

Federalism from the Bottom: The Role of Basque Country and Catalonia in Shaping Federalism in Spain



Adriano Dirri

Abstract The purpose of this chapter is to demonstrate that Spain represents a unique federal model shaped from the bottom, especially by the Basque Country and Catalonia. It examines how peculiar constitutional asymmetries—historical rights (*derechos forales*) and *hechos diferenciales*—have shaped the Spanish territorial Constitution since 1978, contributing to its federalising process. By discussing the latest academic scholarship on federal theory, this chapter examines the interplay between sovereignty, legal pluralism and sub-national autonomy. To this end, the federal jurisprudence of the Constitutional Tribunal will be recalled, as well as the recent developments under Sánchez, whose concessions—especially the 2024 Amnesty Act—have temporarily mitigated the Catalan crisis. Lastly, this chapter argues that Spain requires the constitutional recognition of its multinational reality as well as the entrenchment of asymmetry, preventing regression into homogenisation while preserving unity within diversity.

1 The Territorial Question between Federalism, Asymmetry and Secession

The purpose of this chapter is to strengthen the following argument: despite the territorial conflict, Spain fully represents a federal model, albeit far from the classical federal experiences. This paper will consider the rationale of the Spanish Constitution, with specific regard to its peculiar territorial organisation, especially focusing on the impact of historical rights (*derechos históricos* in Spanish) and the *hechos diferenciales* over secession claims. By analysing the latest academic debate about the “definition” of federalism (par. 1.1), this chapter will reappraise the “location” of Spain in federal studies; to this end, it will also consider those features connected to the entrenched autonomy of the sub-national entities. The odyssey of

A. Dirri (✉)
LUISS Guido Carli University, Rome, Italy
e-mail: adirri@luiss.it

the Spanish federalising process will be taken into account. More specifically, the struggle for differentiation, which has been largely overlooked by the central government (par. 1.2), eventually led to two different waves of secessionist attempts from the Basque Country and Catalonia, and the latter provoked a serious constitutional conflict. In this regard, sovereignty claims and the (ambiguous) constitutional dispositions over territorial organisation will be recalled, as well as the role of historical rights (*fueros*) and the *hechos diferenciales*. The latter have been relevant for nationalities because they are considered the main constitutional tool for strengthening their autonomy and asymmetry, far from the “ordinary” autonomous communities. Besides the crucial role of the Constitutional Tribunal and, above all, its judgments in the past decade, the latest developments will be taken into consideration, such as the Amnesty Law (par. 1.3). Currently, the Sanchez government coalition is based on the external support of several nationalist movements, with whom the Prime Minister bargained several concessions over autonomy and self-determination. In the concluding remarks (par. 1.4), it is argued that even though the conflict has been temporarily halted through measures taken by ordinary legislation, nothing in the future may impede a setback in building constitutional asymmetry without a constitutional reform. Therefore, the call is to expressively acknowledge the multinational character of Spain as well as entrench constitutional asymmetry.

2 Federal Theory and Spain, *Aka* Federalism and *Estado Autonomico*

One of the most contentious and controversial issues in federal studies is the interplay between territory and law. In federal systems, the relationship between different sources of authority within the same constitutional polity and framework has its roots in the sovereignty debate as well as in legal pluralism. These features are at the epicentre of academic scholarships, and the manifestation of this tension becomes the thorny issue in federal constitutions. Firstly, to what extent may the category “federalism” be extended to all experiences marked by internal legal pluralism? Secondly, how far may the category “federalism” be expanded and broadened to include constitutional experiences beyond the classic federal models? Thirdly, to what extent may bottom-up (territorial) claims contribute to federalising processes in a context of constitutional rigidity?

These are only a few of the questions that may arise from a constitutional standpoint. It does not mean that other disciplines, such as political science and the history of political institutions, are not helpful. But their analysis goes beyond the purpose of this chapter, whose scope is limited to underscoring how Spain contributes to federal theory through the examination of the “special” relationship that Catalonia, on the one hand, and the Basque Country, on the other, have with the central state after two decades of secessionist claims—claims that appear to be temporarily halted.

The question of “territory” in federal constitutional studies is central when it comes to understanding bottom-up claims in relation to their territorial and non-territorial accommodation (Malloy and Palermo 2015). Similarly, it sheds light on the connection between law and identity at the sub-national level, which is to some extent generally constrained by the (Federal) Constitution. The latter allows for the presence of or is directly “composed of” different cultural identities. Therefore, the relationship between territory and law becomes crucial in understanding federal dynamics. Territory is not (only) where the law should be applied but where it is applied. Consequently, as has been rightly stated, “territory is not simply a geographical area in which laws happen to be applied but an aspect of the laws themselves” (Doyle 2018, p. 891).

Law with a special geographic referent may play a clarificatory role in fixing and ascertaining legal pluralism and identities. This is the case of Spain and the special regime for the Basque Country, Navarra and Catalonia, as envisaged by the first additional provision and the first and fourth transitional provisions. Moreover, specific constitutional provisions may reconcile plural identities through their recognition within a broader constitutional “container” to make sure that these identities do not implicitly have the chance (legally speaking) to undertake the path towards secession. This, again, is the case with the ambiguous formulation of Article 2 of the 1978 Spanish Constitution (Soloabal Echavarria 2018; San Anton Moracho 2018) (see par. 1.2).

