

Constitutional Change Without Constitutional Reform: Spanish Federalism and the Revision of Catalonia's Statute of Autonomy

César Colino*

This article analyzes the constitutional change in federations that is driven by the bottom-up reform of subnational units' constitutional arrangements as an alternative to the reforms of the federal constitution. Looking at the case of Catalonia's recent reform of its statute of autonomy, it discusses and evaluates some of the benefits and pitfalls of the utilization of substantial subnational constitutional discretion and the likely consequences of this mode of reform for the Spanish model of federalism and others. This is done through the study of the initiation of the Catalan reform process, its content and scope, and through the investigation of the political and institutional factors that account for its occurrence and final outcomes.

Federal systems transform themselves in order to adapt to external conditions and to evolving internal power relations through implicit or explicit constitutional change or through a combination of both (Voigt 1999; Benz 2008). This constitutional change in federations and its different manifestations and propensity across countries has been mostly approached by focusing on federal constitutions at the national level. More recently, however, increasing attention is being paid to change occurring at the subnational level's constitutional arrangements and its impact on the overall rules and evolution of the federation (Williams and Tarr 2004). Component units in federations may have subnational constitutions or autonomy charters, which are usually more easily reformed than national constitutions and differ in the degree to which they confer to some or all of the subnational actors different degrees of discretion or "subnational constitutional space" (Tarr 2007) for changing their own governing arrangements and, indirectly, the federal constitution.

Depending on several political factors, subnational governments in different federations may decide to use this constitutional space allotted to them differently,

*Universidad Nacional de Educación a Distancia (Spanish Distance Learning University), UNED; ccolino@poli.uned.es

in some cases, producing conflict with the federal constitution and, in others, usefully compensating for its excessive rigidity. In some federations, it has been argued, the existence of this subnational constitutional space for all or some of the component units may promote stability, enabling the federation to better manage conflict. It gives increasing political flexibility for federal political actors to make concessions that they could not make at the national level and provides alternative political forums to articulate subnational demands and legitimate dissent for minorities or subunits when specific accommodation and adaptation of the federation is required (Marshfield 2008).

This raises the issue of what is the adequate constitutional space that subnational units should have and whether and to what extent they should use it more or less frequently and intensively. In other words, it leads us to the old issue of the tension between stability and change in federations, or put differently, their sustainability. Although flexibility for constitutional change through implicit or explicit means is good for adjustment to external conditions and for the accommodation or integration of some constituent units, flexibility is also likely to be exploited by some national or subnational actors who continuously seek to extend their power by changing the rules of the game and the allocation of resources, thus producing permanent instability (Filippov et al. 2004; Bednar 2008; Benz 2008).

The Spanish case seems a prototypical one to illustrate these relationships between implicit and explicit, national and subnational, and constitutional and subconstitutional change. It clearly reflects the tension between flexibility and instability and provides a contrast to the component units in other plural or divided federations such as Canada, Belgium, India, Nigeria, or South Africa that may have a say in the reform of the federal constitution but have only limited or no subnational constitutional discretion. Spain shows a unique configuration since its autonomous communities (ACs) possess a very limited role in the reform of the national federal constitution but a large subnational power of initiative for reform of their own constitutions, thus implicitly changing the federal constitution. This power has to be exercised in agreement with the federal government.¹

Due to the fact that territorial institutions were left to subconstitutional regulations such as the statutes of autonomy, the Spanish system of territorial organization has displayed a unique flexibility in the adaptation of its rules of power distribution and regional institution building. In this way, despite having one of the most rigid constitutions in Western Europe, the constitutional model permitted regions, following different procedures justified on historical and political grounds, a broad leeway to choose, through their regional statutes of autonomy, the degree of devolution they desired among the possibilities offered by the Constitution. All this meant that most changes of the Spanish system have occurred without explicit formal constitutional amendment, both through incremental adaptation of regional statutes² and constitutional court interpretation

of power distribution and responsibilities. Hence, without a single reform of Chapter VIII of the Constitution, the system has gradually transformed itself from an asymmetric decentralized system toward a largely symmetric federation, defined by the dominance of legislative concurrent powers and revenue-sharing as main funding model and may be transforming itself again into a more decentralized and asymmetric federation.

The Spanish central government and ACs benefited from this flexibility in adapting the system, but regional governments had never used its maximum level of constitutional space up to now. In the past few years, due to a constellation of political factors in national and regional politics, this model has come under increasing strain. Consensus on the final model to be achieved no longer prevails among all state-wide and regional parties. Main regional nationalist parties and regional branches of state-wide parties in Catalonia and other regions have decided, due to the difficulty of accomplishing a constitutional reform that fulfills some of their more pressing demands, to use—for some to overuse—their subnational constitutional space not for piecemeal or incremental adaptation as had been the case so far, but to unilaterally initiate a more wholesale change in the territorial institutions.

For the first time, regional politicians and parliaments have set the agenda of reform by amending or even entirely replacing their statutes of autonomy without previous agreement among national political forces regarding the orientation and goals of the reform. Given the constitutional flexibility, and ambiguity, on the leeway of regional statutes to regulate not just internal institutions but also relations with the center and the distribution of resources and competencies, some regional politicians, following the lead of the Catalan parliament, have managed to advance a very broad and generous interpretations of the constitutional functions of regional statutes to decentralize the system. For the first time, the central government has been in a reactive position, trying to control the scope and impact of the reforms. This has tested the capacity of the system to adapt itself and maintain its basic stability and legitimacy, forcing it to respond to the new demands of regions and the requirements of national unity, cohesion, and survival.³

In comparative terms, regional statute changes may be considered a unique way to make implicit constitutional change in federations, which has rarely been studied by political scientists interested in constitutional reform.⁴ Change occurs through the reform of subconstitutional norms at the initiative of subnational units but finally negotiated with the federal government. It is thus a kind of bottom-up formal change with effects on the federal constitution. Although it clearly responds to the peculiar nature of the construction and functioning of the Spanish version of federalism, it may have implications for other plural federations searching for new mechanisms of constitutional change.

This mode of constitutional change may arguably produce not only some of the benefits of nonconstitutional reforms in terms of flexibility but also some of the typical pitfalls of formal amendment processes due to the salience and conflict potential of the issues involved. It comes as no surprise then that it has generated a lively political and academic debate in Spain. This debate has recently intensified due to the large scope of the reforms in several ACs. And it has led many to propose a constitutional amendment to limit subnational discretion. In overly simplified terms, there are two positions on this debate, which respond to different interpretations of subnational discretion and different predictions about its effects on the system.

First, the optimistic view comes from advocates of an ample subnational constitutional initiative. They defend it as a valuable contribution of Spanish constitutionalism to achieve accommodation of different nations in a state and as a way to creatively manage conflict with minority or internal nations. For them, it allows component units from time to time to have a forum for demands that cannot be articulated at the national level or through the reform of the national constitution. Its bottom up and unilateral character, they contend, is easily exaggerated. First, because the central parliament must necessarily intervene in the final decision and is legally able to veto unwanted outcomes. Second, because this type of reform has usually occurred with the agreement or even at the initiative of central state-wide parties. In fact, it is argued that this subnational discretion for change should be really regarded as compensation or a surrogate for the lack of entrenched regional participation in the development and reform of the federal constitution [see e.g., Roig (2006), Fossas (2007), and Viver (2008)].

