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Juan Cayón Peña
Universidad de Diseño, Innovación y Tecnología, UDIT

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Conflict and Territory: a Legal and Metalegal approach. The Case of Spain.

Dr. Juan Cayón Peña [*]

Abstract The territory has traditionally been one of the main sources of conflict. Since the borders of the states were determined after the Second World War, some of the main problems for security and defense have been determined by the separatist claims of those territories integrated into states from which they aspire to separate. There are cases in which the foreign influence is clear, but others in which the nationalist sentiment explains the desire for disintegration, as is the case in Spain. The territorial configuration of the Spanish State in the 1978 Constitution was an original milestone in the history of constitutionalism at the international level. More than forty years have passed since the approval of the Constitution and there is growing separatist pressure that the State is confronting with sometimes necessarily exceptional legal means.

This chapter will try to confront the separatist problem as a source of conflict through an in-depth analysis of the legal and ethical issues involved from a philosophical point of view.

Key words: Territory, conflict, political philosophy, Spanish Constitution

1. Introduction and context

1 .1. Forms of Government and State

Let us start this section by making preliminary reflections and laying the foundations on some concepts we will deal with throughout these pages. In general, they have been indistinctly used with some frequency, being common to use these terms to a mode of

[*] E-MAIL: jcayon@nebrija.es

interchangeable words that all refer to the issue of power within the political community, and more specifically to the way that power is exercised in the different existing conceptions. Suffice it as an example SERRANO GOMEZ (1.977) defines the political regime as "mode or system of government of a country," in confusion with the concept of a form of Government. The confusion between the terms that we now analyze has been even more significant with modern theories in political science. These theories have preferentially adopted the terminology form of State to refer to the classic typology of the concept of State based on the territorial base or other traditional criteria and when referring to its political content (democratic, social, legal); Even to refer the heading forms of State to the classic distinction between the different forms of Government. From this terminological chaos arises the need to specify some concepts to which we will constantly refer in this work, at least in the sense that we will use, to avoid the logical problems derived from this conceptual tower of babel before which we face.

We can define a form of Government as the concrete materialization of a particular regime applied to daily life to make concrete political decisions. The denomination form of Government is nevertheless comparable to another that has also handled LAGÜENS y GARCIA DE VERCHER (1.965), which is the political form, nothing but the embodiment of the political idea in a particular organization, that is, of a regime in the form of Government.

As DEUSTCH (1.970) points out, "since politics is decision-making by public means, it is primarily concerned with government, that is, the direction and self-direction of the great human communities." This approach to the concept of politics seems correct; what we fully agree with regarding the quote above is the conception of Government as a task of political leadership that will develop in every human community.

Government usually connects with the art of running a ship in the frequent comparison of ruling with the person who steers the ship of the State. Even the very etymology of the term government indicates this to us. In classical Greece, the term *kybernetes* designate the driver or helmsman of a ship, and both the words government and its derivatives find their last root in the term mentioned above. The modern meanings of Government, more focused on social and information control, have the exact etymological and conceptual origin, even though cybernetics.

In this sense, the different government forms would not be different ways of directing the political community in decisions. In the same way that individual decisions can follow different criteria, the Government of the peoples can entrust to different guidelines and develop in different ways. These forms of Government, as we have already advanced, will obey a specific regime, a series of convictions and beliefs of the community, values, and institutions that, with different depths within the community, will inspire its political development and with it, the development of one form of Government or another.

Regarding the specific forms of Government, BOBBIO (1.992) has already pointed out that their typology is one of those recurring themes on which almost all political writers have spoken out, each proposing the classification they deem correct. Moreover, he even opts for the form of Government that convinces him the most to govern the political community in question. This double function of studies on forms of Government is commonplace; We find a purely descriptive aspect when the authors teach us the different forms offered to the community to govern its political destiny through the Government concentrated in more or fewer people. However, a more prescriptive work indicates which is the form of Government that, in each author's opinion, best suits the historical-sociological peculiarities of the society in which it operates.

This has not been the only classificatory criterion followed by the doctrine; Thus, for example, we can distinguish between different possible forms based on applying mixed criteria: not only the number of people who exercise political domination (to which, by the way, he says, different types of State correspond), which in his opinion leaves essential questions unanswered, to classify forms of Government in a constant fusion of territorial, economic or constitutional patterns of classification.

1.2. The genesis towards the modern State from a Continental point of view:

We usually find explanations of cyclical nature to clarify the change from one form of Government to another, through the paragon, such as if it were an organic body, the degeneration of one for the establishment of the next. A political structure is susceptible

to change as a purely organic matter. There are many forces of all kinds that operate within it and affect it from the outside. As we have already pointed out, the most frequent solution is to consider political changes as a regular succession of pure or just and corrupted forms that tirelessly take turns governing the political designs of a community. Regardless of how the evolution took place, namely, either reform of the way the Government is exercised by adapting it to the different pressures that come into play, or radical and generally violent rupture in the face of the real or fictitious injustices and iniquities incurred by the dominators. Ultimately the classical explanation has ceased to have practical validity since the philosophical-political discussion has *de facto* left aside the issue of the forms of Government to focus solely on democracy. In our days, there is only one political form, democracy in its current sense, that of the modern State.

