

REPORT ON
DEMOCRACY IN SPAIN/ 2007

The Strategy of Confrontation

The development of a *strategy of confrontation* as a method for politically debilitating the governing socialists is the central conclusion of the first *Report on Democracy in Spain*, relevant to the year 2006. This *strategy of confrontation* has affected the workings of democracy in a very direct way on three different levels: the relationship between the government and the opposition; everyday life of some institutions central to the system; and, finally, the coexistence of citizens, with the creation of a divisive situation among them.

SUMMARY

- The Different Levels of Government
- Government and its Citizens
- The Different Levels of Government
- The Justice Administration
- Political Power – Economic Power
- Pluralism and Independence in the Media
- The Impact of Corruption on Democracy

In order to produce this Report on Democracy in Spain, Laboratorio Fundación Alternativas assigned a Advisory Board who, joining to the report director, have agreed orientation and design through several sessions, being aware of every paper in process and proposals of final documents.

A research team employed by Laboratorio Alternativas has done the collection and selection of information, production of relevant data and the start essay of the different chapters that compound the Report,

CONSEJO ASESOR

Estefanía Moreira, Joaquín
Director del Informe

Arango Vila-Velda, Joaquín

Barreiro Pérez-Pardo, Belén

Lafuente Félez, Alberto

Leguina Villa, Jesús

Maravall Herrero, José María

Ontiveros Baeza, Emilio

Pradera Cortázar, Javier

Sánchez-Cuenca, Ignacio

Santamaría Osorio, Julián

Eguiagaray Ucelay, Juan Manuel
Director Laboratorio de Alternativas

Ortiz Vicente, Javier
Subdirector Laboratorio de Alternativas

INVESTIGADORES *

Bacigalupo Saggese, Mariano

Barreiro Pérez-Pardo, Belén

Criado, Olmos, Henar

Fernández Seijo, José María

González de la Vega, Ignacio U

Jiménez Sánchez, Fernando

León Alfonso, Sandra

Lledó Callejón, Pablo

Mulas Granados, Carlos

Ruiz-Rufino, Rubén

EDICIÓN: Fernando Pedrós. **COORDINACIÓN:** Javier Ortiz y Guillermo Cordero. **MAQUETACIÓN:** Chano del Río.

FOREWORD

Democracy, to be recognized as such, requires a previous set of basic assumptions embodied as rules and institutions that characterize its nature, express and symbolize shared values and channel a right working of social relations.

The 1978 Spanish Constitution is the formal expression of principles and rules of the game that we, Spanish citizens, have given ourselves, in order to peacefully resolve social conflicts and organize our collective life in liberty. Fortunately, democracy is an unquestionable reality in Spain, as seen in our daily life experience.

Nevertheless, for different reasons, we find it plausible and even compulsory to question ourselves as to how democracy is functioning. This may be to the following: decisions taken by public authorities seem unfair to us, the great contrast with our deepest values and preferences, certain public representatives who appear to be involved in questionable practices or, taken from a different perspective, because certain social concerns do not find the most appropriate channel to express themselves or receive a satisfactory collective solution.

In the above mentioned cases and in many others, as varied as collective life itself, the result is an inevitable feeling of dissatisfaction towards the reality of democracy and a growing interest in the improvement of social results. However, the extent of such a praiseworthy goal requires a shared conviction among citizens and their representatives that the resulting diagnosis and the proposed remedies can help to attain the desired outcome.

Thus, social debate is not only a consequence of the existing pluralism but also an essential condition for the improvement of the democratic system itself.