For other observers, more pessimistic and critical of the recent reforms, subnational constitutional space may have gone too far in Spain. For them, regional discretion to effect indirect constitutional change through the amendments of their own statutes is a residue of the long gone Transition that leaves in practice, if not in theory, the evolution of national constitutional arrangements in the hands of individual units. In most cases, some of them will show no concern for the stability or the preservation of the common state or for the interests of other component units but have all sorts of domestic incentives for self-aggrandizement. In practice, they argue, despite its veto power, the majority in central parliament will be, under certain political and electoral circumstances, forced to accept regional proposals. As a result of the unilateral initiative and the bilateral procedures, the likely consequences for the overall system will be a never-ending dynamic of asymmetries and emulation. This dynamic will necessarily produce instability and ineffectiveness in the system by gradually hollowing out the central level. Besides that, this openness or flexibility will not even have the alleged benefits in terms of accommodation, since demands and victimism are bound to persist in several ACs with nationalist parties (see e. g. Blanco 2006; Cruz 2006; Sosa and Sosa 2006; Tajadura 2007).

This article contributes to this debate and the more general debate on how different federations change their constitutions. It seeks to assess empirically the plausibility of the different arguments about the determinants and consequences of the utilization of subnational constitutional space in certain moments. By looking at the development and results of the recent Catalan statute reform, as the most telling example of this type of change in Spain, I examine under what circumstances the existing subnational constitutional space for reform is likely to be exercised and what are the consequences of existing rules and procedures on the prospects for a successful outcome.

I show how the Catalan case has been characterized by a great deal of tension and political confrontation, by a large scope in the reform contents initiative, and by an unprecedentedly complex procedure. In spite of this, and due to a constellation of factors, a compromise was found that arguably maximized the benefits and minimized the costs of this type of reform to the satisfaction of most involved political forces. This success is seen as paradoxical, since despite disagreements during the negotiation and the remaining conflicts before the Constitutional Court, most of the involved actors and the original advocates of reform claimed to have reached their goals. On top of that, the main opposition People's Party seemed retrospectively to acknowledge the aims and results of the Catalan reform by voting for similar reforms in other ACs.⁵ In the next section, I look at the demands and aims of reform; then I describe the reform process in its different stages and arenas followed by a discussion of the final compromise. I then explore some elements that help to explaining these outcomes. I conclude with some brief reflections on the factors that have affected the process of reform, its likely consequences for the system, and the prospects of constitutional evolution in Spain.

The Aims of Reform

Especially in Prime Minister Jose Maria Aznar's second term in office (2000–2004), his ruling party in the central government enjoyed a comfortable majority in parliament and declared decentralization to have come to a halt, thus blocking dialog with ruling nationalist parties in the Basque Country and Catalonia, and in other ACs ruled by the opposition, such as Andalusia. The usual mode of piecemeal accommodation of regional demands through small decentralizing or asymmetry reforms, which during the 1990s had served as an escape valve in the system, was thus excluded from the agenda by the People's Party government. The central government's position had consequences in terms of political integration and legitimacy of the system, since nationalist parties both in the Basque Country and Catalonia radicalized their demands and their criticisms of the system.

These criticisms were hardly new. The Spanish model of autonomy had been criticized by some regional political actors and academics in the recent years. Within the realm of academic discourse, some of the most frequent criticisms had been the encroachment on regional responsibilities by the expansive use of cross-cutting powers such as clauses of general interest, equality among citizens or management of the economy, and the absence of ACs in the central decision-making [see Máiz (2005) and Roig (2006) for a summary of these usual diagnoses]. A very influential “Report on the Reform of the Statute of Catalonia” by the Catalan government-run academic institute, the Institut d’Estudis Autònoms (IEA)⁶ highlighted, among the main problems that justified a reform of regional self-government institutions in Spain, the following deficiencies: the lack of recognition of the uniqueness of Catalonia within the state; the lack of regional governments’ ability to fully set their own coherent policies; the undue restriction of executive functions of regional government by central activity; the lack of full self-organizing capacity; the encroachment on the legislative powers of the Catalan government; the nonadaptation of central executive institutions and the judiciary to decentralization; the insufficient participation of ACs in national institutions and policies and in EU decision making; and finally, the lack of adequate, stable, and secured funding.

Joan Saura, Catalan regional minister for institutional relations at the time of the reform discussion, clearly defined the basic aims of the reforms as threefold: (i) the adaptation of self-government institutions to the changing political and social reality—immigration, EU integration, a new generation with new demands such as sustainability, new rights, and the modernization of Catalonia, (ii) a larger recognition of Catalonia’s national rights, and (iii) increased political power and resources for Catalonia (Saura 2005, 10).

On the other hand, the increasing perception of a lack of financial resources, deteriorating public services and infrastructures, less economic growth than other regions, insufficient control of soaring immigration into Catalonia, and the need of other means to promote economic development led many in Catalonia to blame these problems on the neglect by the central government investments and even of exploitation by other regions—the so-called negative fiscal balance. These diagnoses became gradually shared by all parties in Catalonia. The idea of improving self-government capacity and resources through the reform of the regional statute, as a way of receiving further powers and resources, began to enter in the political agenda as an electoral pledge of the then-opposition parties in Catalonia. Catalan politicians began to demand further decentralization of powers and finance, shielding of regional competencies from central encroachment through concurrent legislation, a special funding agreement that compensated for the perceived deficit and, last but not least, special recognition of Catalonia as a nation. This recognition would in practice imply, apart from the symbolic recognition, bilateral relations

with the center in fiscal and financial affairs and some veto possibilities in the legislation affecting Catalan interests.

This discourse about the pathologies of the state and their cure had, by 2004, succeeded in winning over most Catalan politicians and academics. It was not wholly shared in the rest of Spain, even if the new government of the ruling Spanish Socialist Party (PSOE), traditionally committed to a cooperative federal vision, seemed to some extent to have come to subscribe to most of the discourse, if somewhat grudgingly and forced by the political circumstances. The Socialist Party had also accepted the possibility of reforming regional statutes when still in opposition in its 2003 Declaration of Santillana, prompted by a need to respond to Catalan demands.⁷ In this statement, the PSOE acknowledged the need for reforms, provided they met the requirements of consensus and respect for the Constitution, as a way to reintegrate peripheral nationalist parties to the consensus on the system lost after the late 1990s, thereby consolidating the idea of a plural, more accommodative Spain. These reforms were also believed to enable ACs to adapt to new social circumstances. Eventually, six other regional parliaments came to accept much of this view in their reforms in the next three years.

The Reform Process

The regional phase of the reform process lasted from February 2004 to September 2005. It was decided that contrary to the recent Basque experience with the failed Ibarretxe Plan,⁸ the draft proposal should come from the regional parliament and not from the executive and had to be open to public participation and gain the maximum possible legitimacy.⁹ In April, the Catalan government appointed an expert commission composed of eight professors—lawyers and political scientists—to discuss the development of proposals. The first two months of public hearings in Spring 2004 were devoted to the hearing of forty organizations of Catalan society, experts, and the representatives of the executive. The Catalan government also commissioned several reports from constitutional lawyers from all over Spain that were submitted and used by the drafting subcommittee of the parliament.

After the public hearings and participation phase, even though there was no original draft proposal coming from the executive, the IEA was charged with preparing drafts and studies to direct the discussions in parliament. In the last months of 2004 and the first of 2005, a drafting subcommittee worked on reform proposals for the different chapters of the statute on the basis of the drafts provided by the IEA. The three parties of the tripartite ruling coalition in Catalonia (the Catalan Socialist Party *Partit dels Socialistes de Catalunya*, PSC, the pro-independence left nationalist *Esquerra Republicana de Catalunya* ERC, and the Left coalition of ex-communists and Greens *Iniciativa per Catalunya-Verts* ICV, had only fifty-five percent of the votes—seventy-four deputies—but needed

two-thirds—ninety deputies— which gave *Convergència i Unió* (CiU), the right-to-center nationalist coalition now in opposition, a decisive veto power.

