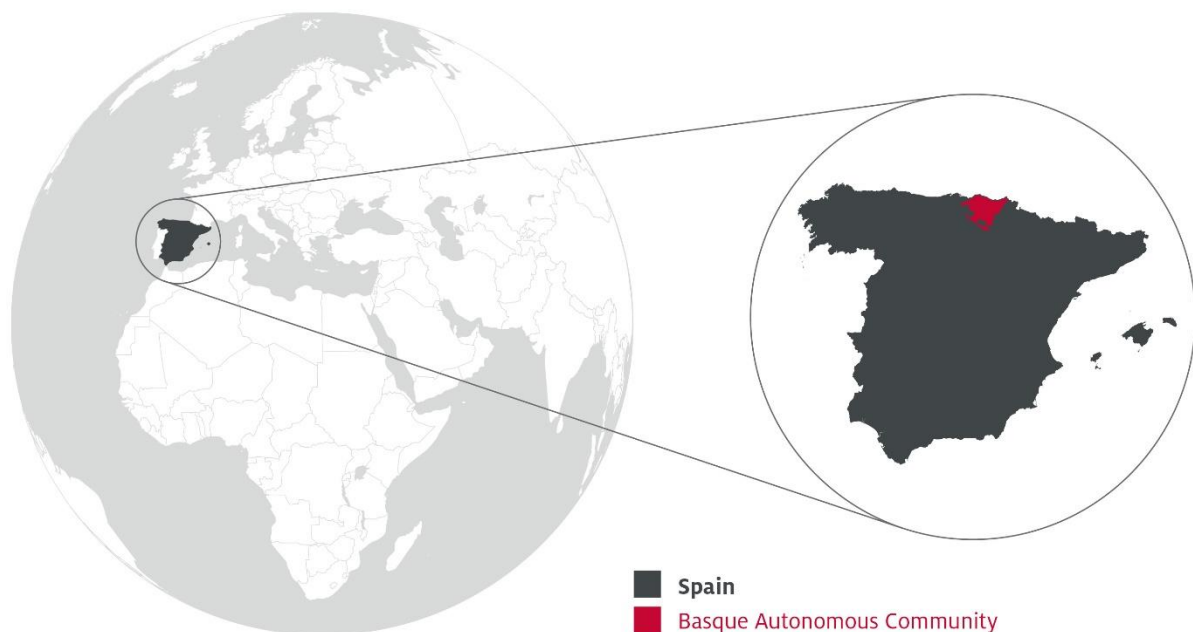




Basque Country

Francisco Javier Romero Caro and Leire Escajedo San-Epifanio

July 2020



Recommended citation:

Romero Caro, Francisco Javier, and Leire Escajedo San-Epifanio. 2020. "Basque Country". In *Autonomy Arrangements in the World*. www.world-autonomies.info.

Autonomy Arrangements in the World

www.world-autonomies.info

Scientific Board: Prof. Balveer Arora, Prof. Gabriel Bădescu, Prof. Yonatan T. Fessha, Prof. István Horváth, Prof. Tove H. Malloy, Prof. Joseph Marko, Prof. Francesco Palermo, Prof. Vello Pettai, Prof. Johanne Poirier, Prof. Cheryl Saunders, Prof. Markku Suksi

Project team: Sergiu Constantin, Ljubica Đorđević-Vidojković, Karl Kössler, Anna-Kira Pirhofer, Levente Salat, István G. Székely, Alexandra Tomaselli, Jakob Volgger

Project partners:

- EURAC Research, Institute for Minority Rights, Institute for Comparative Federalism and Center for Autonomy Experience (Bolzano/Bozen, Italy)
- European Centre for Minority Issues (Flensburg/Flensborg, Germany)
- Babeş-Bolyai University, Center for the Study of Democracy (Cluj-Napoca/Kolozsvár, Romania)
- Romanian Institute for Research on National Minorities (Cluj-Napoca/Kolozsvár, Romania)

© The authors, 2020



This publication is under the terms of the Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

<http://creativecommons.org/licenses/by/4.0/>

Contents

1. Essential Facts and Figures

2. Autonomy and State Structure

3. Establishment and Implementation of Autonomy

4. Legal Basis of Autonomy

4.1. The different procedures for achieving autonomy foreseen in the Spanish Constitution

4.2. The Statute of Autonomy of the Basque Country

5. Autonomous Institutions

5.1. *Common institutions* of the Autonomous Community of the Basque Country

5.2. Institutions of the Historical Territories

5.3. Municipalities of the Autonomous Community of the Basque Country

6. Autonomous Powers

6.1. Powers of the *common institutions* of the Autonomous Community of the Basque Country

6.2. Powers of the institutions of the Historical Territories

7. Financial Arrangements

7.1. The Basque Economic Agreement

7.2. The Basque quota (*cupo vasco*)

7.3. Tax administration of the Historical Territories

8. Intergovernmental Relations

8.1. Relations between the state and the Autonomous Community of the Basque Country

8.2. Relations between the Autonomous Community of the Basque Country and its Historical Territories

9. Intergroup Relations within the Autonomous Entity

10. Membership, “Quasi-citizenship” and Special Rights

11. General Assessment and Outlook

Bibliography

List of abbreviations

About the authors

1. Essential Facts and Figures

The Autonomous Community of the Basque Country (ACBC)¹ is situated at the east end of the Pyrenees, alongside the Spanish - French border. In terms of territorial size, it is the fourth smallest Autonomous Community (AC) of Spain. It covers an area of 7,233 km² (that is, 1.43% of the Spanish territory). As of 2019, the ACBC had 2.207.776 inhabitants, representing about 4.69% of Spain's total population (National Institute of Statistics 2019). Administratively and politically, the ACBC is composed of three provinces that, for the historical reasons explained below, enjoy a special status within the Spanish territory and are known as Historical Territories (HTs): Araba/Álava, Bizkaia and Gipuzkoa.² The legal texts upon which the legal reality of the ACBC is based leaves open the possibility that in the future other territories might be incorporated: thus, the 1978 Spanish Constitution (SC) provides for the possibility of incorporating into the ACBC the province of Navarra (currently a separate AC composed of a single province)³ and, in turn, the Statute of Autonomy of the Basque Country (SABC) refers to some small municipalities that physically are within the ACBC but administratively belong to the ACs of Cantabria (in the case of Villaverde de Trucíos) and Castilla y León (in the case of the village of Treviño).⁴

With a GDP of 72.1 billion Euros, which represents 6.1% of the national total (National Institute of Statistics 2018), the Basque economy is one of the most developed in Spain, with its GDP per capita 29% higher than the Spanish average and 21% higher than that of the EU in terms of purchasing power parity (Eustat – Basque Institute of Statistics 2018a). By sectors, activity is fundamentally tertiary given that services represent 69.1% of GDP, while industry (including construction) accounts for 30%, and the primary sector 0.9% (Eustat – Basque Institute of Statistics 2020a). The Basque economy continued its process of economic recovery, growing by 2.8% in 2018 and 2.2% in 2019 of 2.5% in line with Spain as a whole (2%). A slump of 3.6% is foreseen for 2020 because of Covid-19 with a recovery of 2.6% in 2021. (Basque Government 2020). At the end of 2019 unemployment stood at 9.3%, below the national average of 14.1% (Eustat – Basque Institute of Statistics 2020b). In order to properly understand the current institutional model of the ACBC, as well as some of the particularities of its socio-political diversity, it is important to take into account a series of landmarks in its historical evolution. From the Middle Ages onwards a series of local legal statutes known as

¹ The official name of the Autonomous Community of the Basque Country is *Euskal Herriko Autonomia Erkidegoa* in Basque and *Comunidad Autónoma del País Vasco* in Spanish.

² These are the official names of the HTs according to Law 19/2011 of 5 July, which renamed as "Araba/Álava", "Gipuzkoa" and "Bizkaia" the three provinces formerly called "Álava", "Guipúzcoa" and "Vizcaya". Araba, Gipuzkoa and Bizkaia are Basque names and Álava, Guipúzcoa and Vizcaya are their Spanish equivalents.

³ Fourth Transitional Provision of the SC and Article 2 SABC.

⁴ Article 8 SABC.

fueros spread across the Iberian Peninsula and some areas of France. Applicable to a specific region and granted – as appropriate – by the king, the local landowner or the council of the respective territory, the *fueros* regulated different aspects of local life with regard to both public and private law. The HTs of Araba/Álava, Gipuzkoa and Bizkaia also had, individually, their *fueros*. The independent institutional architecture of each HT was based, on the one hand, on a series of local councils (*Juntas Vecinales*) and, on the other, on an assembly for the whole territory known as the *Juntas Generales*. In the case of Bizkaia, the historical seat of the *Juntas Generales* was alongside the ancient tree of Gernika/Guernica. These institutions were maintained when the HTs joined the Crown of Castile from 1200 onwards. Henceforth the successive kings and queens of Castile came as holders of the lordship (*Señorío*) of the HT to swear loyalty to the *fueros*, acknowledge the rights of each HT as a free zone (exempted from paying taxes to the Crown of Castile) and pledge respect for their internal organization.

In the 19th century, hand in hand with the attempts to establish a liberal state, a process began in Spain to abolish the *fueros* in certain territories. This process, however, initially did not affect Navarra or the three Basque HTs. Moreover, towards the end of the First Carlist War (1833–1840), a Spanish law of 25 October 1839 confirmed the *fueros* of these territories. Nevertheless, on account of their support for *Carlismo*⁵ in the Third Carlist War (1872–1876), the Spanish parliament practically abolished the *fueros* through a law of 21 July 1876 (Castells 2003).

Another important fact to highlight, particularly given its present-day relevance, is the establishment of the so-called Basque Economic Agreement (BEA) after the abolition of the *fueros* in 1876. The administrative levelling of all the Spanish provinces, the Basque ones included, represented an increase in the political and administrative presence of the state in the HTs and established obligatory military service and the payment of taxes to the state treasury. The BEA was established in 1878 as a transitional measure in order to organise tax collection in the HTs (see section 7 below). However, this arrangement, created as part of a process of fiscal unification at state level, has been maintained and updated for over a century, paving the way for a singular tax system that today provides the ACBC – along with the AC of Navarra – with the highest degree of fiscal autonomy in the whole of Spain.

The First Additional Provision of the SC acknowledges the respect for and protection of the historical rights (*fueros*) of the so-called *foral*⁶ provinces. Therefore, the Basque model of self-government has significant particularities in terms of institutional structure (in which competences are

⁵ *Carlismo* refers to a traditionalist and legitimist political movement in Spain aimed at imposing an absolute monarchy in opposition to liberalism.