It is precisely at this point where it is essential to approach the very concept of the State, defining it as the contemporary political community that, organized, develops from the Renaissance to the present day. The coexistence of several elements, the territory, the population, and a specific legal organization, integrate the modern State.

Regarding the forms of State, we also find a classificatory variety that makes agreement difficult. As a preliminary step, we will say that all of them have in common to refer to the same State, that is, to the modern State, but little else. From the origins of the modern State, the classification criterion had been the territorial organization combined with the distribution of power centers. In this sense, modern States are unitary, federal, and confederate. Based on the criteria, this classification was recently complemented by new types of states of a mixed nature, such as the regional or autonomous Spanish State contemplated in the 1.978 Constitution.

It is always appropriate to return to relations between man and society to develop it appropriately for a correct definition. It is essential to delimitate a concept of the State and its scope of action and refer to its territoriality. We have already highlighted how, in our conception, the society, the community, is for the man, for the citizen. ZULETA PUCEIRO (1.981) argues, "this is not only a part of the social whole. It is in a certain order of things but is projected based on its ontological dignity and subsequent dignity, both natural and supernatural, towards a dimension that transcends society". From this

perspective, we can adequately understand the traditional solution to the relationships between the individual and society.

From this perspective, it is possible to maintain without contradicting himself that the person is ordered to the whole as the imperfect to the perfect since it is in the whole where a man can develop inadequate conditions the potentialities that are innate to him. In the same line of argument, the political society or the State should be understood as a smaller organic group of companies, although hierarchy itself, in the function of his goods and equipped with the autonomy necessary to fulfill the purposes to them their own, thereby contributing to the common good. This approach is especially appropriate to our final goal. The different autonomies should be subordinated to the superior community (the Spanish State) that recognizes them and gives political life. They would only make sense insofar as the fulfillment of their purposes (proximity to the citizen or decentralized management) contributes to the common good, that is, the peaceful development of coexistence state policy as a whole. Hence, to the contrary, when they operate against the common good represented by the State, they are delegitimized because they are contrary to the purpose for which they were constitutionally created.

It seems clear that the State is presented to us as the contemporary political community formed by a group of people and intermediate societies, united by emotional, historical, and legal ties, to regulate their coexistence and achieve good superiority to all of them. However, they have particular purposes and autonomies, precisely recognized for contributing to this higher purpose. Connects this approach precisely with the principle of subsidiarity to the now we approach as the way they should coordinate interventions and areas of action of different people and intermediate bodies that make up the political community called State. Subsidiarity operates based on a previous response to the problem of the so-called principle of totality that explains social relations, the relations of the whole with the part. To give a satisfactory solution to the issue of subsidiarity, we must first face and adequately assume the problems involved in the question of the principle of totality. Society is a unitary form in which two terms in principle opposed by their nature, such as the one and the multiple, the singular or individualized and the plural, are carried out simultaneously without being confused or mutually suppressed or eliminated. The reason for dealing with the principle of totality first, before dealing with the principle of subsidiarity is not whimsical; The doctrine has

highlighted two compelling reasons for acting in such a way: first, since both principles operate in the corporate sphere, since they are not conceivable referring to a personal individuality, and society needs a principle of unity for its subsistence; And direction (which is the principle of totality itself), we will necessarily have to face the study of it first; but also, secondly, when the authority respects what we will call the principle of subsidiarity, it does so in compliance with its mission, the Common Good, which necessarily implies the same sense of discipline and hierarchy, sense of integration of the parts into the whole, that is to say, sense of totality.

Political science has been historically based on a broader than a simple description of empirical reality whose starting point must be sought not in the positive but rather a deep metaphysical root. The order of being is the reason and foundation of things, and as regards social relations, these are based, as we have already explained, precisely in the very nature of things, since man is, by nature, a social being. In this sense, society is a reality resulting from updating the person's sociability. As such, it supposes the idea of an order and its notes: First, a plurality of ordered elements. Secondly, their diversity - which implies inequality in the qualitative order-, the basis of the order of priority and posteriority that characterizes every order. Third, an ordering principle. Fourthly, a particular convenience of the elements that enable their connection; finally, the elements' exact relation to each other is determined by the order. For this reason, in no case should it be understood, in the logic we hold, that society is simply an aggregate of individuals, nor is it defensible that man is naturally called to resist life in common.

These assumptions are no longer accepted in a new worldview that does not escape the way of understanding the relationships between the whole and the part, that is, the principle of totality. This new position means the whole exclusively as a unit. From the traditional prism active participation and constant of each of the components of social life in it, the new logic intended occurs simply to affirm as much as possible the independence of each of the components of said totality. This hodiern approach about territorial tensions forgets that the plurality of its members characterizes the society. At the same time, it attempts to unify everything in the interest of what becomes a new guiding principle of totality but localized on one of the regional territories.