Politicians in the drafting subcommittee introduced many amendments in those drafts through a process driven by party rivalries and outbidding, mainly between left nationalist ERC and CiU, which expanded the original proposals through the addition of numerous articles. Clear disagreements persisted among the political groups in the Catalan parliament on issues such as economic interventionism, secularism in education, and other individual rights, on regional funding arrangements and on the use of historical rights previous to the Constitution as the legal basis of competencies. These disagreements blocked the negotiation for months. Despite these disagreements, and due to pressure from public opinion and the media, a first draft was approved by the drafting subcommittee in April 2005 and a second one was sent to the corresponding legislative committee on July. Funding arrangements and competencies based on historical rights continued to divide the ruling coalition to the point that ERC and ICV, two parties of the ruling coalition with the Socialist Catalan Party (PSC) voted with the right nationalist opposition, leaving the PSC alone with the Catalan People's Party. After that, the independentist ERC declared the July draft to be in ninety percent its own. The PSC presented numerous amendments that would maintain for the national phase of the process.

The constitutionality of some aspects of the proposal was doubted by some parties. The legal Advisory Council of the Catalan government—formed by jurists proposed by different parties—was consulted on July draft proposal. In its opinion issued on September, it deemed some aspects unconstitutional, deeming nineteen provisions plainly unconstitutional and thirty-nine dubiously constitutional. In the following weeks, the draft was adapted accordingly and at the same time parties begun negotiating both publicly and secretly the proposals from the regional Finance Minister Antoni Castells for a new funding system that would improve Catalonia's position and be acceptable by all. After intense discussions, disagreements continued in key aspects of the proposal. With the aim to outbid ERC and break the ruling coalition, the main Catalan opposition party CiU proposed a system similar to the Basque arrangement—based on complete tax autonomy and the remitting of a quota to the central government.

Finally, when the agreement seemed impossible, secret negotiations between the Spanish prime minister and Catalan CiU, with Catalan President Pasqual Maragall as mediator, produced an agreement that allowed the Catalan draft proposal to be sent to the national parliament for discussion. Despite the attempt by the Catalan president to keep control of the process, the favorable bargaining position of the CiU opposition gave this party an advantage in the negotiation. This forced the ruling Catalan party PSC, a sister party of the ruling Spanish PSOE, to agree to a text closer to nationalists' preferences, despite having opposed many points in it.

The three ruling coalition parties in Catalonia, in conjunction with the main opposition party in Catalan Parliament CiU, finally approved the draft proposal of the third regional statute in Catalan history. It was passed on September 30 with eighty-nine percent of votes in the Catalan parliament, with the only opposition coming from the Catalan People's Party.

In this fashion, the Catalan Socialists had agreed to support in parliament a text, which basically corresponded to the maximalist agenda and the long-term strategic program of CiU (Santamaria 2006). The final text contained most of the reform agenda of ERC and CiU in terms of nationalist definitions, language policies, funding arrangements, competencies, bilateralism, the displacement of the central government in Catalonia, the unique representation of Catalonia in the State institutions, and the setting up of a single Catalan tax agency. These demands would pose problems to their fellow party members in the rest of Spain and would have to be trimmed down in central parliament (Carerras 2007). For many, this proposal clearly overstepped the constitutional limits of the model of federalism that had evolved in Spain so far, showing some traits that many considered confederal. Numerous provisions were still deemed unconstitutional by the central socialist government itself, by the main opposition party in the Spanish parliament, and by most Spanish constitutional lawyers.

The National Political Arena

The proposal was received for consideration in the lower chamber of the Spanish parliament, the Congress of Deputies, where, in October, it was accepted by the Board of Speakers but opposed by main opposition party, the People's Party, who argued that it was a constitutional reform in disguise and should not be accepted under the procedure of regional statute reform. The People's Party appealed to the Constitutional Court. Despite that, a first global reading of the draft proposal was held in the plenary of the Congress on November 2nd, where Catalan leaders from different parties solemnly presented and defended the proposal approved in the Catalan Parliament. Most Catalan authorities and representatives of Catalan society and institutions were present for the occasion, which was accordingly deemed a historical moment. According to the existing reform rules, the full procedure included a period for parties to propose amendments to the draft proposal until the end of the year, followed by discussion of the amendments in a joint drafting subcommittee with central and Catalan MPs. Then, the final drafting would take place at the Standing Legislative Committee for Constitutional Affairs, also with a joint composition of parliamentarians of both the central and the Catalan parliaments.

In October 2005, a period of intense discussions in the media and negotiations among politicians outside parliament began among the central ruling party and the Catalan parties.¹⁰ Several issues remained controversial or unacceptable for some

parties, societal groups, and for the central government in the proposal approved in the Catalan parliament on September 30. In particular, these were the funding arrangements and the distribution of competencies, the regulations on the justice administration, the bilateral institutions established, the tax arrangement, and more symbolic issues such as the declaration in several articles of Catalonia as a Nation. It seemed clear, however, that the main stumbling block was the economic aspect of the proposal. At first, Catalan parties were in agreement to defend the original proposal in all issues, but most remained open to negotiation. Several secret meetings were held between representatives of central government and representatives of Catalan parties.

The central government had asked for an opinion by a group of constitutional lawyers on the Catalan parliament's draft, which was made public by mid-October. The opinion of this expert group served as a basis for the government's negotiating position in the following weeks. This report viewed many provisions as unconstitutional.¹¹ In the following weeks, despite many meetings, no progress was made and agreement seemed elusive. On October 24, the Socialist Party National Committee declared its intention to amend some of the articles on competencies, the language regime, historical rights, bilateral relations, and provisions affecting a single Spanish market. CiU and the ruling Catalan tripartite unanimously rejected the removal of the word Nation from the draft proposal. After several attempts to reach an agreement, the government urged Catalan parties to agree by New Years' Eve. ERC and CiU publicly warned the government about the risks of a substantial cut, speaking of "unpredictable consequences" if Congress were to "mutilate" the statute proposal.

Negotiations extended during the second half of November and early December without reaching agreement on key points. There were at least eighteen meetings among the representatives of all the Catalan parties and the central government, before formal deliberation and discussion were to start in the Congress of Deputies. By December 20, some papers containing the central government's counter-proposals were leaked to the press, with all the "red lines" of the government clearly visible. In this same period, negotiations on the financial and funding issues were underway between the government's finance minister, Pedro Solbes, and the Catalan government and parties. No agreement was reached after several meetings. The offer by the Government was vehemently rejected by the Catalan political forces with the exception of the Catalan People's Party. For CiU and ICV, the Solbes proposal was utterly unacceptable, whereas PSC and ERC saw it as an acceptable starting point. In response to the rejection of the Catalan parties, the Government offered to increase Catalonia's share of the income tax revenues and to revise the contribution of Catalonia to the State revenues, in exchange for reducing the long list of exclusive powers for Catalonia contained in the proposal and restricting the activity of the new Catalan Tax Agency to regional taxes alone.

Finally, on December 21st, Prime Minister Rodriguez Zapatero offered to relinquish fifty percent of personal income tax to all ACs, while cautioning that the corrections made by Solbes to the Catalan draft were “indispensable” (Agudo et al. 2006).

