns of interaction and cooperation that create enough room for publicly sustained democratic practices (i.e., deliberation, negotiation...) among all relevant actors.

At the constitutional level, in 1978 Spain recognised for the first time in its history that it is composed by ‘regions and nationalities’, and that they enjoy a right to political autonomy or self-government (Section 2, Spanish Constitution). This went against the long standing Spanish tradition of homogeneity and unity of the polity. It also broke away from the past legacy of centralisation and cultural assimilation of the Francoist years (1939-1975). However, as previously discussed, the Constitution did not establish precise ways in which that right to self-government would be exercised and, further, the exact contents and limits to political autonomy were left indeterminate. This is what constitutional doctrine has called principio dispositivo: the Constitution established general principles around Spanish unity and sovereignty coupled with the political autonomy of the regions and nationalities. As a result, the so called Estado de las Autonomías could evolve in different directions, depending on
multiple interpretations and understandings. The wording of the Constitution, its ambiguity and indeterminacy, and the *principio dispositivo* all have made constitutional (and political) disputes in Spain struggles to define the overall system along symmetrical or asymmetrical lines.\(^{152}\) In the former case, certain homogeneity among all the constituent units is secured, blurring the distinction between regions and nationalities. In the latter case, nationalities are favoured on the understanding that they constitute national minorities with a right to enjoy certain powers and competences that regions do not. The Constitutional Court was a fundamental actor in defining the terms of these disputes, by advancing a jurisprudence and case law record conducive to the clarification and realisation of the principles contained in the constitutional text. This paved the way to the recognition and accommodation of certain rights claimed by Catalonia, the Basque Country and Galicia. However, Spain rejected any confederal arrangement whereby these nationalities would enjoy a right to shared sovereignty.

At the institutional level, Spain embarked itself in a general and deep process of decentralisation, in parallel with the just mentioned process of political devolution. All constituent units created their own institutions and bureaucracy in order to fulfil the newly acquired powers and competences at the level of regional governments. This represented an improvement in terms of subsidiarity and better representation of regional interests throughout the country. However, the formal and genuine inclusion of regions and nationalities in decision-making mechanisms and institutions of the central government proved to be more difficult. It is widely accepted that the Senate has not adopted the expected role of a chamber of territorial representation, and other mechanisms conducive to the direct involvement and participation of regions and nationalities in collective binding decisions turned out to be less than satisfactory. There exist a series of agreements and meetings whereby the different levels of government shared information and coordinate their efforts in a whole array of policy areas. However, these do not yet inform the normal government machinery and much more progress

\(^{152}\) Certainly, this element also explains the complex relation of Spain and federalism. The evolution of the Estado del as Autonomías, hand in hand with the *principio dispositivo*, displays a double level of tensions: first, the system itself has progressively adopted institutions and practices conducive to some form of another of federalism; second, political elites and citizens at large have favoured diverse and opposing (con)federal models to define the overall character of the system.
could be achieved in terms of better representation and articulation of interests of regions and nationalities when adopting policy decisions and objectives at the level of the central government. Another thorny issue was the claim of Catalonia, the Basque Country and Galicia in order to be included and actively participate in some of the institutions of the central government, notably the appointment of new members to the Constitutional Court.

At the political level, the interactions between the different political elites also was characterised by conflict and cooperation. During the first years of evolution of the Estado de las Autonomías the relations between all three historical communities and the central Spanish government were dominated by a high level of conflict. This was to a large extent expected due to the fact that the constitutional text only provided principles and general guidelines for the system but did not specify enough fundamental issues like the distribution of power and the territorial organisation of the country. Therefore, the Constitutional Court as arbiter of disputes between levels of government and final interpreter of the Constitution became the central actor in all these conflicts. The activity of the CC was crucial in order to imprint a specific direction in the overall evolution of the system, and affirm specific features of it among several possible ones. It is worth mentioning, among others, its landmark rulings regarding the contents of state basic laws, the block of constitutionality, the principle of institutional loyalty and cooperation. However, the Court cannot replace the necessary interaction and mutual cooperation between nationalist and Spanish elites.