When Fundacion Alternativas considered writing up its first **Report on Democracy in Spain 2007**, the aim was to bring forth accurate data to formulate the desired social debate. This information, organised into an advanced idea of democracy, should allow one to appropriately understand the role played by different State Authorities and their reciprocal relations, motivations and behaviour of different social agents, especially political parties and the fulfilment of duties carried out by the main democratic institutions. What lies behind this analysis is the conviction that not all behaviour is equally acceptable in democracy, according to certain explicitly valued criteria, as well as more or less functional institutions, according to the results offered by certain activity indicators or by taking into account comparative outcome obtained from abroad. Once this behaviour has been analysed and the accurate indicators have been determined, a certain assessment could be reached, as provisional and partial as one would consider but, at least, supported by a precise empirical analysis and a rigorous methodology in relation to certain aspects of our democratic system of special public relevance. Moreover, the observance and follow-up of this could, in time, contribute to directing social debate around problems of general interest, to generating shared convictions among different political visions and, eventually, to mobilising the necessary efforts to improve the

existing institutional designs in order to stimulate the behaviour of social agents in accordance with socially valued preferences.

This Report fulfils this defined purpose. It is the result of discussion and careful planning of every chapter during an entire year. In the course of this period of time, a qualified team of researchers including sociologists, political scientists, economists and law experts carried out an exhaustive search for relevant information in order to explain, compare, measure and give meaning to the effective working of the most significant powers and institutions in our public life: the Government and the Opposition, Parliament, central and territorial powers, Justice, economic powers and their relationships with the mass media.

The texts included in this primary Report are the product of the work and competence of the research team, who, furthermore, have benefited from the global orientation, proposals and analytical suggestions that arose in several monographic meetings with the Report's Advisory Council.

Joaquín Estefanía, the Director of the publication, is the intelligent coordinator and enthusiastic drive behind this work. I feel privileged to share responsibility with him, not in the wise decisions he has taken, but in the remaining deficiencies that could be found.

The aim of **Laboratorio de la Fundación Alternativas**, is to continue publishing reports of a similar nature during the years to come, which will include the improvements originating from the opinions we have received, as well as experience and available information.

Nevertheless, our hope is that this first report arouses the interest of opinion makers and contributes to placing in the centre of public debate the need to unanimously make an effort to improve habits, principles and institutions which intensify social satisfaction and enhance the legitimacy of our organized collective lives.

Juan M. Eguiagaray Ucelay

Director of *Laboratorio de Alternativas*

INDEX

Balance

The Government and the Opposition

1. Introduction	8
2. Argument, Confrontation, and Division	9
3. Has the Government Broken with Consensus?	14
4. The PP's Discreet Moderation	18
5. Confrontation Politics	21
6. The Weakening of the Ideological Vote of the Left	23
7. Conclusions	28

Government and its Citizens

1. Introduction	31
2. Government Actions: Fulfilment of Electoral Promises	31
3. Voter Reactions	39
4. Conclusions	54
5. Appendix	58
6. Bibliography	68

The Different Levels of Government

1. Introduction	70
2. Effects of the Statute Reforms and Decentralization on Inter-governmental Relationships	72
3. Conflict and Cooperation in Intergovernmental Relationships	81
4. Public Opinion and Intergovernmental Relations	89
5. Conclusions	92
6. Bibliography	106

The Justice Administration

1. Introduction	107
2. The Justice Administration as a Power	108
3. The Justice Administration as a public service	123
4. Epilogue: the image of the Justice Administration	129
5. Conclusion	132

Political Power – Economic Power

1. Introduction	135
2. The influence of political power over economic power	135
3. Economic power's influence on political power	149
4. Conclusions	157
5. Appendix	157
6. Bibliography	165

Pluralism and Independence in the Media

1. Introduction	167
2. The media and politics in Spain	167
3. The opinion of the principal newspapers	172
4. Conclusions	194
5. Bibliography	199

The Impact of Corruption on Democracy

1. How much political corruption is there currently in Spain?	201
2. How is Spanish political corruption perceived?	202
3. Practices of political corruption revealed by scandals	207
4. Areas especially prone to corrupt practices	218
5. Conclusions	225
6. Bibliography	228