On December 27, the Government reiterated its offer on funding arrangements launched by Finance Minister Solbes in October. This position was not just a strategic negotiating move but was more unmovable than most of the other parties believed at that point. Some politicians in Catalonia insisted on retiring the proposal from Spanish parliament. The People’s Party changed tactics and finally decided to present 100 formal amendments to the draft proposal to force the government to position itself. Contacts intensified. The government changed its tactics and began negotiating bilaterally with each of the Catalan parties and set an ultimatum for agreement on its known positions. Agreements reached bilaterally were then presented for multilateral agreement in meetings with all the parties except the People’s Party. The Government held to its position on funding arrangements, stating that these should only be reformed at the multilateral Ministers Conference on Fiscal and Finance Policy. After several multilateral and bilateral meetings on early January, some agreements were reached on key points of the funding arrangements, on bilateral relationships, on regional competencies, and on the relation of central organic laws with the regional statute. The term Nation and the rest of the funding arrangements remained controversial (Agudo et al. 2006).

Party bodies began to respond to these agreements and urged their negotiators to reach a final package deal. On January 19, the government delivered a new ultimatum to the Catalan parties to conclude a final agreement that week. Catalan parties reacted in different ways. On one hand, CiU leaders, despite some dissident “sovereignists” in its midst, who wanted to retire the proposal, appealed to the Catalan tradition of pact, advocating an agreement with the PSOE. For its part, ERC adopted a more inflexible attitude that would eventually make a difference for the outcome, interpreting the proposals as inadequate, not accepting any ultimatum of the government, and wrongly believing that the government would still concede more in coming negotiations.

The CiU Party Committee left the final decision to its President, Artur Mas, and the PSOE National Committee urged its leader Zapatero to quickly close the negotiation. Unexpectedly, and secretly even for their party fellows, on January 22nd, Catalan opposition leader Mas reached a global agreement on the Catalan statute with Prime Minister Zapatero after an eight-hour meeting at Moncloa Palace, the seat of the Spanish Prime Minister. This agreement was partly based on the compromises struck on the previous days. Regarding funding, it included the coexistence of two tax authorities and the increase of the transfer of VAT from thirty three percent to fifty percent. Also, agreement was reached on the symbolic issue of the self-definition of Catalonia as a Nation through the indirect inclusion

of this definition in the Preamble. ERC criticized it as unacceptable, especially its funding arrangements. For the PSC, the agreement with the main leader of the opposition in Catalonia seemed to bypass the interests of President Pasqual Maragall and its party in Catalonia, but parliamentary group discipline prevailed in the Socialist Party (Agudo et al. 2006).

“Polishing Up” the Catalan Proposal in the Congress

The Spanish parliament initiated formal deliberation of the draft proposal at the Congress of Deputies by setting up a joint drafting subcommittee from the Standing Committee on Constitutional Affairs with central and Catalan MPs. This drafting subcommittee, led by the chairman of the Standing Committee, former vice-president Alfonso Guerra, had a month to discuss the draft proposal and all the parliamentary groups’ amendments in nonpublic sessions before referring it to the Committee and then to the plenary, that was to solve the remaining disagreements in the proposal.

The working sessions of the drafting subcommittee started with the agreement reached by Zapatero and Mas. This agreement was fed into the formal procedure within the parliament. In all those days, before the formal sessions of the drafting subcommittee, representatives of the government and Catalan parties met to agree on the content of the coming sessions. Reflecting the Zapatero-Mas agreement, many of the amendments proposed were accepted in the draft proposal. A total of 144 articles of 227 were amended; as well as the Preamble. Some issues were reformulated such as competencies and symbols. The text adopted on March 6 reinforced the regional powers vis-à-vis central intervention, confirmed a multilateral model of funding, and included the term “nation” in the Preamble.

Although there was agreement on many provisions, a handful of articles concerning jurisdiction over ports and airports, sports teams, unemployment benefits, and national symbols led ERC to object to the text, leaving the door open for an agreement in the next phase at the Committee on Constitutional Affairs. The government had tried to bring ERC back to the consensus, but ERC kept rejecting the agreement for being too restrictive. The People’s Party also rejected the agreements for different reasons. ERC tried to pressure the government with demonstrations in the streets of Barcelona opposing the cut of the proposal in February. After the workings of the subcommittee, seven points of disagreements between the central MPs and the Catalan MPs delegation remained that had to be referred to the Committee.

Once the text arrived at the Standing Committee on Constitutional Affairs in the Congress, the debate continued. The Committee, also with a joint composition of Catalan and central MPs, began its meetings, this time in public sessions, on March 9. Party representatives supporting the political agreement reached already

met in the mornings to prepare the formal public sessions of the Committee.¹² ERC radicalized its positions and submitted 108 separate dissenting opinions to the text. On March 16, the Constitutional Court rejected by seven votes to five the People's Party's appeal against the admission of the Catalan parliament's draft proposal for discussion at the central parliament. The sessions of the Committee on Constitutional affairs proceeded with the discussion of the different chapters. On March 21, the draft was finally approved and referred to the Senate.

A joint subcommittee debated the remaining amendments to the proposal of the groups of the Senate, presented its conclusions, and referred the draft to the Senate's Standing Legislative Committee for the ACs in joint session with a delegation of fifty Catalan MPs, which debated it on May 3rd and 5th. It rejected the veto of People's Party and the text was finally approved and referred back to the Congress with virtually no changes. The final text was approved by the Senate and the Congress and put to referendum in Catalonia.

The Outcomes of the Final Compromise

The first aspect that seems clear in the reformed text of the Catalan statute after long negotiations is its growth in terms of extension and detail. The new Catalan statute has grown from 57 to 223 provisions, having virtually replaced and repealed the 1979 text. It has introduced, for example, declarations of citizens' rights and has regulated most details of their regional political institutions, which had been contained in ordinary regional laws until then. In the final analysis, it seems clear that the final compromise has led the central government to relinquish some of their financial resources and executive competencies as the price for the agreement. Catalonia and the other ACs following its path have now reinforced their identity symbols, recognized rights for their citizens, updated their internal institutional organization, regulated their relations with the central government both in domestic and EU issues, and last but not least, augmented their fiscal autonomy and taken on new competencies, which are now more protected from central encroachment. Some of the novelties in the provisions of the new Catalan statute are regional identity and symbols, a regional bill of rights, clarification and separation of powers, funding arrangements, and collaborative mechanisms.

Identity and Symbols

The new statute has reasserted the elements of regional identity, particular history, and self-definition, especially in the Preamble. In the previous statute, Catalonia was defined as a nationality in the sense of Article 2 of the Spanish Constitution. Not satisfied with this definition, Catalan politicians proposed the term nation in numerous articles of their statute proposal, but this was ultimately deemed incompatible with the Constitution by most Spanish politicians and as a very

delicate issue by the leaders of the ruling party in the central government, who tried to avoid it. Now there are repeated allusions to history and cultural peculiarities, references to the national character of the Community, and to the will of the Catalan people in the Preamble and several articles.¹³ The final compromise reached was an indirect formulation in the Preamble in which there is an allusion to the definition of Catalonia as a nation by the Catalan parliament. Furthermore, emulating other ACs, such as the Basque Country and Navarre, the new Catalan statute has finally included historical rights as a source of Catalan self-government (Article 5), which has been controversial (Laporta and Saiz 2006).

Concerning language policy, the new Catalan statute has also enshrined the main elements of traditional nationalist language policy—positive discrimination or normalization in favor of Catalan through “linguistic exposure”—in its text, thus giving it a more important legal status. Following the notion that Catalan is Catalonia’s only “proper” language, considering Spanish as simply the official state language, the new statute establishes Catalan as the language of preferential use in public administration bodies, in the public media and as the language of normal use for instruction in the education system, now extending this to university education (Pla 2006). An additional novelty is the duty for citizens to know the regional language established in Article 6, thus equalizing its status with that of Spanish in the Constitution. It also introduces the so-called obligation of linguistic availability, which imposes the obligation for businesses and establishments of answering its users or consumers in the language of their choice.