The second period (1981-1992) was characterised by a tension between the deepening and extension of the principle of political autonomy and some attempts at introducing homogenising factors conducive to establishing the same competences and powers across all Autonomous Communities. During 1993-2000 neither the socialists nor the conservatives achieved a clear majority to form government, and thus were forced to accept the electoral-political support of nationalist political parties (Catalans and Basques). As a result, elites’ relations displayed a relatively stable mode of cooperation based on mutual gains: Catalans and Basques demanded and acquired specific powers and competences in return for their participation in a Spanish coalition government. I believe this is a good development though
limited in terms of political recognition. That is, cooperation becomes the result of political necessity or bargain and not necessarily based on the intrinsic merits or legitimacy of the claims advanced (Fossas, 1999). It is important to note here that the limited cooperation among nationalist-Spanish political parties and leaders can be generated either by an intransigent dogmatic position defended by the former, but also by a principled non-negotiable attitude displayed by the latter.

Taking all these three levels of analysis (constitutional, institutional and political) the accommodation of multinationality in Spain adopted different patterns depending on the specific features of each of the three historical communities.

In the Basque case, political violence and the presence of the terrorist organisation ETA certainly influenced the level of conflict with the Spanish state. This, coupled with an aggressive nationalist discourse and programmes endorsed by the successive PNV’s regional governments, made the relations between that region and the rest of the country highly conflictive and dominated by ideological disputes where negotiation and compromise are rarely invoked, let alone secured. The ways in which the failed proposal to amend the Basque Statute (i.e., the Ibarretxe Plan) nicely illustrates this point: dogmatic positions and maximalist demands clashed against accusations of manipulation and disloyalty. The end result, unsurprisingly, was an overt unconstitutional proposal sent by the Basque Parliament to the Spanish Parliament and the outright refusal of the latter to even consider the proposal. In terms of political recognition, I believe that this represented a distortion of the Basque right of disclosure and provided grounds for its rejection by the Spanish State in its duty of acknowledgement.

In the Catalan case, the relations with the rest of Spain were dominated by ‘Catalanism’ as presented and defined by CiU (in office from 1980 to 2000). As a result, the overall pattern of claims and demands coming from this region were characterised by a clever combination of principled positions and a pragmatic sense of opportunity.153 Ideological compromises and

153 So much so, that for many, this is a defining feature of Catalan culture. It is often described as ‘seny’, a Catalan word that refers to a mental attitude that praises comprehension, moderation and a sense of realistic demands.
aggressive positions were certainly present, but rarely did they dictate the nature and content of relations with the Spanish government. Therefore, Catalan elites were able to defend and advance their interests without resorting, for the most part, to zero-sum situations and political deadlocks, as was often the case with Basque demands. In recent years this tendency was reinforced by regional coalition governments led by the socialists that guaranteed a minimum level of understanding and mutual interest with the socialist Spanish government of Zapatero. However, as previously discussed, the proposed and ratified new Catalan Statute of Autonomy proved to be a divisive issue and an important source of conflict. The strong reaction of the conservatives and the subsequent ruling of the Constitutional Court cutting down some provisions of the proposal seem to indicate specific limits of acceptable demands. In terms of political recognition, I believe that both the right of disclosure and the duty of acknowledgement were reasonably met. However, those limits of acceptable demands should not be taken as carved in stone. Rather, they should be open to contestation and ongoing debates.

In the Galician case, the demands and overall relations with the rest of Spain were characterised by a low level of conflict. This was due to a number of reasons: first, the lack of a strong nationalist political party in control of the regional government, as it was the case of the Basque Country and Catalonia. Second, the ability of the conservatives (PPG) to appropriate Galician demands and claims and convert them into a moderate programme favouring ‘autonomism’ and not nationalism. Third, and related to the previous points, there was a marked inability of Galician nationalist forces to articulate an attractive programme with which to gain electoral support and form government. Certainly this region advanced specific claims and demands (notably, the protection and promotion of Galego as co-official language of that Autonomous Community), but the intensity of these and the overall level of conflict with the Spanish state was much less pronounced when compared to the Basque Country and Catalonia. The experience of the failed initiative to amend the Galician Statute of Autonomy clearly showed the limited scope of nationalist sentiments or, at least, the inability to translate that sentiment into concrete political plans. In terms of political recognition, I think that in this case
the right of disclosure was not forthcoming, due to the inability of the Galician nationalist parties. Therefore, recognition was actually not demanded.

