

**ASYMMETRY AND PLURINATIONALITY
IN SPAIN**

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INTRODUCTION

In this paper I will try to explain how the Spanish system of the territorial organisation of power (State of Autonomies) has managed to be relatively successful, up to the present, in its objective of accommodating the plurinational reality of the State, due to a singular constitutional combination of autonomy and asymmetry. At the same time, I will attempt to show the limitations of this formula in achieving the stability necessary to satisfactorily articulate the ‘nationalisms’ present in this scenario. To this end, I will first introduce some aspects of the debate about federal asymmetry in Spain (I). Next, I will briefly explain diverse constitutional mechanisms of the State of Autonomies which allow the combination of autonomy and asymmetry (II). Finally, I will expound some reflections which help to understand the limitations of the Spanish system in accommodating plurinationality, and I will make some proposals to overcome these limitations (III).

I. THE ASYMMETRY DEBATE IN SPAIN (*)

1. The factors which made the question of asymmetry explicit

The political-legal debate which has accompanied the development of the State of Autonomies has centred on different questions, according to the circumstances and events of each moment: the historical claims raised during the democratic transition (the “re-establishment” of the Generalitat [the Catalan autonomous government], the “historical rights” of the Basque Country), the nominalist controversies in the writing of the constitution (“nation”, “nationality”), the disquisitions over the “nature” of the State (federal, quasi-federal, regional, unitary-federal), doubts concerning access to autonomy (article 143 *versus* article 151), the disputes over the distribution of powers (exclusivity, concurrence, bases), discussion related to the financial aspect (solidarity, fiscal co-responsibility), the debate about federalism and self-determination, the culmination of the process leading towards autonomy (the “closing” of the model).

Since 1992, one of the themes which continues to be the object of attention on the part of scholars is that which refers to the uniformity/diversity of the Autonomous Communities or, expressed in other terms, that of the “asymmetry” of the Spanish model¹. In fact, it could be said that this question has never ceased to be present, although it has not manifested itself in such an explicit form until now. If one reflects a little on the debates which emerged in relation to many issues —the extension of the pre-autonomies and the so called “café para todos” (coffee for everyone), the Andalusia referendum and the attempts of the Unión de Centro Democrático (UCD) Government to reserve the system of article 151 for the historical nationalities, the first Autonomy Agreement of 1981 and the Law for the Harmonisation of the Process towards Autonomy (LOAPA), the financial system, or the linguistic question— one realises that the theme of asymmetry has been “latent” in all of them.

The way in which the theme has become “explicit” is not pure coincidence, but rather has been produced in a context in which many factors intervene. First, what could be considered an ‘unleashing’ factor: the second Autonomy Agreement of 28 February 1992 subscribed to by the Spanish Socialist Party (PSOE) and the Popular Party (PP), and their translation into the Organic Law 9/92, of 23 December, through which the powers of several

Autonomous Communities were broadened. The form and content of this legal-political operation provoked a long debate, not so much about the “widening” but about the “equalisation” of powers².

Second, the political factor, which appears after the result of the 1993 general elections, and PSOE’s loss of an absolute majority, which brought about the need for parliamentary support from the nationalist parties. The decisive position assumed by the Catalan nationalist coalition —Convergència i Unió (CiU)— in Spanish politics continues to provoke controversy (to which I will return later) about the participation of nationalist forces in the governance of the State and, by extension, about the very structure of the State of Autonomies in itself³.

Third, the dynamics that were let loose after the Debate on the State of the Autonomies in September 1994, in the recently created General Commission of the Autonomous Communities of the Senate in which —for the first time using official languages other than Castilian— the Presidents of the Autonomous Communities took part, with the exception of the Basque Country. The effects in the media of the meeting, and the final decision to undertake a constitutional reform of the Senate reopened new arguments about the composition and functioning of this Chamber which put the question of the Autonomous Communities’ equality and the development of the Spanish system firmly at the forefront⁴.

Fourth, the conflict created by the development of linguistic “normalisation” in Catalonia and, specifically, the questioning of the linguistic policy of the Generalitat in the field of education. Immediately after the Supreme Court raised a constitutional question against the Law of Linguistic Normalisation, a lively controversy was provoked by a highly “sensitive” subject in which the defence of national identity and the equality of rights come together. The crucial decision of the Constitutional Court (STC 337/1994, of 23 December), which was reached after an intense internal debate, put an end to a long legal controversy and halted a political crisis which could have had unpredictable consequences. The Ruling asserts the constitutional legitimacy of the Catalan Government’s model of “integral bilingualism” which, preventing the separation of students for reasons of language, placed Catalan at the “centre of gravity”. In this way a certain asymmetry in the regulation of the use of languages was consecrated, when recognising that the Constitution permits different linguistic models (specifically, in education) for the Autonomous Communities⁵.

Fifth, a factor from the theoretical field whose significance is not irrelevant. I refer to the noticeable return in the literature to historical, political and sociological questions, abandoned for years because of a highly technical abstract argument which has given way to solid theoretical constructions, but which has often forgotten the reality in which these arguments should have been developed. Thus, the link between the Basque and Catalan problem and the structure of the State is revived in order to say that “it was and is another problem (...), a problem of being or not being” because “one is not dealing with how to better arrange the territorial power of the State but, in the end, to form or not form part of that State”⁶. It is pointed out that the ultimate objective of the State of Autonomies “is the creation of an organisation in accordance, for the first time in our recent history, with the existence of diverse nations or nationalities which have repeatedly shown their desire for self-government and, therefore, their final goal is not the solution to a technical problem, but essentially that of a long and complex political problem”⁷. The impact of the presence of nationalist parties (Basque and Catalan) in the Spanish system is revalued⁸. It is accepted that the principal problem of the State of Autonomies is not one of powers, because behind the claim for powers “there is the demand for some ability to act considered necessary for the affirmation of the self-government and the development of the personality as a people”⁹. It is noted that the unique characteristic of the Spanish model “lies in the coexistence of nationalities with a very strong political personality with regions where the main goal is to reach an

efficient system of government with wide political decentralisation”¹⁰. The federalist approaches —whose importance has been advocated by a significant part of the doctrine— are openly questioned; it is considered they are not adequate for the assumptions, needs and political bases of the Spanish State¹¹ and, in general, that they “involve more difficulties in societies which integrate communities with different cultures and languages, defined territorially”¹². With all of this, perhaps it is assumed that the federalism of our time must not respond so much to challenges of an economic and social nature (co-operative federalism) as to those which derive from the attempt to conciliate political unity and ethno-cultural diversity, when this is the foundation of nationalist aspirations that are more concerned with sovereignty than association¹³.

2. The connection between asymmetry and plurinationality

From what has been said so far, one can deduce that the question of asymmetry in the Spanish debate has been connected with the plurinational character of Spain and with the claims of the Catalan, Basque and, even if somewhat more weakly, Galician nationalism. This has been reflected in the literature which has examined the question¹⁴, and in the debate which the political forces have maintained in recent years on the subject¹⁵. At the same time, it is clear that this connection, as I will explain later, is also manifested in other countries in which plurinational articulation is under discussion, as in the case of Canada and Belgium¹⁶. In the three cases, the debate about constitutional asymmetry maintains a close relationship with national identities in conflict. To put it another way, the asymmetry *de facto* which supposes the plurinational composition of the State has raised the possibility of an asymmetry *de jure*, which implies the setting-up of “legal-formal differences between the units of a federation with respect to their powers and obligations, the form of the central institutions, or the application of the federal laws and programmes”¹⁷.