It is interesting now to address another side of the problem. The dominant liberal perspective, defended by Bentham or Mill, also introduces an essential qualification, a second element that ZULETA PUCEIRO (1.987) summarizes in that "institutions, codes or constitutions are nothing other than freely agreed rules of the game." "The only foundation of authority is, precisely, the consensus about the validity of the rules of the game - the agreement on the agreements - and the need for it to operate as an instance of guarantee of the free play of interests." Simultaneously, advocates "the postulate of the necessity and legality of full and comprehensive development of human power, with no limits other than those imposed by its nature." The subsequent evolution of these approaches is clear; "the idea loses sight of that image of an austere and protective gendarme, to embrace the illusion of a great moral cause, capable of redeeming men from their situation of inequality and oppression "so that" as the supreme form of rationality, the State becomes a sovereign dispenser of those fundamental meanings on which the existence of the social totality rests." The evolution experienced goes from understanding the State as a simple guarantee of coexistence to understanding it as unique legitimized to act as a promoter of the conditions that "must" exist in the society thus understood, which implies a change in the way of understanding the essence of said society, which begins to be assimilated into a kind of raw matter. that it needs to be rationally molded following the dictates of science and social technology, basing all of this on an erroneous idea of social progress. The last consequence of such a conception is that the new principle of totality that inspires nationalism, among others, is necessarily opposed to the social plurality that traditional thought understood to be consubstantial to the very concept of society. Totality would imply substantial unity, and consequently unity of the social body manifested in the highest possible degree of convergence or, if possible, unanimity, obviating all reference to what is proper to society according to the nature of things plurality and qualitative differentiation. In this new individualism, the concept of political society empties of any community connotation under the pretext of greater rationality, turning the State into a modern "objective" and autonomous instance guided by rational criteria in its action and that, consequently, is irrefutable in their decisions. "The new pact is not destined to act as a regulating idea of the process by which some communities deposit certain powers in a common authority to precisely protecting the freedoms and powers that they do not transfer and retain for the exercise of their purposes. Pact is the hypothesis that explains the existence of the social totality starting from reducing man to the condition of the isolated individual concerning any form of intermediate sociability.

The founding pact is not the origin of the Government but of the social totality itself; the process of transmutation of individuals into a collective self-depositary of national sovereignty." The sole clause of the said pact can only be the total alienation of those who sign it to give rise to that new State that, in the nationalist case, it would be born of the independence that gives rise to the new sovereign power.

1.3. The Common Good as justification of the State

We will now outline the question of the Common Good, understanding that it is an essential reference criterion to elaborate an adequate treatment of the subject at hand. We have already said about him that it is the end of politics. It appears to us as the meeting point between the principle of subsidiarity and that of totality; thirdly, that it is the final cause of the political order and, fourthly, that it must operate as a guiding criterion for the action of the social authority (of the State) and as the last justification for it.

With WIDOW (1.984), we understand by well what is or can be palatable under any aspect, always insofar as it is perfection or a natural complement to the appealing subject. In a first approximation, we could approach the Common Good by saying that it is that good that belongs equally to the different members of society, the good of society itself. The Common Good is communicable, and that it does not belong to one subject to the exclusion of others, but instead is the good of the whole. The end transcends the parts since it is not proportional in particular to none of them. At the same time, it is the good of all to which it is communicated. Hence, all activity of the State, political and economic, is subject to the permanent realization of the Common Good, that is, obtain those external conditions necessary to all citizens to develop their qualities and their trades, of their material intellectual and moral life. This digression, more typical of the philosophy of law than of constitutional law, comes up to raise the issue of the Common Good in society, which must be understood in coherence with what has been sustained up to this moment, as an optional whole and not as an integral whole. Therefore, the Common Good is the natural *raison d'être* of society. Even though it is a good proper to the parties, it is not presented to us as a particular and exclusive good but is communicated to us all parties. Components of the social whole in a distributive way, thus giving with all intensity in each one of them without excluding the others. In this way, we can initially outline the concept of the Common Good of the social whole as the greater good of each

of its parts, superior to any particular good that should be subordinated to the common, since only in this way does it achieve its complete condition of good.

Moreover, from this same conceptualization arises the main problem that the doctrine has raised when the Common Good and the private good come into conflict. The preponderant situation of the Common Good compared to the different particular goods lies in the fact that the difference between the Common Good and the particular goods is quantitative and qualitative because following it could not be concluded otherwise. If the end of the Common Good does, the community will be what it is. If the Common Good corresponds to an entity other than the sum of the individuals, it will not consist of the addition of individual goods but will be good with its content. Society is understood as something more than juxtaposed individualities. Common good must also be constituted as something qualitatively different from an addition of interests or particular goods. That does not mean that their participation in society is annulling the individual, but rather the opposite: the individual cannot be realized except in the community, that is, in a society directed by the authority whose ultimate goal is precisely the Common Good.

Given the above, the State is nothing but the historical incarnation in a specific time (the modern one) of a permanent reality in the different historical moments, and that is the political community. The State has not always existed, nor can we affirm with certainty that it will not cease to exist one day. As DEL VECCHIO (2.020) points out, "(...) the word State does not denote a historical category of universal validity as the nineteenth-century state theory believed, but rather is a concrete historical concept. The State is not a constant and permanent social phenomenon, but a transitory historical form: transitory, but not in the sense of nineteenth-century anarchist interpretations, which prophesied the advent of a stage of humanity without political existence, but in the sense of something historically limited and unique ".

Consequently, the State refers to a political community organized on a specific territory with some type of authority that governs; that was called in other historical periods “republic.”

