1. Historical approach: Spanish centralism and Catalan will of self-government

The political autonomy of Catalonia within Spain is a long-standing tradition. Its earliest antecedents date back to the Middle Age in the form of the institution which ruled the Principality of Catalonia, the Generalitat, until 1714, due to the change of Spanish dynasty and the arrival of the French Bourbon dynasty. At the beginning of the XVIII century the new

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King, Philip V, grand son of French King Louis XIV, abolished local laws and institutions of the territories of the Crown of Aragon and introduced French centralist patterns in Spain.

Centralism was confirmed by the liberal state during the XIX century and by the Franco's authoritarian regime. In fact, in 1812 the liberals chose for the form of the Spanish Constitutional state the French Unitarian State. Thus, the Cadiz Constitution introduced the principles of this type of State, beginning with the proclamation of one legislative power and the “unity of codes”. It entailed the disappearance of the self-governing institutions of Basque Provinces and Navarre, and the suppression of their particular legal systems. At first, the only ones to oppose the unitary state were the sympathisers of the Ancient Regime ("carlists"). But at the last part of the XIX century, other political movements as republicans and regionalists put in crisis this centralistic model, particularly in Catalonia and the Basque Country, first with cultural demands of recognition of vernacular languages and traditions, and later with political and legal demands of self-government. Their views were reflected, firstly, in the never applied Federal Constitution of the I Republic (1873), very similar to the American Constitution.

Regionalist movement has become important in Catalonia since the beginning of the XX century. This movement achieved several moments of self-government for Catalonia. The Mancomunitat [or Commonwealth] was an institution which covered the four Catalan provincial administrations: Barcelona, Girona, Lleida and Tarragona. It was created in 1914 and

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only lasted 9 years. But despite its limited powers and time, it acquired a great political and cultural importance: it represented the first recognition by the Spanish state of the existence and of the unity of Catalonia since 1714. It also created and consolidated a set of cultural and scientific institutions in order to give greater prestige to Catalan language and culture. The first modern Generalitat, an own Catalan government with legislative and administrative powers, was installed during the period of the second Spanish Republic in 1931 (just for 7-8 years with interruptions -1934-1935- and until the finish of the civil war in 1939). The new Spanish Constitution established the so called “Integral state”, as the first experience of the regional state, different of the federal one, later developed in Italy (1947). According with the Constitution was passed the Catalan Statute of Autonomy in 1932.

The Generalitat was provisionally restored in 1977 by the Spanish government, after the first democratic elections in Spain, and definitively in 1979 with the approval of a new Statute of Autonomy. It was a result of the approval of the Spanish Constitution of 1978. The decentralization of political powers is one of the most important political goals achieved by the Spanish Constitution in 1978. The current period of self-government in Catalonia is the longest time of autonomy in the contemporary period: since 1980 uninterrupted.

2. Taking Stock of Twenty-Five Years of Self-Government and Making Proposals for Improvement

Any stocktaking of the past twenty-five years of self-government in Catalonia needs to start off with an acknowledgement of the significance of
the achievement, in both political and legal terms. Progress has been speedy and peaceful since the first statute of autonomy was passed in 1979-1983 (except for ETA or the secessionist terrorists in the Basc Country). Across Spain, regional self-government has continued to grow along the lines broadly laid out in the Constitution of 1978, and a centralist state has made way for what has become commonly known as the “autonomic” or “autonomous state”, characterised by far-reaching decentralisation.

Turning its focus on the experience gained during the development of the autonomic state, legal doctrine has generally concurred in pinpointing a number of clear-cut success stories and shortfalls. Currently there are seventeen autonomous communities (ACs) in Spain—in addition to the northafrican autonomous cities of Ceuta and Melilla—and their respective statutes reflect highly comparable levels of competences, with the exception of what are generally called their hechos diferenciales, or differentiating factors. These are an AC’s particular characteristics—e.g., a language other than Spanish, historical rights such as are claimed in the Basque lands and Navarre, or status as an island—and they may give rise to a particular legal system within the framework of the Constitution and applicable statutes. The ACs also have parliamentary governments with substantially homogenous characteristics. The attribution of legislative competences to the communities and the resulting legislative power exercised by the autonomic parliaments means that autonomy may be characterised as “political” in the case of every autonomous community. However, assessments differ as to the development of self-government, which has certainly seen more noteworthy progress in the administrative sphere (AC administration) than in the legislative sphere, in the strictest sense.

At the same time, the Constitution’s open-endedness concerning the ter-
ritorial organisation of the state—i.e., in Title VIII—and the constitutional matters left unspecified in it—e.g., regarding how far the State’s power extends in the case of concurrent competences—have led to heightened conflict between the State and the autonomous communities over the possession of competences. As a result, the court that has jurisdiction over constitutional matters, the Tribunal Constitucional, has been and continues to be responsible for the critical task of interpreting and defining the framework that ultimately governs how competences are distributed in Spain. The court, in turn, has been hampered by the Constitution’s lack of provision of mechanisms for intergovernmental cooperation or AC participation in decisions taken by the Spanish parliament. Throughout this time, the shortfall has not been rectified effectively yet, either through legislative or political action.

In light of the general situation outlined above, the focus here is on answering how the new Catalan statute of 2006 intends to address the problems found in the autonomic state. It also looks at what approaches the document puts into practice for expanding self-government in the Catalan institutional framework, historically known as the Generalitat.

First and foremost, statutory reform needs to be seen in the context of other kinds of measures proposed by political authorities and scholars throughout the last decade. It is important to understand how and why statutory reform was pursued instead of other potential vehicles for widen-

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2) This kind of competences are the main ones in the Spanish system. Thus, National Parliament passes a common basic law for all the State and each Autonomous Community develops and implements legislation (for example in education, health and environment matters, Art. 149. 1.30, 16 and 23 of Spanish Constitution, SC).
ing self-government.

At the outset, what was put on the table was a “rereading” or reinterpretation of Constitution and the Statute in relation with the competences of the autonomous communities (the so called “block of constitutionality”), as well as reforms to Spanish law and broad application of the provisions in Article 150 of the Spanish Constitution (henceforth SC), which allows the State, in principle, to transfer the exercise of any of its assigned competences to one or more ACs. Meanwhile, other schools of legal thought and other sectors of political opinion supported the “constitutionalisation of the autonomic state”. They viewed constitutional reform as the right method for reaching this goal. With the backing of the political formations on the left, the ultimate aim would be the transformation of the State along federal lines.

