

## **A New Political Status for the Basque Country?**

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The Basque Country can be said to have entered a new post-violence political scenario in 2012. In this context, a new opportunity for debating about the political status of the Country re-emerges. Electoral behavior and additional social evidence show that the accommodation of the Basque Country within the current Spanish constitutional system is far from being settled. While Catalonia claims for recognition as an independent nation, the debate about the future political relationship between the Basque Country and Spain will be a central feature during the mandate of the Basque prime minister, newly elected in 2012. However, given the different positions of the main political families of this fragmented society, the possibility for a broad agreement that could also be driven through the current constitutional system seems very remote, and major future developments in this field remain uncertain and unlikely. Such a process would face two significant obstacles. On the one hand, there is the deep political fragmentation and distrust among the main political forces in the Basque Country, whose electoral expression seems to remain significantly stable. On the other hand, there is the resistance of Spanish society to recognize or accommodate asymmetry at the constitutional level.

**Keywords:** Basque Country; self-determination; sovereignty; autonomy; self-government; right to decide

In 2012 the Basque Country (or *Euskadi*) can be said to have entered a new scenario that is qualitatively different from those it experienced in the preceding decades. In this new context, it remains to be determined what political model will rally the next generation of Basque citizens. This article argues that the constitutional recognition of a new political status for the Basque Country in the upcoming years remains a remote possibility. In fact, such a process would face two significant obstacles. On the one hand, there is the deep political fragmentation and distrust among the main political forces in the Basque Country, whose electoral expression seems to remain significantly stable. On the other hand, there is resistance by Spanish society to recognize or accommodate asymmetry at the constitutional level.

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This article is divided into four sections. First, I describe the main features of the current political context in the Basque Country as a framework for discussion around the right to decide. Second, I outline the Spanish perspective on the debate, and particularly about the existence and accommodation of national asymmetry in the Spanish Kingdom. Third, I refer to the legal and political obstacles for the recognition of the right to decide for the Basque people. Finally, I provide some conclusions by looking at possible future scenarios in the region.

### **1. A new scenario for the Basque Country**

The most significant change and the most important step taken in the recent history of *Euskadi* is undoubtedly the ending of the cycle of political violence. ETA<sup>1</sup> was founded in 1959, in the darkest period of Francoism, as a new expression of Basque nationalism to resist dictatorship and repression from a secular and left-wing orientation. It soon started developing violent actions, which increased in the face of repression by the State or para-State formations. The period of explicit violence lasted for 40 years. After different periods and provisional ceasefires, in October 2011, ETA formally announced its decision to unilaterally end their use of violence. Once ETA violence, and by extension other types of violence, have disappeared, it will be necessary to focus on the peace and reconciliation processes required to consolidate the new stage and achieve a degree of social normality. However, the mere fact that direct violence has been halted constitutes a historical qualitative change for the Basque Country.

A second important factor that emerged in 2012 is the ending of a cycle of volatile political alliances. The years 2012-2013 also marked the end of a political cycle as well as, almost certainly, an even longer political period made up of several cycles. In the recent history of the Basque Autonomous Community (BAC), we saw an initial cycle of institutional domination by the PNV<sup>2</sup> from 1980 to 1985. Between 1985 and 1998 a second cycle took place in which the PNV and the PSE<sup>3</sup> formed the central axis of Basque politics. Though initially balanced, the leadership later tilted in favor of the PNV, allowing it to form occasional alternative government coalitions (the PNV-EA<sup>4</sup>-EE<sup>5</sup> coalition of 1990-91), while primarily relying on the PSE to achieve institutional stability, and from time to time bringing on board some minor players (the EA and IU<sup>6</sup>) which would go on to give their backing to form a government at a subsequent stage. The third cycle beginning in 1998 resulted in pro-

sovereignty governments headed jointly by the PNV and EA, together with support from the Basque nationalist left (*izquierda abertzale*)<sup>7</sup> and IU later on, and with coordinated opposition provided by the PP<sup>8</sup> and PSE. The latter in turn governed between 2009 and 2012, as soon as they had the chance to bring the previous cycle to a halt. However, in 2012 some normality returned to the Basque political map, culminating in elections to the BAC in October. As a result, the Basque nationalist left returned to all institutions and four clearly-defined political forums were established: the PNV, *Bildu*,<sup>9</sup> PSE and PP, none of which show any clear signs of reaching absolute majority in order to govern with comfort or clarity. Rather than being a new cycle, this represents a new period in which new possibilities are opened up, leading to either the quasi-permanent collapse of four political sectors that are unable to work together on a stable basis or a gradual move towards consensus, which could pave the way for a new political culture.

On a different level, the ongoing economic crisis that affects both Spain and the Basque Country provides an opportunity to implement new social models. *Euskadi* has favored a model that envisages the opening up of the economy to external markets, a low level of public debt, cleaning up of the banks and a strong social welfare tradition (Keating, 2012: 22), as well as inter-institutional agreements (*e.g.* investment and research plans, the Bilbao Ría 2000 public company,<sup>10</sup> etc.). This model has proved to be relatively successful compared to the Spanish model. That does not mean that the consequences of the crisis have not been harshly felt in Basque society. The necessary economic recovery calls for a rethinking of the political and social model towards which the coming generations should be striving. Careful consideration also needs to be given to modernizing the way in which the welfare State and the public administration model operate in the Basque Country. In this respect, the profound social transformations that have also taken place over the past 30 years, particularly concerning demography, mean that some of the old ways of thinking are no longer valid. This makes it necessary to update the basic social and political consensus.

All of this is taking place while Spain and *Euskadi* experience specific challenges. First, Spain is suffering from a degree of “constitutional fatigue”, a form of weariness towards discussions about sovereignty, constitutional reform, consensus-seeking, etc. This is coupled with the constant political deadlock, which has provoked large segments of the public and led large sectors of society, especially young people,

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to become depoliticized.<sup>11</sup> Second, *Euskadi* can be described as a politically fragmented society, divided into several political groups whose relations are usually founded on distrust. Basque society is divided in terms of both culture and identity, and it is one in which citizens have no shared basic points of reference. Some of the political projects facing the four main political forces are antagonistic and contradictory to one another. In other words, there is no satisfactory meeting point for them all, a situation which should also be seen as forming part of the political landscape. As far as sovereignty, in particular, is concerned, the various projects are fairly incompatible.

The political culture is one of distrust, in which any victory or success achieved by one is interpreted as defeat or failure by the others and a win-lose mindset prevails, in a context where sometimes different political groups defend contradictory developments. Furthermore, political issues connected with sovereignty, territoriality, symbols and language are addressed as matters of honour, thereby leading political forces to adopt extreme positions and emphasizing the victory/defeat interpretation. This is because in *Euskadi* a fairly explicit struggle over collective identity and feelings of belonging takes place, where institutions or the media can be used to fuel ideas and antagonisms. Despite this, the ending of political violence provides a new opportunity to relax these divisions and feelings of belonging.