Having made this precision regarding the historicity of the State as the materialization of another superior and permanent concept in human history, we could

argue that the concept of the State encompasses two different positions, although compatible: or the State is considered as a social structure or group, or as a more or less specific force or function, that is, either we understand it as a legally organized independent society, or we tend to identify the State with the capacity to act coercively since it is not in vain that the State reserves the legitimate use of force within social life and citizens only obey the behaviors ordered by state organs through force and even physical violence. In Spain, SANTAMARIA DE PAREDES (1.898) gives the term the definitive accolade when in his Political Law Course he points out that "observation shows us the idea of the State under two different aspects, depending on whether we consider this idea in its unity, or decomposing by the analysis in other ideas (those of end, means, and activity of the State) ". "But the unitary idea of the State, is also conceived under two other aspects: in itself, as an abstract concept of reason; and in its historical manifestation, as it has been produced and produced in time, embodied in certain social organisms." Regarding the strictest sense of the term, this author highlights how the State is always related to a specific type of organization, organized society.

In our opinion, the State's primary function is the Common Good. Of course, it is crucial to create and maintain the law, but State does not appear for that. Instead, man uses both the State and the law to live in society peacefully and develop all the innate potentialities. Both the one and the other serve man to achieve his ends.

SANCHEZ AGESTA (1.990), for his part, highlights how the doctrinal positions around the definition of the State can be grouped into three main lines: firstly, we would find the deontological definitions, one of whose contemporary representatives would be the Frenchman HAURIOU (XXXX), who understands the State as "a regime that adopts a nation through a legal and political centralization that is carried out by the action of a political power and the idea of res publica as a set of means that are put together to achieve the Common Good ". Secondly, we also find other types of definitions with a rather sociological character in the style of HERMAN HELLER (2.011) or WEBER (1.984), who respectively understand the State as a "lastingly renewed dominance structure through a representatively updated common act, which ultimately orders instance the social acts on a determined territory "; and as "administrative legal order to which the work carried out according to the group by an administrative body is oriented and whose value is claimed not only for the members of the community, but for all actions that are

carried out in the dominated territory." Finally, we could also find a series of legal definitions of the State, in a sense understood by KELSEN (1.980) when considering the State as the totality of a legal order insofar as it constitutes a system that rests on a fundamental hypothetical norm.

SANCHEZ AGESTA (1.990) also points out that its functions rationally justify power. It provides society with the necessary means for its intellectual and cultural development and those necessary for its physical existence. To achieve these assets effectively, it will be necessary to coordinate the efforts of all political community members, distribute the burdens to be borne to achieve said assets, and guarantee the peaceful use and enjoyment of them by the members of the political community. This is the "integral good" or *bonum integralliter* that Saint Thomas has called the Common Good, originating a whole doctrine maintained for centuries. We found some precedents in ARISTOTLE (2004): "if we observe that every city is a certain community and that every community adjusts for the sake of some good - because everyone does the things they do for the sake of what that they seem good-, it is seen that all their communities want some good, and very notably that one, which is the most important of all, and that it includes itself to all the others, it will seek the most important good of all. This, then, is the city and the civil community". What in our times we have come to call the State does not have as its purpose its survival as could be deduced from practice, nor the maintenance of the law. However, on the contrary, it must serve solely and exclusively the society that composes it, to the men who form it.

2. Why do societies increasingly delegate more powers to peripheral entities?

2.1. On the way to organize power and the State.

Within constitutional dogmatics, the expression "form of State" has served to denote quite different realities. In some way, when KELSEN (1.980) defined it by the legal mode of production resulting in the distinction between democracy and autocracy, he went back to a criterion Aristotelian according to which the political form refers to its essence, to the center of gravity of its power.

Another thing is that from its Greek source to the Viennese mouth, it has followed a bumpy course. Through JELLINEK (1.981) and the statist school, state forms swallowed up political forms. Because the State itself is a political form, and because sovereignty is that center of gravity, unknown on the other hand in pre-modern public law. Determining the form of the State involves determining who is the sovereign. After Kelsen, some Italian authors such as BISCARETTI DI RUFFIA (1996) use the formula to signify how the State is structured in its entirety, giving the first in the classification between States of classical democracy, States social its's and authoritarian states.

Thus, if we took the expression form of State in this sense, we would be entering, without the slightest doubt in a controversial way, in the paths of political philosophy more than in those of pure constitutional law, through the contrast between "sovereignty" and " subsidiarity." Alternatively, the same goes to a remarkable rubric, forged by GENTILE (2.012) at the head of one of his books, between "political intelligence" and "reason of State." Because the expression form of State also knows a widespread use to apply to the organization of territorial distribution of power.

In this last sense, the State can be organized around a single center to establish sovereignty, which gives rise to the unitary State. Alternatively, it can arise from the pre-existence of various centers that form a unit - according to the constructive logic and non-destructive that is at the origin of federalism—, as in the Federal State. Finally, we can think of the preservation of the multiplicity of these centers, with no more integration than that allowed by international law, in which case we are describing the Confederation.

Nevertheless, there have been no more confederations since the American Civil War when the USA was born under the federal Constitution. The same evolution has the Helvetic; decades ago, it became federal despite maintaining the name. Only in international integration processes does the formula reappear in the collective imagination, precisely as opposed to the federation. There are the vicissitudes of the European Union to prove it.