⁶ *Foral* is the adjective of the noun *fuero*.

distributed amongst the ACBC and the HTs), the tax system and some aspects of civil legislation, especially with regard to the law of matrimonial property and inheritance.

The end of the 19th century marks the starting point of the workers' movement in the Basque Country and the emergence of the Basque nationalism, an ideology which argues that the Basque community is a nation and advocates its right to self-determination. This ideology linked the anger caused by the abolition of the *fueros* with a romantic vision of the Basque society based upon the myth of the isolation of *Vasconia* and racial purity of ancient Basques (Corcuera Atienza 2001).⁷ The Basque nationalism (as well as the workers' movement) soon split into different political currents, some of which evolved into political parties that still exist today. Various strains of Basque nationalism share the idea of *Euskal Herria* (Basque Homeland) as an expression of cultural and linguistic bonds between the three HTs that form the ACBC, the AC of Navarra and the three historical provinces of French Basque Country (see Map 1).

Map 1. *Euskal Herria* (Basque Homeland)



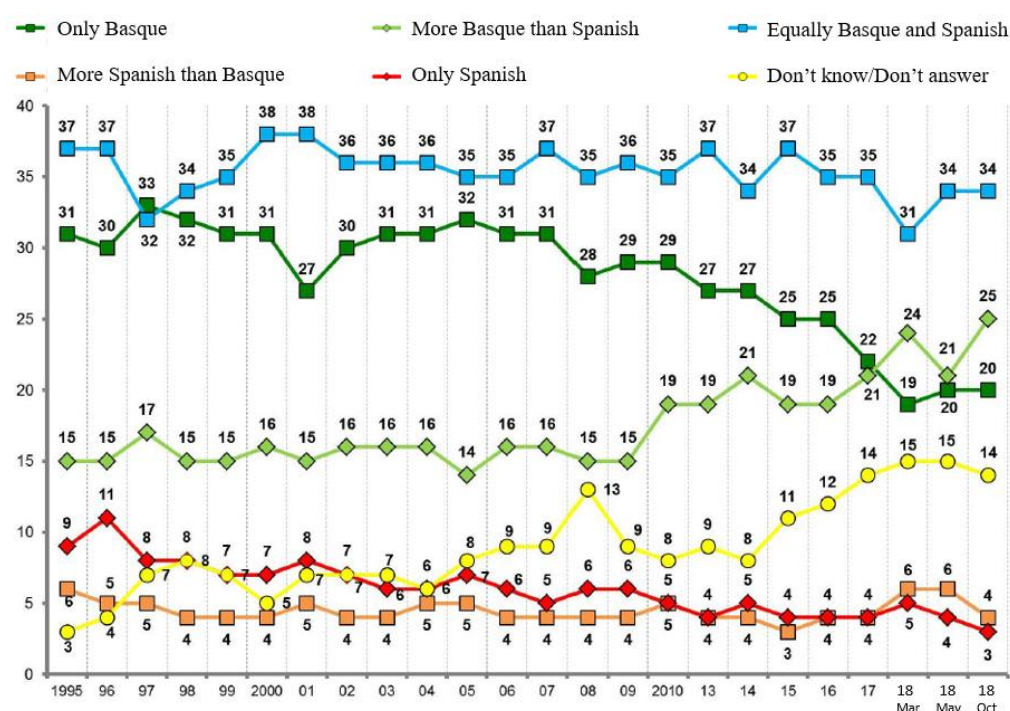
Nowadays, the ACBC has a diverse political landscape that includes nationalist and autonomist parties and the Basque parliament reflects this political diversity. Basque and Spanish national

⁷ Although each HT had its own *fuero*, the three territories shared a common identity and language, fostering a sense of belonging to a common political community.

identities coexist in the ACBC, and most people describe themselves as equally Basque and Spanish. In 2018, only 20% of the population declared an exclusive Basque identity and 3% felt only Spanish (see Figure 1)

In the last half century two kinds of migratory flows have occurred in the ACBC and influenced its demographics. The internal one began in the 1950s when Basque industry attracted significant migratory flows from the rest of Spain. This resulted in a notable increase in population during the following two decades (Alcaide Inchausti 2007, 171–72).

Figure 1. Identity self-identification in the Basque Country (1995–2018)



Source: Basque government (2018)

Foreign immigration has traditionally been low, though it has gradually increased over the last 30 years, with the population of foreign origin rising from 1.3% in 1998 to 10.1% in 2019 (Basque Immigration Observatory 2019). Between the 1980s and 2000 there was a situation of 7.2% net migration to the rest of Spain, owing, among other things, to the violence of the terrorist group *Euskadi Ta Askatasuna* (ETA), which caused over 800 fatalities in four decades (Alcaide Inchausti 2007, 173).

The SABC recognizes two languages as co-official: Spanish (*Castellano*) and Basque (*Euskera*).⁸ Spanish is the mother tongue of more than 70% of the ACBC's population. Around 18% declare Basque as their mother tongue and one tenth of the population speak both languages at home.

⁸ Article 6 SABC.

While Araba/Álava and Bizkaia are largely Spanish-speaking, Gipuzkoa has a significant Basque-speaking population (see Table 1).

Table 1. Mother tongue and language spoken at home in the ACBC and its HTs (2016)

	Total population	Mother tongue (%)				Language spoken at home (%)			
		Basque	Spanish	Both	Other	Basque	Spanish	Both	Other
ACBC	2,176,577	18.40	70.91	6.31	4.39	14.13	72.75	10.22	2.89
Araba/Álava	323,889	4.24	85.42	4.60	5.74	2.83	86.16	6.63	4.38
Bizkaia	1,140,569	12.42	77.96	5.63	4.00	9.01	79.80	8.80	2.39
Gipuzkoa	712,119	34.42	53.02	8.17	4.39	27.48	55.37	14.13	3.02

Source: Eustat – Basque Institute of Statistics (2018b)

This linguistic diversity is reflected in the prevailing educational models in the Basque Country, where three different systems coexist: model A, in which teaching is carried out in Spanish and Basque is taught as a subject; model B, in which students study in both Spanish and Basque; and model D (because there is no letter “C” in Basque), in which Basque is the language of instruction and Spanish is taught as a subject. Although the mother tongue of most of the population is Spanish, model D is dominant at all levels of education except vocational training (see Table 2), a factor which has contributed to increasing the knowledge of Basque amongst the population.⁹

Table 2. Student enrolment in the ACBC per level of education and model (2019/2020)

ACBC	Total no.	% of students per education model*		
		Model A	Model B	Model D
Students enrolled	386,583**	15.19 %	17.76 %	66.45 %
Nursery	84,327	2.65 %	15.92 %	80.92 %
Primary school	129,920	3.46 %	19.94 %	75.76 %
Compulsory high school	86,447	6.63 %	22.78 %	69.92 %
Post-compulsory high school	31,180	28.83 %	5.38 %	65.03 %
Vocational training – basic level	4,735	92.46 %	6.39 %	1.1 %
Vocational training – middle level	15,309	54.54 %	23.37 %	22.07 %
Vocational training – high level	22,438	57.99 %	17.41 %	24.59 %

* The table does not include model X because only 0.5% of students are enrolled in this type of education.

** The total no. includes also 12,227 students attending special education and adult education, categories which are not listed in the table.

Source: adapted from Eustat – Basque Institute of Statistics (2019)

Incidentally, we should also mention the existence of fourth model of education known as “model X” in which all teaching is in Spanish (so Basque is not taught at all). Model X plays a marginal role

⁹ It is worth noting that the institutionalization of Basque language education followed the adoption of the SABC in 1979. There was no education in Basque during Franco’s dictatorship. The use of Basque was restricted to the private sphere.

in the school system of the ACBC. In 2019, less than 1% of the total number of students are attending model X education.

With regard to religion, it is worth noting that the ACBC has one of the lowest shares of Catholics among the Spain's ACs. As of March 2020, 15.5% of the population of the ACBC define themselves as "practicing Catholic" and 39.9% as "non-practicing Catholic". One-third of people self-identify as either "atheist" (16.2%) or "non-believer" (16.9%). The share of believers of other religions is rather small (1.4%) but it increased over time due to immigration (Centre for Sociological Research 2020, 120).

2. Autonomy and State Structure

The Autonomous Community of the Basque Country (ACBC) is organized *de facto* as a sort of federation of its Historical Territories (HTs) of Araba/Álava, Gipuzkoa and Bizkaia. Its institutional structure consists of a combination of autonomous institutions of the HTs and *common institutions* of the ACBC (see section 5).

Although Spain is not strictly speaking a federal state, the process of decentralization that started after the adoption of the 1978 Spanish Constitution (SC) has resulted in a territorial model in which, on the one hand, numerous federal elements and, on the other, a series of unitary traits coexist. This led Watts (2007, 55) to describe the Spanish model as "a federation in disguise". However, there is no consensus among scholars with regard to the federal nature of the Spanish system.¹⁰ In constitutional terms, Spain is a nation-state, which declares itself to be indivisible while guaranteeing the right to the autonomy of nationalities and regions.¹¹ Managing that relationship between autonomy and unity has been one of the challenges facing the Spanish system of autonomies, particularly regarding the so-called *historical nationalities*, as is the case with the Basque Country. Some Autonomous Communities (ACs) have attempted to define themselves as "nation" in their Statutes of autonomy. However, the Spanish Constitutional Court has denied the right of ACs to include any "national definition" in their statutes that may have legal and political consequences.¹²

¹⁰ For various views regarding the federal nature of the Spanish constitutional system, see Burgess (2006), Elazar (1987), Hueglin and Fenna (2006) and Palermo and Kössler (2017).

¹¹ Article 2 SC. The constitutional text does not define the term "nationality". Traditionally, it was understood that nationalities were those communities that enjoyed autonomy during the Second Spanish Republic (1931–1939): Catalonia, the Basque Country, and Galicia. However, the statutes of the AC of Andalusia and the AC of Valencia declare them historical nationalities which exercise their right to self-government in the light of Article 2 SC.

¹² The Constitutional Court has declared unconstitutional the preambular provisions of the 2006 Catalan autonomy statute which declared Catalonia a "nation" and referred to its "national reality". For details, see Constitutional Court of Spain, judgment no. 31/2010 of 28 June 2010 (STC 31/2010). This interpretation is applicable to a similar provision of the Statute of autonomy of Andalusia which acknowledges its "national reality" from a historical perspective.