The new political cycle, in which violence and the threat of the use of force are no longer present, means that the substantive debate occupying Basque society can be clearer and couched in exclusively political arguments. The electoral programme put forward by the Basque Prime Minister (*Lehendakari*) Iñigo Urkullu (PNV), the winner of the October 2012 parliamentary elections, included securing a new political status for *Euskadi* by 2015, based on the recognition that the “right to decide” is available to Basque citizens.<sup>12</sup> This is the position of PNV, although the concrete outcome of this process and the real meaning of that new political status have not been defined. It is effectively a vague form of confederal relations between Spain and the Basque Country, but still lacking in legal and political clarity. All that is known is the basic political orientation of the main parties in relation to their stance to independence: the PNV attracts votes of different sectors whose common standpoint is the right to self-determination of the Basque people, or right to decide (albeit with different positions in respect to outcomes); the *Bildu* coalition is dialectically committed to independence, while the Spain-wide parties, the PP, PSE and UPD,<sup>13</sup> are

opposed to it. For their part, *EzkerBatua* and *EzkerAnitza* have supported the right of Basque society to freely decide its own future, though opting for federal rather than secessionist solutions.

Although the economic crisis is acting as a kind of thick fog that prevents the sovereignty debate from being seen clearly, the truth is that the debate is still waiting to see how the current legislature evolves and how the secessionist process taking place in Catalonia develops.<sup>14</sup> Like the Basque Country (and Galicia), Catalonia is one of the “historical nationalities” of Spain.<sup>15</sup> Discussions are currently centred on the concept of the right to decide for these “nationalities”, an expression which seems to have already become established within the political and academic debates that are ongoing in connection with the Catalan situation and, by extension, the Basque one.

## 2. Territorial organization of the Spanish State and its asymmetry

Spain is a country with a strong national identity. However, feelings of Spanish national identity are contested in Catalonia and the Basque Country. Figures show that Spanish identity is given less importance or denied by a significant number of those living in the Basque Country and Catalonia, while the figures for other regions are significantly different.

*Table 1: Subjective national feelings of citizens (as percentages)*

	Andalusia	Catalonia	Basque Country	Galicia
Only feel Spanish	5.9	5.3	3.5	4.7
Feel more Spanish than a member of their Autonomous Community (AC)	12.1	8.9	5.0	6.4
Feel both Spanish and a member of their AC	61.6	47.3	31.3	58.9
Feel more a member of their AC than Spanish	17.1	19.0	22.0	22.8
Only feel a member of their AC	1.4	11.6	32.7	5.2
Don't know/No reply	1.8	8.0	5.5	2.0
Total (No.)	3,200	2,000	1,200	2,000

Source: *Observatorio Político Autonómico, año 2008* [Regional Political Observatory, year 2008], Universitat Autònoma de Barcelona-Universidad de Granada-UPV-Universidade de Santiago de Compostela, Barcelona, p. 38. Available at: [www.opal51.com](http://www.opal51.com).

Spain has in fact a multinational political reality, even though it is significantly asymmetric and uneven. Indeed, only in Catalonia and the Basque Country do the majority of the population see Spain as a multinational country. However, when it comes to Spanish society as a whole, Spain is seen as a nation by the majority (63%), while only 18% regard it as a multinational State and, more ambiguously, 16% simply see it as a State (Llera, 2009: 312). Once again, the views of those in Catalonia and the Basque Country differ significantly from the rest. The multinational definition of Spain is largely based on a traditional Catalan nationalist idea that configured it as a State of several nations, while Basque national construction has tended to revolve around the idea of the separation of sovereign subjects and a degree of indifference towards how the rest of the State is configured (Keating and Wilson, 2009: 538). In short, what Linz said at the start of the transition to democracy is still perfectly valid: ‘Spain today is a state for all Spaniards, a nation-state for a large part of the Spanish population, and only a state but not their nation for important minorities’ (Linz, 1975: 423).

**Table 2: What does Spain mean to you? (as percentages)**

	<b>Andalusia</b>	<b>Catalonia</b>	<b>Basque Country</b>	<b>Galicia</b>
My country	71.2	35.5	18.0	51.4
A nation I feel a member of	10.7	6.7	3.4	18.0
A State of which I am a citizen	10.5	14.1	18.3	12.2
A State made up of several nationalities and regions	6.4	36.6	46.6	12.5
A foreign State my country is not part of	0.4	5.3	11.3	2.3
Don't know/No reply	0.9	1.8	2.3	3.7
Total (No.)	3,200	2,000	1,200	2,000

Source: *Observatorio Político Autonómico, año 2008* [Regional Political Observatory, year 2008], Universitat Autònoma de Barcelona-Universidad de Granada-UPV-Universidade de Santiago de Compostela, Barcelona, p. 40. Available at [www.opa151.com](http://www.opa151.com).

In the course of shaping and consolidating the modern Spanish State, there have been several rival national projects, none of which has yet fully prevailed (Keating and Wilson, 2009: 537). It has been impossible to satisfactorily resolve the territorial question because the process of national construction has been unable to incorporate the State's different peripheral national realities into the concept of Spain as a nation.

The citizens of those realities have so far resisted the model of uniformity and homogenization that characterized the widely-held idea of Spain during most of the twentieth century, but at the same time were too weak to impose on the centre a pluri-national form of State organization (Requejo, 2005: 89).

In this context, the basic justification for Spain's extensive quasi-federal decentralization is ambiguous and stems both from reasons of internal national/cultural diversity and the search for greater administrative efficiency. The pluri-national nature of its society is the subject of extensive heated discussions in Spain on how to accommodate certain minority communities, especially Catalonia and *Euskadi*, is a cause of permanent friction. Spain has a markedly asymmetric political reality in terms of feelings of national identity, which is something that is nevertheless not recognized within the 1978 Spanish Constitution.

Indeed, the territorial model of the State was not specified in the Spanish Constitution. Two reasons for this can be identified. The first is to avoid using concepts (like "federal" or "unitary" State) that, at the time it was drawn up, would not have been welcome by different political groups (for opposing reasons) whose agreement was important to legitimize the Constitution on a broad consensus. The second reason is that in fact the concrete development of the Spanish territorial model had not been determined or agreed by 1978, or, at least, much of it had not been. One of the few things that can be clearly deduced from the Constitution in this regard is that (political territorial) autonomy is recognized as being a right of nationalities and regions, terms which have been deliberately used in an ambiguous manner. Considering the political circumstances at the time, it was clear that some areas of the State would enjoy a system of self-government of a political nature. These areas were, firstly, the "historical communities" of *Euskadi*, Catalonia and Galicia—all of which are mentioned indirectly in the second transitory provision of the Constitution. From then on, autonomy was, in principle, open to all other regions (*principio dispositivo*), with two procedural channels through which they could acquire different levels of powers.<sup>16</sup> With the Constitution in hand, there was nothing to prevent large areas of the State from becoming Autonomous Communities (ACs), or some of those already established from having self-government of simply an administrative nature.