Actually, the debate about asymmetry is not new. From a political scientific prospect it was established in the well-known paper of Charles Tarlton¹⁸, in which he speculated about the possibility that a federal system “may be more or less federal throughout its parts” when these present differences in their social, political, economic or cultural characteristics. From a legal-constitutional prospect, the question of asymmetry was examined earlier —without using the expression— in the historical federations, where equality between the member States was the object of discussion. Thus, in the Philadelphia Convention, the admission of new members on the basis of equality was rejected¹⁹, although later the US Supreme Court established the principle of the equality of the States “in power, dignity and authority”²⁰. The question was dealt with in Germany, under the Imperial Constitution of 1871, where the jus publicist dogmatic admitted the possibility of according individual rights (*jura singularia*) to certain States (Bavaria, Prussia) in relation to the whole²¹. But in none of the former approaches was asymmetry directly related to plurinationality. The novelty of the debate about asymmetry in Spain (or Canada) resides precisely in the aforementioned connection between legal-political organisation and the national question, which places the Constitution at the centre of the controversy.

On this point one must be precise. The debate about asymmetry in Canada has been, since the *Révolution tranquille*²², a debate *de constitutione ferenda* given that it has dealt with the very reform of the Constitution (Lac Meech and Charlottetown Agreements): it has not been a debate about constitutional law so much as “constitutional politics” or, better still, of “mega-constitutional politics”²³. On the other hand, in Spain the proposal to reform the Constitution of 1978 has not been clearly expressed —at least until today—²⁴ and, therefore, the debate has been *de constitutione data* because the flexibility of the text permits its asymmetric development, as I will try to explain in the next section.

II. DECONSTITUTIONALISATION AND “PRINCIPIO DISPOSITIVO”

1. A preconstitutional and subconstitutional model

The Constitution of 1978 which was approved during the political transition had to face up to some of the outstanding problems of Spanish constitutional history: the position of the Monarchy, the settlement of a democratic system, the subjection of the Army to civil institutions, the relations between the Church and State and, of course, the so-called “national question”. The latter, in contrast to the other issues, had not been resolved either socially or politically by the end of the seventies and, therefore, had to be resolved constitutionally. In fact, the writers of the Constitution had two purposes: first, to transform the old unitary and centralist State into a more modern, efficient and decentralised one, in a moment of generalised crisis in the Nation-State in Europe; second, to find an accommodation formula for the historical nationalities in a new constitutional order which might recognise their differentiated identity, and guarantee their capacity for self-government²⁵. The simultaneous attempt to achieve objectives, which nevertheless require different approaches, explains the peculiarity of the solution adopted and many of its virtues and defects.

The writers of the 1978 Constitution were conscious that the “key” constitutional question was specifically the territorial organisation of the State, about which the parties maintained divergent positions, and the distinct territories presented very diverse situations. Thus, the well-known “consensus” of political transition which operated throughout the constituent process did not finally lead to the adoption of a concrete solution, that is, it did not lead to the establishment of a determined State model (i.e. federal, regional). The Constitution was limited to the establishment of principles and of some procedures in order to begin a process of territorial restructuring of power which could lead to distinct political models. Therefore, the so-called “modelo autonómico” (the current system of Spanish devolution) is not found in the Constitution because this would have “deconstitutionalised”, at least partly, the territorial organisation of the State²⁶. In reality, as I have sometimes maintained before²⁷, we are dealing with a pre-constitutional model, because the generalisation of the so-called “provisional” regions before the Constitution conditioned both its writing and even its later development; and of a subconstitutional model, because the Constitution does not create the State of Autonomies: it does not constitute the Autonomous Communities, nor delimit their territory, nor yet establish their organisation, nor does it determine their powers. All these constitutional decisions are deferred to at a later time²⁸, the constitutional text limits itself to establishing procedures in which the principal players are, on the one side, the local representatives who must manifest their desire for autonomy; and, on the other side, the central institutions, specifically, the lower Chamber of the Spanish Parliament (Congreso de los Diputados), which must develop the so-called “*bloque de la constitucionalidad*” (the Statutes of Autonomy and laws which delimit powers), and the Constitutional Court, which —by virtue of its jurisprudence— has the role of supreme interpreter of the constitutional text.

It is important to point out that the construction of the State of Autonomies is governed by the so-called “principio dispositivo” also known as “principio de voluntariedad”, according to which the process of territorial restructuring must not be directed from the centre, but by the will of the territories and their representatives, to whom the Constitution offers distinct possibilities to accede to autonomy. This is the great singularity of our Constitution, that in this point is directly inspired by the Constitution of the Second Republic (1931), and which has no parallel in any other country. The present model is therefore the result of a process initiated with the Constitution

and developed up to the present in two distinct phases. The first (1979-1993), during which the 17 Autonomous Communities and the essential elements of the model were set up, was dominated by some clear political majorities in the Congreso, formed by the two big state parties (PSOE and PP), which agreed upon the development of the model in two political Agreements (1981 and 1992)²⁹. The second (1993 to the present), sees a loss of the majority on the part of the elected state party (first PSOE and then PP) and what we could call an “asymmetrical majority” is formed through a pact between a state party and a Catalan nationalist coalition (CiU), plus the support of the minorities of the Basque Country and the Canary Islands in the Congreso. As I pointed out at the beginning, it has been this change in the correlation of forces which has contributed, together with the other factors mentioned, to the intensification of the debate about asymmetry in the second phase of the construction of the State of Autonomies.

2. Autonomy and asymmetry

Thanks to the open character of the constitutional provisions and the maintenance of the “principio dispositivo”, the Spanish model has been able to combine autonomy and asymmetry, with a certain degree of flexibility, in an attempt to make the aforementioned proposals compatible to decentralising power territorially and to the constitutional accommodation of plurinationality. Let us see how these two elements develop.

First, autonomy. I use this expression, and I connect it to that of decentralisation because the process of autonomy follows the idea of “devolution” far more than it does that of “federation”³⁰. As I mentioned at the beginning, the question of the nature (federal, regional) of the new Spanish State was the object of debate among constitutional scholars when the new fundamental law took effect, and will possibly be so again in the future. In my opinion, the Spanish model in its current development does not respond to federal schemes in many aspects³¹, among which I would like to point out the following:

a) The State of Autonomies is constituted on the basis of the “national sovereignty of the Spanish people” (art. 1, Spanish Constitution) and not on a constitutional pact between sovereign peoples³². The Constitution recognises that the “Spanish nation” is made up of “nationalities and regions” (art. 2, Spanish Constitution), which have the right to “autonomy”, in other words, to convert themselves into Autonomous Communities.

b) Only the Spanish Nation and its representatives (the Spanish Parliament) can decide upon the reform of the Constitution (arts. 167 and 168, Spanish Constitution).

c) The distribution of powers between the Central Government and the Autonomous Communities is effected in the “*bloque de la constitucionalidad*” (which includes numerous central laws), and therefore there is no proper constitutional guarantee of autonomy.

d) Not all State power is submitted to a double order of government: the Autonomous Communities do not have judicial power, nor do they have the capacity to establish their own bill of rights.

e) The system of distribution of powers is based, above all, on a generalised concurrence of jurisdiction. There is almost no sphere in which the Autonomous Communities can establish their own policies in an unconditioned way; this seriously counteracts the idea of “political” autonomy.

f) The model has not sufficiently developed the mechanisms by which the Autonomous Communities can participate in general institutions, in the legislative body (the Senate), in the executive body (intergovernmental relations), or in European affairs.