According to Article 137 SC, Spain is divided into municipalities, provinces and ACs. Currently there are 17 ACs (including the ACBC) and two autonomous cities (Ceuta and Melilla which are situated on the African continent). The SC assigns no specific name to this model of territorial organization but in academic circles the term “State of Autonomies” has gained widespread use.¹³ The establishment and functioning of ACs are regulated by the SC (especially Title VIII) and their respective Statute of autonomy. The latter has a dual nature because it must be approved, on the one hand, by the parliament of the AC, and, on the other hand, by the Spanish parliament (*Cortes Generales*), through the procedure required for the adoption of organic laws.¹⁴ This dual process, which is also applied to statutory reforms, explains why, in some cases, a reform that was initially approved at autonomous level was subsequently renegotiated in the *Cortes Generales*, in a mixed commission composed of representatives of the state and of the AC in question (Aja 2014, 80). Moreover, some Statutes of autonomy (including the ASBC) provide for an additional procedural step for approval of statutory reforms: a favorable vote of the electorate in a referendum organized by the ACs concerned.

Although the Spanish territorial model was conceived as homogenous, it acknowledges the existence of specific circumstances – or *differential facts* – that justify differential treatment. Among the particular traits of the ACBC are the historical rights of its three territories with *fueros* and the co-official status of the Basque and Spanish languages.

3. Establishment and Implementation of Autonomy

Spain’s first democratic elections after Franco’s dictatorship were held in 1977. Adolfo Suárez became prime minister and political forces advocating the re-establishment of republican autonomy triumphed in both Catalonia and the Basque Country. An initial plan of Suárez government to temporarily re-establish the autonomy did not materialize (Aja 2014, 37). Finally, the central government created an assembly of parliamentarians – composed of deputies and senators elected by the three Basque provinces¹⁵ – which elected the socialist Ramón Rubial as president of the Basque General Council. This provisional Basque autonomous government was established by the Royal Decree-law 1/1978 of 4 January 1978 which approved the pre-autonomous regime for the Basque Country. The provincial (*foral*) institutions of Gipuzkoa and Bizkaia were restored through the Royal Decree-law 18/1977 of 4 March 1977. Royal Decree 1611/1977 of 2 June 1977 and the

¹³ See, for instance, Aragón Reyes (1995), Aja (2014) or Tudela Aranda (2016).

¹⁴ According to article 81 (2) SC, the adoption of organic laws requires the absolute majority in the lower house (*Congreso de los Diputados*) of the Spanish parliament in a final vote on the draft law as a whole.

¹⁵ The province of Navarra could also have been incorporated into the Basque General Council, if it had decided to do so. However, Navarra opted for pre-autonomy in a separate manner through the Royal Decree 121/1979 of 26 January 1979 on local elections and organization of the provincial institutions of Navarra.

Royal Decree 122/1979 of 26 January 1979 regulated the organization and functioning of the *Juntas Generales* of Araba/Álava.

After the adoption of the 1978 Spanish Constitution (SC), drafting began of the first Statutes of autonomy which would govern the new Autonomous Communities (ACs). In the case of the Basque Country, this process was fast and relatively smooth, with the draft Statute completed in less than a year. The Basque Country benefitted a constitutional provision allowing a fast and direct access to autonomy for those communities that had held a referendum to adopt their Statutes of autonomy during the Second Spanish Republic (1931–1939).¹⁶

The Statute of Autonomy of the Basque Country (SABC) – known as *Estatuto de Guernica* in Spanish and *Gernikako Estatutua* in Basque – was adopted by referendum on 25 October 1979 with 94.6% of votes in favor. The turnout was low (58.86%) because *Herri Batasuna*¹⁷ had called on the electorate to abstain from the vote (Castillo Vera 1979, 205–06). The SABC entered into force on 22 December 1979 after it was approved by the *Cortes Generales*.¹⁸ In 1980, regional elections were held and the Basque General Council and the Basque government in exile were dissolved.

Once the SABC had been passed, the ACBC faced the challenge of articulating the structure of two levels of government, as well as inter-governmental co-operation between them. Thus, in the structure of the ACBC two types of institutional organs coexist: on the one hand, the *common institutions* and, on the other, the institutions of each of the three Historical Territories (HTs) which, in turn, are interrelated with the local self-government (i.e., municipalities). While the SABC established only the basic elements of this institutional framework, the autonomy system was further developed by subsequent regulations of the Basque parliament.

4. Legal Basis of Autonomy

The autonomy of the Basque Country is fundamentally based upon three norms: the 1978 Spanish Constitution (SC), the 1979 Statute of Autonomy of the Basque Country (SABC) and the 1983 Law of the Basque parliament on the relations between the *common institutions* of the Autonomous

¹⁶ See the Second Transitional Provision of the SC. A referendum on the approval of the Statute of autonomy was held in the Basque Country in 1933 (Hernández Lafuente 1978, 109–13). However, this Statute of autonomy was approved by the parliament of the Second Spanish Republic only on 1 October 1936, by which time the Civil War, leading in 1939 to Franco's dictatorship, had already begun. The Basque autonomy system developed from October 1936 to June 1937 incorporated most competences of the state, provincial councils and municipalities (De la Granja 2002, 57–87). For several months, and before Franco's troops took the region, the Basque government minted coins and issued passports, reorganised the legal system and established a regular army. The Basque government in exile functioned until the establishment of the ACBC.

¹⁷ *Herri Batasuna* was a Basque nationalist political party that was dissolved by the Spanish Supreme Court in 2003 because of its links to the terrorist organization ETA. The European Court of Human Rights upheld the dissolution of the party in the case *Herri Batasuna and Batasuna v. Spain* (2009).

¹⁸ Organic Law 3/1979 of 18 December 1979 on the Statute of autonomy of the Basque Country.

Community of the Basque Country (ACBC) and the provincial bodies of its Historical Territories (HTs).¹⁹ Chapter III of the SC regulates the legal system of Autonomous Communities (ACs) in terms of, *inter alia*, access to autonomy, division of powers and statutory reforms.

4.1 The different procedures for achieving autonomy foreseen in the Spanish Constitution

The process of access to autonomy in Spain is guided by the *dispositive principle*, which means leaving in the hands of the nationalities and regions the possibility of acceding to autonomy and, when appropriate, the competences they wish to assume (Fossas Espadaler 2007). Chapter III of the SC details the different procedures for achieving autonomy (see also Rubio Llorente 2008). The ordinary procedure stipulated by Article 143 SC resulted in a lesser degree of autonomy and did not require approval by popular vote in referendum. The extraordinary procedure foreseen in Article 151 SC resulted in a greater level of self-government and required approval by referendum. It was designed for those territories that historically had benefitted from autonomy (Catalonia, the Basque Country, Galicia), or manifested a strong desire for self-government (Andalusia). Finally, it should be noted that Navarra is a special case as it acceded to autonomy by updating its historical rights (*fueros*), according to the First Additional Provision of the SC.

The process of access to autonomy was completed in 1983 with the creation of 17 ACs with two different systems of competences: the Basque Country, Catalonia, Galicia, Andalusia, Navarra, the Valencian Community and the Canary Islands enjoyed the highest level of competences while the other ten ACs had lesser powers. However, in 1992 started a process aiming to equalize the competences of ACs.²⁰

4.2. The Statute of Autonomy of the Basque Country

The Statutes of autonomy have a dual nature: on the one hand, they are the basic institutional law of ACs and, on the other, they are part of the legal system of the state given their status as organic laws (Aguado Renedo 1997, 171). This peculiarity is one of the hallmark features of the Spanish system, which distinguishes it from the traditional federal models. As their Statutes of autonomy are organic laws, the ACs do not have the exclusive competence to amend them. Article 147 SC provides for the basic content of the Statutes of autonomy: the name of the AC in question; the delimitation of its territory; the name, organization and seat of its autonomous bodies; and the powers it assumed. The legal framework dealing with the HTs of the ACBC consists of the First

¹⁹ Law of the ACBC 27/1983 of 25 November 1983 on relations between the common institutions of the Autonomous Community and the provincial bodies of its Historical Territories (hereinafter Law 27/1983 of HTs).

²⁰ The updated texts of the Statutes of autonomy are available online (in Spanish) at http://www.seat.mpr.gob.es/es/portal/politica-territorial/autonomica/Estatutos_Autonomia.html (accessed March 10, 2020).

Additional Provision of the SC, Article 37 of the SABC and the provincial (*foral*) laws regulating the institutional organization of each HT.

As the basic institutional law of the ACBC, the SABC regulates aspects such as the territorial composition, the official flag and symbols, and the official languages of the Basque Country. It also contains the basic structure of the autonomous institutions (see section 5 below) and lists the legislative and executive autonomous powers (see section 6 below).

The amendment of the SABC is regulated in its Articles 46 and 47. The former lays down the general procedure, while the latter is concerned with three special procedures peculiar to the Basque Country (Jiménez Asensio 1985, 513–23). According to Article 46 SABC, the Basque government, the Basque parliament or the Spanish parliament have the right to initiate amendments. The reform proposal must be first approved by the Basque parliament, with an absolute majority. Then, the Spanish parliament must approve it by means of an organic law. Finally, the amendments must be validated in a referendum called for this purpose.

Article 47 SABC lays down the special procedures applicable if the amendment would regard:

- a mere alteration in the organization of the authorities of the Basque Country, without affecting the relations of the AC with the state or the exclusive system based on the *fueros* of the HTs;
- the possible incorporation of Navarra into the Basque Country;
- the repeal of the second paragraph of letter (b) of Article 17 (6) SABC which allows state security forces to intervene directly in the ACBC on their own initiative (in cases of particular urgency) and without the approval of the Security Council (which has the role to ensure the cooperation between the police forces of the AC and the security forces of the state). In other words, this provision of Article 17 (6) provides for a temporary alteration of distribution of police powers, authorizing the Spanish government to give national police and Civil Guard competences that normally belong to the autonomous police (Jáuregui Bereciartu 1984, 24)

Finally, it is worth noting that Article 8 SABC provides for a special procedure for the incorporation into the Basque Country of three municipalities that are physically located within the territory of the ACBC but belong to other ACs.²¹

The SABC has not been amended so far. It is one of the two Statutes of autonomy, along with that of Galicia, that have not been reformed since their adoption.