It was as a result of subsequent events and various political agreements that the current model came to be developed. Today, Spain is composed of 17 ACs, all of them endorsed with political powers and legislative and executive institutions. In

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1981 the autonomy map and access to political self-government was decided for the whole of the State territory,<sup>17</sup> together with the basic differences that would initially exist in terms of powers between seven autonomies<sup>18</sup> and the rest. Later on, the intention was, essentially, to ensure that the 17 ACs had equal powers (except for specific matters for the BAC and Navarre derived from having “chartered” status<sup>19</sup>). Today we might ask whether Spain is a composite State of a federal nature, or whether it is both a unitary and decentralized State. Some from the field of constitutional law argue that a State of Autonomies is in practice comparable to federal models, such as those that exist in Germany, Belgium and Austria (Aja, 2003).<sup>20</sup> Others, however, refute this view (Ruiz Robledo, 2004: 727; Pomed Sánchez, 1999: 62; López Mira, 2004: 747; Alvarez Conde, 2000: 365)<sup>21</sup> or argue that the current Spanish State is more like a regional State (Bon, 2003: 23), with Italy being the nearest example.

Though admittedly the level of self-government the Spanish Autonomous Communities can be granted through the model established in the Spanish Constitution is comparatively high, the so-called State of Autonomies<sup>22</sup> cannot conclusively be deemed to be a federal State for different reasons.<sup>23</sup> The best way of describing the current situation would be to say that the model that has evolved from the 1978 Constitution (as well as other sources) is one of a unitary State with a high level of overall political decentralization (except for Ceuta and Melilla<sup>24</sup>) and in which powers tend to be distributed equally between all entities. In other words, it is also a model that tends to be symmetrical except with regard to the peculiarities derived from historic “chartered” rights.<sup>25</sup> In this sense, the Spanish model is a departure from traditional unitary States as well as from those that have been only partially decentralized (such as the United Kingdom, Denmark or Finland), but it is also different from the more classic federal models (like Germany, Austria or Switzerland). Perhaps the most similar theoretical model to the current Spanish one is that of the Italian Republic, although Italy, unlike Spain, guarantees asymmetry between the regions in the Constitution itself.<sup>26</sup>

At the same time, the Spanish constitutional framework categorically establishes national unity. Furthermore, according to Article 2, the Constitution<sup>27</sup> is grounded (“*se fundamenta*”) on the very existence of a single Spanish nation and its indivisibility. The wording of the provision in question bases the Constitution on the existence and defence of a nation, which furthermore presupposes the inclusion of all



State citizens, regardless of their wishes, even though a certain percentage of them do not feel that Spanish national identity is their own and an even greater percentage feel or believe that other national identities also coexist with Spanish identity. In this sense, the wording of Article 2 is not very inclusive since it not only fails to mention the possibility that there may be other national identities among Spanish citizens, but it takes for granted that all citizens form part of the Spanish nation to which it expressly attributes the status of common “homeland” (“*Patria*”). The Constitution undoubtedly establishes what is generally understood to be a nation-State. Within this framework there is no room for any right to decide (Pérez Royo, 2012:19; Viciano, 2103: 24).<sup>28</sup>

Furthermore, in the Spanish regions there are many important dynamics of social and political mobilization that are the result of emulation and envy (Moreno: 2008: 117), so that in the “non-historic” ACs<sup>29</sup>—the ACs other than the Basque Country, Catalonia and Galicia—being different to other communities in asymmetrical terms is seen as a privilege rather than a means of accommodating diversity, a matter which seriously affects discussions on the right to decide. This is why the majority of the Spanish public is permanently distrustful of Catalan and Basque demands for self-government: most Spaniards tend to not believe that the national projects of those communities are genuinely loyal to the State. At the same time, pro-sovereignty sectors from both communities are becoming increasingly distrustful of whether the Spanish national project intends to incorporate them by assuming and recognizing their special nature. This latter process has sped up in Catalonia in particular, following the long process to amend the Statute and the final decision of the Constitutional Court on that issue.<sup>30</sup> In the end, political dynamics become an ongoing battle between the supporters and opponents of asymmetry. The majority of the population in both the Basque and Catalan societies are calling for asymmetrical special treatment so that they can be accommodated once and for all within the State model, while the rest of the Spanish population, on the other hand, is asking for all communities to be treated equally in such a way that contributes to blurring or obscuring the imperfection of their national project (Keating, 2012: 25). Existing political discourses and consistent electoral results show that most of Spanish society accepts that the various ACs have different projects and identities, but only as long as there is strict equality between them all and they are embedded within a common Spanish project. Society is not prepared to accept particular or special

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positions or situations that are permanently viewed as privileges and, therefore, the cause of resentment. The rise of the Spain-wide party UPD as a new political force has become the channel for the most obvious expressions of this neo-Jacobin view which, nonetheless, is also widespread among the electorates of the PSOE, PP, IU and other regionally-based groups.

Thus, after more than 30 years of constitutional development, Basque demands for sovereignty through greater self-government and recognition are wagered on bilateral, pact-based solutions that give them a quasi-State status or allow them to have their own international profile. Apart from the cases of Catalonia and the Basque Country, majority populations in all other Communities wish to match the level of powers enjoyed by the historic communities, thus preventing such regions from being given special status. Behind this latter position is a desire to water down differences into a symmetric system and reaffirm that all ACs jointly belong to Spain (Moreno, 2008: 123-124). This was clearly evident during the period when reform of the Catalan Statute was being sought (2003-2006), as demonstrated by two important political events. Firstly, a parallel process to amend the Statute of Andalusia was also launched—an initiative which seems to have emerged without there being any significant social demand in that region and which in fact copied many articles from the new Catalan Statute. In this instance there was the added difficulty that the PP, which in Catalonia had opposed the new Statute, ended up supporting the very same clauses in the case of Andalusia once the Catalan Statute was drafted—simply for the sake of symmetry. Secondly, this urge to achieve symmetry in order to neutralize the historic nationalities was given legal expression in the so-called “Camps clause” introduced as Additional Provision 2 in the Statute of Valencia,<sup>31</sup> which was approved shortly before the Catalan one in 2006. The Camps clause clearly shows that the so-called *principio dispositivo*—that is, the idea that autonomy is a possibility open to all regions but not an obligation—does not work in practice as a way of accommodating differences, but rather neutralizes them. By introducing this precept, the Community of Valencia showed its distrust of possible future advances in self-government for the historic communities (particularly Catalonia) and went ahead with calling for direct implementation of symmetry in a move to prevent comparative disadvantage which, though having no legal standing, had great political and symbolic importance.

This ongoing battle between the historic communities and the rest of the ACs, or between asymmetry and symmetry, has resulted in considerable political fatigue.