Reform of the Statute of Autonomy is mentioned in the 2002 Report of the Parliamentary Committee of the Catalan Parliament and in the 2003 report prepared by the Institut d’Estudis Autonòmics, a research body sponsored by the Generalitat on the subject of self-government. Statutory reform is mentioned as one of several potential ways—never as the only way—to improve self-government. Looking to the texts promoting improvement, the reform of the Statute only comes to the foreground once sought-

3) Argullol i Murgadas, E., Criteris per a un desenvolupament institucional, IEA, Barcelona, 1999. At that time, the Catalan nationalist government of Jordi Pujol (leader of the political federation Convergència i Unió, or CiU) held power in Catalonia only with the parliamentary support of the PP (Partido Popular). The PP, in turn, led a parliamentary coalition in Madrid in which CiU took part.

4) For more on the constitutionalisation of the autonomic state, see Balaguer Calléjón, F., “La constitucionalización del Estado Autonómico”, Anuario de Derecho Constitucional y Parlamentario, no.9, 1997, p.129 onwards.
after legislative reforms and constitutional reinterpretations failed to occur and, what is more, constitutional reform no longer appeared a viable option, owing to the profound discrepancies between the two main political forces in Spain.

3. Context and Passage of the New Statute of Autonomy

After the Catalan parliamentary elections held on 17th November 2003, a new left-wing coalition government formed by the PSC-PSOE, ERC and ICV-EUiA parties (the Socialists, the separatist Republicans, and the former communists, respectively) was launched, occasioning the first change of government in Catalonia since the return of democracy (until 2003 Catalonia had always been governed by a centre nationalist coalition, CiU). One of the key goals of the new government was to overhaul the Statute of Autonomy. To do so, a committee was set up in the Catalan parliament, and members were appointed from all five political parties then represented there. When the government of José Luis Rodríguez Zapatero took power after the Socialists won the Spanish general elections of 14th March 2004, the reforms already in motion were bolstered by the new president’s commitments to putting constitutional reform on the table.

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6) For further illustration, see C. Viver i Pi-Sunyer in *La reforma de los Estatutos de autonomía*, CEPC, Madrid, 2005, p.12 onwards.

7) See section 5 of this paper.
Prior to these events, the parliament of the Basque Country had proposed a statute of autonomy (25th October 2003) that was later to be rejected by the Spanish parliament on 4th February 2005. The text went beyond the limits of the Constitution in proposing a relationship between the State and the Basque Country that was confederal or bilateral in nature. By contrast, Parliament did pass the 2006 reform of the statute of Valencia (Organic Law 1/2006, 10th April), with the agreement of both the Popular Party and the Socialist Party. The Valencian statute therefore marked the first of the current round of statutory reforms to come to a successful conclusion.

In this context, a new proposal for a statute of autonomy was shortly thereafter passed in Catalonia, abrogating the earlier statute of 1979. The far-reaching ambitions of the new text undoubtedly overstepped the limits of the constitution. Nonetheless, it was passed by the Catalan parliament on 30th September 2005, winning the backing of 4 of the 5 political forces there. Only the fifteen deputies of the PP voted the measure down. At that point, the second stage of the reform process meant taking the text to the Spanish parliament to hammer out its final form in the Constitutional Committee of Spain’s lower house, the Congreso de los Diputados. The negotiations were conducted by members of a delegation sent by the Catalan Parliament and a group of representatives from the lower house. Then the statute was sent to the plenary sessions of both houses for passage, but not before the statute’s parliamentary journey had caused substantial changes to the original document. As a result, the Catalan separatist party

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8) Pursuant to an order issued by the President of the Congress of Deputies on 16th March 1993, the supplementary rule to the Standing Orders aimed at tackling gaps arising from statutory reform.
ERC voted against it, joining the continued opposition of the PP. With the PP's no, the vote marked the first statutory reform to be passed without the agreement of the two main political forces in Spain. The last step in the amendment process required a popular referendum to be held in Catalonia, which duly took place on 16th June 2006. The statute (Organic Law 6/2006, 19th July) finally came into force on 9th August 2006, after its signing by the King, its promulgation and official publication.

The total reform embodied by the Catalan statute—and emulated by others—cannot be compared with the partial reform efforts of ACs under the common system during the 1990s (and, in the case of Navarre, in 2001). These partial efforts basically sought to put the competences of ACs under the common system on a par with ACs under the special system (the Basque Country, Catalonia, Galicia and Andalusia). They also sought to alter some minor matters concerning the institutions of government. As

9) The Statute of Autonomy was approved in the Congreso de los Diputados; the vote was 189 yeas, 154 nays and 2 abstentions, reaching the required absolute majority. It passed in the Senate with 128 yeas, 125 nays and 6 abstentions. In the referendum, the vote was 73.9% for and 20.75% against, with 5.35% blank and spoiled. The abstention rate reached 50.7%. After passage, the Catalan Parliament was dissolved and Catalan elections were called for 1st November 2006. In the elections, CiU won 45 seats, PSC-PSOE 37, ERC 21, PP 14, ICV-EUiA 12, and a new political party (who campaigned against the Statute in the referendum) Ciudadanos (the Citizen’s Party) won 3. As a result, the 8th Legislature (2006-) saw a repeat of the three-party, left-wing coalition known as the “Tripartit”, which had governed for a large part of the 7th Legislature (2003-2006).

10) BOE no.172, 20th July 2006; DOGC, no.4680, 19th July 2006.

11) The Andalusian, Balearic and Aragonese texts have already been passed. Other reformed statutes are yet to be debated in the Spanish parliament, once passed by their respective autonomous communities. These include the Canary Islands, Castile and Leon, and Castile-La Mancha. Other ACs have also begun to debate reform.
stated by Prof. Cruz Villalón, we were not facing a new wave of statutory reforms but rather the beginning of a “second autonomic process” to reform the autonomic state, overhauling foundations set in the statutes enacted between 1979 and 1983, after the Constitution had been passed. However, this second autonomic stage has been characterized from a political point of view by: 1) an important deficit of political deal in Parliament, where PP did show initially reluctance to the changes but at the end voted for all statutes reforms except for the Catalan one, and 2) by a scarce popular co-involvement with the reforms: a very low turnout in both referendums held in Catalonia (49%) and Andalusia (37%), although a great majority of voters were for the new statutes.