In the same way, federalism is a jungle in which federalisms dubbed "dual" coexist with other so-called "cooperatives" and sometimes with some that we could call "pretended." Differences between the Federal State and the politically decentralized

unitary State (what we call regional State) are minimal. Regional State, born in the heat of the Spanish republican Constitution of 1931, exported to the Italian one of 1947 and returned home in the current Spanish, maybe minimal by a kind of picturesque constitutional mimicry. However, despite the many anti-federalist reluctances that are nested in the States that were born unitary, regionalism pure has not been satisfactory. Italy, Belgium, Spain, or even in Britain, also always on the edge of not being State, but in this cultured stratum fiercely Unitarianism.

SCHMITT (2.011) pointed out that "an effective territorial decentralization is only possible today, in a pluralist party state, based on a federal organization (...); the federalism, i.e., a federal organization, provides, in such a democracy, the surest means to achieve territorial decentralization ". Although perhaps, because nothing is silent, from the Hispanic point of view, and we have just touched on it in the previous lines, we should remember that in the federal State, the difficulties for a correct organization of the territory do not come from the " Federalism" but of "statism" D'ORS (1.989) Again, subsidiarity and sovereignty, political intelligence and reason of State.

If society is not, strictly speaking, but a society of societies, and if political society does nothing but crown civil society, the principle of subsidiarity guarantees freedom, a consequence of responsibility, while the principle of totality ensures unity. And authority. Thus, there is no division between freedom and power but rather a harmonious game determined by the pattern of the common good. Modern logic, on the contrary, that of contractualism, leaves no room for subsidiarity or the common good. In its robust version, it is the reason of State, which is imposed on the social disaggregation; or individualism, in its weak version, which dissolves law. For this reason, we maintain that most of the current discourses on subsidiarity move away from classical logic to settle in any of the modern versions and especially in the second, which is appropriately postmodern.

Thus, most of the discussions about federalism seem not to come from the logic of sovereignty. Alternatively, because they oppose the "larger" State, the "smaller" States, which can be more oppressive for the citizens, the closer they are, and which in themselves do not ensure decentralization. At the same time, they contribute to weakening old nations that guard an important moral patrimony, however much it is often squandered. Alternatively, in a paradox, they use subsidiarity to defend the States. In our

view, only the social organicity allows an adequate territorial articulation, conjugating the *pietas patria* with functional regionalism.

2.2. The social constructivism typical of current constitutions.

The first constitutions that appeared in the modern State and mainly in the European continent fundamentally sought to organize the powers of the State starting from their separation. French revolutionary doctrines ended with the Ancienne Régime. They impose theoretical deconcentration of power that goes from being in a single hand to being divided between the legislative, the executive, and the judicial. Those powers are balanced against each other, avoiding, at least in the theoretical framework, the abuses of the past. However, the historical evolution of constitutions and constitutional law itself has left that first mission behind.

In our days, the Constitution is the highest legal norm and the master plan of the entire society. Constitution lays the foundation of what is politically correct, limiting the spontaneous social politicity to channel it towards the parameters considered as adequate, as tolerable by society, outside of whose limits nothing can be done, nothing should be thought about, nothing is possible. This is precisely how constitutions, the real ones or those that reside exclusively in the collective nationalist imagination, are conceived and designed. They are the culmination of a political power that transforms social reality to adapt it to a series of ideological principles, to keep it within a few channels or frameworks defined by the constituent power and outside of which the State tolerates no other civilized life. It is not exclusively about a transformation of the organization of power, which of course it is, but rather, as SANCHEZ AGESTA (1.990) emphasized in his day, "it penetrates the entire structure of the social order."

This primacy of the will of the constituent power, independent from history and frequently, even from social reality, like in Spain, has deconcentrated and decentralized power in different regional authorities. In 1978, there is no doubt that Spanish society did not require distribution of power throughout the national territory. On an equal footing between the different autonomous communities since the old foralism in Spain had been overtaken by Bourbon centralization, surviving only in some territories a constant social will or at least in the informal power structures of said territories, a solid will for more

self-government, perhaps even in some sectors of full autonomy or independence. Constitution opens the door in a dirigiste way to what was in no way posed as a generalized social demand. It designs from the roots a new system of distribution of power with a territorial base. It offers the possibility of a territorial organization that breaks with the model of the last centuries of our history. Therefore, it should not surprise us that, following the same procedure, the nationalisms that consider themselves constituent and yearn for the birth of their States also aspire to configure society according to their criteria, independently even of the genuine demands of those who will be their own. Subjects set themselves up as architects of the new society that must adapt to the political postulates embodied in their texts and slogans. However, some are even legal norms.

2.3. Centrifugal territorial distribution of power in the current political architecture.

The centrifugal movement that we can observe in the distribution of power in numerous cases in old Europe, or even in the American continent, has started to obviate the more classical doctrine that in previous pages we have pointed out concerning the common good, to the integration of what is individual in the plural, of the part in the whole. This traditional doctrinal corpus has been reserved for the highest shelves of libraries, those that only serve to accumulate dust.

On the contrary, abandoning these past mental schemes, current constitutionalism has been nourished by some factors that, although they have far greater significance than the territorial distribution of power itself, are also reflected in it. Of course, they will gladly be developed in the future when time and doctrinal judgment are more significant.