Clearly, these are some aspects of the Spanish model which preclude its full characterisation as “federal”, despite its being based on territorial autonomy.

Second, asymmetry. The development of the State of Autonomies, owing to the “*principio dispositivo*” referred to above, presents a remarkable level of heterogeneity, at least potentially, as the Constitutional Court itself has recognised³³. In accordance with this principle, in the Statute of Autonomy of each Autonomous Community, its character (nationality, region) is defined, its territory is delimited, and the organisation of its political institutions, the status of its own language and the level of their powers are determined, within the framework of the Constitution. This, on the other hand, contains particular provisions (a “special status”) designed for determined territories such as, for example, the First Additional Provision, which speaks of the “historical rights” of the *forales* territories, referring to the provinces of Navarre and the Basque Country. Therefore, the model allows distinct solutions for very heterogeneous territories, that is, for different political demands. I am not going to get involved in a detailed study of the asymmetries *de jure* which the current Spanish model contains³⁴ and which are manifested above all in the distinct power levels in the Autonomous Communities, their internal organisation, the regulation of languages or the financial system, but which do not extend to other aspects such as representation in the Senate, the composition of the Constitutional Court or constitutional reform which, as I have said, do not have a properly federal configuration.

It is important to point out that the State of Autonomies has developed from an initial “differentiating” interpretation which provided for Catalonia, Galicia and the Basque Country (Second Transitory Provision, in relation to art. 152, Spanish Constitution) a distinct status from the rest of the Autonomous Communities, to a homogeneous interpretation—which ranges from the first Autonomy Agreement (1981) to the second Autonomy Agreement (1992)—whose objective is to reduce the scope of the “*principio dispositivo*”. As has been mentioned, the combination of a series of factors from that time (1992) clearly signal an attempt to return to an asymmetrical interpretation, leading to a differentiated treatment of the historical nationalities.

After having considered the two principles, autonomy and asymmetry, one must reflect a little in order to distinguish how far each one goes. The guarantee of political autonomy to the territorial entities is, in itself, a mechanism which generates diversity: it implies the possibility that in different parts of the territory, different governments adopt distinct decisions when or if faced with the same issues. For this reason, the functioning of the institutions in federal systems needs to accept the lack of organisational uniformity and diversity in the exercise of powers³⁵. Thus, the State of California can decide to prohibit gambling in its territory, while the neighbouring State of Nevada decides to permit it. From a normative point of view, it seems clear that a system where the majority of issues are decided by the territorial entities will be potentially endowed with greater diversity given that the territorial powers will be able to adopt different rules and policies concerning many questions. From this perspective, autonomy is in itself a potential generator of diversity and, in fact, is often confused with asymmetry. On the other hand, when all the Canadian Provinces are endowed with the power of withdrawing from determined constitutional reforms (“opting out”) or federal plans (Canada Pension Plan), an asymmetry is established, if only virtually so, given that special powers are not conceded to any of them³⁶. At the same time, when the power to regulate the scope of the official status of their respective languages is attributed to all the Autonomous Communities, an asymmetry is not properly established. This is not even the case when all States are endowed with a wide capacity for self-organisation. In such cases, the consequent heterogeneity is the result of the differentiated exercise, on the part of some entities, of certain powers given to all in equal measure. In this way, it is shown that federalism has in its own roots a strong capacity to reflect and accommodate the diversity manifested through religious, ethnic, ideological, cultural or national factors which can acquire a political expression. In the case of the national minorities, territorial autonomy is basically an instrument of legal guardianship, by offering to these minorities the opportunity to exercise a political weight greater than that which they would otherwise be able to exercise in central institutions³⁷.

As Jeremy Webber has pointed out, constitutional asymmetry does not refer so much to what decisions can be taken as much as to where the decisions can be taken; not so much to citizens who have more power as to where they exercise it³⁸. In other words, asymmetry means that the exercise of power is divided in a different way, so that some questions which are decided at a central level, for the citizens of the majority, are decided at a regional level for the citizens of the minority. The alteration of the division between central power and territorial power thus responds to the variations in the perception of political identity, and this is its justification. The tendency of the minorities towards a division of powers distinct from the majorities lies in their perception that this has a value; and their preference is a result, specifically, of their autonomy as a political community. In short, constitutional asymmetry does not equal autonomy, since it requires singular rules directed to creating a “special status” for certain political units within a federal system.

Therefore, it can be affirmed that the Spanish model which has been established since the Constitution of 1978 is not really federal or asymmetrical, although it contains elements of both definitions. We are dealing with a system which concedes ‘low’ autonomy to territorial entities (with the possibility of realising their own political options but within the framework of the policies adopted by the central government) and a limited participation in general institutions; and it is a system which establishes a potential heterogeneity, or better, which allows for an asymmetrical development but which does not impose it. This singular combination of autonomy and asymmetry has been relatively successful, up to the present, in the achievement of the aforementioned objectives established in the constituent process: decentralisation and plurinational accommodation. However, as I will try to explain next, owing to its limitations in articulating the ‘nationalisms’ present the model has not achieved a satisfactory degree of stability.

III. FEDERALISM, NATIONALISM, PLURINATIONALITY

1. Territorial federalism *versus* multinational federalism

Federalism, as a criterion of social and political organisation, aims to organise co-existence through the articulation of a plurality of systems in a common polity, capable of integrating the diversity of its parts³⁹. But in spite of the fact that federal unity, at root, “is a way for the composition of diversity”⁴⁰, reality shows that it is not always a sufficiently flexible framework with which to accommodate nations or nationalities —reclaiming a level of autonomy appropriate to guarantee the protection and the development of their collective identity— in the same political space. In fact, this is the case when the political bodies between which the same power is shared are different in terms of one, or more, politically expressed factor, as happens with national minorities in a federal State, in any of their variations. This is what happens in those societies which Herrero de Miñón has called “differential” (non-federal), in other words, those in which there are communities of national character alongside other communities which have no such character⁴¹, as is the case with Great Britain, Canada, Belgium or Spain. The constitutional experience of the last couple of decades shows us the remarkable difficulties which have emerged when stable federal structures have tried to be developed in such differential societies. What are the reasons for this difficulty? Professor Rubio Llorente reminded us in a seminar of the dogma inscribed in almost all German handbooks, according to which “federalism is incompatible with nationalism: there cannot be federalism in societies where distinct nationalities exist”⁴². From another point of view, it has been pointed out that nationalism is a difficult ideology to integrate within a federal or quasi-federal project, given that it is not only sustained in a legal formula but also in the aspiration of loyalty to the common project⁴³. On the other hand, Michael Keating has suggested that it is not possible to find a

constitutional formula which can satisfy a nation that seeks an ambiguous position, one which would be, in part, in the interior and, in part, on the exterior of the State⁴⁴.