A Regional Bill of Rights

Additionally, the Catalan statute has recognized basic citizens’ rights and state goals of government activity, mainly social, participation, and linguistic rights that were mostly already contemplated in regional legislation. Social rights, that in the Constitution were considered guiding principles of public action, are recognized as such and are strengthened, with special attention to the most vulnerable groups. The right to a minimum citizenship income and the so-called last generation rights—access to new technologies, environment, minimum income, gender equality, sexual orientation, and protection against domestic violence—may be highlighted.

Clarification and Separation of Powers

Another innovation of the Catalan statute, which the Andalusian statute and others have virtually copied, is the attempt to separate or disentangle competencies by way of the technique dubbed “shielding” (*blindaje*). It implies using a detailed definition and typology of competencies and responsibilities—exclusive, shared, and executive—and a specification of the sub-matters or issues that each

competency includes. The list of regional powers, previously contained in only three or four articles, has now been replaced by specific articles for each responsibility. Supposedly, it tries to avoid the potential encroachments of the central government through their concurrent framework or basic legislation [see Albertí (2005) and Balaguer (2006)]. This is done by enshrining in the regional statute of autonomy some of the most autonomy-friendly interpretations on the distribution of jurisdiction by the Constitutional Court. Besides that, some new competencies—some of them very relevant and many others consisting in new responsibilities in the implementation of national legislation—have been approved in several matters. Examples are in areas such as agriculture, water and hydraulic works, commerce and trade fairs, popular consultations, cooperatives and the social economy, emergencies and civil protection, the environment, e.g., management of coastal zones and beaches, natural areas and meteorology, religious entities, public safety, social security, and transportation (intra-regional railways). New powers are also established in immigration (especially work permits for immigrants), labor relations, universities, and judicial administration. All these were powers not reserved to the central government in the Constitution and for that reason the new Catalan statute was able to claim jurisdiction over them.

Funding Arrangements

The new Catalan statute of autonomy also contains new provisions pertaining to principles that regulate sources of regional revenues and criteria for financial compensation and solidarity. It includes two innovative aspects, which have been partly reproduced in some of the other new statutes. First, it provides an increase in the ACs tax autonomy and fiscal responsibility by way of an increase in revenue sharing from central taxes and more control over them (e.g., fifty percent of income tax and fifty percent of VAT). Second is the idea of partial equalization, which tries to set limits to redistribution among territories and to abandon the objective of total equalization. It also includes the “ordinality” principle, by virtue of which equalization mechanisms shall not alter Catalonia’s ranking position among the ACs in terms of per capita income before equalization. There is an additional provision, also emulated by other statutes, which imposes on the central government the budgetary obligation of spending money on public investments in infrastructures in Catalonia according to Catalonia’s share in the Spanish GDP (eighteen percent) for seven years.

Institutional Innovations: Participation and Bilateralism

New regulations in the statute have introduced an innovative perspective that enshrines some collaboration mechanisms among governments. The new approach recognizes multilateral participation in government decisions and establishes and

regulates bilateral commissions in a very detailed manner. The statute creates a Bilateral Catalan Government-Spanish Government Commission and a special bilateral commission for fiscal issues. A second very relevant innovation is the consideration and recognition for the first time of local autonomy and the consideration of local entities as part of the Catalan institutional system. Besides that, the statute creates a regional tax agency and reinforces the Supreme Court of Justice of Catalonia. It also creates the Council of Justice of Catalonia—as a deconcentrated body of the Spanish Council of the Judicial Power. Another set of provisions provides for the eventual participation of regional government in central bodies and in the appointment of members of some Spanish constitutional bodies. Regarding participation in the EU, the statute provides for Catalonia's bilateral participation in forming the central government's position in those EU affairs that affect its exclusive powers. It establishes that its position should be “decisive” for the Spanish position. Finally, in several articles, it also recognizes the capacity of the regional government, derived from its own competencies, to act internationally.

Explaining the Paradoxical Success

If we set out to explore some of the factors that account for the development of the reform process and its content and final outcomes, we should begin by looking at the situation of regional politics in Catalonia in the period 2003–2006. The reform of the Catalan statute seems a good example of how normal politics becomes constitutional politics at various points in time. In other words, how politicians may decide, rightly or wrongly, that to solve normal governance problems and win elections, constitutional issues pertaining to the distribution of resources, self-definition, and power should be brought into the agenda. In a context of confrontation with the central government—which refused to accept reforms—and an increasing feeling of unfulfilled demands by citizens, the ruling coalition parties in Catalonia came into office in 2003 with the pledge of full reform of the regional statute as a solution to Catalonia's perceived problems. The party that had ruled Catalonia until then—CiU—had never advocated reforming the regional statute in the previous twenty-five years, but it was confronted with hard electoral competition in regional elections and decided to play the game of statute reforms. It began to offer an even greater reform than the then opposition parties during the campaign (Santos et al. 2006; Carreras 2005, 2007).

The idea of a total replacement of the statute began circulating. The unexpected constellation that emerged by the Spring of 2004, with the socialist party ruling in Catalonia—in a left nationalist coalition—and the Socialist Party coming into office at the central level, was the window of opportunity that finally allowed the reform to go on the governmental agenda. This constellation in Catalan politics may thus account for the timing of the proposal. The achievement of agreements, for many

unexpected, in the Catalan parliament after twenty months of negotiation, and despite the diverging views and positions and the fierce competition among Catalan parties, is likely to be explained by the attitude of the leaders vis-à-vis the high costs of nondecision after so much mobilization and political posturing by leaders. This situation increased their willingness to compromise in Barcelona and then in Madrid. Finally, another related element that also affected the likelihood of compromise was the sense of historic moment and the need to seize the opportunity perceived by many of the leaders both in Catalonia and at the central level.

Rules of Reform and Two-Stage Amendment Procedures

The fate of reform was also determined by institutions. One factor that should be mentioned is the peculiar interpretable status of regional statutes as quasi-constitutional laws requiring approval as organic laws in national parliament. For some, this enables regional statutes to determine other national laws and to influence the distribution of powers. Although they are considered a special case of organic laws, they require, as other organic laws, a fifty-one percent for approval in national parliament. This means that they may be passed against the will of main opposition parties. The second relevant related factor refers to the requirement of a “double will” to reform the statute of autonomy. That means that both the regional parliament and the central parliament have to intervene jointly in the amendment of the regional statutes. The interests and demands of the proposing autonomous community are supposed to be safeguarded through the inclusion of a delegation of deputies from its parliament in deliberations at the national parliamentary committees. Additionally, in some ACs, the population has to approve the final version through binding referendum. This clearly implies that even if it is an organic law, the central parliament may not have full freedom to approve provisions against the wishes of the citizens in that region.

Most procedural rules for the reform of regional statutes are not contained in the Constitution but in the Statutes themselves. That means that amendment regulations in the regional statutes can only affect the regional stage of reform, but may not bind the national parliament (Tornos 2007).¹⁴ For that reason, the Speaker of the Congress of Deputies issued a resolution in 1993 on the reform procedure of the Statutes of Autonomy. In it, a negotiation phase between the Standing Committee on Constitutional Affairs and a regional parliament’s delegation was established for those fast-track autonomy ACs, reflecting the way in which they were originally approved. The rules of the procedure at the Committee, in joint sessions with the Catalan MPs delegation are, however, ambiguous, and they had not been used till now. For example, for some legal observers, it was unclear whether the central parliament may amend the proposal or had to accept it or

reject it globally and in that case refer it back to the regional parliament. It seemed clear, in any case, that the proposing parliament had the prerogative to withdraw the proposal at any time if it disagreed with the amendments introduced in the central parliament.