However, it deserves a brief reflection justification, to the less obvious, leading to different states to territorially distribute power. We will purposely state the theoretical reasons for such a decision: To surround the citizens with power; gain efficiency; respect historical differences and increase solidarity between the regions. These four purposes, jointly or separately, constantly appear as the justifying basis for the decision to recognize certain territorial powers that complement the power of the State, deriving to them some of the powers initially attributed to the State.

Unfortunately, comparing these motivations with the reality of things, it is reasonable to think that the difference between them could lead us to think about the failure of the objective sought. Focusing on the Spanish case, partitocracy has prevailed in regions where not only the same national parties are present as well as new ones that seek their differentiation precisely in localism, many times intrinsically nationalist and disruptive. Therefore, the same representativeness crisis suffered by the large national parties and unions affects the local level without bringing power closer to the citizenry, but rather by replicating the models intended to be overcome, although on a smaller territorial scale. Regarding the benefits in terms of efficiency, it is enough to look at the regional and national budgets to see how, in general, greater efficiency has not been achieved. However, quite the opposite, with a multiplication of current expenses and civil servant personnel that has led to that in some Spanish cities about 80% of the working mass is for the Administration in its different aspects. Increasing the deficit and, on too many occasions, becoming a source of corruption or socialization of incentives so that it does not compensate even being employed, not to mention the differences between citizens of the same nationality or the excessive increase in tax pressure to pay for all this.

We cannot affirm that it has been successfully achieved regarding respect for historical differences. In some cases because those historical differences were simply non-existent. In others, because the differential treatment has always been seen as an unacceptable privilege by a large part of the citizenry and, to a large extent, has been a source of limitation of fundamental rights (as in the case of aggressive language policies in those territories with co-official languages). Finally, the purpose of promoting solidarity between the regions does not seem to have been reached either. It is enough to review the statements of politicians and citizens in bars or the media, with a constant comparison of who robs whom, who contributes more to the common funds, or who spends them without contributing anything to the common. Getting to consolidate some regional clichés that hardly contribute to the good of the State as a whole, instead, on the contrary, they serve to deepen the regional resentments between the different areas and of these to the State.

2.4. Personalism and law.

A final factor that could have weighed in the centrifugation towards the regions of political power that was once entirely in the hands of the State in the modern legal doctrine on human rights and its profound cultural impact on the European heritage. There is no doubt that Europe is the land of human rights; it is the legal-political environment in which man and his circumstances are legally more protected in their physical and moral integrity. After the Second World War, Europe is a benchmark worldwide and has served as an inspiration and reference, making its protection and guarantee perhaps the most widespread image of our legal system.

The rationalist philosophy and the personalism behind the ideology of human rights pivot on the central, nuclear role of the human person for any legal system, becoming, at least apparently, the foundation and reason for politics and law. At the early stages of this doctrinal evolution, human rights arise as a guarantee against the encroachments of power, against the risks arising from the disproportion between the power of the person and the State. By constitutionalizing human or fundamental rights, they achieve the highest possible level of protection against everyone. However, deliberately or not, the issue of human rights was called to even greater heights, because over time, they have transcended the law, becoming part of the ethical or moral, in the manner of a new religion typical of Europe, de-Christianized, covered philosophically by moralism and that today is dominant in the West. This philosophical approach makes the Constitution the highest norm of the legal system and the absolute moral referent of society, an ethical referent of its behavior.

Modern Western societies have thus become incessant claimants of new rights, which has led the doctrine to classify them into generations. The culture of our time is a culture of rights in that permanently, but often theoretical, they are conquering new areas of protection and guarantee. Moreover, it goes to the extreme that, with the consolidated and legally protected rights, there are often other supposed rights not yet consolidated but that aspire to be, even based on others that already are. The most obvious example that occurs to us of this situation that we are trying to describe is the confrontation between the right to private property, unanimously recognized in the West with the highest level of protection, and the incipient "right to occupy" those properties that are not in use or even those that are. In the courts, final resolutions usually protect the first against the second. However, it is no less accurate that the latter seeks protection and justification in

the social function of property, the right to decent housing, or the inviolability of the home. Something similar has happened with the rights linked to gender ideology. However, in this second case, the process has already advanced in some legal systems such as the Spanish case until the full equality and full legalization of the social demands of those who came out of conventionalism in their day historical, social status regarding marriage, adoption, or family.

Finally, with all of the above, in what interests us concerning the centrifugal movement of displacement of political power, we arrive at the fact that the new territorial powers and the societies that nurture them also consider the legal evolution of their institutional framework to be natural. Consolidation of what they consider their rights following the examples set out above. Thus, the political community endowed with a regional power aspires to see the fundamental rights of its political conception enshrined in its highest standards (the statutes of autonomy in the Spanish case), transcending these standards beyond their strictly legal function and becoming a new ethical and moral reference. Of course, this new moral cannot, by its nature, know any contradiction in legal norms outside its territory, and that has not emanated from the regional society itself. From his point of view, any correction from outside the regional perspective is illegitimate interference by external powers, even if the courts deny them reason based on formal law. This nationalism is fundamentally sentiment.