The differences between the 1979 Statute and the new one are not found solely in their content. Content differences will be analysed shortly. They also lay in the way the two texts address symbolic questions that raise issues of Catalan identity. In this vein, the 2006 Statute uses convoluted wording to allude to Catalonia's self-definition as a “nation”, trying to sidestep any potential contradictions with the Constitution, which attributes to Spain the character of a nation in Article 2. The wording was also intended to circumvent the criticism voiced by a wide cross-section of Spanish society when a more explicit version was passed in the Catalan parliament in September 2005. As a result, the Preamble declares: “In reflection of the feelings and the wishes of the citizens of Catalonia, the Parliament of Catalonia has defined Catalonia as a nation by an ample majority. The Spanish constitution, in its second article, recognises the national reality of Catalonia as a nationality.” Article 1 of the new Catalan statute defines
Catalonia as a “nationality”, as the 1979 text did. Relations between the Generalitat and the State are based on the principle of mutual loyalty and are to be “regulated by the general principle according to which the Generalitat is State, by the principle of autonomy, by that of bilateralism and by that of multilateralism.” (Art. 3.1 CSA) In this sense, the Spanish state and the European Union serve as Catalonia’s “political and geographic space of reference....” (Art. 3.2 CSA)

4. New Content, New Approaches

The new Statute of Autonomy is much greater in size. The number of articles has been increased from 57 to 223 (in addition to supplementary provisions). It incorporates new sections dedicated to rights, duties and governing principles; the administration of justice; relations with local governments, state institutions and other autonomous communities; and European and international affairs. It also has sections reformulated from the existing statute, in accordance with Art. 147 SC. Building on what was the core of the earlier statute, the revised sections provide greater precision in defining the institutional system and the sources of law. Enumerat-

13) The bill passed by the Catalan Parliament on 30th September 2005 referred to Catalonia as a “nation” in Art. 1.1 and in Art. 3, stating that the principles that must govern relations between Catalonia and the State were: “the principle of mutual loyalty to institutions [...] the overarching principle by which the Generalitat is State, by virtue of autonomy, in keeping with the principle of a plurinational State [italics added] and bilateralism, without excluding the use of mechanisms permitting multilaterial partipation”. The Preamble emphatically insisted on the national character of Catalonia and on defining Spain as a “plurinational state”. In the end, the final text made mention only of the flag, the national day and the anthem as “national symbols” (Art. 8.1).
ing the competences of the Generalitat has also been adopted as a new approach, the aim of which is “blindaje” or the establishment of ironclad safeguards against state interference. What follows below is a thorough examination of a number of the most significant of these reforms.

4.1 A Charter of Rights, Duties and Governing Principles

Previously, Art. 8 of the 1979 Statute of Autonomy of Catalonia (CSA) had limited itself to declaring that the citizens of Catalonia possessed the fundamental rights and duties set out in the Spanish Constitution. However, it did not contain any precepts concerning specific rights nor did it express the autonomous community’s own aims.

The new Catalan statute dedicates an entire section to rights, duties and governing principles (Arts. 15-54), as do the other statutes that have been passed or are currently being prepared in this round of statutory reform. Rights are grouped in three sections: civil and social rights; political and administrative rights; and linguistic rights. In addition to rights and duties, governing principles are also set out, making use of the approach employed in Chapter III, Title I of the Spanish constitution. The governing

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14) This contrasts with other ACs whose statutes had set out specific Articles against discrimination based on language (the Basque Country, Galicia, the Balearic Islands, Valencia), as well as lists of varying length stating political objectives in the form of programmatic rules (the most outstanding examples are Andalusia, the Canary Islands, Castile-La Mancha and Extremadura). Generally, it is made clear that achieving objectives like these or safeguarding rights should take place “within the [community’s] sphere of competence”. On the other hand, several statutes establish a body responsible for guaranteeing rights in the face of any infringements by the autonomous government in question. Such ombudsmen are similar to the People’s Defender on the state level. The Catalan ombudsman called the Síndic de greuges provided for in Art. 35, CSA 1979.
principles require legislative action to translate them into subjective rights. In the absence of classic civil rights, these rights are in addition to the charter’s constitutionally protected fundamental rights. In some cases, they apply constitutional rights at the AC level, e.g., the right to political participation in the government institutions of Catalonia or the right to an education, defined as secular education in state-run schools, including the guarantee to children of the right to receive moral and religious education (Art. 21.2 CSA). In other cases, they raise what were formerly merely legal rights onto the statutory level, e.g., environmental, consumer and linguistic rights (Art. 27, 28 and 32-36). In yet other cases, they incorporate “new” rights such as the right to die with dignity (Art. 20), they reflect advances in the European Union’s Charter of Fundamental Rights (including rights associated with good government, Art. 30) or they express the aspirations of certain sectors of society (naming women, minors and the elderly as holders of specific rights, although their contents are not clearly, precisely defined by the Statute).

Such rights are, in general, binding on Catalan public authorities and, where appropriate, on individuals. As an exception, in the case of the linguistic rights set out in Art. 32 and 33, all public administrations present in

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Catalonia are subject to the Charter rights, including State bodies as well.

The most hotly debated issue in the section on rights arose from the nature of the jurisdictional and quasi-jurisdictional guarantees underpinning them. The guarantees were less limited than in other statutory reforms from the same period. Judicial protection of statutory rights falls within a legal framework that is characterised, on one hand, by the Tribunal Constitucional’s exclusive role in reviewing the constitutionality of any provisions of law and, on the other hand, by the unitary nature of the judiciary in Spain, a question to be revisited in section 4.3 of this paper. In the first case, the CSA assigns power to the Council for Statutory Guarantees to review draft bills for any possible violations of statutory rights, prior to enactment by the Catalan Parliament. The innovation is that the review’s findings are binding, meaning that the intervention of the Council can be decisive in the legislative process. In the second case, Article 38 CSA assigns the power of judicial review of ordinary decisions taken by public bodies or of rules enacted by Government at levels below the Law to the High Court of Justice of Catalonia, referring the creation of the necessary proceedings to the procedural laws.

Lastly, the Catalan statute of autonomy reiterates one of the previous statute’s clauses limiting the scope of statutory rights. One consequence is that no statutory right may alter the Generalitat’s competences. An additional clause spells out the primacy of fundamental and human rights over statutory rights. It bans the introduction of any law based on rights ex-

\footnote{In addition, Transitional Provision I contains an unusual clause: it defers the full effect of the charter of rights for two years. During these two years, any existing laws that are incompatible with the Statute’s rules governing rights will remain in effect. The Council for Statutory Guarantees will be responsible for ruling on the need to amend such laws in light of the new Statute.}
pressed in the Statute that would restrict constitutional rights or rights recognised in international treaties and conventions ratified by Spain (Art. 37. 4).

On these terms, in my opinion, it is not objectionable to put a charter of rights in a statute of autonomy, giving statutory status to subjective rights derived from the enumerated competences assigned to the *Generalitat*. A golden opportunity may have been lost, however, to enshrine in the Statute a list spelling out specific rights that would not require legislation to come into force (as happens in the majority of cases). Instead, the authors of the Statute focused more on issues bound up with affirming the identity traits of a distinct body politic (i.e., the symbolic elements included in the charter of rights) rather than addressing the legal implications arising from such a declaration.