I am more convinced by the explanation according to which in the federal (or quasi-federal) formulas used in “differential societies” two contradictory principles coexist: that of identity and that of public efficacy. In accordance with the first, the constitution of autonomous entities responds to the need to protect the peculiarities of communities endowed with a differentiated political identity. In accordance with the second, federal organisation is justified by virtue of its greater effectiveness in undertaking public functions, and by bringing the centres of political decision closer to the citizens⁴⁵. In federal countries with national minorities, both principles are present and, normally, there is the generation of logic which may be both contradictory and even incompatible⁴⁶. On one side, there is the logic of the national minorities, which reclaim a constitutional and political recognition for their differentiated identity, and sufficient self-government for its maintenance and development; on the other side, the logic of the national majorities, which see in federalism a factor of democratic reinforcement and a technique for decentralisation. We can observe the tension between the two types of logic just mentioned in the countries referred to above. In the case of Belgium, it can be seen in the divergence of political leanings in Flanders (cultural communitarianisation) and Wallonia (economic regionalisation)⁴⁷. In the case of Canada, tension lies in the contrast between the demands for greater autonomy on the part of Quebec and the need to reinforce the federal government expressed by the other Provinces⁴⁸. And in the case of Spain, we can observe the contrast between Basque and Catalan nationalism and “what could be called the political thought of Ortega y Gasset, which would be translated into modern egalitarian and federalist approaches”⁴⁹. In these situations, the generalisation and equalisation of autonomy is worked out under the logic of the first principle (efficiency), particularly difficult to match with the logic of the second (identity), and which has repercussions on the very concept of autonomy, as Viver Pi Sunyer has made clear⁵⁰.

Actually, the contrast between these two types of logic emerges from the connection outlined above between asymmetry and plurinationality, which has arisen in recent debates in Spain (and also in Canada). The terms and positions maintained in these debates clearly demonstrate the important role that political identity acquires in the discussion, in other words, the form in which citizens perceive their belonging to a community upon which political institutions are constructed⁵¹. So, for instance, the distinct demands for self-government are based on different justifications, which bring different conceptions of the equality of powers between “national” units and “regional” units. For the first, to guarantee equal powers to the nations and to the regions means, in fact, the denial of equality to the minority, reducing their status to that of a regional division of *the* nation. In contrast, for the latter, to concede special powers to the minorities implies considering certain territorial units as less important than others and, therefore, gives discriminatory treatment to their citizens⁵². In fact, as Kymlicka has pointed out⁵³, the demand for a particular status on the part of national minorities is not only directed to an increase of powers, but also to their recognition as nation. These positions reflect a more profound difference in the very concept of federation: for the minorities, federalism is above all a federation between founding peoples based on equality, which would demand asymmetry between national and regional units; for the majorities, federalism is first and foremost a union of equal units, which demands symmetry. On the other hand, the national minorities often conceive the structure of the system more as a confederation than a federation⁵⁴. Their basic claim does not consist in defending the political community as culturally diverse, but in sustaining that more than one political community exists, each one of which has the right to govern itself.

2. The limitations of the “modelo autonómico”

The earlier considerations make it clear that the connection between asymmetry and plurinationality in Spain poses political and legal problems of great scope, preventing the consolidation of the State of Autonomies and of its endowment with a certain stability. Certainly, to any observer it is undeniable that since the political transition there have been great and rapid advances: in 20 years, few States have experienced a process of political decentralisation like that undergone by the Spanish State. At the same time, in the modern history of Spain, Catalonia and the Basque Country have never had recognition and self-government comparable to those achieved in the final stage of this current century under the Constitution of 1978. However, the development of the “modelo autonómico” has shown its limitations when it comes to achieving the main objective that is pursued by the Constitution, i.e. the accommodation of the historical nationalities within a common constitutional space that might guarantee their constitutional recognition and political autonomy. Such limitations, in my opinion, do not come so much from the Constitution itself as much as from its development over these years. Certainly, the Constitution of 1978 in many ways fails to establish a federal State, as I explained earlier. But this does not seem to me to be its main flaw because I believe that in Spain the conditions for a properly federal project do not exist: Spanish civil society is not a federal society, nor has the federal culture penetrated the political and intellectual milieu, and such a project is not a priority objective for the political forces in Spain. It is not a priority objective for the Spanish state-wide political parties (PSOE and PP) because they see in it a threat to national unity; and it is not a priority objective for the Basque and Catalan nationalist parties because they believe that they would not see their political demands satisfied under such a system.

The limitations come, therefore, from the constitutional development which has taken form in the “modelo autonómico”, which has misused the possibilities offered by the Constitution of 1978 to articulate the plurinationality of Spain. First, it has eliminated the constitutional recognition of that plurinationality, blurring the initial distinction between “nationalities” and “regions” (article 2, Spanish Constitution), a provision aimed precisely at recognising the difference of Catalonia, the Basque Country and Galicia within the State of Autonomies. Second, it has conferred on those communities a level of autonomy remarkably inferior to that which could have been obtained with the same Constitution, a fact which has generated constant demands on the part of their autonomous governments (Catalonia and the Basque Country), in the hands of the nationalist parties. This, in its turn, has provoked (by emulation) the claim of the other Autonomous Communities, compelling the central government to extend to all of them the same powers that it was initially devolving to the first. Third, the asymmetrical potential which the “principio dispositivo” contained —seen unfavourably by the state-wide parties— has been reduced, generating a growing dissatisfaction among nationalist forces, desirous of special status. Finally, instruments of integration and participation in general institutions (the Senate, conferences) have not been developed, owing to an incapacity to find mechanisms of political representation adequate for a “differential society” like that of Spain. This deficit has been compensated for, since 1993, with the collaboration of nationalist forces with the Spanish government, perhaps the “most relevant experience of Spanish political life in terms of unity/diversity”⁵⁵ which, however, has stirred up a confrontation between the two main state-wide parties and has brought a degree of rejection on the part of some of the public at large. The main weakness of this mechanism of integration lies in the fact that it is based on factors as volatile as electoral results and the capacity to reach agreements between the parties represented in the Congreso. In short, these in my view are the reasons for which the State of Autonomies, despite the success that it has had from many points of view, has not managed to establish itself as a system of plurinational accommodation in Spain.

Good evidence of this is that recent political events —from the Barcelona Declaration to the Basque elections, through the ETA truce and the twentieth anniversary of the Constitution— have unleashed a stormy political and media debate —about the State of Autonomies and the validity of the constitutional pact of 1978— in which the link between asymmetry and plurinationality continues to be maintained. As in other countries, the recent debate in Spain shows that the pressure for asymmetry from the minority ‘nationalisms’ is normally replied to by pressures for symmetry on the part of the majority nationalism, and that this tension between opposing pressures can become a significant characteristic of the system and of its political dynamic⁵⁶. The success of the State of Autonomies rests precisely on its flexibility to channel this dynamic, permitting a re/negotiation which may adapt the constitutional compromise to successive political and economic changes and to changes in public opinion. Therefore, I think that the current circumstances and the probable consolidation of certain tendencies within the Spanish political system (hegemony of the nationalist forces in their respective territories, the lack of a clear majority on the part of the ruling party in Spain, advances in the peace process in the Basque Country, the deepening of European integration), demand a renewal of “constitutional consensus” which may commit the state-wide forces and the nationalist forces to the design of a new model, thereby overcoming the limitations of the “modelo autonómico”.

3. Constitutional consensus and a new model

The attainment of this renewed consensus can only take place under certain conditions, it should affect determined contents and would be possible to be carried out through concrete procedures.

The main conditions for a political consensus in the current circumstances would basically be those which might contribute to ensuring a commitment between the nationalist minorities and the nationalist majority⁵⁷. Through this pact, the former would be obliged to clarify their political demands, articulating them in a constitutional project, for the whole of the State, that was widely accepted by the citizens of these communities, and which could be negotiated with all the parties; for its part, the latter should recognise without reservation the plurinationality of the State, accept the necessary accommodation within the State of the historical nationalities, and guarantee their right to make use of real political capacity for self-government. From my point of view, only through this commitment will the negative inclinations of both parts be overcome: that of Spanish nationalism, seeing in peripheral nationalism a danger which must be resisted and excluded from the construction of the State; and that of peripheral nationalism, seeing an insuperable impediment to its aspirations in the State, outside of which is the only place to realise its future plans. These inclinations are evident in the current debate and confirm the connection referred to above between asymmetry and plurinationality, now in the form of adopting attitudes that are not only defensive but also destructive: asymmetry is promoted or rejected from the position of denying national identity to the other party or parties in question. In the face of the questioning of Spanish national identity on the part of the peripheral nationalist parties, the majority nationalism denies the national character of Catalonia and the Basque Country, delegitimising the argument of the nationalist forces, and proposes to end their decisive position in the governance of Spain⁵⁸.