All these peculiar rules for reforming the system, at least for several ACs, do indeed produce a vital necessity for deliberation and negotiation and require agreements between parties at both levels and between central and regional actors. They follow the logic of federal pacts between territories whose autonomy is constitutionally protected. It is true, however, that the possibility of a unilateral regional reform initiative affecting the other ACs, the absence in the reform procedure of the rest of them, and the broad, if interpretable, discretion given to the regional parliaments under the Constitution to take on the powers they desire, is very likely to generate conflict with the central government and other ACs over the constitutional compatibility of the proposal. Usually, these rules will produce decentralizing and asymmetrical proposals in regional parliaments and bring about a restrictive or compensating reaction on the part of the central parliament, especially whenever the reforms have not been previously agreed upon with or among state-wide parties. On the other hand, the majority in central parliament may also find it difficult to oppose regional demands for more resources and powers due to political reasons, such as the central ruling party coalition with regional parties or to other electoral determinants, especially when this demand is backed by all or most regional parties, as was the case in Catalonia in 2005. That means that, in the long run, the central level powers and resources may be doomed to be the result of an evolution imposed by the uncoordinated particular unilateral demands of various ACs struggling for not being left behind in terms of powers and resources.

Reform rules also help to account for the content and scope of demands and the type of secret negotiation and bargaining between the representatives of the two levels of government that took place in the Catalan reform, explaining the lack of true deliberation and public participation. Under this multistage procedure, some regional politicians in their regional parliaments followed strategies of over-demand, over-promise, and outbid the other regional parties, thereby straining the Constitution without much cost for them. This led to the exaggeration of regional demands and made the trimming down of proposals at the central level all the more necessary, with the ensuing political tension, frustration of citizens' expectations, and sense of relative deprivation (Blanco 2006). This action also encouraged in turn some regional politicians' victimism and grievance. The exaggeration of demands shifted the debate from a discussion in terms of opportunity or usefulness of the initiatives to a discussion in terms of its constitutionality, since maximalism had to be defended against the reproach of unconstitutionality (Tornos 2007). It also strained the established interpretations of

the Constitution and unavoidably resulted in the recourse to the Constitutional Court by the main opposition party and other ACs. The court is now compelled to issue a ruling that may possibly contradict the will of two parliaments and the electorate of Catalonia.

The Role of Parties, Leadership, and Negotiation Tactics

A third element that may account for the final outcome of the Catalan reforms is the party politicization of the reform process. As has been shown, party political bargaining has been the modus of decision making both at the regional and national arenas. Despite the frequent input of very prestigious constitutional lawyers and political scientists at the beginning of the process, reform efforts were dominated by intracoalition and interparty negotiations at the regional level and later by multilevel party bargaining at the national arena. Proposals of experts, formal deliberation, and public consultations seemed to be just a starting point for the upcoming political bargaining on the basis of sheer electoral concerns. This factor, alongside the alluded procedures, made the technical or legal soundness of proposals and their effectiveness for reaching the aims of reform disappear soon from the actions of politicians. Each party in the parliamentary committees would decide its position on all issues on a tactical basis. The party would look at the other parties' position and its perceived electoral interests rather than to its own traditional ideological positions, long-term interests or the imperatives of long-term stability in the system. Even the package deal among leaders Zapatero and Mas was arguably a compromise that was based on electoral considerations of both leaders. The Catalan nationalist party CiU accepted the proposal to be modified in exchange for Zapatero's allowing CiU to present the final agreement before Catalan and Spanish public opinion as an achievement of CiU. As a Spanish scholar has put it, "law was exchanged for politics" (Blanco 2006).

The entire process at the regional arena was defined first by the correlation of party forces in parliament. To reach the required two thirds, both PSC and CiU were necessary. That made CiU's forty six seats a blocking minority in Catalan parliament. Second, the process was characterized by a race by the Catalan parties to display regional assertiveness in search for most autonomist and nationalist voters. This race was shaped mainly by two factors: on one side, by the struggle for political hegemony in Catalan nationalism between a rising ERC and a declining CiU—thrown out of office after the retirement of Pujol, despite continuing to be the most-voted party—and, on the other hand, by the assimilation of the Catalan Socialist Party PSC—theoretically, a branch of the Spanish PSOE—to mainstream Catalan nationalism, carried out through the apparent conversion of its leader Maragall, his renovated strategy of competing for the nationalist voters of CiU and its necessary alliance with ERC as the only way to remain in office. CiU, from the

opposition, was afraid that the success of a reform would mean a success for Maragall and the tripartite coalition. Not having coalition compromises in Madrid, CiU could seek to break the tripartite coalition with maximalist proposals such as historic rights and funding arrangements based on the Basque model that outbid ERC's positions and forced it to react with posturing and more nationalist counterproposals before its electoral base.

Another important factor was the use that leaders made of different negotiation tactics. During the whole process, meetings behind closed-doors and secret negotiations among party representatives were the prevailing *modus operandi*. This allowed for the development of a certain amount of trust and empathy among negotiators through personal relationships during long negotiating meetings. This was so despite the conflict potential of the issues and the starting divergent positions. These closed-door negotiations helped to somehow recover the tradition of elite accommodation emblematic of the Spanish transition. Also the use of deadlines and ultimatums for the negotiation, the *divide et impera* strategy used by the Prime Minister by negotiating separately with each of the Catalan parties, and the separation of the financial issues from the others avoided deadlock in the negotiations in January. The global package deal presented publicly to the media by the end of January was also a pact that was difficult to abandon for the CiU opposition nationalists in the following stages of the negotiation. It was criticized by some left nationalists as a signed blank check for the central government, giving it leeway to trim down the proposal subsequently (Ridao 2006). As a matter of fact, the end result of these negotiation tactics can be said to constitute a set of ambiguous compromises on issues such as the definition as nation, language, competencies, bilateralism, and funding arrangements that may be acceptable for most of the actors and can be claimed by several parties to be the most advantageous for them under the circumstances.

The Role of Ideas and Use of Experts

Together with procedures and the action of party leaders, ideas and their transmission by experts have also played a prominent role in this reform process. Various old and new political and technical ideas, previously present in the academic discourse only, have entered the discussion and the texts of reform drafts through the activity of expert commissions, advisory councils, or legal academic centers advising parliamentary committees or regional executives. These ideas were already to be found in academic debate in the country or were imported from the reform discussion in Germany, Switzerland, or Canada. The main ideas or blueprints for reform in the Catalan reform process stemmed from the work of some very influential Catalan constitutional lawyers and political scientists, and many of them had already been around in nationalist academic discourse for some time.

Many of these ideas could be seen in the draft proposal adopted by the Catalan Parliament in September 2005. To give some examples, the concepts of asymmetric federalism, the notions of plurinationality of Spain, and the idea of mononationality of Catalonia, the notion of self-government as expression of historical rights and national identity and the idea of language as main national marker were crucial for the first draft. As far as more technical ideas are concerned, many notions that had been so far shared by only a minority of legal scholars in the country, and which amounted for some to a reinterpretation of the Constitution, made their way into the draft proposal. For instance, there was the notion of a constitutional function of the regional statutes of autonomy as supplementary constitutional instruments having preeminence in the legal system over all other state organic laws, for example, the Organic Law on Funding Arrangements; this meant that national organic laws could be changed through the regional statute. Also, the idea that the regional statutes may indirectly regulate the powers of the central government by specifying the mode and effects of application of its competencies, thereby implicitly interpreting the Constitution and enshrining in them a particular (autonomist) interpretation of the distribution of legislative powers. Also present was the idea of single administration, meaning that the regional government should be the only one implementing all legislation, both central and regional, in Catalonia.