As noted, 2008 also saw the outbreak of a deep and lasting economic crisis. Both factors may explain why, from 2008-2009 onwards, surveys carried out by the *Centro de Investigaciones Sociológicas* [Centre for Sociological Research] have shown that support among Spanish society for ‘a State with Autonomous Communities as we have now’ has begun to wane after having increased progressively and steadily since the Constitution was approved. At that point, the trend began to reverse and, although a broad majority supported the State of Autonomies as the State model, explicit support for “a centralized State” started to increase from then on (Grau, 2011: 194). According to Roca, since 2006 financial distrust between the ACs has been growing (Roca, 2007: 879-881). The economic crisis is undoubtedly speeding up this process, since it can add fuel to the debates on the competition among ACs for certain resources, and on responsibilities for budget cuts. For example, in the summer of 2012, according to the Centre for Sociological Research, 39% of citizens from throughout Spain expressed support for a centralized State or a State with less decentralization than at present, higher than the figure for those arguing for the current territorial model to be maintained (30.8%) as well as for those calling for greater self-government for the ACs or recognition of their right to secession (21.2%).<sup>32</sup> At the same time, over the past few years there seems to have been an increase in pro-independence sentiments among the historic nationalities, especially in Catalonia, to the extent that in 2012, for the first time, independence received the backing of a majority of Catalan society.<sup>33</sup>

Meanwhile, the lack of political trust and stability has not been remedied by the actions of the arbitration authority which, in the Spanish system, is essentially the Constitutional Court. On the contrary, this body has also suffered from a serious loss of prestige and excessive politicization, especially during the process of decision-making on the Statute of Catalonia in 2006.<sup>34</sup> The way in which its members are elected, in practice based on agreements between the two major State parties, does not help it inspire greater trust.<sup>35</sup> In addition, with regard to proposals that could affect the constitutional order—as, hypothetically speaking, might have been the case with regard to the 2004 proposal to amend the Basque Statute or the call for a referendum in the Basque Country in 2008<sup>36</sup>—the Spanish Constitutional Court has avoided the use of more open or flexible interpretations of the Constitutional framework. Thus, in contrast to the stance taken by the Canadian Supreme Court with regard to the possible secession of Québec, where basic political considerations at the level of

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general principles accompanied a legal analysis of the legitimacy of secession, the Spanish Court has not at any point sought to invoke general principles, non-positive constitutional norms or political considerations regarding democracy. The Court's position strengthens the vision of the Constitution in Spanish society as a frozen myth deriving from a quasi-ideal and general consensus in 1978 when the Constitution was adopted, which cannot be betrayed. In any case, the most important decisions made by the Constitutional Court<sup>37</sup> in the most recent phase of autonomy development have also failed to build trust between the different national projects that co-exist in Spain, reasserting the powers of the centre against deepening further devolution, and consequently raising the levels of distrust from the Basque or Catalan sovereignist forces towards the neutrality of the central institutions of the State (Vid. Acierno and Cruz, 2005; Costa-Font and Tremosa-Balcells, 2008). In fact, the process of amending the Catalan Statute has changed the way divergences over the territorial model were dealt with in the first decades of democracy (Arzoz, 2012: 187): the judicial challenge to the new Statute carried out by the Popular Party has involved the Constitutional Court in the dispute, whereas previous debates on autonomy were preferably kept within the framework of political negotiations between the parties (Castellá-Andreu, 2010: 5). Finally, it is important to underline in this respect the restriction on the use of instruments of direct democracy, particularly the referendum of self-determination, as it was denounced on several occasions by the Basque and Catalan sovereignist parties. This is obviously a restriction at the national level<sup>38</sup> and there is an even a deeper refusal of referenda held at the regional level as a way to legitimize separatist aspirations (Tajadura, 2009). Following the wording of Articles 92 and 149.1.32 of the Constitution, the power to organize referenda at the regional level remains in the hands of the State authorities (Viciano, 2013: 30), and the regional institutions in Catalonia or the Basque Country (as happened in 2008) have found no way of legally implementing this important step in their political projects (Keating, 2012: 17).

### **3. The Basque Country and its political status**

In the case of the Basque Country, distrust between the two political blocks—the sovereignists and the unionists—has been evident since the political breakdown of 1998. Any attempt by pro-sovereignty groups to establish a new framework for relations between *Euskadi* and Spain based on “free association”<sup>39</sup> (and the right to decide) by amending the Basque Statute ran directly up against the main Spanish

parties, as it happened with the 2004 draft law to amend the Basque Statute, defended by the Basque Primer Minister Ibarretxe in the Spanish Parliament in 2005. By then, mutual distrust of the ultimate intentions of each of the Basque political families had become ever more apparent, and was possibly growing (García-Álvarez and Trillo-Santamaría, 2013: 109). In the present context, the new political scenario deriving from 2012 and the sovereignist clear majority in the Basque Parliament will bring back to the political agenda demands for self-determination or a new status with greater autonomy under the idea of the right to decide, as suggested by the Basque Prime Minister. The debate will have to be conducted within a different post-violence scenario for the first time, and the concept of the “right to decide” (of the Basque people) seems to be the key issue at stake.

With regard to the supposed “right to decide”, however, there is first of all some doubt about its nature and existence. Having found some resonance because of its euphemistic and strategic value, the expression is used to eliminate or mitigate the alarming effect that the right to self-determination tends to generate. In addition, employing such a new concept may serve to side-step the rambling critique of self-determination that has been developed from majority positions. Despite this, it cannot be argued that a new right has emerged that can be distinguished from the right to self-determination (Tajadura, 2009: 383; De Miguel, 2006: 263). Ultimately, when talking about the right to decide or the right to self-determination, the potential holders and basic content of the rights in question are identical and this should lead us, at least in the academic field, to call it by its proper name. The right to self-determination is currently established as a collective human right of peoples; it belongs to the mandatory part of international law, cannot be determined by States and gives rise to *erga omnes* obligations, as recognized by the International Court of Justice itself.<sup>40</sup> However, justification for self-determination goes beyond just the field of law to encompass political and moral arguments. As Falk states, the right to self-determination has matured along three distinct but often overlapping, and sometimes uneven and confusing, paths: morality, politics and law (Falk, 2002: 42). This mixture of approaches is also present in the discussion about the existence (or legitimacy) of the right to decide for the Basque people. The Basque Country and Spain are not free from the hyper-sensitivity of the debates on the right to decide and sovereignty.<sup>41</sup>

The expression “right to decide”, as currently used in the Basque context, means the ability of a specific territorially-defined collective to freely determine its

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internal and external political status and the way in which it delivers its political, economic, social and cultural development. Its content is thus wholly indistinguishable from that of the right to self-determination, or from a political notion of sovereignty. The main question that emerges from the debate in *Euskadi* is who is entitled to exercise that right. In other words, the topic of debate that causes political groups to line up in two opposing blocks is whether it is the citizens of the Basque Country who are entitled to exercise this right of decision or whether, on the other hand, it is the population of the Spanish State as a whole who holds that right.