²¹ Municipalities of Condado de Treviño and Puebla de Arganzón, are located in Araba/Álava, but are part of the AC of Castile and León. Municipality of Valle de Villaverde is located in Bizkaia but is part of the AC of Cantabria. A potential incorporation of these enclaves in the ACBC would require the amendment of the Statutes of autonomy of Castile and León, and Cantabria, respectively, since it would alter their territories.

5. Autonomous Institutions

The Basque provinces, known as Historical Territories (HTs), form the territorial basis of the Autonomous Community of the Basque Country (ACBC) and have an important place in its institutional organization. This importance is reflected in the assignment to each HT of an equal number of representatives in the Basque Parliament, despite the considerable demographic differences between the territories.²² The institutional structure of the ACBC consists of a combination of *common institutions* of the ACBC and autonomous institutions of the HTs.

5.1. Common institutions of the Autonomous Community of the Basque Country

The autonomous institutions of the ACBC, known as *common institutions*, are the Basque parliament (*Eusko Legebiltzarra/Parlamento Vasco*), the Basque government (*Eusko Jaurlaritza/Gobierno Vasco*) and the president of the government (*Lehendakari/Lendakari*).²³ In addition, the ACBC has institutions such as the Basque ombudsman (*Ararteko/Defensor del Pueblo*), the Basque Public Audit Office and the Basque Council of Public Finances.

The Basque parliament is composed of 75 members, elected by universal suffrage for four years. The three HTs of Araba/Álava, Bizkaia and Gipuzkoa are equally represented with 25 MPs each²⁴ despite their demographic differences. The population of Bizkaia is more than three times larger than that of Araba/Álava (see Table 1) so the number of inhabitants per parliamentarian is much higher in the former than in the latter. The fact that the parliamentary seats are not allocated proportionally to population size is a particular feature of the Basque autonomy system (García Herrera 2004, 321–22).

The parliament exercises legislative power, approves budgets and controls the activities of the Basque government.²⁵ In addition, the Basque parliament has the following functions:²⁶

- To appoint the senators who, along with Basque senators directly elected by universal suffrage, represent the ACBC in the Spanish parliament;²⁷
- To request the Spanish government to adopt a bill or to refer a draft law to the parliamentary committee of the lower house of the Spanish parliament (*Mesa del Congreso de los Diputados*);²⁸

²² Articles 2 and 26 (1) SABC.

²³ Article 24 SABC.

²⁴ Article 26 SABC and Articles 9 and 10 of Law 5/1990 of 15 June 1990 on elections to the Basque parliament.

²⁵ Article 25 SABC.

²⁶ Article 28 SABC.

²⁷ According to Article 69 (5) SC, each AC appoints one senator and a further senator for every million inhabitants in their respective territories.

²⁸ The Basque parliament has initiated this process on 15 occasions, leading to the adoption of only two proposals while one is currently being processed.

- To lodge appeals of unconstitutionality before the Constitutional Court.

The Basque government exercises executive and administrative functions²⁹ and is headed by the *Lehendakari*, the highest representative of the Basque Country and of the state in the ACBC. The *Lehendakari* is elected by the Basque parliament from among its members and is appointed by the King, as the supreme representative of the Basque people.³⁰ The *Lehendakari* represents the ACBC in its relations with the state, the other ACs, and with institutions of the HTs, directs and coordinates the government and the public administration, promulgates the laws of the Basque parliament and the legislative decrees of the government, and dissolves the parliament. Furthermore, he/she has political functions (e.g., defining the government's programme, appointing ministers, calling for a vote of confidence) and exercises any other competences, in accordance with the law.³¹

Spain has a single integrated judicial system and in each AC functions a High Court of Justice. The High Court of Justice of the Basque Country leads the judiciary within the territory of the ACBC, without prejudice to the jurisdiction exercised by the Spanish Supreme Court. The SABC lays down a special rule regarding the appointment of judges and magistrates, and the recruitment of court staff: preference is given to candidates with knowledge of the Basque *foral* law and the Basque language.³²

5.2. Institutions of the Historical Territories

Each HT has a parliament (*Batzar Nagusiak/Juntas Generales*) composed of 51 members and a government (*Foru Aldundia/Diputación Foral*) headed by a president (*Ahaldun Nagusia/Diputado General*) and composed of maximum 10 members (*Foru Diputatua/Diputados Forales*). Members of parliament (*junteros* in Araba/Álava and Gipuzkoa and *apoderados* in Bizkaia) are elected by direct universal suffrage for a period of four years based on a system of proportional representation that divides each HT into electoral constituencies.³³ The provincial parliaments exercise the legislative function, approve the budget, elect the presidents of the provincial governments and supervise the work of the executives. In addition, the three provincial parliaments exercise all other functions entrusted to them by the Statute of Autonomy of the Basque Country (SABC) or the provincial (*foral*) laws regulating the institutional organization of the HTs.

The provincial governments exercise the executive powers of the HTs and approve regulations within their sphere of competences. The presidents of the three provincial governments represent

²⁹ For a detailed list of functions of the Basque government, see Article 18 of Law of the ACBC 7/1981 of 30 June 1981 on the Basque government. The text is available online (in Spanish) at <https://www.boe.es/buscar/pdf/2012/BOE-A-2012-5927-consolidado.pdf> (accessed March 10, 2020).

³⁰ Article 1 and 4 of the Law of the ACBC 7/1981 of 30 June 1981 on the Basque government.

³¹ Articles 7 and 8 of Law of the ACBC 7/1981 of 30 June 1981 on the Basque government.

³² Article 152 SC and Articles 34 and 35 SABC.

³³ Araba/Álava is divided into three electoral constituencies, while Bizkaia and Gipuzkoa have four constituencies each.

them, direct and coordinate the activities of the members of the government, enact provincial decrees and order their publication and carry out other functions assigned to them by provincial laws and regulations.

5.3. Municipalities of the Autonomous Community of the Basque Country

Law 27/1983 of HTs guarantees the local autonomy of municipalities regarding, for example, water and waste management, traffic planning and road safety, promotion of local tourism, and any tasks delegated to them by the ACBC or the HTs.³⁴ Municipalities are subordinated to both the ACBC and the HTs. For instance, the ACBC decides the delimitation of municipal territory and has coordination and supervisory powers, while the HTs have powers over the internal organization or the electoral and fiscal regime of municipalities.

6. Autonomous Powers

Spain's Autonomous Communities (ACs) have their own legislative and executive powers in certain areas, but do not have their own judicial system. The legislative and executive powers of the Autonomous Community of the Basque Country (ACBC), which derive from the Statute of Autonomy of the Basque Country (SABC), are divided between two levels: the *common institutions* of the ACBC and the institutions of the Historical Territories (HTs). Any area of competence, which is listed in the SABC but is not specifically assigned to the HTs, belongs to the *common institutions* of the ACBC.³⁵

6.1. Powers of the *common institutions* of the Autonomous Community of the Basque Country

One of the deficiencies of the Spanish territorial model is the lack of detail concerning regional competences in the constitutional text. On the one hand, Article 148 of the 1978 Spanish Constitution (SC) simply lists those competences that the ACs “may assume”. According to the *dispositive principle* (see section 4.1 above), the ACs are responsible for deciding which competences listed in Article 148 SC they wish to assume. On the other hand, Article 149 (1) SC lists the state's competences³⁶ and, in accordance with the residual clause of Article 149 (3), the state is

³⁴ Article 3 of Law of the ACBC 27/1983 of 25 November 1983 on relations between the common institutions of the Autonomous Community and the provincial bodies of its Historical Territories. The competences of municipalities are listed in Articles 17 and 18 of Law of the ACBC 2/2016 of 7 April 2016 on local institutions in the Basque Country.

³⁵ Article 6 of the Law of the ACBC 27/1983 of 25 November 1983 on relations between the common institutions of the Autonomous Community and the provincial bodies of its Historical Territories.

³⁶ In this list we find both exclusive competences, such as defence, foreign relations, currency and debt, immigration, nationality etc., and competences that are shared or concurrent with the ACs, with the State's role limited to a legislative function or the regulation of the general principles of an area, for its later specification by the ACs.

responsible for all those matters that are not assigned to the ACs by their respective Statutes of autonomy.

The competences assigned to the ACBC by the SABC may be classified into three categories:

- Exclusive competences (Article 10 SABC): these legislative and executive powers regard matters such as the internal organization of the ACBC, agriculture, livestock farming, inland fishing, social welfare, culture, Basque Country's public sector, economic activity, internal trade, planning of inland territory and coastline, regional transport, tourism, autonomous police force etc;³⁷
- Competences of legislative development and execution (Article 11 SABC): they regard areas for which the state is responsible to enact basic laws and the ACBC is responsible to adopt secondary legislation and implement it (e.g., environment protection, compulsory expropriation, mining, education, health, media and any other areas expressly transferred by the state to the ACBC);³⁸
- Executive competences (Article 12 SABC): they regard areas for which the ACBC is responsible for direct implementation of the state legislation (e.g., prison legislation, labour legislation copyright and patent rights, weights and measures, airports and ports of general interest which are not directly managed by the state).

However, the division of competences outlined above needs to be further explained.³⁹ The functioning of the system is complicated by the fact that several powers described as exclusive are, in practice, shared competences. An illustrative example is the area of woodland, forestry resources and services, livestock tracks and pastures. Article 10 (8) SABC lists it among the exclusive competences of the ACBC but Article 149 (1) point 23 SC gives the state exclusive competence over basic legislation in this area. Therefore, the ACBC can only adopt legislative or executive rules in accordance with the state legislation. Taking another example, according to Article 149 (1) point 3 SC, the state has exclusive competence in the area of international relations but this does not prevent the ACBC from being active internationally and having a representation office in Brussels which coordinates the relations between the public institutions of the ACBC and the EU bodies.⁴⁰ Moreover, the state has the tendency to abuse its right to adopt basic legislation on certain matters. It eventually assumes the entire competence which means a *de facto* suppression of autonomous constitutional space (Montilla Martos 2006, 114).

³⁷ Articles 10 and 17 SABC.

³⁸ Articles 11, 16, 18, 19 and 20 SABC.

³⁹ On the constitutional interpretation of the system see Ortega Álvarez (2011).

⁴⁰ Spanish Constitutional Court, Judgment no. 165 of 26 May 1994 (STC 165/1994). The Court held that ACs may carry out certain activities outside Spanish borders subject to the limitation foreseen in Article 149 (1) point 3 SC, which confers the state exclusive jurisdiction on international relations.