4.2 **Ring-fencing Catalonia’s Competences**

The matter of *blindaje*, or fencing off AC competences so that no State legislation can interfere with them, stands as one of the key issues of statutory reform. At the same time, such ring-fencing has doubtless been one of most intensely contested doctrinal issues among legal minds. This stems from the innovative technical solutions that have been brought to bear within the context of the Spanish autonomic state, as well as the consequences of implementation on, firstly, the way competences are distributed between the State and Catalonia and, secondly, the current model of the state and how it has been evolving.

In analysing the various ways that competences have so far been distributed between the State and the autonomous communities (ACs), it is useful to bear the following three points in mind:
1) The competences that are exclusive to ACs have quite frequently been affected by the State’s transversal, horizontal competences (e.g., the effect of economic planning—set out in Art. 149.1.13 SC—on industry, tourism and agriculture). This has caused problems fixing where the State’s competences end and AC competences begin.

2) Regarding what the Statute calls “shared competences” (more commonly known as concurrent competences), the State is to provide basic provisions for these areas, but the development of detailed legislation is to be left to the ACs. The Tribunal Constitucional’s distinction between basic provisions and detailed development, however, has not prevented the State’s role from growing and encroaching on areas of detail. Formally, the law’s presumed preference in regulating this distinction has not halted frequent use by the State of other non-parliamentary sources of rule-making.

3) Lastly, regarding “executive competences”, the executive function, in the strictest sense, is assigned to each autonomous community, while all

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rule-making power—whether legislative or regulatory—resides with the State, except in the matter of operational rules.

As a direct result of the above situation, autonomous communities have found themselves unable to develop their own policies in vital areas where, according to the “block of constitutionality” (the Constitution and the Statute), they wield legislative power. This has been the state of affairs in the case of a number of executive competences (affected by the State’s horizontal competences) and with the overlapping competences (given the State’s wide leeway for action).

Two legal techniques have been used in the new Statute to fix clearer boundaries between the competences of the State and Catalonia. Both were aimed at forestalling State intrusion and, as a by-product, lessening conflict over competences. Together they were meant to double ring-fence Catalonia’s own competences:

1) The first approach set out to clarify the distribution of competences by categorising functions according to competence area (as found in the first chapter of Title IV CSA). In this way, the Catalan statute states that where exclusive competences (Art. 110) fall to the Generalitat, then “legislative power, rule-making power and the executive function correspond fully to the Generalitat [...] by means of which it may establish its own policies”. Further, shared or overlapping competences set out a framework that limits the scope of the State’s action. From a content perspective,

18) This is the reason why emphasis was placed on the “reductionist reading of competences” and on the “administrativisation” of devolution in a report on the Statute called Informe sobre la reforma de l'Estatut, op. cit., as well as in the scholarly reports commissioned by the Study Committee looking at improving self-government, during the 7th Legislature of the Parliament (Estudis sobre l'autogovern de Catalunya, Parliament of Catalonia, Barcelona, 2003).
these limits take the form of basic “principles or lowest common legislative denominators”. From a formal standpoint, they are “rules with the standing of law, with the exception of those circumstances determined by the Constitution and Statute of Autonomy”. Within this framework, the Generalitat is to enact legislation—that is, to “implement and specify said basic provisions by means of a law” (Art. 111). Lastly, the executive competences assign not only the executive function to the Catalan government, but also rule-making power, thereby giving power to the Catalan government to approve provisions for the execution of State rules (Art. 112).

This technique introduces a change to constitutional jurisprudence concerning the scope of AC intervention in overlapping and executive competences. A number of legal commentators have flatly refused to accept any intent under the new Statute of Autonomy to contradict the doctrine of the Tribunal Constitucional. In September, however, the Consultative Council of the Generalitat issued an advisory opinion—Dictamen no. 269—in which it addressed the proposed Statute’s constitutionality, contending that the option was legitimate for the drafters of the Statute to put forward. It is well known that the Tribunal Constitucional’s jurisprudence has not been consistent over time with respect to the State’s scope of action in the area of overlapping competences. Another criticism that could be levelled against the Statute’s approach turns on doubts over its suitability as a vehicle for introducing provisions concerning State institutions and focusing on competences assigned to the State in an effort to restrict the State’s scope of action.

2) The second technique pursued by the new Statute of Autonomy is to specify which competences the Generalitat holds, providing an extensive list organised by subject area. Each area refers to a sector of reality and its
respective subsectors. Within each area, the competences that fall to the Generalitat are stated (Title IV, Chapter II, Art. 116-173 CSA). Compared to the previous statute, which set out a succinct list of subject areas broadly classified by category or competence type, the new approach elaborates a wide range of specific powers in various subject areas that have caused or may still cause heightened conflict. The new approach in question resembles techniques used in Central European federalist models.

The technique has sparked criticism as a result of the heightened level of detail in spelling out subject areas. Such detail carries a risk with it, so the criticism goes, that the system of assigned competences will become calcified or prematurely obsolete, losing the flexibility needed to respond to new social realities.

4.3 Applying the Principle of Self-Government to the Judiciary

According to the Spanish constitution, the judiciary in Spain is unitary, or indivisible (Art. 17.5 SC). This has been seen to differentiate the autonomcic state from a federal model. As a result, the central state is assigned exclusive competences over the administration of justice (Art. 149.1.5 SC) and procedural legislation “without prejudice to the necessary specialities in these fields arising from the peculiar features of the substantive law of the autonomous communities (Art. 149.1.6 SC). The Constitution makes provision for a specific law, the Organic Law of the Judicial Power (OLJP), which allows for the setting up, operation and internal administration of

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19) This has been applied quite narrowly by the Tribunal Constitucional in judgments such as 47/2004, 25th March, in which the court held that an autonomous community is only competent to introduce procedural innovations that are directly required by the peculiarities of its own substantive law.
courts and tribunals, as well as for the legal status of professional judges and magistrates (Art. 122 SC).

Within this framework, the statutes of autonomy had hitherto limited themselves, on the one hand, to establishing relatively piecemeal regulations concerning operational aspects of the administration of justice and, on the other hand, to addressing matters of lesser importance (such as defining legal boundaries and determining the location of capitals). No intrusion would occur in matters relating to the jurisdiction or management of the judiciary, the two core elements of the administration of justice corresponding to the State (STC 56/1990). The statutes would, however, address matters related to the high courts of justice in the respective communities. They regulated these high courts’ powers of cassation and review regarding civil law in those communities possessing this competence (Art. 149.1.8 SC and Art. 20.1 CSA 1979). As such, those courts constituted the highest judicial body in a given autonomous community (Art. 152 SC) [italics added]. Further, autonomous communities that have two official languages and their own civil laws (in family law and property and inheritance rights, differing from those in the Spanish Civil code) have used their statutes to establish “preferential treatment” in the awarding of public positions, based on relevant language skills and knowledge of the AC’s own body of law.