I believe that at the end of the twentieth century, phenomena such as economic globalisation, the emerging of new technologies, the explosion of communications, multiculturalism or European integration lead to the overcoming of the idea of Nation-State and, thus, demand a reopening of the strategies of nation building for all forms of nationalism. As Gurutz Jáuregui has pointed out, “nationalism in general, and the European minority nationalities in particular, need to adapt themselves to the new historic circumstances, to new realities, to the profound social, economic, technological and cultural changes of today. This is the fundamental problem of nationalism at this moment (...)”⁵⁹. On the other hand, the vindication of cultural recognition which the postmodern State must face have

made the limitations of modern constitutionalism clear, raising the need to rethink part of its principles in order to better realise the values of liberal democracy⁶⁰.

The new constitutional consensus should focus on those aspects of the present model which, as I have mentioned, have demonstrated their limitations in achieving a stable accommodation of plurinationality. For this reason, it would have to contain proposals in relation to the following matters. First, the recognition of Catalonia, the Basque Country and Galicia as national communities within the Spanish State and the translation of this recognition into legal, symbolic, political and institutional fields through specific measures to be developed over time⁶¹. Second, the attributing of real political capacity of self-government to the Autonomous Communities as entities which fully exercise a part of power, including judicial power. This would demand the transformation of the concept of autonomy, as much quantitatively as qualitatively, in other words, it would require understanding autonomy as the minority nationality's capacity to develop its own policies unconditionally in issues that come within its jurisdiction. Third, the setting-up of a system of financing for the Autonomous Communities which confers more autonomy on them, and the financial sufficiency to exercise their powers, as well as bringing them more fiscal accountability. That is, a system which does not articulate inter-territorial solidarity based on strict equality, resulting in discriminatory treatment towards the Communities that create more wealth. Fourth, the opening of mechanisms for the participation of the Autonomous Communities in the general institutions of the State at a legislative (Senate), judicial (General Council of Judicial Power, Constitutional Court), financial (Tax Agency) and executive level (Ministry of Intergovernmental Relations and not of Public Administrations, as is currently the case). Fifth, the process of globalisation and transformation of international relations demands a certain capacity, on the part of Autonomous Communities, to project themselves abroad, especially in the case of those communities which have a differentiated national identity; on the other hand, the effects that the process of European integration produce in the autonomy of the Autonomous Communities requires that these be able to contribute directly to the ascendant and descendant phase of European policies affecting their powers. Finally, all these aspects are susceptible to being developed asymmetrically in order to give space to heterogeneous political demands, in other words, articulating diversity in diverse ways. This should come about by respecting two criteria: that the demands of the national communities must not create obstacles to the demands —if and when they are made— of the other Autonomous Communities; but neither can such demands be rejected simply on the grounds of having been claimed exclusively by the national communities.

With regard to procedures, a consensus about the transformation of the current model into one which is plurinational and asymmetrical would not necessarily require constitutional reform in order to carry out all the changes mentioned. Given the singular features of the Spanish constitutional text, already pointed out, and the possibilities that this offers to subconstitutionally develop another model⁶², the majority of the proposals could be brought about by introducing or reforming statutory law which, together with the Constitution, integrate the “bloque de la constitucionalidad”. Thus, the widening of powers could be achieved through the transfer of the powers of state jurisdiction to the Autonomous Communities (art. 150.1 and 2 Spanish Constitution), the formal and material revision of *basic* central legislation, or the revision of the Statutes of Autonomy. The same could be said of the system of financing the Autonomous Communities, almost totally designed in the Law for the Financing of the Autonomous Communities (LOFCA) and other central laws. This could also be the case for the participation of the Autonomous Communities in the formation of the will of the Spanish State in the European Communities, partially regulated in state legislation (Law 2/1997, of 13 March). In contrast, the modifications directed to facilitate the participation of the Autonomous Communities in some of the general institutions of the State (Senate, Constitutional

Court, General Council of Judicial Power) would require a constitutional amendment, given that it is the very Constitution which directly regulates its composition and functioning.

In any case, recent experience shows that the majority of political reforms do not presuppose an insurmountable legal-constitutional problem. As Alejandro Nieto has observed, “the roots of evil are normally found in politics and not in rules”⁶³. And there is no doubt that the Spanish system of territorial organisation (symmetrical or asymmetrical), simply because of its link with the national question, is essentially a political concern.

(*) This work is a revised and extended version of the paper which under the title of “Asymmetry and Autonomy in Spain” I presented in the name of the Institut de Ciències Polítiques i Socials (ICPS) in the Annual Meeting of the International Association of Centers for Federal Studies (IACFS), dedicated to the subject “Federalism and Peace-Making”, which took place in the Jerusalem Center for Public Affairs between 19 and 23 October 1998. Later, I had the opportunity to discuss it with my colleagues in the Department of Constitutional Law at the Universitat Autònoma de Barcelona, and I appreciate the comments they made.

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NOTES

1. This can be further explored in some of the works collected in *Informe Pi i Sunyer sobre Comunidades Autónomas 1992*. Barcelona, 1993; *Revista Vasca de Administración Pública* n. 36, 1993; in the periodical *Documentación Administrativa* n. 232-233/1993. Also in the following works: V. A.: *Organización territorial del Estado*. Salamanca, 1993; VIVER PI SUNYER, Carles: *Las autonomías políticas*. Madrid, 1994; INSTITUT D’ESTUDIS AUTONÒMICS: *Uniformidad o diversidad de las Comunidades Autónomas*. Barcelona, 1995; UDINA, Ernest (ed.): *Quo Vadis Catalonia?* Barcelona, 1995.
2. DE CARRERAS, Francesc: “El procés de reforma dels Estatuts d’Autonomia”, *Autonomies*, n. 19/1994, p. 165-174.
3. See the “Reflexiones finales” of the *Informe Pi i Sunyer sobre Comunidades Autónomas 1993*. Barcelona, 1994, p. 815, and of the *Informe Pi i Sunyer sobre Comunidades Autónomas 1994*, Vol. II. Barcelona, 1995, p. 1067.
4. FOSSAS, Enric: “Comisión General de las Comunidades Autónomas del Senado”, *Autonomies* n. 22/1997, p. 306.
5. On this point, see MILIAN, Antoni: *Derechos lingüísticos y derecho fundamental a la educación*. Madrid, 1994, p. 377-442. The documentation of the case and the reports presented by the Catalan government are collected in Institut d’Estudis Autonòmics: *La lengua de la enseñanza en la legislación de Cataluña*. Barcelona, 1994. The ruling was commented on by ALBERTÍ, Enoch: “El régimen lingüístico de la enseñanza”, *Revista Española de Derecho Constitucional* n. 44/1995, p. 247-261 and by MURO, Xavier: “Los deberes lingüísticos y la protección de la cooficialidad lingüística sobre la distribución de competencias en la reciente jurisprudencia constitucional (Sentencias 337/1994 y 147/1996)”, *Revista Española de Derecho Constitucional* n. 49/1997, p. 259 and foll.
6. TOMÁS Y VALIENTE, Francisco: “La primera fase de construcción del Estado de las Autonomías (1978-1983)”, *Revista Vasca de Administración Pública* n. 36, art. cit., p. 42.
7. VIVER PI SUNYER, *op. cit.*, p. 9.
8. GONZÁLEZ ENCINAR, José Juan: “El Estado Federal asimétrico y el fin del Estado”, in MONREAL, Antoni (ed.): *El Estado de las Autonomías*. Madrid, 1991, p. 58.
9. SOLAZÁBAL, Juan José: “El marco constitucional del debate sobre el Estado autonómico español”, *Documentación Administrativa* n. 232-233, *op. cit.*, p. 78.