The Government and the Opposition

1. Introduction

In his investiture speech on April 15, 2004, Zapatero announced before the House of Representatives that he was “ready to make this term one of dialogue, understanding, and conferencing”. His words were above all directed at those who “were awakening from despair in politics, [who had] come to vote in [the] elections”. The despair Zapatero was talking about was reflected perfectly in the opinions Spaniards made apparent on the eve of general elections on March 14, 2004: a vast majority of citizens thought that the PP, during its years in government, had shown itself to be authoritarian, intolerant, and with little inclination towards dialogue. Spaniards did not punish the political party then in power for its management of the economy, but rather for its “governing style”. The PSOE, during the electoral campaign, committed itself to radically changing that style if it were to be elected. Zapatero’s speech was not mere rhetoric. The complete change in public life constituted one of the fundamental pillars both of the PSOE’s platform in the general elections of 2004 as well as of the government’s platform that the President presented in his investiture speech. The commitment to improve the quality of democracy contained institutional reforms (the law limiting institutional publicity, the Code of Good Government, or the reform of public television, among others), as well as changes of certain political habits, that were put in motion practically since the beginning (for example, the Socialist Parliamentary Group renouncing the asking of questions in the control sessions or the President’s control in the Senate).

This term is, however, the term of arguments, clashing and division. In February of 2006, when not even two years had passed of Socialist government, citizens perceived a high level of confrontation in Spanish political life, that even went beyond the borders of the relationships between political parties, reaching people of the street. If the assessment of the political situation was already bad at the end of Aznar’s term, by the end of 2006 it was even worse.

The PP’s chosen strategy for opposition during this term is based on confrontation. It fundamentally consists of looking for clashes on central questions of political life. The lack of cooperation is justified by harsh and alarmist language which contributes to the feeling of constantly being on the edge of an abyss.

However, in spite of the confrontation, overall the PP has not become radicalized ideologically. In the statements outlining its platform it continues to defend itself as a moderate and conservative political party. In other respects, the PP has cooperated with the government in other areas: it voted in favor of passing some of the most important laws of the term like the Domestic Violence Law and the Dependency Law.

This two-sided behavior by the PP, at times tense, other times conciliatory, shows that the strategy of confrontation is deliberate. It can’t be explained simply by this party’s difficulties in taking its electoral defeat in 2004, nor is it an inevitable response to the actions of a government that, according to accusations of the PP’s partisans, has broken certain basic consensus that governed the relationship of the two main political parties in Spain.

The PP centers its strategy of confrontation on two areas: territorial policy and terrorism (ETA and March 11th). Policies of confrontation are not chance selections: they reflect a strategy, used for years by the PP, where they pursue the imposition of transversal issues on the political agenda, that is, issues that are alien to the traditional debate between the left and right (essentially, welfare policies). The reason is none other than the game disadvantage that the PP competes with in Spain, a country with more citizens of the left than of the right. To win votes, and to ultimately reach power, the PP needs Spaniards to set aside ideological considerations, which are what make them lean towards the PSOE, and think that what is at stake are issues like the territorial make-up of Spain or the fight against terrorism.

It's not clear if the PP's strategy will work in electoral terms. The right tries to dominate the political agenda bringing confrontation to the two mentioned issues. Along with this the PP seeks to take away visibility of some of the fundamental achievements of the government. In the environment created by this confrontation, the PSOE can't obtain the expected profitability from administration that under more normal circumstances would have meant a greater popularity and a greater electoral support for the party. With all of this, if the partisans of the PP take their strategy too far, they run the risk of creating a climate of rejection that will end up triggering the left vote.

Ultimately, those hurt most by this confrontation are the citizens themselves, who find themselves condemned to living in a country where the political party of the right prevents democracy from working normally.

2. Argument, Confrontation, and Division

Confrontation introduced by the People's Party in the political arena, which sometimes moves into society itself, has two components: on the one hand, complete clashing with the government on certain issues, breaking any possible road to understanding and cooperation, and on the other hand a very harsh tone in its criticism that often degenerates into insults and slights.

The most visible part of this confrontation has to do with the PP's rhetorical style of opposition, based on gross accusations and disdain for its opponent. When creating confrontation, the PP holds important support in the media of the most extreme right. The most brutal insults and condemnations are heard from radio broadcasters like COPE or Onda Cero, on televisions like Telemadrid, and in newspapers like El Mundo or Libertad Digital. There are members of the People's Party that regularly collaborate with some of these media. The PP senator Ignacio Cosidó, for example, frequently writes in the pages of Libertad Digital next to prominent commentators of the extreme right¹. In these media rhetoric of hate is practiced (that which is called *hate speech*) directed at the destruction of one's adversary. With this background noise, the politicians' insulting words echo with greater gravity yet.