Similarly, debates around who is entitled to exercise the right to self-determination could be reproduced at this point (Ruiz-Vieitez, 2012: 7-10). However, the specific aspect of the discussion that relevant to the Basque case is whether the Basque people can be called a territory-based minority nation, and whether this type of collective indeed holds that right and under what conditions. Requejo uses the expression “minority nations” to refer to situations such as that of the Basque Country and Catalonia and provides some guidelines for identifying them (Requejo, 2007: 36). When arguing in favour of entitlement to the right to decide it is important to analyze the social and electoral strength of political forces calling for a substantive change to the existing legal framework in order to increase (or transform) self-government of the collective, as well as to consider whether such support is geographically consistent and repeated in time. This is clearly the case in *Euskadi*. If we take into account the ten autonomous elections held in the BAC between 1980 and 2012, we see that on every occasion the pro-sovereignty groups (PNV, HB, EE, EA, EH, EHAK, EB, *Aralar* and *Bildu*) received over 50% of the valid votes cast, and that in every legislature except the ninth (in which the Basque nationalist left was declared illegal), that also translated into an absolute majority of seats in the Basque Parliament.

In addition to this decisive point, there is the fact that in *Euskadi*, compared to the rest of the Spanish State, the constitutional framework has less legitimacy, given the significantly lower support it received in the referendum held on 6 December 1978 on the adoption of the Constitution (replacing the constitutional legislation of the Franco era).<sup>42</sup> If in a democracy political frameworks can only retain legitimacy on the basis of majority consent, the only possible means of legitimizing a particular territorially-based accommodation of sovereignty is via the democratic principle, as expressed through the wishes of the majority of those who at any given time make up a national majority or minority community, identified as such in accordance with

electoral evidence. In other words, any kind of internal or external accommodation of minority nations should be based primarily on respect for the freely given consent of a majority of their members, and this would correspond to the referred right to decide. Therefore, what Basque sovereignist parties defend is that when a territorially-delimited minority collective persistently demonstrates electoral behaviour that is different from the rest of the State's population, it is appropriate, employing democratic arguments, to recognize that the community in question constitutes—if that is what it desires—a *demos* in itself, and that any political and constitutional formula to incorporate or accommodate such a collective should have the majority support of that community. Ultimately, self-determination or the right to decide equates to the democratic principle, rather than to secession (Keating, 2012: 15). If the minority community consciously wishes to establish a distinct *demos* and has the political will to exercise such original power, the only stable political solution is for its ability to decide its own political status to be recognized, or for its own area of political decision-making to be established. From that point on, this process may lead to the designing of shared constitutional models that are accepted by a majority of all the co-existing communities or, in the absence of agreement, democratic secession.

In the case of *Euskadi*, this reasoning is advocated, more or less explicitly, by the pro-sovereignty political sectors. Rather than advocating on the basis of the idea of self-determination or the recognition of the historic rights derived from the Basque “chartered” system (*régimenforal*),<sup>43</sup> these groups see the Basque people as holders of the right to decide, thereby making it possible for them to determine their political status without the need to comply with the constitutionally established limits. The Spain-wide political parties, on the other hand, only recognize the sovereignty of the Spanish people as a whole and believe that the decision-making capacity of Basque citizens is confined to the powers enshrined in their Statute of Autonomy, any amendment of which requires the consent of the *Cortes Generales*, the central parliament. According to those parties, the current constitutional limits could only be legitimately overcome if agreed by all Spanish citizens as a result of a process of constitutional reform.

Thus, if the Basque institutions, in which pro-sovereignty groups have consistently enjoyed a majority, were to launch a decision-making process to enable Basque citizens to attain a new political status, they would find themselves opposed by the central State institutions, which could legally prevent any change in status of

that kind. Without the consent of the State-level political groups, the chances of achieving any such new status through legal channels are practically non-existent. Securing a broad-based agreement recognizing that the Basque people have the right to decide therefore seems implausible at present or in the medium term. Since this is the basis on which the different proposals put forward by the pro-sovereignty parties, including that of the Prime Minister himself, have been established, it seems unlikely that the Spanish political groups could subscribe to such an agreement, however well it might be viewed by a majority of BAC citizens. Indeed, given the current constitutional context in Spain, the legal framework, as read by its highest interpreter, the Constitutional Court, does indeed close all doors to any attempt to propose and achieve the desired right to decide. What impedes the right to decide is the juridical interpretation of the legislative framework, rather than its actual wording.

However, it could also be argued that, without needing to amend the Constitution, the right to self-determination has been recognized in domestic law as a result of the incorporation of international human rights law into Spanish law, and the acknowledgement contained in Article 1 of the 1979 BAC Statute of Autonomy, recognizing the citizens of the BAC as a people (De Miguel, 2006: 266-267; Viciano, 2013: 25).<sup>44</sup> It is also worth mentioning once again the channel provided by the historic rights recognized in Additional Provision 1 of the Constitution, in relation to the additional provision of the Basque Statute which makes a somewhat vague reference to not waiving the historic rights of the Basque people (Caño, 1997).<sup>45</sup> Yet again, the interpretation of Additional Provision 1 of the Constitution by the Constitutional Court does not at present leave any means open for the right to decide to be realized<sup>46</sup> (Ezeizabarrena, 2012: 26). However, in the case of the Basque Country, the historic rights it has are an important line of symbolic argument that, given their special nature, should not be discounted as a possible means of making the State shift its position (Ezeizabarrena, 2012: 13). In other words, even though such rights should not in themselves be used as grounds for deciding whether or not the right to decide is justified, it should not be forgotten that the historic rights—those recognized in the Constitution—belong exclusively to the Basque territories, thereby justifying their special and thus asymmetric treatment and legitimizing such treatment in the eyes of the rest of the State's population so that it is acceptable to them. Even if this did not fully correspond to the so-called right to decide, it could serve as grounds for legitimizing a special asymmetrical statute, as a kind of agreed sovereignty (Caño,



1997; Ezeizabarrena, 2012: 78). At the same time, this means of socially justifying a political solution that differs from the current one does not exist in the case of Catalonia, which could help to reduce Spanish fears that other communities would end up being broken up. Lastly, the historic rights are the only legal entitlement that is expressly shared with Navarre.

On the other hand, a proposal from the Basque political majority that focuses solely on amending the Basque Statute without calling for recognition of the right to decide might be acceptable from the perspective of the State-wide parties; however, that does not currently seem to be enough for the pro-sovereignty groups. To sum up, discussion of the right to decide uses different terminology in order to mask the old debates around self-determination, sovereignty and attempts to reinstate the Basque “chartered” system as its own actual distinct constitution. Ending the cycle of violence has not substantially transformed the age-old Basque debate or the fragmentation between sovereignist and unionist political sectors and, thus, the divisions along political and identity-based lines are basically the same as those that existed at the beginning of the democratic period.