Hence, regarding secession, it may be argued that constitutional silence (Jackson 2016) has proven to be the best option within the constitutional framework, paving the way for both constitutional agreement (where possible) and constitutional interpretation. However, in the shadow, the core issue is still sovereignty. In fact, beyond the debate about secession as taboo (Mancini 2012) and the “comparative constitutional law of secession” (Palermo 2019), the issue lies in the contestation of the constitutional order by sub-national identities. This is the limit—when sub-national groups question the Constitution’s own authority to regulate secession (Doyle 2018, p. 901). It would also mean that secessionist claims do not consider other avenues for accommodating diversity, including constitutional federal processes, within the context of a rigid Constitution. The Constitution is contested as the supreme source of law according to Kelsen and the *Stufenbau* theory (Carrozza 2019, pp. 73–75). It is as if, in the case of Spain, the Constitution foresees the possibility of pursuing specific legal status and competences for special communities within a system that may be included among federal countries.

The starting point remains the debate around federalism, its manifestations and the constitutional devices for accommodating groups (*i.e.* federal arrangements). Spain is often positioned somewhere in the middle; this is the reason why the country has been called *Estado autonómico*. This definition has been made on the basis of the classic models of federations; for that purpose, it is useful to consider the latest scholarship debate on the issue.

Nevertheless, it should be kept in mind that the Spanish experience has been distinguished from classic models of federalism, especially the United States and Germany, in light of diverse federalising processes. This bias may hide the fact that

Spain is characterised by “multiple sources of authority within a single geographical territory”, which mirrors legal pluralism (Ryan, 2020, p. 493). Still, the struggle is strictly connected to the concept of dual sovereignty, or distinct sources of sovereign powers. This standpoint does not address legal pluralism as legal identities, with territorial autonomy not deriving from original sovereign power. This is the theoretical gap that needs to be addressed, also because federal scholars know that “every system of federalism is developed in response to unique circumstances” (Ryan, 2020, p. 499). Thus, the federal model based on dual sovereignty should not serve as the groundwork for understanding federal dynamics in diverse constitutional environments and processes such as Spain.

The relevance of the Spanish territorial organisation from 1978 onwards is strictly connected to the meaning of the word “federalism”. To this end, it is useful to underline the recent scholarly debate. A “working definition” presupposes the identification of key elements of the subject. In this case, it means identifying the most important features of federal constitutions, which necessarily include both dual and cooperative federations and their archetypes, the United States and Germany. It is not the scope of this paper to analyse traditional scholarships, which may be found elsewhere (Hueglin and Fenna 2015; Palermo and Kössler 2017; Popelier 2021). Broadly speaking, the most useful description still lies in Elazar, who identified federalism as a particular constitutional framework grounded in the “self-rule and shared-rule” formula (Elazar 1987).

Recently, Fenna and Schnabel have pointed out the relevance of autonomy vis-à-vis the co-determination constitutional dynamic in federal systems. They argue that the gist of federalism lies in the following idea of autonomy: the Federal Constitution provides for a central government and a set of governments for the “constituent” units into which the state is territorially divided; there is a direct relationship with the people, inasmuch as each layer of government has its own representative system and exclusive powers; and the status of the levels of government are constitutionally protected (Fenna and Schnabel 2024, p. 14). Conversely, problems emerge as far as “co-determination” (shared rule) is concerned. The main issues at stake are the role of intergovernmental relations (IGRs) and the process of decision-making at the central level through the second chamber. According to them, for Elazar, shared rule meant the existence of a shared central government and not, only and mainly, the procedures of lawmaking. In fact, if IGRs and second chambers are considered the heart of federalism, many would find that while the former is ineffective in either shaping lawmaking or representing sub-national units, the latter lacks a normative dimension and is part, instead, of the politics of federalism (Ferran and Sanjaume-Calvert 2022, p. 2; Fenna and Schnabel 2024, pp. 9, 10, 15).

Criticisms have been raised against the downgrading of the co-determination principle on the basis of, for example, the jurisprudence of the Canadian Supreme Court (Supreme Court of Canada, 2011), which has also stressed that IGRs cannot override constitutional provisions (Supreme Court of Canada, 1998 and 2023). Without any doubt, the IGR dimension is crucial to the functioning of federalism, but, as everyday politics, it is not related to the “constitutional essence” of federalism. That essence means harmonising the plural allocation of powers among the

layers of government (including by-laws at the municipal level) and *politically* preventing the unilateral transfer of powers towards the centre as well as the unilateral processes advanced by strong sub-national entities (Hueglin and Mueller 2025, pp. 401–405). Still, Fenna and Schnabel focused their attention on constitutional amendment processes related to the normative powers of sub-national units rather than ordinary lawmaking procedures. They stressed that IGRs are a form of joint governance and not “rules” since they presuppose a “hard veto power, which constituent units rarely enjoy in their relations with central government” (Fenna and Schnabel 2025, pp. 408–413).

The inner problem of comparative law and federalism lies in understanding the relationship between the central government and sub-national entities. In fact, Fenna and Schnabel often recall the role of “constituent units” and, therefore, sovereignty as the groundwork for territorial accommodation between centre and periphery. That debate echoes Tierney’s works, where federalism is considered a particular constitutional idea and practice. He stated that a federal constitution “creates one central government, but it also creates territorial government for each of its constituent territories”, in addition to the fact that territorial polities, within a single polity (the federal state), retain “their constitutional personality and carries its particular constitutional subjecthood from constituent moment into constitutional form and hence into lived constitutional practice” (Tierney 2018, p. 57; Tierney 2022). The shortcoming of this view resides in sovereignty and in the historical formation of federal states. Therefore, other notable examples, including Spain, are left to different qualifications, such as “disaggregative federations” (Mastromarino 2013).