10. AJA, Eliseo: "Balance polémico", *Historia 16* n. 200/December 1992 about "La España de las Autonomías. Balance polémico", p. 16.
11. SOLAZÁBAL, *art. cit.*, p. 96.
12. LÓPEZ GUERRA, Luis: "Algunas notas sobre la igualación competencial", *Documentación Administrativa* n. 232-233, *op. cit.*, p. 127.
13. CROISAT, Maurice: *Le fédéralisme dans les démocraties contemporaines*. Paris, 1992, p. 131.
14. AGRANOFF, Robert: "Asymmetrical and Symmetrical Federalism in Spain" and MORENO, Luis: "Ethnoterritorial Concurrence and Imperfect Federalism in Spain", in DE VILLIERS, Bertus (ed.): *Evaluating Federal Systems*. Dordrecht/Boston/London, 1994; FOSSAS, Enric: "Autonomía y asimetría", in *Informe Pi i Sunyer sobre Comunidades Autónomas 1994*. Barcelona, 1995, vol. II, p. 900; the papers of Joaquim FERRET, Luis LÓPEZ GUERRA and Manuel ARAGÓN in the monograph "Problemes i perspectives de l'Estat de les autonomies" in the journal *Autonomies*, n. 20/1995; REQUEJO, Ferran: "Diferencias nacionales y federalismo asimétrico": *Claves de la razón práctica*, n. 59/1996, p. 24-37; the monograph "Simetría y asimetría en el Estado de las Autonomías" in the journal *Revista Vasca de Administración Pública*, n. 47 (II)/1997; MORENO, Luis: *La federalización de España*. Madrid, 1997, p. 86 and foll.
15. The question of asymmetry has been particularly agitated with the approval of diverse documents and manifestos on the part of the main nationalist parties in Catalonia: "La sobirania de Catalunya i l'Estat plurinacional" (Unió Democràtica de Catalunya, 1997) and "Per un nou horitzó per a Catalunya" (Convergència Democràtica de Catalunya, 1997). Both documents argue for a special status for Catalonia which would combine elements of asymmetry and confederal elements with a plurinational Spain. Other political forces in Catalonia (Iniciativa per Catalunya and Esquerra Republicana de Catalunya) have also formulated proposals which include the idea of asymmetric federalism, although they do not use this expression.
For its part, the Partit dels Socialistes de Catalunya (PSC-PSOE) in its manifesto "Per Catalunya. Ara, un nou federalisme" (1998) calls for a federal development of the Constitution which recognises the differences. The so-called "Barcelona Declaration" (16 and 17 July 1998) has had a greater impact, signed by nationalist forces in Catalonia (Convergència i Unió), the Basque Country (Partido Nacionalista Vasco) and Galicia (Bloque Nacional Gallego) in which they demand a legal-political recognition of the plurinationality of the Spanish State and a confederal political organisation which should recognise the sovereignty of each nation.
16. As pointed out in WATTS, Ronald: "Contemporary Views on Federalism" when commenting on the studies contained in the work DE VILLIERS, Bertus (ed.): *Evaluating Federal Systems*, *op. cit.*, p. 10. Also, the papers of KYMLICKA, Will: "Federalismo, nacionalismo y multiculturalismo", and REQUEJO, Ferran: "Pluralismo, democracia y federalismo", *Revista Internacional de Filosofía Política*, n. 7/1996. The similarities between the three cases has been pointed out in several works: Dimitros Karmis and Alain G. Gagnon, "Fédéralisme et identités collectives au Canada et en Belgique: des itinéraires différents, une fragmentation similaire", *Revue Canadienne de Science Politique*, XXIX: 3/1996, p. 435 and foll; FOSSAS, Enric: "L'assimetria federale: il Canada e la Spagna", *Scienza & Política*, n. 17/1997, p. 31 and foll; CROISAT, Maurice: "Le fédéralisme asymétrique : les expériences canadienne, espagnole et européenne", Journée d'études en honneur du Professeur Louis Rebound, Grenoble, 4 July 1997 (paper).
17. MILNE, David: "Equality or Asymmetry: Why Choose?" in WATTS, Ronald L.; BROWN, Douglas M. (eds): *Options for a New Canada*. Toronto, 1991, p. 285.
18. TARLTON, Charles D.: "Symmetry and asymmetry as elements of federalism: a theoretical speculation", *Journal of Politics*, vol. 27/1965, p. 861 and foll.
19. MADISON, James: *Journal of the Debates in the Convention which framed the Constitution*, vol. II/1908, p. 89.
20. *Coyle v. Oklahoma*, 1911, 221 U.S. 559, 576.
21. LABAND, Paul: *Le droit public de l'Empire allemand*. Paris, vol. I/1900, p. 185.