During this term it has become habitual for Mariano Rajoy to turn to an offensive tone when directing himself to the President of the Government. For example, after a meeting of the national executive committee of the PP, Rajoy declared, in response to previous words by Zapatero: "A complete fool is much more dangerous than a tin patriot" (El País 12-20-2005). The ease with which the main authority of the PP calls the

President of the Government a “fool” is then transmitted to lower posts in the party. Recently, the PP representative Alicia Castro said at a political rally in Asturias that “there is an absolute idiot at the head of the central government” (January 27 of 2007). Between the “complete fool” and the “absolute idiot” many other names have been used:

This crude language is complemented with terrible accusations destined to create a sense of social alarm, as if the country were at a crossroads and fighting for its very survival. Let the following serve as an illustration. January 15, 2006, in a closed congressional meeting of the Galician PP, Rajoy expressed himself in these terms: “[Zapatero] needs to crush the Constitution so that ETA accepts a truce and Zapatero will beg for a truce so that the Spaniards forgive him for having crushed the Constitution” (El País 01-16-2006). As far as former President Aznar is concerned, on September 25 of 2005, he insinuated that the government was approaching a reactionary stance when allowing the Statute plan to be voted on in Parliament in Catalonia. His exact words were these: “Probably this week decisive steps will be made for a regime change, without a mandate and without anyone’s consent”, adding that “we do not have a politician at the head of government who has either convictions or a sense of responsibility” (El Mundo, 09-25-2005).

Confrontation has been centered on three issues: the March 11th attack, the Statute of Catalonia, and the government’s anti-terrorist policy. Although clearly there are overlaps in time, a chronological order can be noted. The PP began its opposition with the March 11th attack, it continued with the statute reforms, and afterwards went on to terrorism and the peace process.

The argument about the attack on March 11th has been crucial for the campaign to debilitate the government. This issue has served to create permanent suspicion about the legitimacy of the PSOE’s electoral victory in the elections of March 14th. The PP has considered that the more March 11th is talked about, the greater the reinforcement of the impression that this is only a provisional government, which happened in tragic circumstances, which does not have the authority to set out on ambitious social reforms.

In the conspiracy versions of the attack, at times the government is accused of directly intervening in the planning of the bombs, and other times it is attributed with a dark role in silencing or hiding the truth about what happened. Neither of the alternatives is very comforting. If someone believes that their government is behind the worst terrorist attack in Europe’s history, or that their government is unwilling to try those responsible for that attack, then the conclusion can be none other than the urgent necessity to remove that government from power.

In May of 2004 an Investigation Committee was established in Parliament on this issue. In the committee it was impossible to reach any mutual conclusions. The PP used the opportunity to defend its management of the attack and its speculations on who was responsible for itⁱⁱ. From there on insurmountable breach was opened between those who believe the official version of islamist responsibility for the bombs in the trains and those who believe the conspiracy version of intervention by ETA, secret services of other countries and even the Socialist Party.

Some leaders of the PP (like former President Aznar or Representative Jaime Ignacio del Burgo) have explicitly supported the conspiracy theory. José María Aznar, during his appearance before the Investigation Committee, referred to “relationships among terrorists, Islamic or not: a relationship before now discarded as unlikely and now

shown to be an irrefutable fact.ⁱⁱⁱ” In addition, he let it drop that there was no need to look for the planning of the attack “in far-off deserts or remote mountains” (El País, 11-30-2004), in this way stimulating speculations on collusions between Islamists and the supposed beneficiaries of the attack. These beneficiaries would be none other than the socialists as the attack, from what the particular vote of the PP in the committee argues, “aimed to remove the People’s Party from power and provoke and change in the direction of Spanish domestic and foreign policy.^{iv}” Strangely, the particular vote of the PP defends the attack’s electoral intent seeking a change in Spanish foreign policy at the same time as it defends “the theory that the determining factor of the attack was Spain’s participation in Iraq is not upheld and is completely denied by the facts.^v” It’s shocking that those responsible for the attack wanted to change foreign policy, but they did not consider the support of Aznar’s government of the war in Iraq.