Given the situation outlined above, Catalonia’s new statute of autonomy introduced Title III, dedicated to “the judicial power in Catalonia” [italics added]. It incorporated a number of innovations worthy of note, designed to fulfil three broad aims. Firstly, they expand the powers of Catalonia’s High or Supreme Court of Justice to the detriment of powers previously exercised by the Supreme Court (Tribunal Supremo), turning the Catalan
body into the court of last resort for all legal proceedings initiated in Catalonia. Moreover, the court is to exercise authority to unify the interpretation of law in Catalonia and to hear and rule on appeals (Art. 95 CSA). Secondly, the innovations are designed to bring management of the judiciary closer to AC institutions, enabling each parliament to take part in choosing members for delegated versions of the General Council of the Judicial Power (Consejo General del Poder Judicial). In the case of the new Catalan statute of autonomy, that would be the Justice Council of Catalonia. Its roles are to include implementing powers set out in the Statute of Autonomy, powers under the Organic Law of the Judicial Power, and powers delegated by the General Council of the Judicial Power concerning the nomination and dismissal of judges and magistrates, as well as any relevant disciplinary proceedings (Art. 97-100 CSA). The third and final aim is to expand competences over the way the judiciary is organised and run. This would include the requirement to demonstrate sufficient knowledge of the Catalan language and Catalan laws, and it would apply to all judges, magistrates, public prosecutors and staff working in the justice service in Catalonia (Art. 102 CSA). It would also cover any related human and material resources, such as community provision of justices of the peace and other local officers of the court (Art. 103-109 CSA). All in all, what is apparent is that the aforementioned powers do not disturb the constitution’s established model of a unitary judiciary, although they are meant to bring a sense of autonomy to the administration of justice.

Of course, applying fully the overhauled provisions of a statute is not the same thing as launching a coherent reform either of the Organic Law of the Judicial Power—which is, in fact, currently under negotiation in the Spanish parliament—or tackling reform of the procedural laws. That ex-
plains what frequently sounds merely declarative and programmatic in the Catalan statute’s provisions. Legislative reform devolves upon the Spanish parliament, and it is the shape of such reform that will actually determine the eventual scope of what the new Statute envisages. It is far from likely, in any event, to pave the way for genuine judicial federalism. That would require constitutional reform.

4.4 Bilateral Relations between Catalonia and the State, Multilateral Relations

The Spanish constitution lacks participatory mechanisms that would enable the autonomous communities to take part in the decision-making processes of Spanish and European institutions. Nor are there mechanisms for adopting any principles or methods for intergovernmental cooperation. Wide-ranging schools of legal thought have characterised the lack of such mechanisms as one of the chief shortcomings of the Constitution’s approach to the distribution of territorial power. Catalonia’s 1979 Statute of Autonomy, along with the other statutes of that period, gave little attention to these aspects (Art. 27 CSA 1979).

Four approaches have been followed to fill the above gaps: 1) using standing orders, for instance, to create a standing committee for autono-

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20) L. Aguiar de Luque refers to the OLJP as a constitutionally authorised set of rules governing the essential aspects of the administration of justice; he also addresses the suitability of the statutes as vehicles for supplementing these aspects, noting the lack of legislative mechanisms for cross-referencing the various legal texts, in “Poder Judicial y reformas estatutarias”, Revista General de Derecho Constitucional, Iustel, no.1, 2006, p.67 onwards. For more information on the judiciary and statutory reform, also see Gerpe, M., Cabellos, M. A. and Fernández, M., “La aproximación del gobierno del Poder Judicial a la realidad autonómica del Estado”, Revista Vasca de Administración Pública, no.72, 2005, pp. 69-93.
mous communities in the Senate, which exercises basically information-sharing and consultative powers (Reform of Senate Standing Orders, 1994); 2) passing State laws (Law 30/1992 on inter-administration cooperation); 3) signing agreements (from the agreement of 1994 to that of 2004, European Union accords have been signed by the State and the autonomous communities); and 4) engaging in non formalised activities (meetings between AC presidents and the Spanish prime minister, begun in 2005, during the current legislature. These approaches have so far failed to bring about any notable progress and stability in operationalising the principles and methods of autonomic cooperation. To a large extent, any advances must be put down to political circumstances, such as the impetus the central government has wished to give to the matter or the political affinities between respective governments.

The statutes have played and will continue to play a highly limited role in the establishment of multilateral relations between the autonomous communities and the State, and among ACs themselves. This is because statutory law insofar as it is bilateral cannot lay any claim to exhaustiveness. Nevertheless, bilateral committees set up between the State and the ACs have, in practice, made a real impact. Created to foster dialogue and cooperation in general matters related to an AC itself, such committees have seen the size of their impact vary as a consequence of political factors. During the period of nationalist government in Catalonia led by Convergència i Unió (CiU) (1980-2003), bilateralism took shape through ongoing negotiations between CiU’s parliamentary group in the Spanish lower house, the Congreso de los Diputados, and Spanish government. This occurred because CiU played a swing role when there was no absolute majority in the Spanish parliament. As a result, relations between Catalonia and the State
have put bilateral ties before ties of a multilateral nature.

In formulating its response, the new Catalan statute of autonomy wavers between two contrary impulses. On the one hand, it aims to shore up the principle of bilateral relations between Catalonia and the State. With shades of confederalism, this impulse is clearly foremost in the two draft statutes passed by the Basque and Catalan parliaments, respectively. On the other hand, there are elements that water down the effective scope of such bilateralism, too. They instead refer to joining other autonomous communities in institutions and mechanisms. In other words, the opposing tug is multilateral in nature. The tension between these two positions is especially apparent in the regulations governing inter-institutional cooperation (Title V CSA).

In any case, mechanisms for cooperation with the State and with other autonomous communities pertain to the exercise of assigned competences and do not affect the way competences are assigned. The Generalitat-State Bilateral Commission deserves to be given serious statutory teeth as the “standing, general framework for relations” between the two bodies (Art. 183). This sort of committee could therefore ensure that there was an institutional channel for political relations between AC governments and the State.