Another notion that some parties successfully managed to bring into the draft proposal was the idea of historic rights of Catalonia, as a basis of legitimation for several of its special powers and resources. This idea that the Constitution contains in its first additional provision had been so far interpreted as applying only to the Basque Country and Navarre. Together with the national definition of Catalonia, the idea of historic rights would for some justify a special status and recourse to bilateral relations between the Catalan government and the central government. Finally, the idea of agreed or voluntary fiscal contribution by Catalonia, somewhat after the Basque model, was also put forward in the first draft proposal. Several other ideas were imported from the discussion in other federal countries such as Germany and Switzerland. For instance, the successful notion of disentanglement and “shielding” of regional competencies from central encroachment. This aim would imply that the new statute should detail and specify the content of responsibilities and competencies of the regional government at its maximum to avoid central encroachments (Viver 2005).

Many of these ideas were to represent the technical basis underlying the first discussion drafts of the proposal that President Maragall himself commissioned to the prestigious Catalan constitutional lawyer and former justice of the Constitutional Court Carles Viver. They were supposed to reflect academic or technical ideas exploring the possible limits of increasing regional powers within the constitutional framework. Some of these new ideas and interpretations of

the Constitution were disputed as unconstitutional by many constitutional lawyers in the rest of Spain, some of them even by the Advisory Council of the Catalan Government itself, and by the central government—whose negotiators, mostly constitutional lawyers by profession, contested and rejected many of them during the negotiations. However, it is true that they constituted a very sophisticated and coherent set of ideas with a convincing appeal for Catalan politicians and regional politicians in other regions such as Andalusia, who adopted many of them in their new statutes as well. The problem was that once these ideas were put in the hands of politicians, the political bargaining dynamics led the original proposals to be expanded and modified until they were changed out of recognition and clearly overstepped the limits of the Constitution. Experts, such as the Catalan Government's legal advisory council, were called again to retrospectively fix the damages and suggest ways to come back within the limits of the Constitution. At present, the Constitutional Court has the last word.

Conclusion

This article has presented a case study of a particular kind of constitutional change in federations, namely implicit change of the federal constitution through the exercise of subnational discretion for amending its own regional statutes. In the context of increasing debate both in Spain and other federations, it has sought to contribute to assessing the pessimistic and optimistic arguments on the consequences of subnational constitutional capacity for accommodation and sustainability of federal systems. To that end, it has examined the factors that explain the emergence, the different phases, and the final outcomes of the recent reform process of Catalonia's statute of Autonomy.

I have argued that the timing and the large scope of reform may be accounted for by the domestic political circumstances in Catalonia—pressures on elites, constellation of electoral interests, and new leadership—and the extension of certain ideas among Catalan elites through the influence of experts in the process. The final outcome of the long multilevel negotiation process can be explained by the Spanish open federal arrangements and the complex reform procedures—double will requirement, majorities, institutional interests, and negotiation at two levels—that have forced actors to use all their skills to reach agreements and package deals, ultimately avoiding deadlock. Due to the willingness of elites to compromise and the support of the population, more moderated in their preferences than politicians, its final outcome seems to have been a decentralizing adaptation of the system with relative accommodation of Catalan demands through bilateralism and asymmetry. This compromise has still unknown consequences in terms of integration, since concessions from the federal government were extended rapidly to other reformed regional statutes.

What this concrete process tells us about the actual exercise of subnational constitutional space and its consequences in the case of Spain is that, on one side, this mode of reform opens possibilities for adapting the system when constitutional reform is difficult. It may be able to achieve what was impossible in the federal constitution, such the explicit recognition of Catalonia as a nation, which might never find a majority of Spanish state-wide parties. In this sense, the Spanish model may be an example of how subnational constitutional space can be used to accommodate competing nation-building agendas within a single state, and for that reason may offer some lessons for Belgium, Canada, India, or others. The power to determine their own constitutional arrangements within the Spanish framework might provide a form of self-determination for subnational units that can serve as an alternative to movements for secession. What we have seen, however, is that despite the large scope of reform, starting the next day, nationalists in Catalonia declared that this was just a new step in the direction of sovereignty, some of them announcing a self-determination referendum along the way. Besides that, the revisions of the original statute proposal in the Spanish parliament after the negotiation have given many nationalists an alibi for permanent dissatisfaction and grievance, and a future agenda of demands for the years to come.

In that sense, the recent experience teaches us that, under specific circumstances, this mode of constitutional change may prove a risky business for the stability and the governance of the territorial model. The possibility of unilateral proposal, when combined with national recognition claims by component units, redistributive demands, and a political weakness of the ruling party at the central government will lead to different interpretations of the subconstitutional leeway for reform, with the final recourse to the Constitutional Court to solve conflicts of interpretation. It will also cause higher polarization and blockage risks due to the combination of reform issues and to the need of political grandstanding and posturing on identity or communitarian issues, and a bargaining modus of interaction among actors due to multilevel electoral competition. The subnational capacity to initiate reforms, although not frequently used, clearly produces incentives for regional elites to expand their power and demand continuous changes in the system. The redistributive issues implied by many of the decentralization measures lead other units to follow suit in adopting similar reforms. The central parliament's majority may see itself forced to tolerate unsustainable or dysfunctional asymmetric or bilateral arrangements, due to the imperatives of electoral competition.

For all those reasons, the beneficial aspects of this subnational reform space may only work when there is a great deal of trust and responsibility among the elites, who decide to renounce some of their power ambitions to favor a stable bargain within the federation. All of the above seems to lend some support to the

arguments favoring the conditioning of subnational constitutional space or a limitation of its use in Spain. It also supports those advocating a constitutional amendment that gives a role to all the ACs in reforming the federal constitution along the lines of other federations.

Notes

1. Although ACs are not given a direct role in constitutional reform, because they did not exist when the constitution was approved, constitutionally their power is not totally negligible. Regional parliaments have the right to propose a constitutional reform bill to the national parliament and will also participate through the Senate. A tenth of senators (which is half of the senators appointed by regional parliaments) may subject any constitutional reform that they deem against regional autonomy to a national referendum (Art. 167.3 Spanish Constitution).
2. Regional statutes of autonomy have been amended 31 times thus far (Albertí 2006).
3. Seven totally replaced or deeply amended statutes of autonomy have recently come into force—in the Valencian Community and Catalonia (in 2006), in the Balearic Islands, Andalusia, Aragon, and Castile and Leon (in 2007)—or are about to be passed by the Spanish Parliament—Castile-La Mancha. For the reform process, see the contributions in Ortega (2005) and Terol (2005), and see Solozábal (2006).
4. See, for example, Lazar and McLean (2000) for a fourfold typology of modes of constitutional change in federations based in the Canadian case. Despite its comprehensiveness, it is not able to grasp this peculiarly Spanish form of change.
5. Although none of the statute reforms approved subsequently responded in general to any global plan or clear blueprint concerning the Spanish territorial model to be achieved, most of the new statutes triggered by the Catalan initiative have been ultimately approved by consensus between the two main Spanish parties both in the regional and the national arenas.
6. See *Informe sobre la Reforma de l'Estatut de Catalunya del Institut d'Estudis Autònoms* (2004).
7. Approved by all the territorial leaders of the party and contemplating a “deepening” of the model that included reform of the regional statutes of autonomy.
8. Approved by the Basque parliament in December 2004 by only a short majority with the votes of the political branch of the terrorist organization ETA. This plan was rejected by the Spanish parliament in February 2005. It was formally presented as a regional statute reform proposal but was clearly outside the boundaries of the Spanish Constitution in its claim to an original Basque sovereignty and the notion of a pact between equals to form a state associated with Spain.
9. The Catalan government declares that more than 100,000 people have participated in the process in some form, around 10,000 written contributions from citizens and organizations were received through Internet and through a large publicity campaign

- organised by the Catalan government with the title “the Statute belongs to everybody” (L’Estatut és de tothom). See Saura (2005, 18).
10. I follow here accounts from the press in Madrid (El País) and Barcelona (La Vanguardia) and the accounts by Agudo et al. (2006), Gendrau (2007), and some personal accounts of the participants from different parties in the negotiation process (Sánchez Llibre 2006; Santos et al. 2006; Ridaó 2006).
 11. Its report considered several provisions unconstitutional such as those on the bilateral arrangements, competencies, and funding arrangements, which were in fact the main aims of the reform. These experts were not questioned about the use of the term nation in the draft statute, so that they did not present their opinion on this issue.
 12. We can also trace around fourteen multiparty informal meetings between February 9 and March 21 (Sánchez Llibre 2006).
 13. Also, in other new statutes, there is recourse to the use of expressions such as “historic nationality” or “national reality.”
 14. Different majorities are needed in different regional parliaments (e.g., a majority in the Basque Country, two-third in others). For the procedures, see Ripollés (2006) and Serra and Oñate (2007).