In a similar vein, plural constituent power theory leaves in the background the differences between devolution unitary states—the United Kingdom and Italy—and Spain, which shares fewer constitutional features with the former than with federal countries (Aroney et al. 2024, p. 602). The main reason is that Spain represents an additional example of a process from unity to plurality, without distinguishing the procedures of constitutional amendment or power conferral to sub-units in devolutionary unitary states. That is the difference with Italy, where sovereignty belongs to the people and remains in the national Parliament. In fact, while the central government and special regions are on equal footing in the approval of statutes of autonomy through a constitutional law, the powers and functions of ordinary regions are listed in Article 117 of the Constitution and are, therefore, amendable by a constitutional revision. In addition, with regard to “differentiated” autonomy (Article 116.3), the national Parliament plays the key role, since it may unilaterally revoke the functions allocated according to Article 116.3 (Palermo 2021, pp. 139–145; see also Savastano; Severa in this volume).

Differently, the territorial Constitution of Spain not only allows for the presence of regions and nationalities but also distinguishes two different procedures for accessing autonomy as well as recognising historical rights (*fueros*) and *hechos diferenciales*. These features are “enough” to make Spain a federal country because of the constitutional entrenchment and the necessary convergence between centre and periphery in the federalising process.

3 The Spanish (Federal) Distinctiveness between Homogenisation, Asymmetries and “Federal” Jurisprudence

In analysing the territorial Constitution of Spain, the starting point is the 1978 constitution-making process (Arato 2017, pp. 187–194). During the transition (Rubio Llorente 1991), the two leading parties—the Union of the Democratic Centre (Unión de Centro Democrático (UCD)) and the Spanish Socialist Workers’ Party (Partido Socialista Obrero Español (PSOE))—sponsored decentralisation to various degrees, also as a tool for strengthening democracy (Balaguer Callejón 2019, pp. 423–431), especially the latter, which promoted pluri-nationality and even self-determination (Moreno 2010, pp. 160–177). The centre-left and left-wing parties adopted a pragmatic strategy and opted for a territorial model that could bridge the gap with other political forces (Jaria 1999). The result was that decentralised and/or federal demands were registered both from the centre (top down) and from historical communities (bottom up) with their parties (especially the Basque Country and Catalonia), supported by the PSOE and its allies (Moreno et al. 2019, pp. 246–249).

Therefore, the main agreement among the political parties during the constitution-drafting process was the rejection of centralism, alongside a delaying formula over autonomy that would satisfy all territorial claims and the recognition of historic nationalities as special. This balance was contained in the two principles under Article 2, which stand as the basis for Title VIII and its implementation: the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards and the right to autonomy of the nationalities and regions of which it is composed, together with solidarity among them all. These core principles followed the 1931 constitutional framework, but the purpose was to overcome the principle of homogenisation among the autonomous communities, which was embodied in the draft Constitution of January 5, 1978. Afterwards, plural autonomous communities with their peculiarities were identified through the inclusion of two avenues for recognising territorial pluralism and highlighting specific legal traditions in communities with “stronger” legal identity. The principle of plurality in the territorial Constitution was encapsulated in different access routes, different autonomous initiatives and procedures for drafting statutes, different distributions of powers and the institutional organisation of the communities: in short, multiple (potentially) constitutional asymmetries. The Constitution implicitly envisages the presence of three autonomous communities (Catalonia, Galicia and the Basque Country) with extensive powers and others with weaker autonomy (Blanco Valdés 2014; Blanco Valdés 2012, p. 122; Cagiao y Conde 2022).

This open-ended solution recognised the legal and historical specificities of certain communities without acknowledging their territorial autonomy (a constitutional asymmetry). Thus, federalism has become the bone of contention between the historical communities (*nacionalidades*) and the central government, which has led to secessionist claims (Frosina in this volume; Monti 2021). Despite this, the

federal nature of the Spanish constitutional architecture cannot be denied. Firstly, the features of the multilayered system must be traced in the bottom-up initiatives of the territories and not, for example, in bicameralism; secondly, the Constitution envisages several differentiations among the autonomous communities; and thirdly, fiscal autonomy was granted to the historical communities of the Basque Country and Navarra, according to their medieval *fueros*.

Hence, the comparative perspective shows how innovative the Spanish constitutional solutions regarding procedures and institutions are. In addition, even though some scholars argue that Spain is not a federal state because the principle of “shared sovereignty” cannot be detected, it is nonetheless evident that regional basic laws are above ordinary legislation and possess a “constitutional nature”.¹ Lastly, the utility of the Senate lies in its veto power in the constitutional amending process, since it is in part (one-quarter) composed of members appointed by regional legislative councils (Hueglin and Fenna 2015, pp. 129–131, 234). This is an additional feature that continues to be relevant, since the de facto or “substantial federalisation of the system has occurred upon the initiative of the Autonomous Communities with the consent of the central government” (Aroney 2017, p. 21).

Other scholars considered Spain as a state in transformation from unitary to federal, highlighting the rationale that IGRs are the engine of the federalising process (Agranoff and Ramos Gallarin 1997). By contrast, others focused their attention on the multiple ethnoterritorial concurrences in the country, which produced a non-linear process with “chiefly elements of heterogeneity and plurality”. This was mainly based on two premises: the differential fact and the centralist inertia in the plural accommodations of differentiated claims. Despite the differing views, IGRs were still deemed relevant in the process, though without considering the contribution coming from the bottom, especially from Catalonia and the Basque Country (Moreno 1997, pp. 73, 75–76).