Once it is understood that the possible legal entitlements available under the current framework are extremely limited, the only means of defending the right to decide that might serve as a basis for a new political status for the Basque Country is to turn to the political argument of the democratic principle. According to the sovereignists, the population of the Basque Autonomous Community would be entitled to exercise the right to decide about its future political status with no pre-established limits to that democratic will. However, above and beyond the legal and political arguments, the problems that arise with regard to moving forward with sovereignty in the Basque Country are of a practical and operational nature. Recognizing and exercising the right to decide, as proposed by the Basque Prime Minister, is particularly difficult in the current Basque context, not only due to legal restrictions, but also because of an accumulation of political and social factors.

First, the chances that the right to decide for the Basque people will be accepted by Spain’s legal doctrine and political class at this moment in time seem extremely limited. Although some Spanish intellectuals have said that they take the view that any majority decision reached by Catalan society by means of an official decision-making process would need to be respected (Rubio Llorente, 2012), this position does not appear to be widely shared within Spanish society. In addition, the

fact that a significant minority of Basques remain opposed to it legitimizes centralist positions and prevents any progress.

Second, if the decision-making process was to include the possibility of secession and this was wanted by a majority of the Basque population, there would also be major difficulties at the international level. Without an agreement from the State, popular support for sovereignty would have to be very significant. If there were important internal social divisions, as in the Basque case, the neighbouring European States would not be inclined to support the process and oppose the Spanish State's position. This would also mean that, if it opted for secession, and even if it was accepted, *Euskadi* would have to leave the European Union, in compliance with the basic principles of international law.

Third, as far as the territorial definition of the Basque Country is concerned, if the pro-sovereignty sectors focused their claim on a political entity that included Navarre,<sup>47</sup> it would complicate matters to such an extent that it would be impossible for their arguments to be accepted. At present Navarre constitutes a distinct political unit, and its inclusion in the matter to be decided would clearly have to be endorsed by its inhabitants, something which is unlikely to happen in the medium term. To be plausible in *Euskadi*, any sovereignty proposal must be confined to the territory that is currently inside the BAC. In any event, the territorial vagueness or the uncertainty to which it might lead is a serious obstacle to the decision-making process in the Basque case. Current or future irredentist situations are a source of political instability and, given that Basque sovereignty is still carrying a heavy burden in that respect, this would need to be clarified before any process of this nature could be implemented.

Fourth, just as there is a lack of clarity about territory, it should be pointed out that there is also no basic minimum consensus within the Basque sovereignty movement with regard to the entity whose sovereignty they are seeking to champion. In the Basque Country, unlike Catalonia, there is no shared view of what constitutes the national character of the society and its right to decide among any of the pro-State political sectors (with the exception of the small political sector around EB/IU). Furthermore, there is no basic agreement on definitions between the two quintessential sovereigntist political groups—the one represented by the PNV and the one centred around *Bildu*. Worse still, there is a feeling that, rather than establishing shared narratives, they both sometimes seek to create differences. The lack of consensus on territorial limits, the country's name and other basic symbols limits the

chances of expanding and consolidating the sovereignist programme, causing it to lose credibility with the rest of society and abroad.

Fifth, no serious plan has been drawn up for the type of country to which a decision-making process or sovereignty might lead. There is currently almost no genuine and credible sovereignist plan that could be used to explain the resultant political project to Basque citizens and their neighbours. There has not yet been any attempt to address operational matters that concern social institutions and citizens by anticipating how economic, social, financial and cultural matters will be affected following a process of that nature. Any such exercise should be done on the basis of a project that has been widely shared and backed by people and institutions of standing that give it legitimacy. This type of political and educational work apparently still remains to be done in the case of the Basque Country and this, in addition to the lack of consensus among the main political families, surely shows why it was impossible for the sovereignist project to be put into practice in previous decades.

All these constraints and operational obstacles show that *Euskadi* is far from able to exercise the right to decide and it could even be said that Basque society (and the neighbouring societies) are far from believing that it would be a genuine possibility. The progress made towards attaining that right in Catalonia may act as a catalyst, but the fact is that, in any event, Basque society is today trailing behind Catalan society in that respect, regardless of the specific electoral situation. As well as working on getting other outside structures to recognize such a right to decide, a great deal of internal work still needs to be done to develop genuine prospects of securing this right, which, according to democratic principle, would at the very least apply to the part of Basque society that makes up the BAC. The lack of a basic political consensus, and even of a culture of political consensus, will make it very difficult for any process seeking sovereignty that has not been accepted within the current legal/constitutional framework to be set in motion.

## **5. Conclusion**

Prime Minister Urkullu's proposal to secure a new political status for *Euskadi* by 2015 was initially presented using a deliberately ambiguous formulation which, as such, could not be immediately rejected by any of the four main Basque political groups. However, when the said plan becomes more concrete, the chances that one or several of these political families will oppose it will increase significantly. It is

difficult to envisage a proposal for reforming Basque self-government that would meet the minimum requirements for it to obtain support from the pro-independence *Bildu* coalition without at the same time exceeding the maximum concessions that could be made by parties opposed to independence, such as the PSE or the PP.

At the moment, deferring the possibility to secure a new political status until 2015 would offer a number of strategic advantages. The first is that the new government installed as a result of the 2012 Basque elections can focus its efforts on overcoming the greatest economic crisis that *Euskadi* has experienced since the 1980s. Secondly, it makes it possible to take action in the wake of what happens in Catalonia, depending on how the situation there evolves. To the extent that the Spanish State may move towards supporting an asymmetrical arrangement for Catalonia, the Basque Country would clearly be entitled to, at the very least, aspire to be treated in the same way. If, on the contrary, the Catalan situation becomes permanently blocked, the Basque Country could invoke the special nature of its historic rights to call for an increase in the level of self-government. Lastly, if a scenario emerges in which there is a systematic failure to agree and it is impossible to back a political status that is minimally acceptable to the sovereignist groups, the Prime Minister would, in the last year of his legislature, have at his disposal the weapon of dissolving parliament early and calling BAC elections in which discussion of the proposal presented by the Basque Government and rejected by the State forces would become the central policy debate.