In general, the PP does not openly support the conspiracy theory. That labor is in the hands of certain media (COPE, El Mundo, Libertad Digital). Rather, its way of keeping the debate open consists of permanently claiming a slippery truth that did not come out either in the investigation committee (which according to the opinion of PP partisans did not end properly) or in the issuing of indictments. By insisting so much that the truth of the events is not known, the party of the right clearly protects and legitimizes supporters of the conspiracy theory^{vi}.

It’s likely that the issue of March 11th will not disappear during the term. In 2006 El Mundo and COPE kept it alive, and it’s foreseeable that in 2007 the issue will hold great prominence due to the trials held in the Supreme Court^{vii}.

After the close of the investigation committee in July 2005, the PP centered its attention on the Statute of Catalonia. The issue came to a boil with the passing of the Statute plan in the Catalanian Parliament on September 30, 2005 (120 votes in favor and 15 opposed, by the People’s Party). The PP considered the plan to really be a concealed Constitutional reform which threatened Spain’s territorial integrity. Because of this, it refused to admit the plan in Congress, as it concerned legal fraud according to their understanding. It placed an appeal of unconstitutionality in Congress in the processing itself of the plan, but the Constitutional Court denied it in March of 2006.

The central government’s management of the Statute of Catalonia was pretty chaotic, providing grounds for the PP to attack with extreme harshness during the entire process. The President of the autonomous government of Catalonia, Pasqual Maragall, did not know how or did not want to curb the multiple nationalist demands of the ERC that had no place in the Constitutional order. As far as Zapatero was concerned, before winning the elections he had committed himself, at a rally held at Palau Sant Jordi on November 13 of 2003, to supporting “the Statute reform that the Catalanian Parliament passed.” (El País, 11-14-2003). Leaving out what Zapatero’s final intention was when voicing those words, what is true is that the entire world understood that Zapatero was announcing that what came out of the Catalanian Parliament would be passed in the central Parliament without major difficulties. For that to happen he was counting on the guarantee that the Party of Catalan Socialists (PSC) was the main partner in the tripartite and that it would be able to watch the reach of the proposed reform. However, Maragall’s inability to control the process of drawing up the Statute required the PSOE, highly pressured by the opposition and public opinion, to make profound modifications to the text in central Parliament.

The situation only began to be redirected as of January 2006, when Zapatero reached an unexpected agreement with Artur Mas on the thorniest issues of the Statute (the definition of Catalonia and the new financing framework). But that agreement, which allowed the text to pass in central Parliament, caused a crisis in the tripartite Catalan government, because of the ERC's opposition to both Zapatero's maneuver with the party Convergence and Union (CiU) as well as the reduction in content of the Statute, a crisis that was resolved with the anticipated call for regional elections. The ERC betted on a "no" to the referendum on the Statute, held on June 18, 2006, with a very low participation of 49.5% (the text received support by 73.9% of the voters).

In terms of procedure, the PP's opposition during the entire process was extremely harsh: dissent in all votes, both in the Catalan Parliament as well as in central Parliament, campaign for a negative vote on the referendum and the making of two appeals of unconstitutionality (one on the admission of the reform proceedings and the other on the passed text itself). It's important to add to this, as an element of citizen mobilization, the campaign to gather signatures from the street seeking the a referendum to be held with the following question: "Do you consider it advisable for Spain to continue to be a single nation where all citizens are equal in their rights, obligations, as well as public assistance?" Rajoy presented four million signatures in Congress in support of his proposition against the referendum.