The unique configuration of Spain is justified by the rigidity of the Constitution as well as by the role of the autonomous communities in the constitutional amending process, while their autonomy is expressed through their statutes. Therefore, federalism in the Spanish Constitution might be considered—at the beginning—almost an “empty box”, except for the historical rights in specific territories, until the Constitution is “filled” by territorial autonomy through their statutes as “sub-constitutional regulations” and by the judgments of the Constitutional Tribunal (Colino 2009, pp. 263–264).

Despite some ambiguities, the richness of the territorial organisation of the Spanish constitutional framework should be highlighted. Firstly, the only “permanent” territorial asymmetry is represented by the first additional provision to the Constitution that protects and respects the historic rights of the territories with traditional charters (*derecho foral*). Secondly, non-territorial asymmetries or “micro-asymmetries”, relate to, for example, the recognition of languages (Article 3 Constitution) and local rights (Art. 149.1.8). Thirdly, the standard and

¹ Despite the Constitutional Tribunal having more recently lowered its rank (*infra*).

fast-track procedures: the former, according to Article 143 grants the right to initiate the process to Provincial Councils concerned with a qualified majority and, afterwards according to Article 146 by the Spanish Parliament, the proposed statute must be approved. Through this procedure, the autonomous communities may assume their “own” competences (Article 148.1), while they must wait 5 years for the enlargement of their powers (Article 148.2). By contrast, the fast-track procedure envisages the possibility of circumventing the 5-year term and was basically reserved for those *territories* that already had their statutes at the time of the promulgation of the Constitution or provisional regimes (Second Transitional Provision)² (Monti 2021, pp. 32–33). In that way, the Spanish Constitution granted the special status to Catalonia, the Basque Country and Galicia. Despite that, the Constitution left the door open to multiple asymmetries, depending on which subject matter communities are able to pick and choose. In sum, “different tracks, speeds, historical legacies, and voluntary thresholds of autonomy make the existence of very different regional profile possible” (Sala 2014, pp. 114–115).

The multiple prospects of constitutional asymmetry were “sacked” by the major political parties, whose direction was more in favour of homogenisation rather than differentiation. Pushing towards uniformity was not the expectation of the historical communities. At the beginning of the 1980s, during the first stage of “federalisation”, the 17 autonomous communities were created and their statutes adopted. Afterwards, the path to homogenisation was fuelled by the new statutes at the end of the 1980s, when an additional agreement over the autonomous communities took place in 1992 (second stage) (Munoz Machado 1992; Montaner 1996). They were considered a turning point in the evolution of the autonomous model (Blanco Valdés 2014; Blanco Valdés 2012, pp. 234–238), which was steadily opposed by Catalonia and the Basque Country during the 1990s and labelled *café para todos*. Despite different claims (Monti 2021, p. 38), the two nationalities started to advocate for a pluri-national federal state, with constitutional asymmetries and differentiation between “ordinary autonomous communities” and special nationalities. These positions found their way into the asymmetry of the Spanish Constitution: *hechos diferenciales* and historical rights. Within the third stage (Martinico 2010; Ruiz and Rico Ruiz 2006), both gave substance to their claims through the adoption of radical (secessionist) autonomous statutes (the Ibarretxe Plan and the 2006 Catalan Statute), whose consequence was a constitutional conflict with the central government and the involvement of the Constitutional Tribunal (Sala 2014, pp. 116–117).

Therefore, it is useful to recall the role of the Spanish Constitutional Tribunal. Since the beginning, it has referred to autonomy as a limited and distinct power

² “The territories which in the past have, by plebiscite, approved draft Statutes of Autonomy and which at the time of the promulgation of this Constitution, have provisional autonomous regimes, may proceed immediately in the manner contemplated in section 148, subsection 2, if agreement to do so is reached by the overall majority of their pre self-government higher corporate bodies, and the Government shall be duly informed. The draft Statutes shall be drawn up in accordance with the provisions of section 151, subsection 2, where so requested by the pre Autonomous assembly” (Senate Standing Orders, section 143).

from sovereignty because an autonomous territorial organisation is part of the whole and can in no case be opposed to the principle of unity. Rather, autonomy has its constitutional meaning within the realm of Article 2 of the Constitution (STC 4/1981). Shortly after, the Court highlighted the difference between the political nature of the autonomous communities and that of municipalities (STC 25/1981). A few years later, in declaring unconstitutional part of the *Ley Orgánica de Armonización del Proceso Autonómico* (LOAPA), the Court stated that the alleged equality of rights of the autonomous communities lacked a constitutional basis, on the one hand, and did not specify the uniqueness of the nationalities, on the other (STC 76/1983). In addition, for the Court, the Constitution is not a pact among historical territories that maintained “*unos derechos anteriores a la Constitución y superiores a ellas*”. With these judgments, the Court highlighted the “constitutional distance” between classic federal models and Spanish federalism.

This was the constitutional interpretation of Spain’s territorial organisation before the secessionist claims of the nationalities. The first test was the constitutionality of the Basque Parliament Law No. 9/2008, which called for a popular consultation to ascertain support for the beginning of negotiations with the central government in matters of peace and political normalisation. This judgment (STC 103/2008) was extremely important since it stated that referendums on sovereignty issues (regardless of their binding nature) must be conducted within the procedure set out in Article 168 for constitutional amendments (López Basaguren 2009). It was followed by the Constitutional Court’s judgment on Catalonia’s sovereignty claims: it started when the Court struck down the most important features of the 2006 autonomy statute, which affirmed the subordinate role of the latter in respect of the Constitution (Russo 2021, pp. 150–153), as well as declared that the sole sovereign people is the Spanish People (STC 31/2010). The Catalan secessionist “uprising” reached its peak between 2015 and 2017, which saw an open constitutional conflict. The Court, in judging the Catalan Declaration of Sovereignty in 2014, stressed once again that territorial alteration (secession) was possible only through constitutional amendments (STC 42/2014). Subsequently, the Court declared Catalan Law No. 10/2014 on referendums unconstitutional on grounds similar to those of 2008 (STC 31 and 32/2015). Lastly, among other judgments (STC 259/2015), the Court was called to rule over the law on the secessionist referendum held on October 1, 2017. The Court declared such type of legislation unconstitutional, both on procedural and on substantial grounds (STC 114 and 124/2017) (Castellà Andreu 2019, pp. 408–409; Bilbao Ubillos 2024, pp. 16–22).