22. GAGNON, Alain G. and GARCEA, Joseph: "Quebec and the pursuit of special status" in OLLING, R.D.; WESTMECOTT, M.W. (eds.): *Perspectives on Canadian Federalism*. Ontario, 1988; WOEHLING, José: "L'évolution et le réaménagement des rapports entre le Québec et le Canada anglais" in MORIN, Jacques-Yvan; WOEHLING, José: *Demain, le Québec... Choix politiques et constitutionnels d'un pays en devenir*. Quebec, 1994, p. 30 and foll.
23. RUSSELL, Peter: "The Politics of Mega-Constitutional Change: Lessons from Canada" in *Evaluating Federal Systems*, *op. cit.*, p. 30.
24. The proposals contained in the documents recently approved by the nationalist forces (note 15) do not establish the need for reform of the 1978 Constitution with clarity, and there is even some difference between the parties on this point. On the other hand, the "Lizarra Agreement" (12 September 1998) subscribed to by the Basque nationalist forces, and the dynamic unleashed after the indefinite truce declared by ETA on 16 September 1998, has openly suggested a modification of the legal-political framework for the Basque Country.
25. The originality of the Autonomous State would reside precisely in "the nationalist tensions which explain their appearance and those which are intended to be faced" (SOLAZÁBAL, Juan José: "Autonomías, Federalismo y Tribunal Constitucional", *Claves para la razón práctica*, n. 17/1991, p. 11).
26. As Pedro CRUZ VILLALÓN argued, "La estructura del Estado o la curiosidad del jurista persa", *Revista de la Facultad de Derecho de la Universidad Complutense*, n. 4/1981, p. 53. It has been argued that the Constitution created a flexible and open model, which "demands the continuation of the consensus throughout the whole construction process" and, therefore, it can generate "the risk of the perception of the non-existence of the model" (ALBERTÍ, Enoch: "Estado Autonomico e integración política", *Documentación Administrativa*, n. 232-233/1992-1993, p. 229). Moreover, it has been pointed out that "in practice, this lack of determination *ab origine* has propitiated the formulation of reiterated proposals of 'perfecting' and of closing of the model', of 'reinterpretations' and 'second readings' whose result is not other than to favour a kind of de facto deconstitutionalisation of the aforementioned territorial form of State" (TRUJILLO, Gumersindo: "Homogeneidad y asimetría en el Estado Autonomico", *Documentación Administrativa*, n. 232-233/1992-1993, p. 106). On the idea of the "modelo autonomico" and its open character, see the papers of LÓPEZ GUERRA, Luis: "El modelo autonomico" and ARAGÓN, Manuel: "El Estado autonomico: modelo indefinido o modelo inacabado", *Autonomies*, n. 20/1995, p. 165 and foll.
27. FOSSAS, Enric: "El model de l'Estat de les Autonomies a la llum de les diferents experiències comparades", in COLOMINAS, Joaquim (coord.): *Catalunya-Espanya: les relacions històriques, culturals i polítiques*. Barcelona, 1998, p. 102.
28. AGUADO, César: "El principio dispositivo y su virtualidad actual en relación con la estructura territorial del Estado", *Revista de Estudios Políticos*, n. 98/1997, p. 157. According to the author, one would be dealing with a constitutional content which "results in an 'inauthentic' or 'apocryphal' constitutional commitment in the terminology of C. SHMITT", in other words, it consists "of finding a formula which satisfies all the contradictory demands and leaves the contentious question itself undecided and ambiguously expressed". What is agreed is to postpone the decision and leave the most distinct possibilities and meanings open. In these cases the "political decision" has not been adopted by the constituent, but is adopted by the legislator each time there is the regulation of the object of commitment to postponement.
29. These Agreements could be considered a kind of "constitutional convention", according to César AGUADO, *art. cit.*, p. 141.
30. The distinction between both concepts is clearly explained in KINCAID, John: "The Devolution Tortoise and the Centralization Hare", *New England Economic Review*, May-June/1998, p. 13 and 14: "Devolution can be defined as a transfer of specific powers or functions from a superior government. The transfer is of constitutional magnitude even if not effected through a written constitution; it is ordinarily intended to be permanent; it surrenders all the powers associated with the devolved functions (namely, political, legislative, administrative, and fiscal); and it leaves the functional field vacant for occupancy by subordinate governments". In contrast, the federal system would be a "system of dual sovereignty", like that established in the US Constitution, according to which "the Congress possesses limited, enumerated powers delegated to it by the

sovereign peoples of the several States; all other powers are reserved to the States or to the people”; the system also “guarantees that no formal transfer of constitutional powers can be effected between the federal government and the States without the explicit, concurrent consent of the Congress and the state legislatures (...). Changes in allocation of constitutional powers require the joint consent of both the ‘indestructible Union’ and the ‘indestructible States’. If this were not the case, the United States would be a decentralised unitary polity rather than a non-centralised federal polity.”

31. I cannot share the view of those who argue that the Federal State does not exist as a category but that Federal States do, while at the same time supporting the idea that the Autonomous State is a Federal State (See RUIPÉREZ, Javier: *La protección constitucional de la autonomía*. Madrid, 1994, chapter 1). Certainly, as Isidre MOLAS has written, “federal systems are as diverse as the needs which each one of them has had to satisfy are plural” and, consequently, “a paradigm of an institutional framework of federalism, of universal validity, does not exist” (“El federalismo entre la ideología y las técnicas para resolver conflictos prácticos”, in MONREAL, Antoni (ed.): *El Estado de las Autonomías, op. cit.*, p. 38). Indeed, the federal paradigm has continued to be that of the historical federations: the United States, Switzerland, Germany, Canada, whose institutional framework does present some common characteristics, with the variations which they have later been given. Thus, it seems to me that the distinction between “federalism”, “federal political systems” and “federations” is very useful as expressed by Ronald WATTS, art. cit. in note 16, p. 8, and which I follow in my article “El model de l’Estat de les Autonomies a la llum de les diferents experiències comparades”, art. cit., note 27, p. 104.
32. As Francisco TOMÁS y VALIENTE reminds us in “Soberanía y autonomía en las constituciones de 1931 y 1978”, article collected in *Constitución: escritos de introducción histórica*. Madrid, 1996, p. 196. Also established by the constitutional jurisprudence (STC 4/1981, 2 February).
33. In the LOAPA ruling the High Court pointed out that “the autonomy system is characterised by a balance between homogeneity and diversity in the public legal statute of the territorial entities which comprise it” (SCT 76/1983, 5 August).
34. FOSSAS, Enric: “L’Espagne: l’asymétrie dans l’État autonome” in INSTITUT DU DROIT LOCAL ALSACIEN-MOSELLAN: *État, régions et droits locaux*. Strasbourg, 1997, p. 27-32; also in my works “L’asimetria federale: il Canada e la Spagna”, “Autonomía y asimetría”, art. cit., notes 14 and 16.
35. MUÑOZ MACHADO, Santiago in TORNOS, Joaquin et al. (ed.): *Informe sobre las autonomías*. Madrid, 1988, p. 232.
36. Alejandro SAIZ ARNAIZ agrees when he rejects the idea that Quebec is disposed of a “singular constitutional position (...) although the singularity of the attitude of Quebec when exercising its own powers cannot be denied”. *Estado Federal y Estatuto particular. La posición constitucional de la Provincia de Quebec en la Federación canadiense*. Madrid, 1997, p. 147.
37. PIZZORUSSO, Alessandro: *Minoranze e maggioranza*. Turin, 1993, p. 119.
38. WEBBER, Jeremy: *Reimagining Canada: Language, Culture, Community and the Canadian Constitution*. Kingston & Montreal, 1994, p. 230. I developed the same argument in my article “Autonomía y asimetría”, art. cit., p. 904. For an argument against, see RUBIO LLORENTE, Francisco: “Minorías y mayorías en el poder constituyente”, contained in *La forma del poder (Escritos sobre la Constitución)*. Madrid, 1993, p. 154-163.
39. MOLAS, Isidre: “El federalismo entre la ideología y las técnicas para resolver problemas prácticos”, art. cit., p. 38.
40. ELAZAR, Daniel: *Exploring Federalism*. Tuscaloosa, 1987, p. 65.
41. HERRERO DE MIÑÓN, Miguel: “La posible diversidad de los modelos autonómicos en la transición, en la Constitución española de 1978 y en los Estatutos de Autonomía” in *Uniformidad y diversidad de las Comunidades Autónomas, op. cit.*, p. 13.