Acknowledgements

The author is most grateful to the editor and three anonymous reviewers for *Publius: The Journal of Federalism*. This article has greatly benefited from their comments and from close collaboration and discussions with Arthur Benz and Nathalie Behnke at the FernUniversität Hagen. It has also benefited from numerous discussions with Michael Burgess during the author’s stay at the Center for Federal Studies in the University of Kent.

References

- Agudo, Miguel J., Juan L. Lara, and Juan García. 2006. Las otras reformas estatutarias. In *La Reforma del Estatuto de Autonomía para Andalucía: La Proposición Parlamentaria*. Sevilla: Centro de Estudios Andaluces.
- Albertí, Enoch. 2005. El blindatge de les competències i la reforma estatutària. *Revista Catalana de Dret Públic* n° 31: 109–36.
- . 2006. Las reformas territoriales en alemania y en españa y la sostenibilidad del paradigma autonómico español. *Revista Española de Derecho Constitucional* 78: 9–42.
- Balaguer, Francisco. (2006). Las cuestiones competenciales en los actuales procesos de reforma. *RGDC, iustel.com*, n° 1.
- Bednar, Jenna. 2008. *The robust federation. Principles of design*. Cambridge: Cambridge University Press.

- Benz, Arthur. 2008. Stability and instability in Federal Systems—Canada and Germany Compared, Paper presented at the Annual Conference of the IPSA Research Committee 28, Balancing Federal Systems: Implications for Politics and Policy, October 3–4, 2008, Berlin.
- Blanco, Roberto. 2006. El estatuto catalán: Texto y pretextos. *Claves de la razón práctica* 62: 20–7.
- Carreras, Francesc de. 2005. Reflexiones sobre la propuesta de nuevo estatuto de cataluña. *Teoría y Realidad Constitucional* 16: 43–82.
- . 2007. La reforma territorial: Errores de planteamiento. In *El Futuro del Modelo de Estado*, ed. E. Á Conde, 199–214. Madrid: IMAP.
- Cruz, Pedro. 2006. La reforma del estado de las autonomías. *Revista d'Estudis Autònoms i Federals* 2.
- Fossas, Enric. 2007. *El principio dispositivo en el estado autonómico*. Madrid: Marcial Pons.
- Filippov, Michael, Peter C. Ordeshook, and Olga Shvetsova. 2004. *Designing federalism. A theory of self-sustainable federal institutions*. Cambridge: Cambridge University Press.
- Gendrau, Pere. 2007. *L'Estatut. Km 0. Off the record d'un periodista català a Madrid*. Barcelona: L'Albí.
- Laporta, Francisco J. and Alejandro Saiz. 2006. *Los derechos históricos en la Constitución*. Madrid: CEPC.
- Lazar, Harvey and John McLean. 2000. Non-constitutional reform and the Canadian Federation: The only game in town. In *The Politics of Constitutional Reform in North America. Coping with new challenges*, eds. R. Sturm and R.-O. Schultze, 149–175. Opladen: Leske & Budrich.
- Máiz, Ramón. 2005. Nación de naciones y federalismo. *Claves de Razón Práctica* 157: 18–23.
- Marshfield, Jonathan L. 2008. Authorizing subnational constitutions in transitional federal states: South Africa, democracy, and the KwaZulu-Natal constitution. *Vanderbilt Journal of Transnational Law* 41: 585–638.
- Ortega, Luís. 2005. *Reforma constitucional y reforma estatutaria*. Madrid: Tecnos.
- Pla, Anna M. 2006. La llengua al nou Estatut d'Autonomia de Catalunya. *Revista d'Estudis Autònoms i Federals* 3.
- Ridao, Joan. 2006. *Així es va fer l'estatut*. Barcelona: Editorial Mediterrània.
- Ripollés, María R. 2006. La reforma de los estatutos de autonomía. *RGDC, iustel.com*, 1.
- Roig, Eduard. 2006. La reforma del estado de las autonomías: Ruptura o consolidación del modelo constitucional de 1978? *Revista d'Estudis Autònoms i Federals* 3: 149–185.
- Sánchez Llibre, Josep. 2006. *Les veritats d l'estatut. Allò que no s'ha publicat al diari de sessions*. Barcelona: La esfera de los Libros.
- Santamaría, Antonio. 2006. Los acuerdos Zapatero-Mas. *El Viejo Topo* 218: 30–7.
- Santos, Lidia, Laia Bonet and David Fuentes. 2006. *El nou estatut. Comentaris a peu d'obra*. Barcelona: Fundació Rafael Campalans.

- Saura, Joan. 2005. *El nou estatut de catalunya per a una espanya federal*. Barcelona: Generalitat de Catalunya.
- Serra, Rosario and Pablo Oñate. 2007. The reform of the Spanish subnational constitutions: Rules and regulations and political contexts, Presented at the VII World Congress on Constitutional Law, June, 11–15, Athens.
- Solozábal, Juan J. 2006. *Tiempo de reformas. El estado autonómico en cuestión*. Madrid: Biblioteca Nueva.
- Sosa, Francisco, and I Sosa. 2006. *El estado fragmentado. Modelo austro-húngaro y brote de naciones en España*. Madrid: Trotta.
- Tajadura, Javier. 2007. Reformas territoriales y estado social. *Sistema* 196: 49–73.
- Tarr, G. Alan. 2007. Subnational constitutional space: An agenda for research, Prepared for delivery at the World Congress of the International Association of Constitutional Law, June 11–15, Athens, Greece.
- Terol, Manuel J., ed. 2005. *El estado autonómico in fieri: La reforma de los estatutos de autonomía*. Sevilla: IAAP.
- Tornos, Joaquín. 2007. Valoración general. In *Informe Comunidades Autónomas 2006*, ed. J. Tornos, 19–31. Barcelona: Instituto de Derecho Público.
- Viver, Carles. 2005. En defensa dels estatuts d'autonomia com a normes jurídiques delimitadores de competències. Contribució a una polèmica juridicoconstitucional. *Revista d'Estudis Autònoms i Federals* 1.
- Viver, Carles. 2008. Federal constitution and statutes of autonomy: Explaining change and development in the evolution of political decentralisation in Spain. Paper presented at the International Research Workshop, Canterbury, UK.
- Voigt, Stefan. 1999. *Explaining constitutional change: A positive economics approach*. Cheltenham: Edward Elgar.
- Williams, Robert. F, and G. Alan Tarr. 2004. Subnational constitutional space: A view from the states, provinces, regions, lander and cantons. In *Federalism, subnational constitutions and minority rights*, eds., G. Alan Tarr, Robert F. Williams, and Josef Marko, 3–24. Wesport: Praeger.