These judicial precedents have highlighted the federal possibilities of the Spanish constitutional framework through its most critical issues: sovereignty and secession. This has been largely discussed by constitutional scholars (Adam 2017), but here it is argued that the potentialities of Spanish constitutional asymmetries are still not fully empowered, since they rest mainly on the historical rights of the nationalities.

4 Legal Pluralism and Territorial Claims: *Derecho Foral*, *Hechos Diferenciales* and Latest Developments during the Sanchez Era

Legal pluralism in Spain is often debated, especially concerning its impact on the different branches of law, without disregarding its consequences for the constitutional framework and federalism. Historical rights (*derecho foral*) are that part of local law that survived legislative and political unification, i.e. the construction of Spain as a constitutional democracy through various stages, beginning with the fall of Barcelona in 1714 and the Nueva Planta decrees of 1716, which made the Kingdom of Spain a French-style centralised state. These norms were collected especially in the Basque Country (1959), Catalonia (1960), Galicia (1963) and Navarra (1973). The Constitution acknowledged them in the first additional provision, and this must be connected to the *hechos diferenciales* for nationalities (Alpa 2023, p. 124).

Historically, it is worth recalling that among the obstacles at the time of the drafting and adoption of the Spanish Civil Code in the nineteenth century—based on the French model—there were the legal systems operating in the “foral” regions. Thus, from a legal standpoint, building a centralised and unitary state was not an easy task. Catalonia fiercely opposed homogenisation in civil law; among the reasons was the “import” of French rules, which were even closer to the Catalan civil framework (Dyson 2019, p. 134).

According to Article 149.1.8 of the 1978 Spanish Constitution, the autonomous communities have powers over the development of civil, *foral* and special rights, where they exist. In this matter, all autonomous communities have modified their code as well as adopted legislation broadening rules and institutions within the realm of *foral* rights. It is worth noting that in Catalonia, legislative activity has been very extensive, to the point that “*que la Compilacion se ha convertito en un element secundario del ordenamiento juridico privado*”. Far more different and unique is the special fiscal regime of the Basque Country and Navarra, because they have kept the system of *Concierto economico*, through which both regulate and collect relevant taxes such as value-added tax (VAT) and personal income tax (IRPF) (Aja 2003, p. 185).

In addition to this kind of territorial asymmetry, *hechos diferenciales* represent a non-territorial differentiation. These include the recognition of special languages (Carbonneau and Jiménez-Salcedo 2024, pp. 269–288), fiscal regimes, unique institutions at the communal level and local police forces. Beyond the debate over broader or narrower interpretations of the constitutional provisions related to the *hechos diferenciales*, their role is strongly connected to Article 2 of the Spanish Constitution, which empowers territorial claims of the nationalities (Di Martino 2018, pp. 68–69). This presupposes the existence of people(s) with specific legal personality within the Spanish constitutional framework. This political reality has also acquired a legal dimension because the Constitution and the statutes recognise the existence of characteristics only for some autonomous communities and endow

them with normative consequences in the form of rights, powers, institutions and special procedures (Aja 2003, p. 173). This represents a clear recognition of different legal, political and social traditions, which were kept intact at the time of the adoption of the Constitution (Tomás Y Valiente 1995, p. 28). In other words, *hechos diferenciales* cannot be extended to other autonomous communities since they are by definition “*elementos de una personalidad historico-politica diferenciada en algunas CCAA*” (Aja 2003, pp. 174–175).

These were the grounds of secessionist claims, which meant, for the nationalities, the existence of Spain as a multinational state. Two directions were undertaken: first, the road to unilateral secession was constitutionally unsuccessful (McRoberts 2022, pp. 217–256), and the only result was the broadening of the territorial cleavage between the central government and Catalonia; the second path has been the building of a stronger fiscal autonomy. Besides reconciliation with Catalan institutions, fiscal autonomy currently represents the main issue at stake. In fact, while the *concierto economico* is not contested in the Basque Country and Navarra, in Catalonia, it is slightly different. While for the former, fiscal autonomy as a *foral* right has been maintained without discontinuity over time, for Catalonia, it was suppressed, considering the fierce opposition to the 1936 military coup. The result has been that, from 2010 onwards, Catalan government authorities have been claiming this kind of “privilege”, which initially started with more modest claims concerning levels of inter-territorial solidarity (Bossacoma Busquets and Sanjuame-Calvet 2019, pp. 454–455).

Therefore, secessionist claims differ between the Basque Country and Catalonia for a “constitutional reason”. On the one hand, Basque nationalism in the past decade has been more focused on financial autonomy, with positive results; on the other hand, Catalonia “experimented” with radical claims aimed at unilateral secession while also considering the behaviour of the central government. The constitutional issue at stake is Catalonia’s desire to link its claims to the first additional provision, since the Constitutional Tribunal has stated that historical rights are the constitutional basis for territorial asymmetry, but only for the Basque Country and Navarra (STC 214/1989). Consequently, the claimed existence of Catalan historical rights, recognised, for example, in Article 5 of the Catalan Statute, is more or less a dead letter (STC 31/2010) (Monti 2021, pp. 236–237).