As for Catalonia’s participation in State institutions and decision-making,

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21) CiU played a swing role in 1993-96 during the Socialist Government of F. González (PSOE) and again in 1996-2000 during the Government of J.M. Aznar (PP). In the current legislature (2004-), the Government of J.L. Rodríguez Zapatero has received swing support from Esquerra Republicana rather than from CiU.

the Statute of Autonomy limits itself to proposing the *Generalitat’s* right to participate actively in the nomination of judges to the *Tribunal Constitucional* and members to the General Council of the Judicial Power (Art. 180 CSA), without specifying exactly where or how. It also claims the *Generalitat’s* role in appointing members nominated to State regulatory agencies in areas of economic and social relevance, such as the Bank of Spain, the Spanish National Board of the Stock Exchange (*Comisión Nacional del Mercado de Valores*) and so forth (Art. 182). In such cases, however, the Statute always defers to the corresponding applicable State legislation to establish the terms of participation.

An important innovation of the Statute is its systematic regulation of participatory mechanisms and channels for Catalonia’s involvement in European decision-making and international affairs. Nonetheless, the content and scope of such participation is quite often reliant on the development of general or multilateral laws by the State or the European Union (EU) (e.g., Catalan representation on the Spanish delegation to EU institutions or the *Generalitat’s* access to the EU’s Court of Justice, Art. 187 and Art. 191).

In this area, the Statute reaffirms the solemnly established set of principles and practices that have already been consolidated (and upheld under constitutional jurisprudence, as with the principle whereby European regulation shall not modify the internal distribution of competences, or with the *Generalitat’s* having delegations and offices in Brussels or elsewhere to defend and promote Catalan interests, Art. 189, 192 and 194, respectively). It also includes relatively innovative new provisions on, for example, Catalonia’s participation in the development of State positions to be taken in the EU Council of Ministers, including a “decisive” role in such development if
Catalonia’s exclusive competences are affected. Another innovation permits Catalonia to form part of any Spanish delegation to an EU institution or body that may be addressing matters that fall within Catalonia’s legislative competence (Art. 186 and 187). It also affirms the responsibility of the State to inform the Generalitat about initiatives being undertaken to revise EU treaties (Art. 185 CSA). This is a further example of the difficulties faced when using law specific to an autonomous community to regulate matters of wider importance, which need to be regulated at the State level, whether through constitutional or legislative action. The first of the criteria that justify Catalan participation is the notion of “exclusive effect” on Catalonia’s competences. According to this principle, strict bilateralism applies because the matter pertains solely to Catalonia. Since involvement is based on presumptive ties to Catalonia’s “differentiating factors”, it cannot be extrapolated to other ACs. The second of the criteria lies in the notion of “effect on exclusive competences”. That is, the matter to hand affects the rule-making and executive powers of Catalonia, in a given subject area. It may also be an exclusive competence for other ACs. Multilateral mecha-

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23) The meaning of the term “decisive” is clarified in Additional Provision II. Where the State Government rejects the position of the Generalitat, it must justify its decision in the Bilateral Commission. By contrast, concerning the other competences, the Statute only indicates that the State must listen to the Generalitat’s position.

nisms of cooperation, therefore, need to be sought in these cases. Throughout this Title of the Statute of Autonomy, moreover, the text refers both to the legally precise term “competences” and to the more generic, imprecise term “interests” of Catalonia. Hypothetically, the notion of “interests” would allow greater flexibility than the notion of “competence” in addressing Catalonia’s involvement in European decisions that may affect it.

Foreign affairs farther afield are dealt with separately from European matters. The Statute’s innovations in this area refer to the State’s obligation to inform the Generalitat in advance of the signing of any treaties that would have a “direct” or “singular” effect on the powers of Catalonia. In such case, the Generalitat may make “observations” and request the State to include representatives of the Generalitat on the negotiating team (Art. 196 CSA). In addition, the Generalitat “shall participate” in international bodies competent in matters of interest to Catalonia, such as UNESCO, in accordance with “corresponding regulations” (Art. 198). The Generalitat is also to foster the international renown of Catalonia’s social, cultural and sporting organisations (Art. 200). As a result, the foreign affairs provisions


are very open-ended, indicating principles for potential action. In most instances, however, they rely on specific legislation to be enacted by the State, which possesses competence in the area of international relations (Art. 149.1.3 SC).

4.5 The Financial Dimension of Autonomy

One of the most controversial issues in Catalonia has been how the Generalitat is funded. As a result, the funding issue turned into one of the pivotal elements of statutory reform, although it did not necessarily have to be resolved by means of a new statute. How the autonomic funding system works is generically stipulated in the Constitution and in the statutes. It takes on more detailed form in the State’s 1980 organic law addressing the funding of autonomous communities (known as the LOFCA, in Spanish). Further detail arises in laws governing the fiscal and administrative measures of the new funding system of ACs under the common system (which excludes the Basque Country and Navarre, because they have agreed a traditional bilateral system with the State known as the concierto, or “joint agreement”). The most recently approved law of this sort is Law 21/2001, 27th December, which is still in force. It was the outcome of the autonomic funding pact, reached in 2001 by all the autonomous communities and the State in the Council for Fiscal and Financial Policy (Consejo de Política Fiscal y Financiera), which is the competent multilateral body in this case. In accordance with the LOFCA framework, Catalonia’s funding—like the funding of the other autonomous communities—was based on non-financial revenues coming, in the first place, from taxes ceded by the State (representing 76.7% of the total). To a lesser extent, funding also came from transfers made by the State (generally through the Sufficiency Fund,
a State-administered equalisation transfer) and through other funds originating from the EU (in total, about 22.2%). By contrast, the proportion of taxes raised by the autonomous communities themselves is very small, given their limited capacity to levy taxes.

Widespread criticism has been levelled against the AC funding system in effect since 2002. Diverse political and legal sectors have held that—even though the 2002 reform was substantially better than its predecessor—it is still not enough to cope with the Generalitat’s level of expenditure, since it does not allow the Generalitat to have much effect on the most significant tax streams or to raise revenue. Moreover, the autonomous communities play no role in the State tax administration. This has a negative impact both on the tax revenue information they receive and on the transfer of the apportioned taxes. Another focus of criticism has centred on the issue of solidarity between the autonomous communities. The criteria remain unclear and there is no effective equalisation mechanism. As a result, the most affluent ACs operating under the general funding system (the Balearic Islands, Madrid and Catalonia) have below average resources per capita, compared to the other ACs in the general system.