Overall, after the processes of statutory reform undertaken by several ACs, the powers of Spanish ACs are practically the same. Yet, one may notice slight differences due to the transfer of competences foreseen by Article 150 (2) SC.⁴¹ For instance, the Basque Country is the only AC that administers the incentives paid to companies to encourage employment of particularly vulnerable segments of society.

Since the establishment of autonomy there has been a dispute between the state and the ACBC regarding the desire of the latter to acquire more powers. In 1993, the Basque parliament passed a resolution specifying those competences which could still be transferred to the ACBC. The list included 53 areas and was passed with the votes of the Basque Nationalist Party (EAJ–PNV), Popular Party (PP), Socialist Party of the Basque Country (PSE–EE) and Unidad Alavesa (UA). In 2018, according to the Basque government, there were still 37 areas of competence to be transferred (Mateos 2018).

Except for the tensions generated by the so-called *Plan Ibarretxe* (see section 9 below), the implementation of autonomy in the Basque Country has not led to a multitude of conflicts over competences. For years, the Basque government did not appeal to the Constitutional Court on issues regarding competences because it had reservations as to the impartiality of the Court. This approach started to change in 2009. Since then, the Basque government appealed to the Constitutional Court on several occasions but, in general, the resolution of conflicts between the state and the ACBC through political negotiations has prevailed over judicial conflict.

6.2. Powers of the institutions of the Historical Territories

The system and organization of competences between the ACBC and the HTs replicates the relationship between the state and the ACs. The HTs have these categories of powers:⁴²

- Exclusive competences listed in the SABC (or transferred to them) and in the Law 27/1983 of HTs: they regard matters such as internal organization, internal electoral system, financial and tax administration, local infrastructure, libraries and museums;⁴³
- Competences of legislative development and execution of the regulations issued by the *common institutions* of the ACBC in matters such as plant and animal health, water management and conservation of historical heritage; moreover, the HTs are responsible for

⁴¹ For comparative tables regarding the assumed competences, see http://www.seat.mpr.gob.es/portal/politica-territorial/autonomica/Estatutos_Autonomia/estatutos_materias.html (accessed March 10, 2020)

⁴² Article 7(a), (b), (c) and (d) of Law of the ACBC 27/1983 of 25 November 1983 on relations between the common institutions of the Autonomous Community and the provincial bodies of its Historical Territories.

⁴³ All these competences should be exercised in accordance with the framework of competences established by the SC and the SABC, so the HTs are only responsible for those areas which, assumed by the ACBC, are not exercised by the *common institutions* of the Basque Country.

the legislative development and implementation of the basic state legislation in those matters attributed to their exclusive competence;

- Executive competences to implement the legislation of the *common institutions* in matters such as social welfare, fire prevention and management of protected natural areas.

7. Financial Arrangements

7.1. The Basque Economic Agreement

In comparison with the other Autonomous Communities (ACs) of Spain, the Autonomous Community of the Basque Country (ACBC), its Historical Territories (HTs) and the AC of Navarra enjoy considerable legislative and administrative autonomy regarding revenues and public spending. While Article 138 (2) of the 1978 Spanish Constitution (SC) stipulates that differences between the Statutes of autonomy of ACs may not imply economic or social privileges, the heterogeneity of the Spanish territorial system is acknowledged by the constitutional recognition of territories with historical rights (*fueros*): Navarra, Araba/Álava, Bizkaia and Gipuzkoa. The so-called Economic Agreements (*Concierto Económico* of the ACBC and *Convenio Económico* of the AC of Navarra) made it possible for these *foral* territories to have their own tax system. Although the mere existence of these arrangements is not, in itself, a privilege, various circumstances have meant that, in practice, these territories have obtained a higher level of financing than the rest of Spain.

Created over a century ago, the Basque Economic Agreement (BEA) has been the object of various and sometimes contradictory interpretations, especially with regard to its meaning and purpose (López Basaguren 2005). Following the abolition of the *foral* systems in 1876, the BEA was established in 1878 as a transitional instrument for tax collection in the HTs which until then had been excluded from the Spanish tax system because of their *fueros*. The aim was to integrate the HTs in terms of taxation within the constitutional unity of the state in the space of ten years (López Basaguren 2005). But after this initial period, the BEA underwent important transformations. What was originally conceived as a provisional measure has evolved into a consolidated system. The provincial representatives paved the way towards a new interpretation of the agreement. The BEA is no longer regarded as a mechanism of fiscal unification, but as a *negotiated system* which regulates the financial relationship between the state and these territories. This juridical instrument is unique and different from the rules regarding the other ACs.

The BEA survived the Second Spanish Republic and Francoism, although during the dictatorship it was suspended in the HTs of Bizkaia and Gipuzkoa. Upon the restoration of democracy, it was incorporated into the new constitutional framework via the Statute of Autonomy of the Basque

Country (SABC). Law 12/1981 approved the BEA for a period of 20 years⁴⁴ but it has been amended several times to adapt it to new circumstances (e.g., introduction of new taxes such as VAT). After the 1981 law expired, the BEA was approved by the Law 12/2002 (hereinafter “2012 Law of the BEA”) which proclaims the “indefinite character [of the BEA], with the aim of placing it within a stable framework that guarantees its continuity.”⁴⁵

7.2. The Basque quota (*cupo vasco*)

According to the SABC, the HTs levy and collect most of the taxes payable to the state tax system (except for some direct taxes). Broadly speaking, the HTs collect practically all their taxes and the ACBC pays an annual quota (*cupo*) to the Spanish government as a contribution towards competences for which the state remains responsible (e.g., foreign affairs, defence and armed forces).⁴⁶ The Basque *cupo* is made up of the individual quotas of each of its HTs.

The SABC provides for the establishment of a Joint Commission tasked with determining the *cupo* to be paid by the ACBC to the state. This body consists, on the one hand, of one representative of each provincial government and a similar number of representatives of the Basque government, and on the other, of an equal number of representatives of the state administration.⁴⁷ Therefore, the procedure involves both parties, the central government and the ACBC, negotiating the specific details of the *cupo*.

The 2012 Law of the BEA specifies that decisions of the Joint Commission of the Economic Agreement must be adopted unanimously by all its members and that the *cupo* is negotiated every five years.⁴⁸ Since 1981 the *cupo* has remained virtually stable at 6.24% which represented the GDP of the ACBC with respect to the state that year.

7.3. Tax administration of the Historical Territories

According to Law 27/1983 of HTs, the administration of taxes is a task of the HTs, which receive the financial yield of the “negotiated” tax system in its entirety, an amount from which the *cupo* is deducted when the state is paid for the competences not assumed by the ACBC, the remainder being distributed among the *common institutions* of the ACBC and each of the HTs.

Each HT must contribute to the General Treasury of the ACBC to finance the competences of the *common institutions*. The contribution of each HT is established by the Basque Council of Public

⁴⁴ Article 1 of the BEA as laid down in the annex of Law 12/1981 of 13 May 1981 approving the Economic Agreement with the Autonomous Community of the Basque Country.

⁴⁵ Explanatory Note to the Law 12/2002 of 23 May 2002 approving the Economic Agreement with the Autonomous Community of the Basque Country.

⁴⁶ Article 41 (2) (a) (b) (d) SABC.

⁴⁷ Article 41 (2) (e) SABC.

⁴⁸ Articles 50 (1) and 61 of the 2012 Law of the BEA.

Finances, an intergovernmental body made up of six members, three appointed by the Basque government and three by the HTs.⁴⁹

Law 27/1983 of HTs establishes a series of criteria that should guide the distribution of financial resources between the HTs and the *common institutions* of the ACBC. The basic criterion is that each institution should receive a share of resources proportional to the costs of its respective competences. In addition, the Basque government must receive the necessary resources for the planning, promotion and economic development policies, for the redistribution of income and wealth, and for the adoption of measures designed to ensure political and economic stability. Finally, the contribution of each provincial government shall be determined in direct proportion to the income of each HT, which shall be weighted in a manner inversely proportional to the relationship between the fiscal effort of each HT and the average fiscal effort in the ACBC as a whole.⁵⁰

8. Intergovernmental Relations

8.1. Relations between the state and the Autonomous Community of the Basque Country

The 1978 Spanish Constitution (SC) does not expressly contemplate any instrument of cooperation, be it vertical or horizontal (Fernández Alles 2004, 51–55). The practical needs of the system have led, however, to the gradual development of a system of clearly vertical intergovernmental relations, both multilateral and bilateral.

At multilateral level, after several failed attempts, the institutionalization of collaboration began in 1992 with the adoption of a basic legal framework which promotes multilateral cooperation by means of sectorial conferences (*conferencias sectoriales*). The sectorial conferences are designed as the central element of the system of cooperation with meetings between experts and civil servants from the central government and the Autonomous Communities (ACs) (Duque Villanueva 2007, 117). Each sectorial conference deals with a certain subject matter (e.g., agriculture, tourism). As of April 2019, there are 45 sectorial conferences,⁵¹ the most important one being the Council of Fiscal and Financial Policy which is the body responsible for negotiating the financing of ACs.

One of the most significant developments to date is the creation of the Conference of presidents in 2004. For years it worked as an informal forum but Law 409/2015 on the legal system of the public

⁴⁹ Articles 18, 20 and 28 of Law of the ACBC 27/1983 of 25 November 1983 on relations between the common institutions of the Autonomous Community and the provincial bodies of its Historical Territories.

⁵⁰ Article 22 (2) (3) and (6) of Law of the ACBC 27/1983 of 25 November 1983 on relations between the common institutions of the Autonomous Community and the provincial bodies of its Historical Territories.

⁵¹ For detailed information, see the website of Spanish Ministry of Territorial Policy and Civil Service at https://www.mptfp.gob.es/portal/politica-territorial/autonomica/coop_autonomica/Conf_Sectoriales.html (accessed March 10, 2020).

sector formally established it as a multilateral body that brings together the president of the Spanish government with the presidents of the 17 ACs and of the two autonomous cities Ceuta and Melilla. The aim of the Conference of presidents is to strengthen relations of cooperation between the state and the ACs, debate matters of interest to the ACs, as well as to promote and direct the work of the sectorial conferences.⁵² To date, six conferences have been held, addressing themes of particular interest to the ACs such as financial situation, health, employment, relations with the EU. While according to its 2009 Rules of procedures, the Conference of presidents shall meet annually, the president of the Spanish government convened it only in 2012 and 2017. Owing to their differences with the central government, the presidents of ACBC and Catalonia declined to attend the meeting in 2017. Even though this action did not violate the law (since participation is not compulsory), it could be interpreted as a violation of the principle of constitutional loyalty (Tajadura Tejada 2018, 560–65).