The Catalan question remained at the centre of Spanish politics; with the advent of the Sánchez era (beginning in early 2020), a different political path was undertaken, that of the “normalisation” of political relations between the central government and Catalonia. The future of the autonomous community was set to be discussed in the “Table for Dialogue”—the centrepiece of the PSOE-*Esquerra Republicana de Catalunya* (ERC) pact. The initiative was modelled on the 1977 Moncloa Pact, but the main issue was the differences between ERC and *Junts per Catalunya* (JxCat): the former pursued dialogue with the Sánchez government, while the latter favoured unilateralism. This project required pardons for Catalan leaders who had remained in Spain, which represented only the first step towards normalisation (McRoberts 2022, pp. 275–292). Subsequently, the role of Catalonia and its nationalist forces became even more important for the formation of Sánchez’s third government in October

2023. In exchange for the support of nationalist movements, especially JxCat, Sanchez agreed to several compromises, among them the Amnesty Law, to normalise the relationship with Catalonia and open a cross-cutting dialogue (Moreno Martínez 2025). This was proof of pragmatism since the Amnesty Act (*Ley Orgánica 1/2024, de 10 de junio, de amnistía para la normalización institucional, política y social en Cataluña*) represents an instrument to normalise the relationship between Catalonia and the central government rather than a measure to redress rights violations arising from criminal convictions (Bassocoma Busquets 2024). The Amnesty Act was challenged before the Constitutional Tribunal, which upheld the validity of the legislation with only minor declarations of unconstitutionality. In fact, the Court (137/2025) acknowledged the pragmatic view of the Act and considered this “move” as a suitable means of lowering constitutional and political conflict, given that it has been one of the most important conflicts within the Spanish constitutional framework (Tirapu-Sanuy 2025).

The secessionist claim has also been halted, thanks to the agreement over a new Fiscal Pact, a subject matter that was often advocated by nationalists in Catalonia (see Frosina in this volume). As said above, the Constitutional Tribunal (STC 31/2010) made Article 5 of the Catalan Statute inoperative, which impeded the activation of historical rights. Despite that, the “normalisation” of relations with Catalonia also passed through the new Additional Provision 17 of the *Ley Reguladora de las Bases del Régimen Local* (LBRL), introduced by Decree-Law No. 6/2023. This legislative innovation has given effect to Article 5 of the Statute since according to this new provision, the LBRL must be applied in light of Catalonia’s historical rights, “*respetando en todo caso la posición singular en materia de sistema institucional recogida en el artículo 5 [...] así como las competencias exclusivas y compartidas en materia de régimen local y organización territorial [...]*”. It is the first time that an ordinary law has recognised Catalonia’s specific position. Therefore, it makes possible the broadening of asymmetry in other matters, such as civil law, culture and language in education (Ridao Martín 2025, pp. 163–169).

To sum up, this evolution confirms that the only way forward is to strengthen Catalonia’s constitutional asymmetry by recognising its historical rights alongside the reinforcement of its fiscal autonomy. Nevertheless, the main issue remains “alive” since the adoption of an ordinary law does not set aside the sovereignty claims of the nationalists in Catalonia. This is because, in the history of the Spanish federalising process, homogenisation trends have often prevailed through legislative measures of the central government. The solution—perhaps the only viable option—remains a constitutional reform that recognises the distinctiveness of the nationalities without prejudice to the other autonomous communities.

5 Conclusions: The Way Forward

The 1978 constitutional dispensation was considered by the Basque Country and Catalonia the starting point for the recognition of their special status among the autonomous communities. However, these expectations were often thwarted by

homogenisation trends which fuelled secessionist attempts. Nevertheless, the Spanish Constitution allows for a wide range of constitutional asymmetries or, to recall Kierkegaard, several dimensions of the possibility, which has caused anxiety in the two nationalities regarding their autonomy.

In fact, a combined reading of the constitutional provisions related to autonomous communities—Part VIII, historical rights, and *hechos diferenciales*—makes Spain a federal state, although different from the classical model. There are strong arguments in support of this view, such as the constitutional revision procedure and the autonomous statutes, which have “a constitutional dimension [...] that ranks them above the legislation of either level of government” (Sala 2014, pp. 125–127). In addition, the Spanish Constitution acknowledges different kinds of asymmetries that had been overlooked until secessionist movements emerged in the Basque Country and Catalonia. Therefore, recognising the multinational character of Spain might represent the first step towards constitutional asymmetries (Anderson 2020). In addition, it would provide an opportunity to clarify the relationship between plurinationalism and the indissoluble unity of Spain (Tornos Mas 2019, pp. 401–402). This solution would overcome the ambiguities of the current constitutional framework, which was invoked by both Catalonia in favour of the unilateral secession and the legitimacy of the right to decide (the democratic principle), and by the central government in favour of the rule of law (the principle of legality) (López-Basaguren 2019, pp. 365–388). Furthermore, although Sanchez was able to defuse the issue with pragmatism, this settlement remains anchored in ordinary legislation. For these reasons a reconciliation through a constitutional revision seems the most viable option, given the fragility of the Sanchez government, whose survival depends on the support of Catalan nationalist parties, especially JxCat.