To address this situation, Title VI of the new Catalan statute aims to affect both the funding model and inter-territorial solidarity along lines con-

27) Autonomous communities receive 33% of personal income tax, 35% of VAT, 40% of special taxes and 100% of pertinent inheritance tax and stamp duty. They exercise legislative powers with respect to personal income tax, inheritance tax and stamp duty.

sistent with fiscal federalism. It therefore differs from the special system applied in Navarre and the Basque Country. As far as the funding model is concerned, the new Statute of Autonomy establishes Catalonia’s participation in the collection of State taxes ceded to Catalonia. It leaves the details concerning the taxes ceded and their respective percentages, however, to Additional Provision VII and subsequent provisions. Further, it assigns the Generalitat the regulatory power and management purview over both ceded and levied taxes (Art. 203 CSA). Regarding this last point, the text also makes mention of the creation of the Taxation Agency of Catalonia, under Catalan law, which would be responsible for the management, collection, settlement and inspection of locally levied taxes and of ceded taxes as delegated by the State. It equally foresees the creation of a consortium to allow cooperation with the State’s tax authority (Art. 204). In terms of inter-territorial solidarity, the text sets the criteria as follows: “The financial resources available to the Generalitat may be adjusted to enable the State funding system to have sufficient resources to ensure levelling and solidarity with other autonomous communities, so that education, healthcare, and other essential social services of the welfare state provided by the different autonomous governments can achieve similar levels throughout the State, provided that they also make a similar fiscal effort” (Art. 206.3). To specify the criteria further, the text adds the principles of transparency and five-yearly assessments; a guarantee that the application of the levelling mechanisms will not change Catalonia’s position in the pre-levelling ranking of per capita earnings; and the inclusion of population as a basic criteria when determining the Generalitat’s expenditure needs to fund its own services and competences.

The new Statute of Autonomy also foresees the creation of a bilateral
standing committee on joint economic and financial affairs to address the area of autonomic funding. It replaces the current committee, the Comisión Mixta de Valoraciones (Art. 210 CSA), and its competences would be to specify, apply, keep updated and monitor funding relations between Catalonia and the State.

5. Constitutional amendment process and proposals for a Constitutional revision

In the Investiture Programme for the Term of Office initiated in April 2004, the President of the Government, Mr. Rodriguez Zapatero, mentioned four goals regarding constitutional reform, three of them being linked, more or less, with the territorial issue: 1) there would be no gender discrimination in the succession to the throne; 2) the names of the Autonomous Communities would be included in the Spanish Constitution; 3) the State procedure of ratification with regards to European integration would be adapted; and 4) there would be some reform undertaken in the Senate, although the content was not specified.

However, parliamentary work on constitutional revision has not been yet initiated. Probably, we will have to wait until the next Term of Office.

In March 2005 the Government asked the Council of State for advice concerning the constitutional revision. Council of State is the most important Advisory body of Spain’s government. On February 2006 the Council of State released the “Statement on Spanish constitutional reform”. In such Statement the Council proposes to use the extraordinary reform procedure according to Art. 168 SC. This is the most difficult procedure. It requires the approval of the guideline of the amendment by 2/3 of both Houses of
the Parliament, the dissolution of the Parliament, and elections. Then, the new Parliament must also pass the reform by another 2/3. At the end of the process Spanish citizens must ratify the reform by referendum. This complicated procedure is required just for total amendment of the Constitution, or for the reform of the most sensitive sections, such as: Preliminary Title, where the general principles of the State are laid down, fundamental rights of the Title I, and the King provisions in Title II.

Spanish Constitution also foresees in Article 167 a simpler procedure for other partial amendments. The simpler procedure requires the approval of 3/5 of Both Houses of the Parliament and a popular referendum has to be held, if a minority of 1/10 of deputies or senators asks for it.

In Spain, both constitutional amendment procedures force political parties to reach a deal, as it happened during the drafting of the Constitution in 1977-78. Thus, it is not possible an amendment without the agreement of the main opposition party, as it occurs in Italy. Spanish citizens do not act in referendum as arbiters between parliamentary majority and minority. They just ratify or not the previous decision of the Parliament.

Only one of the current reform proposals needs strictly the difficult procedure. That is: gender discrimination in the succession to the throne. According to Article 57, male has preference in the order of succession to

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30) This simplified procedure was used in 1992 for passing an amendment on Art. 13.2 SC concerning suffrage rights for foreign citizens in local elections. It has been the single constitutional amendment in Spain due to the ratification of the Treaty of Maastricht.
The other reforms don’t need the special procedure and could be passed using the simple one. The reform concerning the European integration process is not so problematic. Art. 93 SC establishes the entirely parliamentary procedure to ratify the European integration. This article does not mention European Union. Many of the European countries have reformed their constitutions to adapt them to European integration, to establish limits to the provisions of the European law contraries to national constitutions, and to recognize the primacy of the European laws over national laws. In federal States as Germany, Austria or Belgium the participation of member states in European integration process is also laid down in national constitutions. These reforms are to be incorporated in Spanish Constitution.

The inclusion of the names of the Autonomous Communities in the Constitution is an issue that nobody in Spain has ever claimed. It is a symbolic point present in the Constitution of other regional and federal States as Italy or Germany, but not in all of them (neither US nor Canada). With this issue and with the reform of the Senate, the President of the Government probably wanted to open the question of the federalisation of the State. In fact, in the Federal model the Senate must be the chamber where all the territories are represented, participating in national decisions.

But regarding this point there is no agreement between the main polit-
cal forces. On the one hand, Catalan and Basque nationalists disagree because it means a homogenization of the State, losing then the particular features of their self government. By the contrary, they want a better recognition of the singular status of their regions in the Constitution and in the Statutes. On the other hand, Popular Party opposes to further developments of the territorial distribution of powers, as it may give more powers to the Autonomous Communities.

Without doubt the issue of the Senate reform is the most important of the current reform proposals. In fact, Spanish scholars agree that the most significant lack of the Constitution concerning Autonomous state is related to the participation of the Autonomous Communities in State decisions, throughout the Senate, and also to their participation in the Constitutional amendment process, as in Federal states. The composition and functions of the Spanish Senate, in spite of its definition as “the Chamber of territorial representation” (Art. 69), are not equivalent to the federal Senate.

The Senate revision can be analysed from two points of view: the Parliamentary system and the Territorial division of powers. Criticism of the present functioning has been levelled at both of these: as a chamber of Second reading, its position in the Parliamentary system has been practically insignificant up now, and as a Chamber of territorial representation, the function carried out has been marginal. However, the reform proposals generally focus only on the matter of the territorial distribution of powers.

This lack of ruling is replaced on a practical political level by means of

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the presence in the Parliament and ability for negotiation of the nationalist parties. Especially in the Congress, given its priority in the Spanish parliamentary system. The results of this political solution depend on the varying strength of these groups, and on whether or not Spanish government have overall majority in the Parliament. In terms of office with a relative majority by the Government, the significance of nationalists parties increases. By contrast, in terms of office with an overall majority by the leading party, their influence decreases. Simultaneously, in the first case, the conflicts of power in the Constitutional Court between the Central state and the Autonomous Communities with nationalist governments tend to decrease because political negotiation takes priority. However, when a party has overall majority in Congress, power conflicts with the Autonomous Communities tend to increase, precisely because there is little need of agreement and negotiation between the Central government and the Autonomous Communities governments.