3. The crisis of the State?

In the following section, we will briefly deal with the aspects related to the functional or horizontal distribution of power that may have contributed to the acceleration of the centrifugal process of political power in the States that have sought a territorial distribution. Typical of the last third of the last century has coincided in time with the crisis of the State. After the unification of the old European kingdoms and principalities into superior units resulting in the political map of today's Europe, those states that did not opt for the federal configuration from the beginning eventually ended up distributing political power to a different extent among the territories that made it up. However, they did so at a historical moment in which globalism is growing due to the creation of the United Nations and, especially, of what we now know as the European Union.

The creation of supranational power structures has dramatically weakened the sovereignty of the nation-states by blurring or erasing borders, shifting the center of power towards supranational levels, and being accompanied by a generally open culture that makes the traditions more typical from nations suffer in favor of shared citizenship. There is no doubt that this weakening of the strength of the unitary State, also coinciding with the territorial distribution of power within its border limits, has turned out to be a dangerous combination. That could be ruining those States that were not constituted *ab initio* by federal aggregation of different smaller States (since the confederative model has practically disappeared from the political scene).

Political power is dispersed between the new supranational and regionalist tendencies, weakening the State in a kind of new "federalism." That is not a federation of States as defined by the canons of the political science but an amalgam of relationships and legal-institutional forms that may well end up being post-state. Sovereignty and territory give way to other interdependent and interrelated sharing power.

Since the middle of the last century, constitutional law and political science have emerged a new and highly relevant political operator: the Constitutional Court. Constitutional Court undoubtedly operates far beyond the Administration of justice, from the moment it has attributed the authentic interpretation of the constitutional text. Its direct intervention in matters of greater depth, in terms of the territorial distribution of power focusing on unconstitutionality remedies and constitutional conflicts of competences between the State and the different regional powers or between them. Yes, the Constitutional Courts have grown in prominence as the centrifugation of power from the State to the territories. The Spanish case is a great example. Constitutional Court had interventions of enormous relevance since both the most conflictive statutes of autonomy and those other decisions of the territories in nationalist hands that could have been systematically subjected to its interpretation, like any attempt against the unity of the State.

There is no doubt that, as the maximum guarantor of the Constitution, the power of the constitutional courts has made them a "superpower," maybe superior to the three classic powers in which Montesquieu deconcentrates power, as AYUSO TORRES

(1.996) rightly sustain. For the same reason, and the difficulty of a politically considered election of its members, the constitutional courts have been transformed into a judicial body to adopt political decisions that of course, it seems that in a democracy they would have to be in the hands of the representatives of the national collective.

The juridification of politics, which inevitably occurs when constitutional courts are above the rest of political operators and overcome the classic division of powers, has fostered a kind of the absolute rule of law in the hands of its components to which no parcel of social life can escape. Their role in the territorial distribution of political power, being necessarily centralized, has undoubtedly aroused the zeal of nationalisms that, rightly or wrongly (we opted for the second of these possibilities) find in the representation of the State through of the Constitutional Court an immobile bloc that curtails any possibility of genuine self-government.

Members of our Constitutional Court, which otherwise often do not even have to come from the judicial career, make judgments exempt from partisanship or ideology and increase difficulty when, in addition, and for the sake of that “legal invasion” of politics, they are interposed as a dam. Insurmountable and responsible for decisions that an executive that was genuinely responsible for executing what the representatives of national sovereignty decided in legal norms could adopt. In this way, there has been a paradoxical reversal of the most reasonable reality: Constitutional Court is involved by Government or central power, not by separatist. Constitutional Court is used thoroughly in limiting the most unruly territorial powers that could be repressed with governmental measures, leaving the judgment of constitutionality ex-post and not ex-ante to them.

4. The Spanish case

In the Spanish legal experience, the territorial issue has historically been approached with the reality of the "jurisdiction" of Foralism, which allowed a reasonably broad legal and political autonomy without diminishing the superior unity of Spain in that historical configuration that led to being Empire. In intellectual purity, this figure is a precocious maturation of the experience that we know with the name of subsidiarity. Nowadays, "Return of civil society" has not provided better results in achieving the community well.

It tends to camouflage a set of lobbies and pressure groups that are guessed under the withdrawal of the State of large parcels that cannot be simply abandoned. Moreover, in the economic and social sphere, the subsidiary discourse today almost always conceals the reality of neoliberalism. It is used to weaken the State, which, despite its historicity in origin and development, many times currently guards the natural politics of man better than separatism, Europeanism, synarchy, or big money.

Having made this first observation unavoidable in the analysis of the Spanish constitutional reality, let us now place ourselves within what has been called the "State of the Autonomies." In general terms, the Spanish Constitution of 1978 contains a territorial design hybrid, or at least intermediate, between the politically decentralized unitary State and the federal State. In fact, Spain is a paradigmatic example of that "third way" intermediate between the most decentralized State of the unitary State and the federal (or confederal) State itself. Moreover, the text that culminated the transition from the Franco regime to modern democracy, as in so many things, purely leaves the question open. Article 2, included in the essential preliminary title, with the correlate of its aggravated rigidity in terms of Article 168, affirms, on the one hand, that the Constitution is based on "the indissoluble unity of the Spanish nation, common homeland and indivisible from all Spaniards," for another to consecrate the right to autonomy of the" nationalities and regions "that comprise it. Title VIII develops and thematizes Article 2 but does not create a "regional" State. More correctly describes one that could become "regional," since the principle of voluntariness —of access to autonomy—, together with those of equality and solidarity, was at the base of the model that the constitutional text contained.