At bilateral level, various mechanisms of cooperation have emerged over the years. The Joint Commission tasked with overseeing the transfer to the ACBC of the powers vested in it by the Statute of Autonomy of the Basque Country (SABC) was the first to be established. This body is responsible for coordinating any future transfers of competences that may occur. Other special bilateral commissions focus on various competences of the ACBC. For example, the Joint Commission of the Economic Agreement (see section 7.2. above) deals with financial matters and the Security Council (consisting of an equal number of representatives of the state and of the ACBC) is responsible for coordinating policing.⁵³

The so-called “Autonomous Pacts of 1992”⁵⁴ led to the establishment of bilateral commissions for cooperation between the state administration and the ACs. This is the most important bilateral mechanism of cooperation to date. The Bilateral Commission for cooperation between the administration of the state and the administration of the ACBC is a mechanism of inter-territorial dialogue the main purpose of which is to avoid as much as possible that conflicts of competences are brought before the Constitutional Court.⁵⁵ If the bilateral commission is not able to solve the conflict, the state or the ACBC may lodge a complaint before the Court. The work of this body has been particularly important especially owing to the fact that, traditionally, Basque governments led by the Basque Nationalist Party (EAJ–PNV) have been reluctant to appeal to the Constitutional Court

⁵² Article 146 of Law 40/2015 of 1 October 2015 on the legal system of the public sector and Article 2 of the Rules of procedures of the Conference of presidents as laid down in Order TER/3409/2009 of 18 December 2009.

⁵³ Second Transitional Provision, Article 41 (2) (e) and Article 17 (4) SABC.

⁵⁴ The Autonomous Pacts of 1992 signed by the González government and the two main political parties (i.e., PSOE and PP) aimed to increase the competences of the ACs that were established in accordance with the ordinary procedure stipulated by Article 143 SC (see section 4.1 above). According to Article 148 (2) SC, after five years since their establishment, these ACs may progressively enlarge their powers through amendments of their Statutes of autonomy. The outcome of this process would be a quasi-equal level of competences among all ACs.

⁵⁵ See Article 33 (2) of the Organic Law 2/1979 of 3 October 1979 on the Constitutional Court.

because of their lack of confidence in its impartiality. The bilateral commission was instrumental in reaching agreement on several laws of the ACBC (e.g., Law 5/2015 on Basque civil law and Law 2/2016 on local institutions of the Basque Country). Negotiations are currently taking place with regard to several Basque laws challenged by the state before the Constitutional Court (e.g., Law 7/2019 on Basque Police and Law 10/2019 on planning of large commercial establishments) and one decree challenged by the Basque government (i.e., Royal Decree-law 14/2019 adopting urgent measures for reasons of public security in the field of digital administration, public sector procurement and telecommunications).

As has been noted, there has been no reform of the SABC since its adoption, whereas in other ACs processes of statutory reform have introduced new vertical and horizontal mechanisms of collaboration (García Morales 2009).

Finally, there are some mechanisms of cooperation in the Senate, the upper house of the Spanish parliament. The most significant is the General Commission of the Autonomous Communities, a forum for debate and communication between the state and the ACs established in 1994 with the aim to underline the territorial function of the Senate. It is composed of senators and representatives of the central government and of the governments of the ACs.

8.2. Relations between the Autonomous Community of the Basque Country and its Historical Territories

An arbitration commission established according to Article 39 SABC is responsible for solving any conflicts of jurisdiction which may arise between the *common institutions* of the ACBC and those of each of the Historical Territories (HTs). This body is composed of an equal number of representatives freely appointed by the Basque government and by the government of the HT concerned and is presided over by the president of the High Court of Justice of the Basque Country.

It is worth noting that the SABC and Law 27/1983 of HTs do not contain specific provisions concerning other instruments of institutional collaboration and coordination besides the arbitration commission. It should be borne in mind that both legal texts were approved almost four decades ago and would benefit from being updated. In the absence of regulatory reform, representatives of the Basque government and of the HTs meet in advisory, consultative and participatory bodies, in which representatives of social, economic and cultural organizations also participate. However, these are not intergovernmental bodies in a strict sense.

9. Inter-group Relations within the Autonomous Entity

In 2003 the Basque government presented a proposal for a reform of the Statute of Autonomy of the Basque Country (SABC), the so-called *Plan Ibarretxe*, according to which autonomy would become an agreement of free association, transcending the framework of the autonomous state and creating special bodies to settle any conflicts arising from this new relationship (López Basaguren 2008). This project proposed by Juan José Ibarretxe, at that time president of the Autonomous Community of the Basque Country (ACBC), strained the relations between the Basque and the Spanish governments and led to a bitter confrontation in a climate of tension heightened by the return of ETA terrorism. The *Plan Ibarretxe* was approved by the Basque parliament in 2004 but failed a year later when it was rejected in the lower house of the Spanish parliament by 313 votes to 29.

Some provisions of the *Plan Ibarretxe* were inspired by Canadian legal developments that followed the 1995 Quebec independence referendum. Canada's Clarity Act of 2000⁵⁶ defines under what prior conditions the federal government is subject to political obligation to negotiate secession resulting from a referendum that has satisfied certain clarity requirements. The *Plan Ibarretxe*, included the possibility of holding a referendum regarding the status of the Basque Country as a prior step to future independence. However, these provisions were based on a biased interpretation of the Clarity Act and of the opinion of the Canadian Supreme Court in the *Quebec Secession Reference*⁵⁷ (Romero Caro 2017, 146–47). In June 2008, the Basque parliament approved Law 2/2008 on the organization of a referendum on the opening of a negotiation process regarding a new relationship between the ACBC and the state. However, this regulation was declared unconstitutional by the Spanish Constitutional Court.⁵⁸

The question of independence has polarized the Basque society for years, especially during ETA's terrorist campaign targeting politicians, judges, businessmen, journalists and ordinary citizens. ETA's dissolution contributed to lessen the intensity of political confrontation within the Basque society and public institutions put forward a process of reconciliation, recognition and reparation for victims of terrorism.

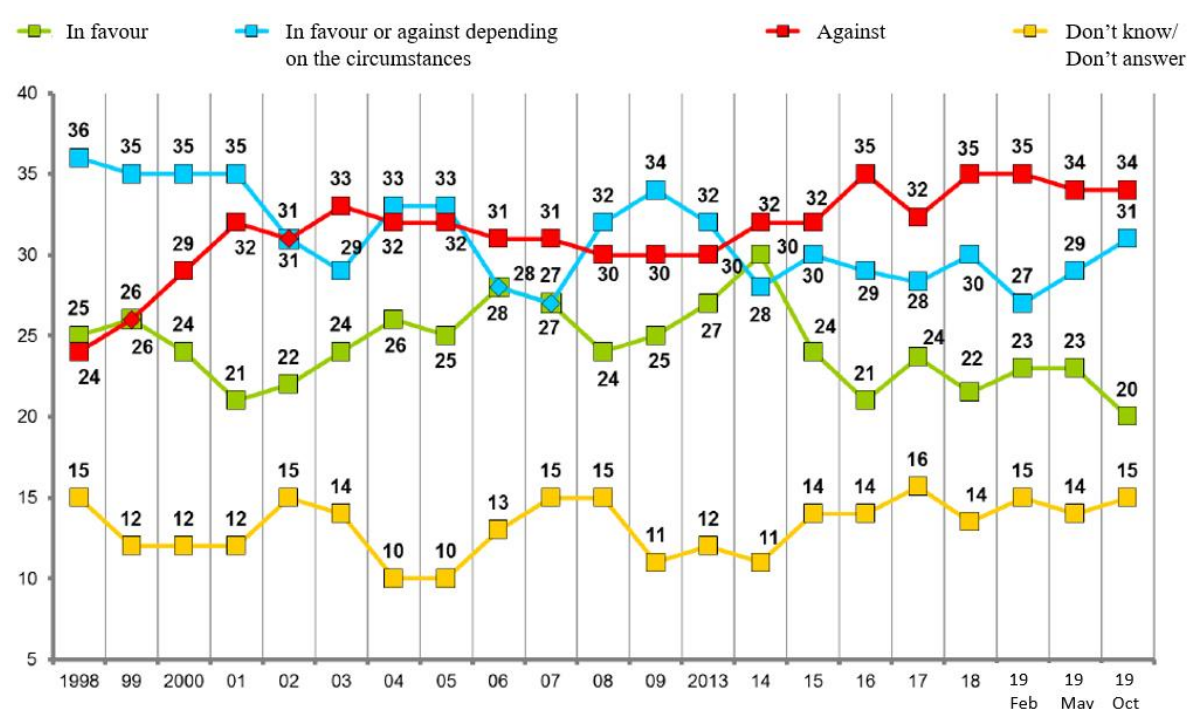
⁵⁶ An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference (S.C. 2000, c. 26). The text of the Act is available online at <https://laws-lois.justice.gc.ca/eng/acts/c-31.8/page-1.html> (accessed March 10, 2020).

⁵⁷ Supreme Court of Canada, *Reference Re Secession of Quebec* [1998] 2 SCR 217. For more details about the impact and legacy of this decision, both within Canada and abroad, see Delledonne and Martinico (2019).

⁵⁸ Constitutional Court of Spain, judgment no. 103/2008 of 11 September 2008 (STC 103/2008). For a commentary on the STC 103/2008, see (Corcuera Atienza 2009).

According to public opinion surveys, in 2019 only 20% of the population of the ACBC expressed unconditional support for independence, the lowest level in the past two decades (see Figure 2). For a significant percentage of the population (31%), support or rejection of independence would depend on additional circumstances (e.g., membership of Basque Country in the EU, an association agreement between the Basque Country and Spain). More than one third of the Basques are clearly against independence. Catalonia's failed bid to break away in 2017 and the subsequent suspension of its autonomy by Madrid in accordance with Article 155 SC had a chilling effect on the pro-independence camp.