The problems generated by this political practice are evident: 1) the changeable nature of the relations which depend on the concrete composition of the Congress in every Term of Office; 2) the lack of legal form referring to this essentially political type of relation, with the consequent lack of stability of some obtained achievements; 3) the confusion in identification between the interest of the Autonomous Community and the interest of the nationalist parliamentary group of that Community in the Congress; and 4) the sensitivities generated by these agreements in the rest of the Autonomous Communities, with their consequent feelings of injustice.

For all these reasons, academic and legal circles have supported the constitutional reform of the Senate. In the aforementioned Statement, the Council of State rejects the Bundesrat or German model of Senate, where
member states are represented through members of executive powers of each member state. Such a model had been proposed by many Spanish scholars. This occurs in a moment when German Senate has been reformed and has been taking out several powers on legislative procedure.

The Council of State proposes to reduce the number of the 259 current senators and suggests, as an outstanding change, that the Autonomous Communities should be the only territorial entities represented in the Senate excluding provinces as now, and combining thus the direct election with the Autonomic Parliaments election. In relation with the functions, the Council of State suggests increasing them, although not changing the Congress’s superiority of nowadays in legislative power, and investiture and censure of the Government. The Advisory Body also wants to avoid a Senate focused exclusively on matters regarding territorial organisation. In short, the Council of State decided to offer a flexible framework without changing constitutional model (that is a minimum reform). It is an imperfect bicameralism and a parliamentary House.

6. What Next: New Statutes or Constitutional Reform?

The current wave of statutory reforms began in 2005-6 and it has profoundly changed the Spanish autonomic state under development since 1979. Doubts have arisen as to the constitutionality of some of the reforms. Moreover, a number of underlying and related legal questions have been

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33) The Tribunal Constitucional is yet to rule on the matters in question. Claiming unconstitutionality, applications for judicial review have been filed by members of the PP (Partido Popular), the State Ombudsman’s office (Defensor del Pueblo), and by other ACs.
raised. Is a statue of autonomy a suitable vehicle for changing the definition of the kinds of competences in question? Is it appropriate for addressing participation in and cooperation with the institutions of the State? Is it right for putting forward a new funding model or a new model for the administration of justice? Would a reform of the Constitution not be a better response to these issues or—at least in some of the areas at stake—legislation at the State level?

At the root of these concerns lies a question about the nature of the statute of autonomy in the autonomic state and the specificity offered by the Spanish constitution in defining the model of the state. There are political and legal decisions about the territorial organisation of the State that should have been taken by the constituent power, based on theoretical and comparative grounds, because they are decisions fundamental to the entire political body. Yet, in the Spanish case, the High Law does not specify them but rather defers them to the statutes of autonomy, developed in harmony with the Spanish constitution. As the set of “basic institutional rules of an autonomous community” (Art. 147.1 SC), each statute gives shape to the identifying traits of a specific political entity (its symbolic features and—based on current reforms—the principles, rights and duties of its citizens). It defines its institutional framework (its form of government and, now, its regulation of certain aspects of the judiciary as well). It specifies the areas in which it exercises authority (updating the criteria for establishing competences and funding) and, lastly, it delineates participation in State and European decisions.

The new contents of the Catalan statute move ever closer to the legal

category of a constitutional document, although without overlooking its source of legitimacy in the Spanish constitution—as reiterated during the reform and approval proceedings—or forgetting that its limits lie therein as well. In effect, the limits are set not only by the explicit contents of the Constitution (as in Art. 149, which address the State’s competences), but also by various specific bodies of rules other than the Statute of Autonomy, which are provided for in the Constitution, for example, the Organic Law of the Judicial Power, the Organic Law on the General Electoral System, and the organic laws that develop fundamental rights.

Looking ahead from the 2006 Catalan statute, attention will have to be paid to the direction taken by the other statutory reforms already in hand or anticipated in the coming months. Will they follow in the same direction or will they correct some of the most controversial points? What is certain, to date, is that all the reforms under way include additional sections and provisions devoted to rights and principles, the administration of justice, the local system and the conduct of national and foreign affairs, including participation in State and European decisions. They do, however, avoid certain specific clauses that appear in the Catalan statute.

Clearly, thorny, old questions about the autonomic state have once again come to the foreground. They date back to the creation of the autonomic state, and statutory reform has not managed to resolve them. The issues persist: 1) to what extent are homogenisation and generalisation necessary in the autonomic State for it to function well, while still allowing room for the wider aspirations fostered by the unique territories within it, and—as a corollary—to what extent would the influence of such aspirations affect the balance between bilateral relations (the State and one AC in particular) and multilateral relations (between all the ACs and the State) ; and
2) what level of political autonomy is desirable in light of AC aims and the necessary functions and competences that the State must fulfil to guarantee unity, solidarity and equality to all citizens.

These kinds of issues, especially the ones concerning the State’s role as guarantor of solidarity and equality and the multilateral mechanisms for relations between autonomous communities or between them and the State, can be resolved more coherently through constitutional reform or legislation at the State level. Meanwhile, AC levels of self-government, their particular systems, and their bilateral relations with the State may all be addressed more effectively through reform of statutes of autonomy, as has been the case to date.

These two solutions are not incompatible but rather complementary. At present, it appears that statutory reform is outstripping constitutional reform. It appears that review is coming from below, from the autonomous communities. Yet, given the broad scope of the statutory reforms recently embarked upon, it is becoming necessary for the Spanish parliament to make legislative modifications, especially concerning basic laws, autonomous communities funding laws, and other institutional laws (the judiciary), as well as rules governing participation in EU decisions. It is also necessary that such modifications reflect continuity in the context of constitutional reform (hitherto practically unknown in Spain). What is more, tackling reforms such as these requires political agreement from across the spectrum. In the case of constitutional reform, Title X of the Spanish constitution, in fact, requires the \textit{de facto} consensus of the two largest Spanish political parties, although it does not formally require the consensus of the majority of the autonomous communities, as is the case in Federal states (the required consensus is 3/5 or 2/3 of the members of each house of
the Spanish parliament, depending on the procedure to be followed). In the case of statutory reform, agreement is only required between the governing party and the regional parties that are involved, since only an absolute majority is required in the Spanish lower house, just as an absolute majority is required in the Congress to pass legislative reforms on matters designated as important. Of course, it is sensible in both kinds of reforms to achieve the widest possible support for an agreement, leaving out no political parties or currents of public opinion that have weight in the whole or any part of the country. In that way, we shall face the next stage in the development of the autonomic State with guarantees of stability and success, and the conflict now being suffered shall be overcome.