42. RUBIO LLORENTE, Francisco: “La reforma constitucional del Senado” in INSTITUT D’ESTUDIS AUTONÒMICS: *Ante el futuro del Senado*. Barcelona, 1996, p. 360.
43. RECALDE, José Ramón: *Crisis y descomposición de la política*. Madrid, 1995, p. 81.
44. KEATING, Michael: *Naciones contra el Estado. El nacionalismo de Cataluña, Quebec y Escocia*. Barcelona, 1996, p. 8.
45. LÓPEZ GUERRA: art. cit., note 12, p. 125.
46. It would be possible to talk of the logic of “territorial federalism” versus the logic of “multinational federalism”, as Philip RESNICK has done in “Towards a Multinational Federalism: Asymmetrical and Confederal Alternatives”, in SEIDLE, F. Leslie (ed.): *Seeking a New Canadian Partnership. Asymmetrical and Confederal Options*. Montreal, 1994, p. 71; Will KYMLICKA also continues this idea, “Le fédéralisme multinational au Canada: un partenariat à repenser”, in LAFOREST, Guy; GIBBINS, Roger: *Sortir de l’impasse. Les voies de la réconciliation*. Montreal, 1998, p. 21.
47. PAS, Wouter; VAN NIEUWENHOVE, Jeroen: “La estructura asimétrica del federalismo belga”, *Informe Pi i Sunyer sobre Comunidades Autónomas 1994*, op. cit., p. 946.
48. CAMERON, Duncan: “The Asymmetrical Alternative” in CAMERON, Duncan; SMITH, Miriam (eds.): *Constitutional Politics*. Toronto, 1992, p. 21; FOSSAS, Enric; WOEHLING, José: “El referéndum sobre la soberanía de Quebec y el futuro constitucional de Canadá: federalismo, asimetría, soberanía”, *Revista Vasca de Administración Pública*, n. 48/1997, p. 142; McROBERTS, Kenneth: *Misconceiving Canada. The Struggle for National Unity*, Toronto/New York/Oxford, 1997, p. 249 and foll.
49. LÓPEZ GUERRA: art. cit., note 12, p. 126.
50. VIVER PI SUNYER: *Las autonomías políticas*, op. cit., p. 19-37.
51. On this question, see FOSSAS, Enric: “Identitat política i cultures minoritàries: el repte constitucional” in CASANOVAS, Pompeu (ed.): *Globalització econòmica i experiència políticomoral*. Sabadell, 1998, p. 61.
52. On this point, see KYMLICKA, Will: “Le fédéralisme multinational au Canada: un partenariat à repenser”, art. cit., p. 27; and also “Federalismo, nacionalismo y multiculturalismo”, art. cit., p. 37. The problems which asymmetry poses in relation to the principle of equality are very wide and cannot be dealt with here. They have been examined in the following studies, among others: WOEHLING, José: “Le principe d’égalité, le système fédéral canadien et le caractère distinct du Québec”, PATENAUDE, Pierre (dir.): *Québec-Communauté française de Belgique: Autonomie et spécificité dans le cadre d’un système fédéral*. Montreal, 1991, p. 119-168; WEBBER, Jeremy: op. cit., p. 232-237; LENIHAN, Donald G.; ROBERTSON, Gordon; TASSÉ, Roger: *Reclaiming the Middle Ground*. Montreal, 1994, p. 127-145; VIPOND, Robert: “From Provincial Autonomy to Provincial Equality (Or, Clyde Wells and the Distinct Society)” in CARENS, Joseph H.: *Is Quebec Nationalism Just?* Montreal & Kingston, 1995, p. 97 and foll.
53. See his papers cited in the previous note.
54. See the “Working Papers” which accompany the aforementioned “Barcelona Declaration” (16 July 1998) subscribed to by the nationalist forces CiU-PNV-BNG. In these papers we find the statement that “The Spanish State is, at the same time, the institution which denies the sovereignty that belongs to us as nations and the political space to achieve national liberty, through joint action in order to configure a plurinational State of a confederal nature”, p. 6.
55. MONREAL, Antoni: “The Balance of the State of Autonomies in Spain”, a paper presented at the IACFS 1998 Conference “Federalism & Peace Making”. Jerusalem Center for Public Affairs, 19-22 October 1998.
56. This is made clear in WATTS, Ronald: “Asymmetrical Federal Arrangements: Facilitating or Undermining Federal Harmony”, a paper presented in the IACFS 1998 Conference “Federalism & Peace Making”. Jerusalem

Center for Public Affairs, 19-22 October 1998. A manifestation of this phenomenon in Spain can be seen in the “Mérida Declaration”, subscribed to on 6 October 1998 by the socialist Presidents of the Autonomous Communities of Andalusia, Castile-La Mancha and Extremadura, in which the existence of “a natural right, neither prior nor posterior to the Constitution, which can be invoked to justify privileges between the territories or inequality between the Spanish” is rejected.

57. It is sometimes forgotten that, together with the peripheral ‘nationalisms’, there is also a State nationalism, and that the “Spanish State is [not] disposed to dispense with the nationalist argument at the moment of ensuring the justification of political order; in other words, it is not necessary to renounce this advantage, call it emotional if you like, of political legitimisation, rejecting the political agglutination resulting from the national congruence” (SOLAZÁBAL, Juan José: “El Estado Autonómico como Estado nacional”, collected in *Las bases constitucionales del Estado Autonómico*. Madrid, 1998, p. 99). Spanish State nationalism impregnated constituent works, and can be followed in the constitutional text itself, as has been highlighted in the work of BASTIDA, Xacobe: *La Nación española y el nacionalismo constitucional*. Barcelona, 1998, especially chapters 6 and 7.
58. From an aggressive Spanish nationalism perspective, J. Ramón PARADA has defended this position in an inflammatory article (“España: ¿una o trina?”, *Revista de Administración Pública*, n. 141/1996, p. 7-23) —in answer to an earlier one by Miguel HERRERO y RODRÍGUEZ DE MIÑÓN (“Nacionalismos y Estado plurinacional en España”, *Política Exterior*, X, n. 51, p. 7 and foll)— where it is affirmed that “the harangue of the differential fact of the ‘nationalisms’ appears as a political propaganda operation”, it is defended that in order to maintain the unity of Spain “an agreement between the Spanish parties and the impulse and guarantee of the Crown is necessary”. From positions supposedly progressive, although with similar arguments, Roberto L. BLANCO VALDÉS qualifies the nationalist arguments as “constitutionally untenable” and “politically inadmissible”, he denies that Catalonia and the Basque Country are nations, warns that “peripheral nationalism are today a threat for the disintegration of the State”, and advocates a “re-establishment of the prestige of the State project and of the acceptance of the historical-cultural Spanish community”, which must emerge from a new pact between state-wide parties “which should end some of the uncertainties of the present” (“Nacionalidades históricas y regiones sin historia”, *Parlamento y Constitución*, n.1/1997, p. 33-75). Thus, it would be shown that “when, in the interior of a State, politically articulated formations appear which put into question the legitimacy of the national fact coinciding with the limits of the State, using in its refutation resources of subjective paradigm, the response of the State is formulated on cultural terms and vice versa. The Nation-State uses, in relation to the communities which proclaim themselves nations within its seat, a type of belligerent national discourse against that managed by the insurgent periphery”. (BASTIDA, Xacobe: *op. cit.*, p. 195). In a similar sense, Xavier RUBERT DE VENTÓS has pointed out with irony that “the State, when not threatening, is becoming increasingly more nationalist (...), while small ‘essentialist’ nationalism will become —it is already becoming— increasingly lay and pragmatic”. (“¿Soberanía?, No, gracias, apenas independencia”, *El País*, 16.10.98).
59. JÁUREGUI, Gurutz: *Los nacionalismos minoritarios y la Unión Europea*. Barcelona, 1997, p. 19.
60. A critique of the principles of modern constitutionalism for its incapacity to face the problems which the current cultural diversity generates can be seen in the interesting work of TULLY, James: *Strange multiplicity. Constitutionalism in an age of diversity*. Cambridge University Press, 1995, especially chapters 3 and 4.
61. Some of these measures have been suggested by REQUEJO, Ferran: *Federalisme, per a què? L'acomodació de la diversitat en democràcies plurinacionals*. Valencia, 1998, p. 129 and foll.
62. One should not discard the possibility of translating this consensus into a “constitutional convention”. As has been pointed out (see note 30), the Autonomy Agreements of 1981 and 1992, which defined the “modelo autonómico”, can be considered to have such characteristics.
63. NIETO, Alejandro: *Derecho Administrativo sancionador*. Madrid, 1993, p. 31.