References

- Adam EC (2017) The constitutional court of Spain: from system balancer to polarizing centralist. In: Aroney N, Kincaid J (eds) *Courts in Federal Countries: federalists or Unitarists?* University of Toronto Press, Toronto, pp 367–403
- Agranoff R, Ramos Gallarín, JA (1997) Toward Federal Democracy in Spain: an examination of intergovernmental relations. *Publius: J Fed* 27(4):1–38
- Aja E (2003) *El estado autonómico: federalismo y hechos diferenciales*. Alianza, Madrid
- Alpa G (2023) *I principi generali*. Giuffrè, Milano
- Anderson P (2020) Decentralisation at a crossroads: Spain, Catalonia and the territorial crisis. *Ethnopolitics* 19(4):342–355
- Arato A (2017) *The adventures of the constituent power: beyond revolutions?* Cambridge University Press, Cambridge
- Aroney N (2017) Constituent power and the constituent states: towards a theory of the Amendment of Federal Constitutions. *Jus Politicum: Revue de droit politique* 17:5–31
- Aroney N, Duke G, Tierney S (2024) A theory of plural constituent power for federal systems. *Glob Const* 13(3):591–611
- Balaguer Callejón F (2019) Federalism and democratic quality: the contribution of territorial pluralism to constitutional democracy. In: López-Basaguren A, Escajedo San-Epifanio L (eds) *Claims for secession and federalism*. Springer, Cham pp 423–431

- Blanco Valdés RL (2012) *Los rostros del federalismo*. Alianza Editorial, Madrid
- Blanco Valdés RL (2014) *El laberinto territorial español: del cantón de Cartagena al secesionismo catalán*. Alianza, Madrid
- Bossacoma Busquets P (2024) The Catalan process of Independence and the Spanish Amnesty Act. *Int J Const Law Blog*, 20 June 2024, available at: <https://www.iconnectblog.com/the-catalan-process-of-independence-and-the-spanish-amnesty-act/>
- Bossacoma Busquets P, Sanjaume-Calvet M (2019) Asymmetry as a device for equal recognition and reasonable accommodation of majority and minority nations. A country study on constitutional asymmetry in Spain. In: Popelier P, Sahadžić M (eds), *Constitutional asymmetry in multinational federalism. Federalism and internal conflicts*. Palgrave Macmillan, Cham, pp 429–460
- Cagiao y Conde J (2022) *Democracia y nación. España en el laberinto plurinacional*. Catarata, Madrid
- Carbonneau JR, Jiménez-Salcedo J (2024) The limits of linguistic diversity in a federal context: a comparative view of Canada, Spain and Germany. In: Mathieu F, Guénette D, Gagnon AG (eds) *Comparative federalism. Federalism and internal conflicts*. Palgrave Macmillan, Cham, pp 269–288
- Carrozza P (2019) Kelsen y constitucionalismo contemporáneo: la continua presencia de los temas kelsenianos. *Estudios de Deusto* 67(1):55–82
- Castellà Andreu JM (2019) Constitution and Referendum on Secession in Catalonia. In: López-Basaguren A, Escajedo San-Epifanio L (eds) *Claims for Secession and Federalism*. Springer, Cham, pp 405–422
- Colino C (2009) Constitutional change without constitutional reform: Spanish federalism and the revision of Catalonia's statute of autonomy. *Publius: J Federal* 39(2):262–288
- Di Martino A (2018) Il conflitto costituzionale sulla Catalogna: origini, svolgimento, prospettive. *Costituzionalismo.it* 1:49–107
- Doyle O (2018) The silent constitution of territory. *Int J Const Law* 16(3):887–903
- Dyson M (2019) Comparative legal history: methodology for morphology. In: Moréteau O, Masferrer A, Modéer KA (eds) *Comparative legal history*. Edward Elgar Publishing, Cheltenham, pp 110–138
- Elazar DJ (1987) *Exploring federalism*. University of Alabama Press, Alabama
- Fenna A, Schnabel J (2024) What is federalism? Some definitional clarification. *Publius: J Fed* 54(2):179–200
- Fenna A, Schnabel J (2025) Defining federalism: a rejoinder to Hueglin and Mueller. *Publius: J Fed* 55(2):408–413
- Ferran R, Sanjaume-Calvet M (2022) Defensive federalism: tackling the two faces of the territorial tyranny of the majority — a revised federal institutional design. In: Raquejo F, Sanjaume-Calvet M (eds) *Defensive federalism: protecting territorial minorities from the “tyranny of the majority”*. Routledge, Abingdon, pp 1–21
- Hueglin T, Mueller S (2025) A reply to Fenna and Schnabel's (2024) “what is federalism?”. *Publius: J Fed* 55(2):399–407
- Hueglin TO, Fenna A (2015) *Comparative federalism. A systematic inquiry*, 2nd edn. University of Toronto Press, Toronto
- Jackson VC (2016) Secession, transnational precedents, and constitutional silences. In: Levinson S (ed) *Nullification and secession in modern constitutional thought*. University Press of Kansas, Lawrence, pp 314–342
- Jaria J (1999) La forma del Estado en los debates constituyentes. In: Aparicio MA (ed) *La Descentralización y el Federalismo: Nuevos Modelos de Autonomía Política (España, Bélgica, Canadá, Italia y Reino Unido)*. Cedecs, Barcelona, pp 13–28
- López Basaguren A (2009) Sobre referendum y comunidades autónomas: la ley vasca de la “consulta” ante el Tribunal Constitucional (consideraciones con motivo de la STC 103/2008). *Revista d'estudis autonòmics i federals* 9:202–240