Spain has gone a long way from the legacy of Francoist dictatorship and the traditional model of a centralist homogenising state. However, this does not mean that the Estado de las Autonomías solved once and for all the nationalist demands of the Basque Country, Catalonia and Galicia. Further, to expect a final resolution of these conflicts is to misunderstand the nature of politics in a multinational polity. Conflict and disagreements about the proper way to recognise claims put forward by national minorities is part of the dynamic of a country characterised by multinationality. It is not so much finding a way to avoid these conflicts but, rather, exploring the possible alternatives to accommodate contrasting claims. Therefore, the Spanish political system is prone to regular challenges from these three regions in order to make the political order more responsive to their identities and interests.\footnote{More precisely, the issue includes a triple relation: first, the historical communities and their claims; second, the reaction of the Spanish government towards those claims; third, the predictable feeling of comparative grievance that all other component units may express.}

The overall assessment of the political evolution of the Spanish Estado de las Autonomías and the ways in which it responded to multinationality should be seen as an ongoing struggle whereby different political actors advance a series of claims and engage in public debates and reasoning as to what extent those claims are legitimate and how to accommodate them. As Requejo (2005: 90) put it, there is a difference between decentralisation and devolution. The Spanish political system displays a high level of decentralisation whereby all the constituent units enjoy a wide array of powers and competences. This in itself can be seen as a good thing, insofar as that process is conducive to political authorities being closer to the people and more responsive to their needs. However, devolution (i.e., self-government) and the ways in which nationalist claims are being recognised do not necessarily go hand in hand with decentralisation. The constitutional enshrinement of Basque, Catalan and Galician demands,
together with a symbolic and institutional recognition of their identities and interests becomes the heart of political debates in Spain.

There are a number of instances in which the Basque Country, Catalonia and Galicia were denied political recognition. These constitute interesting cases to illustrate the possibilities of political recognition in a multinational democracy. However, in order to grant political recognition there needs to be more than just a claim being advanced. As Tully emphasises, that is only the starting point. Equally important are three other elements: first, the ways in which the specific claim is framed and defended; second, the response of the rest of the polity in the face of the claim in question and the reasons adopted for its acceptance or rejection; third, the overall impact that these exchanges and dialogues have on the minority and majority self-understanding.

More broadly, the right of disclosure that a minority enjoys to make the case for an alleged misrecognised claim goes hand in hand with the duty of acknowledgement that the majority exhibits when assessing such claim. Moreover, both processes should respect the above-mentioned conditions of a) respect for minorities; b) reciprocity; c) feasibility; and d) public reasoning.

I contend that the duty of acknowledgement from the majority in the face of claims put forward by a national community does not represent free reign to adopt whatever measure the Galician, Basque or Catalan governments may desire. This connects to the conditions that these processes of citizenisation must necessarily meet. Therefore, some right claims can be challenged by the majority insofar as they are seen as infringements of the right conditions needed to advance a valid claim.

I think it is useful to recap the cases of the Basque and Catalan Statutes The right of disclosure in both these instances took the form of a series of claims advanced by the Basque Country and Catalonia expressing their dissatisfaction about the ways in which their identities were recognised in the existing legal and constitutional order of the polity. Therefore, these two regions defended a redefinition of their status within Spain with the aim of proclaiming their
distinctiveness and securing their identities as ‘nations’. By doing so, they proposed a series of changes to their respective Statutes of Autonomy which included symbolic and institutional elements, extended policy-domains and financial prerogatives, and specific ways to exercise their political autonomy and deepen the mechanisms for intergovernmental relations.