Figure 2. Attitude towards independence in the ACBC (1998–2019)



Source: Basque Government (2019)

10. Membership, “Quasi-citizenship” and Special Rights

Pursuant to Article 7 of the Statute of Autonomy of the Basque Country (SABC), individuals who are officially residents, in accordance with the general legislation of the state, in any of the municipalities of the Autonomous Community of the Basque Country (ACBC) hold the political status of Basque. Persons residing abroad and their descendants enjoy the same political rights as those living in the ACBC, if their last legal residence in Spain was in the Basque Country, and provided they retain their Spanish citizenship. Residents of the ACBC have the right to vote in elections to the Basque parliament and to the parliaments of the Historical Territories (HTs). Spanish citizens living abroad (who specifically requested the recognition of their political status as Basque in accordance

with Article 7 SABC) can vote in the elections to the Basque parliament but they do not have the right to vote in municipal elections and in elections to the parliaments of the HT.⁵⁹

The administrative residence also determines the applicability of some provisions of the *foral* civil law of the ACBC. Until 2015, the Basque civil law was not uniform. Regulations differed not only from one HT to another but even within the same HT. Law of the ACBC 5/2015 on Basque civil law ended this situation and extended the personal scope of application of the *foral* civil law to all individuals who have Basque *vecindad civil*. The Spanish legal concept of *vecindad civil* goes beyond the concept of residence and it may be described as a form of regional “quasi-citizenship”. A person acquires *vecindad civil* by birth (if one of his/her parents already has that *vecindad civil*), by residence of two years in the specific territory if he/she opts for the respective *vecindad civil* and by residence of 10 years in the specific territory if he/she does not make a declaration to the contrary during this period.⁶⁰

Finally, it should be noted that Law 5/2015 maintains some special provisions that apply to the areas of Bizkaia known as Tierra Llana and the municipalities of Llodio and Aramaio, and the Ayala Valley in Araba/Álava. Another example is a provision regulating the donation of traditional farmhouses (*caseríos*) in Gipuzkoa.

11. General Assessment and Outlook

Forty years after the restoration of the Basque autonomy, one may conclude that the Basque Country has achieved a significant degree of self-government within Spain, fulfilling the main objectives that were set out during the transition process towards democracy. Autonomy has allowed the Basque Country to develop its economy and reach levels of prosperity comparable to those of the wealthiest regions in Europe. It is worth noting that, since 1978, the Basque Nationalist Party (EAJ–PNV) have often been crucial for the Spanish government’s majority in the national parliament, consequently increasing the influence of the Autonomous Community of the Basque Country (ACBC) in the national political arena. The EAJ–PNV used this influence in order to increase the autonomy of the regional government.⁶¹

Although from the perspective of the Spanish system of autonomies, the ACBC is just one of the country’s Autonomous Communities (ACs), a series of legal-institutional, political and socio-economic elements reveal the singularity of the Basque Country. From the point of view of

⁵⁹ Article 4 of Law of the ACBC 5/1990 of 15 June 1990 on elections to the Basque parliament and Article 2 (3) of the Organic Law 5/1985 of 19 June 1985 on the general electoral regime.

⁶⁰ Article 14 (2) and (5) of the Spanish Civil Code.

⁶¹ This was the case in 1993 and 1996 when the EAJ–PNV supported the governments of González (PSOE) and Aznar (PP). In 2010 and 2018 the EAJ–PNV agreed to support the budgets of Zapatero (PSOE) and Rajoy (PP), respectively, in exchange for bigger investments and new transfers of powers to the ACBC.

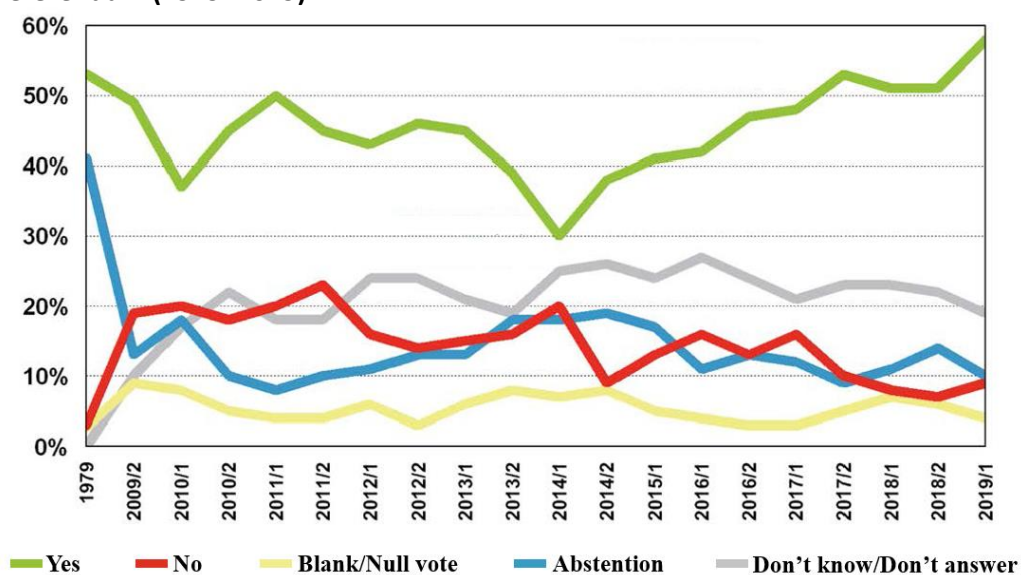
institutional architecture, the ACBC is a federation of the three Historical Territories (HTs) of Araba/Álava, Gipuzkoa and Bizkaia. Therefore, *common* legislative and executive bodies and *foral* legislative and executive bodies coexist in each of the three HTs. Thus, there is a distribution of competences and a network of intergovernmental relations between the state and the ACBC, as well as between the latter and each of the HTs.

The financial system of the ACBC, organized around the so-called Basque Economic Agreement, is also an exception within Spain. Various historical and socio-political circumstances explain this distinctiveness recognized by the Spanish Constitution (SC) of 1978 which provides for the respect of the historical rights of the territories with *fueros*.

From a cultural point of view, it is noteworthy that the ACBC has two co-official languages – Spanish (*Castellano*) and Basque (*Euskera*) – and that it has significant cultural ties with other Spanish regions (especially Navarra) and territories in south-west of France inhabited by Basque speakers. It is important to bear in mind that a variety of visions regarding the Basque Country and its identity have coexisted in this territory for over a century.

Although there are still matters to be addressed (e.g., the pending transfers of powers), the level of satisfaction with the Statute of Autonomy of the Basque Country (SABC) is generally quite high. A 2019 public survey shows that for the first time since the establishment of the ACBC, the level of support for the SABC is higher than the one expressed in the 1979 referendum (see Figure 3). If a new statutory referendum were held in 2019, 57% of the Basques would vote “Yes” while in 1979 only 53% did so. Only around 9% of the population would vote against the SABC. Abstentions dropped from 41% in 1979 to 9% in 2019.

Figure 3. Level of support for the SABC as expressed by voting intentions in case of a statutory referendum (1979–2019)



Source: Euskobarometro (2019)

However, as López Basaguren (2018, 345–51) notes, this high degree of satisfaction with the SABC among the population contrasts with the negative view of the current arrangement that exists among the nationalist political class which wants to reinforce self-government without giving up the independence goal.

In 2014, a “Commission on self-government” was established within the Basque parliament with the aim to help political forces reach an agreement regarding a new Statute of autonomy. This commission proposes, among other things, to include in the new SABC a reference to the “right to decide”,⁶² an ambiguous formulation of the right to self-determination (Aja 2014, 364; López Basaguren 2016, 166–71). However, there is no broad consensus on this issue. While the main Basque nationalist parties and Podemos are in favor, the main Spanish parties (PSOE and PP) are clearly against. This seems to indicate that even in case of approval in the Basque parliament, the proposal would be rejected in the national parliament and this would block the reform of the SABC.

Bibliography

- Aguado Renedo, César. 1997. “Acerca de la naturaleza jurídica del Estatuto de Autonomía”. *Revista Española de Derecho Constitucional*, no. 49: 169–93.
- Aja, Eliseo. 2014. *Estado autonómico y reforma federal*. Madrid: Alianza.
- Alcaide Inchausti, Julio. 2007. *Evolución de la población española en el siglo XX, por provincias y comunidades autónomas*. Vol. 1, Bilbao: Fundación BBVA.
- Aragón Reyes, Manuel. 1995. “Estado autonómico: ¿modelo indefinido o modelo inacabado?”. *Autonomies (Revista catalana de Derecho Público)*, no. 30: 187–95.
- Basque Government. 2020. “Informe trimestral de la economía vasca”. Accessed May 21, 2020. https://www.euskadi.eus/contenidos/informacion/informe_trimestral/es_def/adjuntos/previsi ones.pdf.
- Basque Government. 2019. Sociómetro Vasco/Euskal Soziometroa “Administración Pública Vasca/Euskadiko Administrazio Publikoa”, no. 71 / November 2019. Accessed March 10, 2020. <http://www.euskadi.eus/sociometros-vascos/web01-s1lehike/es/>.
- Basque Government. 2018. Sociómetro Vasco/Euskal Soziometroa “Cultura democrática/Kultura demokratikoa”, no. 68 / December 2018. Accessed March 10, 2020. <http://www.euskadi.eus/sociometros-vascos/web01-s1lehike/es/>.
- Basque Immigration Observatory. 2019. “Evolución de la población total y de origen extranjero en la CAE y territorios históricos. 1998–2019”. Accessed March 10, 2020. https://www.ikuspegi.eus/documentos/tablas/castellano/evolucion/2019/Evolucion_extranj_t otal_2019.pdf.

⁶² This notion has gained traction in the Catalan context as an indirect formulation of the right to self-determination in order to attract voters to the secessionist cause. For details, see Fossas Espadaler (2014) and Castellá Andreu (2016).