This precision, necessary for the purposes we are interested in, is confirmed by the fact that Article 137, heading the title as mentioned above, determines that "the State is organized territorially in municipalities, provinces, and Autonomous Communities to be constituted. " In this way, the new system devised by the constituent legislator is based on the concept of those indeterminate autonomous Communities, which can also be understood by "nationalities" and "regions," as well as being referred to other territories endowed with unique features, opening their training not mandatory to bordering provinces with common characteristics, island territories, provinces with the historical regional entity, regions from a single province, territories that do not exceed that of a

province and to those others not integrated into the provincial division (articles 143 and 144). Even throughout the process of drafting the constitutional text when, in a contradictory way with the assumptions on which it rested, there is a generalization, homogenization, and acceleration of the system of territorial autonomies.

The autonomic pacts of 1981 are a true constitutional novation due to the substance of the matter and, deepening the path opened by the "pre-autonomous" regimes, the division into regions of the entire national territory. The division would be imposed even for those who, like the cases of León and Segovia, they would have rejected it if they had had the opportunity. It also extends Government and superior court of justice, which was only initially planned for the "historical" communities and those who had agreed to self-governed by the way called "fast" in Article 151 of the Constitution. The final result is an entirely artificial autonomous map, sometimes contrary to our history, with brand-new Communities whose existence sometimes seems to be due only to ignorance, picturesqueness, chance, or even the design of dividing Castilla and not consolidating León. Imposing a uniformity in maximums (colloquially known in Spanish as "coffee for all" and in English “one size fits all”) in the long run has created an ineffective and expensive system that has not served to satisfy nationalist claims, today more vigorous and challenging than ever.

Furthermore, *stricto sensu*, regionalization cannot be based exclusively on demands of administrative rationality, paradoxically, on the same argument as the one used in the past for centralization. However, its nature as a projection of an abstract nature right should not be exacerbated either. Certain self-government must imply efficiency, but to a large extent, it is required by freedom, which is applicable at the different levels of territorial organization. Nevertheless, of course, the difficulty lies in determining that specific measure, that proper term, which in a modern State quickly deviates towards claiming a federal organizational model incompatible with legal and historical reality or leading directly to secession via a supposed right of self-determination that is exercised against all rights supported by the longing for a past that never existed.

As a proposition, it seems that a system that combined a broad administrative decentralization for the common law territories would have endowed them with greater efficiency and proximity to the citizens. Reserve the recognition of certain political rights

of self-government for historical reasons, thereby strengthening the differentiation that many lengthy for, would have been more reasonable from an organizational point of view and, undoubtedly, more convenient from a political angle. Obstacles and reluctance of all kinds could raise, but the disturbing litigation of a transference process never closed and in constant expansion is dangerous; the reality of current events that put the unity of Spain at serious risk; and finally, if any of the complaining nationalisms were to consummate the disconnection, more than likely, others would follow.

The progress towards greater cohesion that has taken place in recent decades due to globalization should not be forgotten, forging in our homeland a previously unknown cultural unity, which - despite the nationalist counter - has not stopped growing. We take it for sure that there will be those who deplore the sign of this trend. However, for the non-judgmental observer, the mystery of that tightest forge between the different Spanish territories in the cultural field will not be able to go unnoticed. Only the strict linguistic and educational policy in the hands of some autonomous communities oriented to erase Spain, their name, history, and reality, have been able to limit such cultural homogenization that, for instance, could be considered impoverishing. Will we oppose these centrifugal procedures, an attractive pedagogy of what our Spain has been and could continue to be so rich in its plurality of regional characteristics?

5. Conclusions and learned lessons

5.1. The territory has always been a source of possible conflicts of all kinds. Social life unfolds territorially, and man has always been a territorial animal. We all consider ourselves attached to a territory with which we maintain a material relationship because it nourishes us and provides the necessary resources for life, but also, and most importantly, an emotional bond. That is why historically, patriotism has been an essential element of territorial cohesion that has its roots in the depths of the human being.

5.2 Frequently communities try to expand their territorial sphere. Others have fought for the defense of their territory. The territory has been and continues to be in the focus

of most of the fierce conflicts, for example, in the case of the second world war in historical terms or the current conflict in Crimea.

5.3 In postmodernity, the international community recognizes the borders between states, and with some exceptions, the external borders are peaceful. However, the postmodern context does see the territorial problems derived from internal territorial disintegration grow.

5.4 A romantic and sentimental perspective that does not respect historical truth is attractive and popular in territorial politics. If it is maintained and cultivated for generations, it becomes dangerous for the territorial integrity of states.

5.5 In order to preserve their territory, postmodern states should respect the classic principle of subsidiarity, rigorously exercising their unifying mission. Integrating diversity into the whole is the only authentic guarantee of the territorial survival of the states.

5.6 Given the territorial problems, political representation, and institutional comfort that states suffer in postmodernity, perhaps we should appreciate that the state formula is obsolete, and a new configuration of the political community is necessary. The State as we know it did not always exist and may not exist forever.

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