The duty of acknowledgement by the majority took different expressions in one case and the other. The Basque Proposal was acknowledged as a legal initiative adopted by that regional Parliament. However, that same Proposal was deemed as a unilateral and dogmatic attempt at redefining the very structure of the political order of the country and, by the same token, an unconstitutional initiative which left no option to the Spanish Parliament other than simply reject it. The Catalan Statute was different due to two facts: first, even though the proposed reform included a series of elements that could be deemed as unconstitutional, by and large it presented itself as an attempt at better accommodating the interests of Catalonia from within the existing legal and constitutional order; second, the political support of the initiative (both among Catalan and Spanish political forces) was considerably higher than that enjoyed by the Ibarretxe Plan, making the acceptance of it much easier. This created the minimum conditions for discussions and negotiations surrounding numerous elements contained in the proposal of reform that in the case of the Basque initiative proved to be impossible. Nevertheless, even the Catalan interests so advanced were met by resistance or, at least, some of the provisions being discussed were deemed as unreasonable. The main difference here between the Basque and the Catalan cases was that the former rightly was denounced as denying the possibility of public reasoning whereas the latter made possible the necessary discussions and opened up the possibility of agreements and shared goals.

Both the Ibarretxe Plan and the Catalan Statute illustrate the ways in which these models are articulated in Spain, trying to push the boundaries to a system more sympathetic to their interests and claims. On this point, Spanish political elites defended a more or less open system for the accommodation of Basque and Catalan identities. However, the capacity of the Estado

155 Hence, the refusal of the Constitutional Court to declare unconstitutional the debate and resolution of the Basque Parliament, as the conservative PP demanded.
de las Autonomías in this regard are such that questions of sovereignty or even symbolic elements associated with the idea of a ‘nation’ cannot be fully incorporated without a serious and inclusive dialogue and public deliberation and, as the case may be, a constitutional reform.

In terms of political recognition this means that the Spanish political system should remain open to the possibility of a re-definition of the position and status of its national communities. Each right claim advanced by Galicia, Catalonia or the Basque Country should be assessed on its own merit, focusing on the four basic conditions of the process of political recognition. To the extent that those claims meet the conditions of respect for minorities, reciprocity, feasibility and public reasoning, I see no normative objection to discuss and contemplate the possibility of introducing changes to the existing legal and constitutional order of the polity.

**Implications and future directions**

The analysis I defended in this dissertation aimed at the possibility of developing a coherent and logical framework for the accommodation of multinationality through the double process of right of disclosure and duty of acknowledgement involved in the realisation of political recognition.

I attempted to identify the basic characteristics and factors at play when it comes to the different stages of political recognition. By doing so, I think it is also possible to discover the likely dynamic and patterns of interactions among all relevant actors in the process. Further, political recognition is also affected by time, whereby each round of negotiations has an impact on successive ones.

If I am correct, then the conceptual framework presented and defended here can serve as a model to other polities and national communities around the world. Political recognition certainly will assume different forms and modalities depending on the context and empirical
characteristics of each case. However, I believe that the process itself contains regular features that in principle will be present in all cases. Once these are identified through the conceptual framework I discussed in this dissertation then the variance and details of each case will imprint its own dynamic and possibilities.

Related to this, I see a clear possibility to extent the present analysis to the interactions and possible influence between cases. In the Spanish experience, especially the Basque Country sought parallels and points of contact between their own experience and problems in the Spanish context and other cases that could shed some light from a different perspective. Granted, the translation of one case to the other is often problematic insofar as the situation of a national community in a given polity rarely is genuinely the same as that of another national community in a different polity. Questions of history, reiterated action and reaction cycles between political elites, relative weight in economic, political, demographic terms, they all necessarily caution us about the possible comparisons between cases. Moreover, such comparative exercise is also prone to manipulation by nationalist elites, presenting a case in line with predetermined objectives or reinforcing their own position, and not necessarily logically inferring consequences from the contrast between cases.\footnote{For an interesting discussion about the political use by Basque leaders of other ‘multinational cases’, see Alonso, 2010; Nagle 2011, Villanueva, 2000. For a general comparative analysis between the Spanish and Canadian case, see Rocher et. at., 2001; Coulombe, 2001. For a critical analysis of the use of the Quebec case and the Ibarretxe Plan, see Lopez Basaguren, 2008.}

Another venue to extent the present analysis to a different setting would be the participation of the Basque Country, Catalonia and Galicia in the affairs of the European Union. This is something that all the proposals of renewal of their respective Statutes already contemplated as a necessary update of the Estado de las Autonomías.