- Burgess, Michael. 2006. *Comparative Federalism: Theory and Practice*. London: Routledge.
- Castellá Andreu, Josep María. 2016. “Tribunal Constitucional y proceso secesionista catalán, respuestas jurídico-constitucionales a un conflicto político-constitucional”. *Teoría y Realidad Constitucional*, no. 37: 561–92.
- Castells, Luis. 2003. “La abolición de los Fueros Vascos” *Monográfico sobre la Política en el reinado de Alfonso XII Ayer*, no. 52: 117–49.
- Castillo Vera, Pilar. 1979. “Referéndum del Estatuto de Autonomía en el País Vasco”. *Revista de Derecho Político*, No. 5: 201–11.
- Centre for Sociological Research. 2020. “Barómetro de Marzo 2020, Avance De Resultados, Tabulación Por Comunidad Autónoma”. Study no. 3277. Accessed April 10, 2020. http://datos.cis.es/pdf/Es3277ccaa_A.pdf.
- Corcuera Atienza, Javier. 2001. *La patria de los vascos: orígenes, ideología y organización del nacionalismo vasco (1876–1903)*. Madrid: Taurus.
- Corcuera Atienza, Javier. 2009. “Soberanía y autonomía. Los límites del ‘derecho a decidir’ (comentario de la STC 103/2008)”. *Revista Española de Derecho Constitucional*, no. 86: 303–41.
- De la Granja, José Luis. 2002. “La II República y la Guerra Civil”. In *Historia del País Vasco y Navarra en el siglo XX* coordinated by José Luis de la Granja and Santiago de Pablo, 57–87. Madrid: Biblioteca Nueva.
- Delledonne, Giacomo and Giuseppe Martinico. 2019. *The Canadian Contribution to a Comparative Law of Secession. Legacies of the Quebec Secession Reference*. London: Palgrave-Macmillan.
- Duque Villanueva, Juan Carlos. 2007. “Las Conferencias Sectoriales” *Revista Española de Derecho Constitucional*, no. 79: 113–53.
- Elazar, Daniel J. 1987. *Exploring Federalism*. Tuscaloosa: University of Alabama Press.
- Euskobarometro. 2019. “Estudio periódico de la opinión pública vasca”, June 2019. Accessed March 10, 2020. <https://www.ehu.es/es/web/euskobarometro/home>.
- Eustat – Basque Institute of Statistics. 2020a. “Indicadores Estructurales”. Accessed May 21, 2020. https://www.eustat.eus/indicadores/ambito_99/temaseleccionado_42/indicadoresEstruc.html
- Eustat – Basque Institute of Statistics. 2020b. Press Release “Survey on population in relation to activity. IV/2019”. Accessed March 10, 2020. https://en.eustat.eus/elem/ele0017100/not0017119_i.pdf.
- Eustat – Basque Institute of Statistics. 2019. “Alumnado matriculado en enseñanzas de régimen general no universitarias en la C.A. de Euskadi por territorio histórico y nivel de enseñanza, según titularidad del centro y modelo lingüístico. Avance de datos 2019/20”. Accessed March 10, 2020. https://www.eustat.eus/estadisticas/tema_300/opt_0/tipo_1/ti_Alumnado_profesorado_y_centros/temas.html.
- Eustat – Basque Institute of Statistics. 2018a. “Euskadi en la UE-28. 28 indicadores básicos para conocer la situación de nuestro país en la Unión Europea”. Accessed May 21, 2020. https://es.eustat.eus/elementos/ele0015400/Euskadi_en_la_UE-28/inf0015472_c.pdf.

- Eustat – Basque Institute of Statistics. 2018b. “Población de la C.A. de Euskadi por ámbitos territoriales, lengua materna y lengua hablada en casa. 2016”. Accessed March 10, 2020. https://www.eustat.eus/elementos/ele0014700/tbl0014754_c.html.
- Fernández Alles, Jose Joaquín. 2004. “Bases para una teoría constitucional española sobre relaciones intergubernamentales”. *Revista Española de Derecho Constitucional*, no. 72: 51-86.
- Fossas Espadaler, Enric. 2007. *El principio dispositivo en el Estado Autonómico*. Madrid: Marcial Pons.
- Fossas Espadaler, Enric. 2014. “Interpretar la política. Comentario a la STC 42/2014, de 25 de marzo, sobre la Declaración de soberanía y el derecho a decidir del pueblo de Cataluña”. *Revista Española de Derecho Constitucional*, no. 101: 273–300.
- García Herrera, Miguel Ángel. 2004. “El régimen electoral de la Comunidad Autónoma del País Vasco”. *Revista de Estudios Políticos*, no. 22–23: 319–26.
- García Morales, María Jesús. 2009. “Instrumentos y vías de institucionalización de las relaciones intergubernamentales”. In *Las Relaciones Intergubernamentales en el Estado Autonómico. La posición de los Actores* edited by Xavier Arbós Marín, César Colino Cámara, María Jesús García Morales and Salvador Parrado Díez, 41–134. Barcelona: Instituto d’Estudis Autònomic.
- Hernández Lafuente, Adolfo. 1978. “Los referéndums de autonomía en la II República”. *Revista de Estudios Políticos*, no. 5: 97–119.
- Hueglin, Thomas O. and Fenna, Alan. 2006. *Comparative Federalism: A Systematic Inquiry*. Peterborough: Broadview Press.
- Jáuregui Bereciartu, Gurutz. 1984. “Algunas reflexiones sobre la reforma del Estatuto de Autonomía del País Vasco”. *Revista Vasca de Administración Pública*, no. 10: 11–26.
- Jiménez Asensio, Rafael. 1985. “La reforma del Estatuto de Autonomía del País Vasco”. *Revista de Estudios Políticos*, no. 46–47: 475–526.
- López Basaguren, Alberto. 2005. “El Concierto Económico y la Financiación de la Comunidad Autónoma del País Vasco: entre Mito y Realidad”. In *El Estado Autonómico: integración, solidaridad, diversidad* edited by José María Vidal Beltrán and Miguel Ángel García Herrera, 619–34. Madrid: Colex-Goberna.
- López Basaguren, Alberto. 2008. “Trasformazioni dello Stato autonomistico e riforma dello Statuto del Paese Basco: tra rottura ed “accomodamento a volontà”. In *Regionalismo e Statuti. Le riforme in Spagna e in Italia* edited by Silvio Gambino, 171–217. Milano: Giuffrè.
- López Basaguren, Alberto. 2016. “Demanda de secesión en Cataluña y sistema democrático. El procés a la luz de la experiencia comparada”. *Teoría y Realidad Constitucional*, no. 37: 163–85.
- López Basaguren, Alberto. 2018. “El País Vasco, el modelo de autonomía territorial y la pretensión confederal del nacionalismo”. *Fundamentos* 10: 343–76.
- Mateos, Adrián. 2018. “Estas son las 37 competencias que reclama el Gobierno vasco al Estado.” *ABC País Vasco*, 25 June 2018. Bilbao. Accessed March 10, 2020. https://www.abc.es/espana/pais-vasco/abci-estas-37-competencias-reclama-gobierno-vasco-estado-201806251755_noticia.html.

- Montilla Martos, José Antonio. 2006. “La legislación básica tras las reformas estatutarias”. *Revista Española de Derecho Constitucional*, no. 78: 105–50.
- National Institute of Statistics. 2018. “P.I.B. a precios de mercado y valor añadido bruto a precios básicos por ramas de actividad: Precios corrientes por comunidades y ciudades autónomas, magnitud y periodo”. Accessed March 10, 2020. <https://www.ine.es/jaxi/Datos.htm?path=/t35/p010/rev19/I0/&file=01001.px>.
- National Institute of Statistics. 2019. “Población por comunidades y ciudades autónomas y sexo”. Accessed March 10, 2020. <https://www.ine.es/jaxiT3/Datos.htm?t=2853>.
- Ortega Álvarez, Luis. 2011. “El debate competencial entre el Estado y las Comunidades Autónomas”. *Revista de Estudios Políticos*, no. 151: 29–56.
- Palermo, Francesco and Karl Kössler. 2017. *Comparative Federalism. Constitutional Arrangements and Case Law*. Oxford: Hart Publishing.
- Romero Caro, Francisco Javier. 2017. “The Spanish vision of Canada’s Clarity Act: from idealization to myth”. *Perspectives on Federalism* 9(3): 133–59.
- Rubio Llorente, Francisco. 2008. “La titularidad del derecho a la autonomía: nacionalidades y regiones”. In *Estudios sobre la Constitución Española: homenaje al Profesor Jordi Solé Tura*, 1802–13. Madrid: Cortes Generales, Madrid.
- Tajadura Tejada, Javier. 2018. “La Conferencia de Presidentes: Origen, evolución y Perspectivas de Reforma”. *Revista de Derecho Político*, no. 101: 549–72.
- Tudela Aranda, José. 2016. *El fracasado éxito del Estado autonómico. Una historia española*. Madrid: Marcial Pons.
- Watts, Ronald L. 2009. “Spain: A Multinational Federation in Disguise?”. In *Spain y modelos de Federalismo* edited by José Tudela Aranda and Félix Knüpling, 55–81. Madrid: Centro de Estudios Políticos y Constitucionales.

List of abbreviations

AC – Autonomous Community

ACBC – Autonomous Community of the Basque Country

BEA – Basque Economic Agreement

EAJ-PNV – Basque Nationalist Party (*Euzko Alderdi Jeltzalea–Partido Nacionalista Vasco*)

ETA – *Euskadi Ta Askatasuna*

HT – Historical Territory

PP – Popular Party (*Partido Popular*)

PSE-EE – Socialist Party of the Basque Country (*Partido Socialista de Euskadi–Euskadiko Ezkerra*)

PSOE – Spanish Socialist Workers' Party (*Partido Socialista Obrero Español*)

SABC – Statute of Autonomy of the Basque Country

SC – Spanish Constitution

STC – Judgment of the Constitutional Court (*Sentencia del Tribunal Constitucional*)

About the authors

Francisco Javier Romero Caro is Assistant Professor at the Department of Law at Nebrija University and researcher at the University of the Basque Country. After degrees in law and business management he obtained a PhD in Law at the University of the Basque Country. His research interest relates to territorial distribution of powers in multilevel systems (with a special focus on federal states) and territorial integration and secession in states such as Canada or Spain. He has been a visiting researcher at the CEPC, the Max Planck Institute for Comparative Public Law and the University of Ottawa. His publications include articles such as "Senado y sistema federal en Canadá: ¿imposibilidad de una reforma deseable?" (Revista de Estudios Políticos 2016) and "The Spanish vision of Canada's Clarity Act: from idealization to myth" (Perspectives on Federalism 2017). In 2020, the European Commission awarded him with the Seal of Excellence in the Horizon 2020 Marie Skłodowska-Curie call in a joint application with Eurac Research in a project on fiscal federalism.

Leire Escajedo San-Epifanio is Professor of Constitutional Law at the University of the Basque Country (Bilbao, Spain) and member of the Research Group "Multilevel Governance and EU Law" (PR Alberto López-Basaguren). Her main research fields are multilevel governance, bioethics and biolaw, identity and data protection, governance of agrofood biotechnologies and governance of the food systems. Her publications on autonomy and federalism include: *The Ways of Federalism in Western Countries and the Horizons of Territorial Autonomy in Spain* (Springer 2013; co-editor and co-author) and *Claims for Secession and Federalism. A Comparative Study with a Special Focus on Spain* (Springer 2019, co-editor and co-author).