In any case, today it appears that there are few chances of achieving a broad-based agreement in the Basque Country on updating self-government within the existing legal framework. Expressly calling for the right to decide would clash with the Constitution and the interpretation of it by its main guarantor, the Constitutional Court. The main challenge in the evolution of the Spanish constitutional system is its difficulty in recognizing and accommodating asymmetry. The pro-State political groups would refuse to recognize a right to decide for a specific region and would only be prepared to sign an agreement that would translate into an amendment to the Statute made in compliance with the established procedure and with the resulting final approval of the Spanish Parliament. It is true, however, that within this framework any increase in the effective level of self-government would appear to be complicated and the most that could be expected would be to update the wording of the Statute rather than expand a political power. At the same time, it seems extremely unlikely

that the political group represented by *Bildu* would accept a simple amendment of the Statute as a political solution, or even that the PNV could present such an amendment to its grassroots or the rest of its electorate as constituting a success. In both cases, what is required is to present citizens with a kind of specific, asymmetric and quasi-confederal relationship between *Euskadi* and Spain, including some elements that have symbolic value. That this could turn into an amendment of the Statute within the constitutional framework is, at the very least, complicated to envisage. Only by going down the route of the historic rights argument could an original solution of this kind be reached without pro-State positions being concerned about the threat of such a system being extended to other nationalities and regions within the State. However, the current social and political conditions are very different from those which in 1979 made a truly bilateral negotiation of the Statute possible, and there is no indication that Spain is on the way to genuinely reforming its autonomy model in such a way that its symmetrical nature is altered. How the Catalan dispute is settled in this legislature may provide a guide for the future on the level of territorial reform that the Spanish State is prepared to accept and, consequently, on how a new agreement on self-government for the Basque Country could be articulated. Nevertheless, at the moment the forecast is for there to be an ongoing clash between two distinct political majorities who, unless there are significant constitutional moves that enable the situation to become unblocked, are unable to reach satisfactory agreement between them.

### Notes

- 1 ETA stands for *Euskadi Ta Askatasuna* [Basque Country and Freedom]. This organization has gone through numerous internal divisions and splits throughout its history, but there is a degree of continuity in the social understanding of this acronym.
- 2 PNV stands for *Partido Nacionalista Vasco* [Basque Nationalist Party]. PNV is a pro-(Basque) sovereignty political party founded in 1895 and representing a wide political spectrum from centre-right to centre-left. At the European level, PNV is part of the European Democratic Party and sits in the European Parliament within the group Alliance of Liberals and Democrats for Europe.
- 3 PSE stands for *Partido Socialista de Euskadi* [Socialist Party of the Basque Country], which is the BAC federation of the Spanish Socialist Party (PSOE).
- 4 EA stands for *EuskoAlkartasuna* [Basque Solidarity], which is a pro-independence socio-democratic Basque party founded in 1986. In the last general and Basque elections EA has participated in the *Amaiur* and *Bildu* coalitions along with other left-wing pro-independence parties. EA is also a member of the European Free Alliance.

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- 5 EE stands for *EuskadikoEzkerra* [Left of the Basque Country], which was an independent left-wing nationalist party that in 1993 officially merged with the PSE after a severe internal split.
  - 6 IU stands for *IzquierdaUnida* [United Left], whose Basque branch has been named *EzkerBatua* [United Left] and *EzkerAnitza* [Plural Left] is a state-level left-wing coalition. The biggest party within the coalition is the Spanish Communist Party. This coalition makes part of the European Unitary Left.
  - 7 The expression refers to the succession of banned political parties like *Batasuna*, *HerriBatasuna*, *EuskalHerritarrok* or *PartidoComunista de lasTierrasVascas*, among others. This political sector is today organized around the new Party *Sortu* [Create] and within the coalitions *Amaiur* and *Bildu*.
  - 8 PP stands for *Partido Popular* [Popular Party], which is the main right and centre-right wing political force in Spain and a member of the European People's Party.
  - 9 *Bildu* is a pro-independence left-wing coalition that includes the Basque nationalist left, EA and other minor parties like *Aralar* and *Alternatiba*.
  - 10 Bilbao Ría 2000 was a public company with the involvement of all major public institutions at different levels: Spanish government, Basque government, Biscayan government, Bilbao and Barakaldo municipalities, and the different public railway companies. For several years it promoted big urban operations in the metropolitan area of Bilbao, with a considerable success in regenerating urban spaces and building new city equipment.
  - 11 Sociological surveys show a progressive decline of interest for politics. See the last data within Gobierno Vasco, Gabinete de Prospecciones Sociológicas, *Sociómetro Vasco no. 52*, 'La crisis y el mercado laboral' [Basque Sociometer no. 52, 'Crisis and Labour market'], 2013, at p. 69, available at [http://www.lehendakaritza.ejgv.euskadi.net/contenidos/informe\\_estudio/sociometro\\_vasco\\_52/es\\_soc52/adjuntos/13sv52.pdf](http://www.lehendakaritza.ejgv.euskadi.net/contenidos/informe_estudio/sociometro_vasco_52/es_soc52/adjuntos/13sv52.pdf).
  - 12 The exact scope of the "right to decide" is not detailed in the program. It simply refers to the fact that the citizens of the Basque Country are to decide about the country's new "political status". The meaning of "political status" also remains undefined.
  13. UPD stands for *Unión Progreso y Democracia* [Union, Progress and Democracy], which is a centralist centre-left wing Spanish party that has a single member in the Basque Parliament.
  - 14 A wide political consensus at the Catalan level was the basis for a substantial amendment to the Catalan Statute in 2003. In the version that came out from the Catalan Parliament, with the support of 88% of Catalan members of parliament, Catalonia was declared as a nation. This and many other relevant points were, however, modified in the process of negotiation within the central parliament. The final version of the Statute, submitted to referendum of the Catalan people in 2006 was severely different from the first draft. However, the new Statute was challenged before the Constitutional Court by the Popular Party, several neighbor regions and the Spanish Ombudsman. The Constitutional Court, in 2010, ruled out several parts of the new Statute and made restrictive interpretations of many other articles, what generated a strong reaction in the Catalan society. Since that moment, an important secessionist movement has developed in Catalonia and most of the Catalan political forces are committed to celebrate a referendum of self-determination in 2014, which is fiercely opposed by the two big Spanish parties and central institutions.
  - 15 These historical nationalities are not explicitly defined in the Constitution, but Transitory Provision number 2 refers to those territories that in the past (*i.e.* in the period of the Second Republic, 1931-1939) ratified by referendum an Statute of Autonomy, this is to say, Catalonia, *Euskadi* and Galicia.
  - 16 The ordinary way for a given region to accede to autonomy is foreseen in Article 143 of the Constitution. A faster track, implying a higher level of powers from the beginning and some additional institutions, is regulated in Article 151. This fast track would have almost automatically applied to the "historical nationalities" (those indirectly referred by second