The European Union as a distinct level of government offers a level of political and institutional framework in which these historical communities could legitimise their claims and pursue their own objectives. Moreover, the EU seemingly opens up political and institutional possibilities for regional governments that enable these regions to become actors on their own right and participate in a direct way at the European level (Keating, 1999). This could be especially
important for the regions insofar as the EU does affect many policy areas that have an obvious impact not only at the national level (member states) but also the regional one.

Therefore, it is not surprising that the European Union is openly embraced by different political forces in the Basque Country (and, to a lesser degree, Catalonia) insofar as it is seen as a fertile venue in which their interests can be successfully defended. The attractiveness of this option for regions like Catalonia, the Basque Country and Galicia would be the possibility of by-passing the authority of the Spanish State. However, I believe this is just a possibility and a detailed assessment of the interactions of different levels of government that the EU implies is needed here.

Moreover, the Basque Country has been traditionally a supporter of European integration, given its adherence to different initiatives and institutions. In the former case, the Basque Country has defended the idea of a federal model of political integration whereby they could be recognised as a legitimate actor advancing its own interests and goals. In the later case, the Basque Country has been active in the Committee of the Regions and other multilateral forums involving regional governments, despite the lack of actual political power of these institutions (Lecours, 2007: 125). The maximum aspiration in this regard would be direct participation in EU affairs, integrating on some capacity the official position of Spain as EU Member. This is especially relevant for those matters that refer to exclusive competences and powers exercised by the Autonomous Communities, and yet are affected by EU decisions and regulations (Martín y Pérez, 2005; Lecours, 2007: 125).

I believe that my analysis and assessment of political recognition and multinationality could benefit from this European dimension, by paying special attention at the interplay between governments and politicians participating in the EU multilevel system of governance.

---

157 The fact that the Committee of the Regions only acts as a consultative body has always been seen in the Basque Country (and Catalonia too) as a disappointing feature of the EU. They would rather have a much more ‘federal’ Union where regions could enjoy an expanded, broader set of powers vis-à-vis those of the states.
Conclusion

In this dissertation I proposed to explore the possibilities of realising political recognition in multinational contexts. By combining normative discussions and a description of an empirical case (Spain) I sought to bridge both literatures highlighting the fruitful interconnections between them. In doing so, I attempted to provide adequate tools to normatively assess concrete and actual processes of political recognition in a context-sensitive manner.

Also, I emphasised the possibilities (and limits) of federalism as a viable political and institutional framework to accommodate multinational demands in a democratic fashion. By looking at the Spanish case and the controversies and challenges that Catalonia, the Basque Country and Galicia present, I hope that I offered a better understanding of political recognition. I defended a view of democracy and politics that is open by definition and is amenable to contestation and ongoing negotiations. The temptation to arrive at a “solution” as if it were a final and permanent state of affairs should be avoided. Rather, the indeterminate and open-ended nature of the processes analysed should be not only tolerated but actually welcomed.
Bibliography


De la Granja, José; Beramendi, Justo; Anguera, Pere. 2003. La España de los Nacionalismos y las Autonomías. Madrid: Editorial Síntesis.


228


Los Estatutos de Autonomía ante el Tribunal Constitucional. Fundación Manuel Jiménez Abad


232


**Official Documents**


Estatuto de Autonomía del País Vasco
Estatuto de Autonomía de Cataluña 1979

Estatuto de Autonomía de Cataluña 2006

Estatuto de Autonomía de Galicia

European Court of Human Rights Sentence on Illegalisation of Political Parties (2009)


Ley Básica de Normalización del Uso de Euskera


Ley de Normalización Lingüística del Gallego


Ley Orgánica de Armonización del Proceso Autonómico


Ley Orgánica del Tribunal Constitucional


Press Release ECHR (2009)


Propuesta de Estatuto Político para la Comunidad de Euskadi


Sentencia Tribunal Constitucional sobre Estatuto de Cataluña