- López-Basaguren A (2019) Claims for secession in Catalonia. Rule of law, democratic principle and federal alternative. In: López-Basaguren A, Escajedo San-Epifanio L (eds) *Claims for secession and federalism*. Springer, Cham, pp 365–388
- Malloy TH, Palermo F (2015) *Minority accommodation through territorial and non-territorial autonomy*. Oxford University Press, Oxford
- Mancini S (2012) Secession and self-determination. In: Rosenfeld M, Sajó A (eds) *The Oxford handbook of comparative constitutional law*. Oxford University Press, Oxford, pp 481–501
- Martinico G (2010) The new “Estatutos de autonomía” in Spain: a brief overview of the literature. *Persp Fed* 1:1–15
- Mastromarino A (2013) The adhesion of the Spanish autonomic state to the Disaggregative model of federalism: a possible way. In: López-Basaguren A, Escajedo San-Epifanio L (eds) *The ways of federalism in Western countries and the horizons of territorial autonomy in Spain*. Springer, Berlin–Heidelberg, pp 711–730
- McRoberts K (2022) *Catalonia: the struggle over independence*. Oxford University Press, Oxford
- Montaner LC (1996) Los estatutos de autonomía y los pactos autonómicos. *Revista de estudios regionales* 44:47–68
- Monti M (2021) *Federalismo disintegrativo? Secessione e asimmetria in Italia e Spagna*. Giappichelli, Torino
- Moreno L (1997) Federalization and ethnoterritorial concurrence in Spain. *Publius: J Fed* 27(4):65–84
- Moreno L (2010) Federal democracy in plural Spain. In: Burgess M, Gagnon AG (eds) *Federal democracies*. Routledge, Abingdon, pp 160–177
- Moreno L, Colino C, Hombrado A (2019) Spain: constitutional transition through the gradual accommodation of territories. In: Anderson G, Choudhry S (eds) *Territory and power in constitutional transitions*. Oxford University Press, Oxford, pp 237–254
- Moreno Martínez V (2025) Entre la independencia y la reconciliación: el proceso soberanista catalán y la amnistía. In: *Parlamento y Constitución*. Anuario, Cortes de Castilla-La Mancha—UCLM, Toledo, pp 135–177.
- Munoz Machado S (1992) Los pactos autonómicos de 1992: la ampliación de competencias y la reforma de los estatutos. *Revista de administración pública* 128:85–106
- Palermo F (2019) Towards a comparative constitutional law of secession? In: Delledonne G, Martinico G (eds) *The Canadian contribution to a comparative law of secession*. Palgrave Macmillan, Cham, pp 265–282
- Palermo F (2021) Asymmetries in the Italian regional system and their role model. In: Arban E, Martinico G, Palermo F (eds) *Federalism and constitutional law. The Italian contribution to comparative regionalism*. Routledge, London, pp 136–151
- Palermo F, Kössler K (2017) *Comparative federalism. Constitutional arrangements and case law*. Hart Publishing, Oxford
- Popelier P (2021) *Dynamic federalism. A new theory for cohesion and regional autonomy*. Routledge
- Ridao Martín J (2025) Reconstruir l’asimetria: els drets històrics com a via de modulació o excepció de les competències i normes de l’Estat a Catalunya (CA-ES). *Revista Catalana de Dret Públic* 70:153–171
- Rubio Llorente F (1991) Minorías y mayorías en el poder constituyente. *Anuario de Derecho Constitucional y Parlamentario*, 3.
- Ruiz-Rico Ruiz GJ (2006) *La reforma de los Estatutos de Autonomía: actas del IV Congreso de la Asociación de Constitucionalistas de España*. Tirant lo Blanch, Valencia
- Russo AM (2021) Sistema delle fonti e pluralismo territoriale tra (in) crisi ed (in) emergenza negli Stati composti. *DPCE Online*, 50(Sp.): 132–206.
- Ryan A (2020) Federalism as legal pluralism. In: Berman PS (ed) *The Oxford handbook of global legal pluralism*. Oxford University Press, Oxford, pp 491–527
- Sala G (2014) Federalism without adjectives in Spain. *Publius: J Fed* 44(1):109–134

- San Anton Moracho L (2018) (Re)definiendo España: una aproximación a la génesis del artículo 2 de la Constitución Española. *Huarte de San Juan*, 25: 193–220.
- Solozabal Echavarria JJ (2018) Art. 2. In: Rodríguez-Piñero Y Bravo Ferrer M, Casas Baamonde ME (eds) *Comentarios a la Constitución Española*, vol I. Wolters Kluwer, Madrid, pp 61–73
- Tierney S (2022) *The federal contract. A constitutional theory of federalism*. Oxford University Press, Oxford
- Tierney S (2018) Federalism and constitutional theory. In: Jacobsohn G, Schor M (eds) *Comparative constitutional theory*. Edward Elgar Publishing, Cheltenham, pp 45–65
- Tirapu-Sanuy JM (2025) The Catalan Amnesty in the Spanish constitutional court: a triumph of pragmatism over principle. *VerfBlog*, 7/12, <https://verfassungsblog.de/the-catalan-amnesty-in-the-spanish-constitutional-court/>. <https://doi.org/10.59704/d16f7effe3ceb6e6>
- Tomás y Valiente F (1995) Uniformidad y diversidad en las Comunidades Autonomas en la legislación Estatal y en la doctrina del Tribunal Constitucional. In: *Uniformidad o diversidad de las comunidades autónomas*. IEA, Barcelona, pp 513–524.
- Tornos Mas J (2019) Secession and federalism. The Spanish case. In: López-Basaguren A, Escajedo San-Epifanio L (eds) *Claims for secession and federalism*. Springer, Cham, pp 389–404
- Ubillos JMB (2024) Spain as a Democratic State Governed by the Rule of Law and the Catalan Secessionist Process. *Hague J Rule Law* 16:3–30

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