- transitory provision), but it remained open to any other regions that would show an strong wish for immediate and substantial autonomy, as it would later happen with Andalusia.
- 17 Apart from the specific situation of Ceuta and Melilla, two Spanish enclaves in the northern coast of Morocco. The formal status of these two cities is that of “autonomous cities”, but in practice they are just reinforced municipalities, not Autonomous Communities.
  - 18 Basque Country, Catalonia, Galicia, Andalusia, Valencia, Canary Islands and Navarre.
  - 19 Chartered or historic rights correspond to the four historic territories with “fueros” (Biscay, Gipuzkoa, Alava and Navarre), according to Additional Provision 1 of the Spanish Constitution, which recognizes (therefore, does not create *ex novo*) and guarantees such rights. These four territories compose today two different Autonomous Communities: Basque Country and Navarra.
  - 20 Others more cautiously prefer to say that it is a decentralized State that resembles federal models (Pérez Tremps, 2002: 298).
  - 21 For his part, Aparicio Pérez does not set the federal State against the unitary State but the complex or composite State against the unitary (Aparicio Pérez, 1998: 252).
  - 22 The Spanish Constitution does not define the territorial model, but in Spain the expression “Estado autonómico” or “Estado de las Autonomías” [State of the Autonomies] has been adopted for that purpose. It also allows differentiating the Spanish system from those of the federal States, on the one hand, and from unitary models on the other.
  - 23 In fact, this is the bulk of the last reform proposed by the current leader of the PSOE as an instrument to overcome the disputes between the Catalan approach to the right to decide and the rest of the country. It can be stated that today the two big formations of the Spanish left, PSOE and IU, are in favor of an expressly formulated federal model.
  - 24 *See* note 17.
  - 25 *See* note 19.
  - 26 Some authors argue that the Spanish model tends to be permanently open and that symmetry is one of its characteristic features (Torres del Moral, 1998: 718; Pomed Sánchez, 1999: 63).
  - 27 It states: ‘The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible fatherland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed and the solidarity among all of them.’
  - 28 It should be noted, however, that the 1978 Constitution introduced an assumption of linguistic pluralism. Article 3 of the Constitution recognizes languages other than Spanish, and the possibility for them to become co-official, but only in their Autonomous Communities. This can be seen as an important step forward in the sphere of linguistic pluralism (Arzoz, 2012: 180). The degree of linguistic pluralism in Spain is one of the highest in Europe, considering the number and/or percentage of people having a mother tongue different from the official language of the state. In absolute terms, Spain would be the most plural country in Europe after the Russian Federation, and in percentages, Spain would be very close to Switzerland and only clearly behind Belgium.
  - 29 Not to be confused with the historic territories, indirectly referred in the Additional Provision 1 (*see* note 15), that make up the Autonomous Communities of Basque Country and Navarre. In this case, Historic Communities tend to define those indirectly mentioned in Transitional Provision 2, the ones that held an autonomy referendum in the past, *i.e.*, the period of the Second Republic (1931-1939)(*see* note 15).
  - 30 Judgment of the Constitutional Court no. 31/2010, of 28 June 2010.
  - 31 Additional Provision 2 of the Statute of the Community of Valencia (Organic Law 1/2006, of 10 April, on Amendment of Organic Law 5/1982, of 1 July, on the Statute of Autonomy of the Community of Valencia) states as follows:
    1. Any amendment to State legislation which, in general and at national level, entails an extension of the powers of the Autonomous Communities shall apply to the Community of Valencia, its powers thereby being deemed to have been extended.

2. The Community of Valencia shall ensure that the level of self-government established in this Statute is upgraded in terms of equality with the other Autonomous Communities.
  3. To this end, any extension of the powers of the Autonomous Communities that have not been adopted in this Statute or not previously attributed, transferred or delegated to the Community of Valencia shall, where necessary, oblige the legitimate institutions of self-government to instigate appropriate initiatives to bring about such upgrading.
- 32 Centro de Investigaciones Sociológicas, *Barómetro de Julio, Estudio nº 2951* [Barometer of July, Survey no. 2952], July 2012, p. 14, available at [www.cis.es](http://www.cis.es).
  - 33 Baròmetre d' Opinió Política [Barometer of Public Opinion], 2a onada 2012, available at: <http://www.ceo.gencat.cat/ceop/AppJava/pages>.
  - 34 A number of judges during this process were accused of been politically aligned with one side or the other.
  - 35 In July 2013 a big debate arose in the media when it was known that the recently elected president of the Constitutional Court, Francisco Pérez de los Cobos Orihuel, was in fact a member of the Popular Party, and had hidden this condition during the appointment process in parliament.
  - 36 Judgment of the Constitutional Court no. 103/2008, of 11 September 2008.
  - 37 These concern, in particular, the Judgments of the Constitutional Court N° 247/2007, of 12 December 2007 (concerning the Statute of Autonomy of the Community of Valencia); N° 103/2008, of 11 September 2008 (on the consultation law in the Basque Country); and N° 31/2010, of 28 June 2010 (on the Statute of Autonomy of Catalonia).
  - 38 Spanish Constitutional system is very reluctant to direct democracy mechanisms. Referenda are rare, merely consultative, and can only be proposed by the prime minister with the consent of the Chamber of Deputies (many municipalities have had severe problems in implementing locally relevant referenda; so far only two national referenda have taken place in relation with the permanence of Spain in NATO in 1986 and with the failed European Constitution in 2005). The use of a jury in criminal proceedings is also very strictly implemented, and the possibility for popular legislative initiatives clearly discouraged with thematic and procedural restrictions.
  - 39 The expression “free association”, as distinguished from “free state”, was used in the 2004 draft Basque Statute.
  - 40 Judgment of the International Court of Justice in the case of East Timor: *Case concerning East Timor*, ICJ Reports (1995), p. 102.
  - 41 Again, following Falk, ‘what makes the right to self-determination so difficult to clarify is that its exercise involves a clash of fundamental world order principles. On the one side is the basic geopolitical norm that the existing array of states is close to the maximum that can be accommodated within existing diplomatic frameworks ... On the other side of self-determination is the sense that peoples should be treated equally and that since some peoples have the benefit of statehood, others should be entitled as well.’ (Falk, 2002: 31).
  - 42 There was a much higher abstention rate in the Basque Country than the Spanish average and the support obtained by the Constitution as just 30% of the electorate compared to a 60% average in the whole country.
  - 43 This expression refers to the traditional system of public and private law that was present in each of the four Basque territories (Biscay, Gipuzkoa, Alava and Navarre) until the nineteenth century, including specific institutions like parliaments, governments, judicial authorities, police forces and treasuries. This chartered system was finally abolished in 1876 through a Spanish law that was explicitly abrogated by the 1978 Constitution. *See* note 19.
  - 44 At the same time, the debates about the possibility of holding a referendum in the Basque Country (or Catalonia) on sovereignty issues are also heated. However, the constitutional framework does not seem to ban this possibility, since Article 92 of the Spanish Constitution foresees the possibility of calling for consultative referenda on issues of political importance. The power to call the referendum is in fact of the Prime Minister, with the consent of the Lower Chamber of Parliament.



- 45 The exact wording of this additional provision is the following: 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.
- 46 Judgments of the Constitutional Court no. 11/1984, no. 16/1984, no. 124/1984, no. 6/1988, no. 140/1990, and no. 88/1993 (*see* note 1928).
- 47 Navarre is recognized as one of the four historic territories with chartered rights. It also has the right to be included within the Basque Autonomous Community, through the decision of its parliamentary body and a popular referendum. However, the majority presence in Navarre of the Spanish-oriented parties (including the regionally based and strongly anti-Basque formation Unión del Pueblo Navarro –UPN: Union of Navarrese People) justifies the fact that these options have never been exerted.

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