But above all it's the tone and the content of the messages PP leaders have made which reveal the degree of confrontation reached on this issue. The passing of the Statute was presented in dying terms, as an act that meant the breaking up of Spain and the breaking of the Constitution. In the congressional debate of March 30, 2006, Mariano Rajoy read phrases like these: "We are at the beginning of the end of the State as it was designed by Spaniards in 1978", "this partisan Statute, the first Statute of dissent, of division and disagreement, a Statute that has been conceived under the cover of darkness, quietly and with its back to the general will."^{viii} Outside of Parliament accusations were even more alarmist. In an interview with the Italian daily *Il Messaggero*, Aznar said the Statute "means the irreversible division of Spain" and it means the "*de facto* abolition of the Constitution" (*El País*, 4-01-2006). Ángel Acebes described the Statute as dense, ambiguous, and unintelligible garbage," adding that "it finishes with the autonomous State of the Constitution of 1978" (*El País*, 4-01-2006). Acebes himself caused a huge stir when he affirmed that ETA was in charge of the reform process and when he rhetorically pondered the connection between the meeting held by Carod-Rovira with ETA members in Perpiñán on January 4, 2004 and the Statute reform (*El País*, 11-26-2005)^{ix}. Former Secretary of the Interior, Jaime Mayor Oreja, also pointed to the connection with ETA: "Just as Ibarretxe's plan is a product of the Pacto de Estella, the Statute of Catalonia is a product of the Pacto de Perpiñán" (*El País*, 11-26-2005). The President of the PP in Andalusia, Javier Arenas, made several speeches full of the Statute reform connection to ETA. In an interview granted to the daily *El Mundo* on November 28 of 2005, he declared: "I once said that Zapatero is preparing a placement for Maragall that works for Ibarretxe and ETA. And now it's being shown."

In Andalusia the PP launched a radio publicity campaign where the damages to this autonomous community caused by the passage of the Statute were exposed, revealing the extent to which the PP was prepared to convert its opposition into a confrontation between territories. In February of 2006 several ads were included that all ended with this

phrase: “Zapatero’s pact with Catalan nationalism is detrimental for Andalusians, and Chaves does nothing to make it right.” In some of these radio advertisements it was Arenas himself who read a text announcing that he was going to fight to prevent “the Constitution from being changed without Andalusia and against Andalusia” (El País, 2-14-2006).

Having created such a horrifying opinion climate, it’s not odd that the confrontation extended to society and the boycott of Catalan products at Christmas of 2005 had a certain amount of success. The most visible product during that season is *cava* (sparkling wine). According to data provided by the Regulating Council of Cava, sales in the Spanish market fell 6.6% in 2005 (El País, 12-13-2006).

Lastly, policies against ETA terrorism have been the third axis of confrontation between the two big parties. Though in the past there was always a basic understanding between the PP and the PSOE, that minimal understanding has blown up during the present term. Curiously, it’s worth affirming without any exaggeration that this term is, in all other respects, that which has had fewer fatalities at the hands of ETA, at least up until now. Despite the fact that ETA is weaker than ever, terrorism has become the main issue of opposition for the People’s Party.

The politization of the fight against ETA began with the State of the Nation debate on May 11, 2005. On that occasion Rajoy spat this accusation out against the President of the Government: “It is you who has proposed changing directions, betraying the dead and allowing ETA to recover the positions it held before its withdrawal”, adding that the socialists have started “speaking in *batasuno*.³” All the same, terrorism did not come to be the center of discourse for the PP until the declaration of a permanent cease-fire by ETA on March 22 of 2006. There was an initial cautious reaction by Mariano Rajoy, but he used the meeting with the secretary general of the Basque socialists, Patxi López, with Arnaldo Otegi and other members of the banned Batasuna party, as an excuse to justify the burning of all bridges with the government. That meeting was announced just after the State of the Nation debate in 2006 was held, where there was consensus even in the press of the right regarding Zapatero’s victory in his confrontation with Rajoy. Before the announcement of the meeting between López and Otegi, Rajoy said at a rally in Tarragona that Zapatero was “disloyal”, he accused him of “having deceived Spaniards” and of having “given in to ETA’s blackmail and pressure” (El País, 6-04-2006). Acebes intensified the message, declaring that the government “has turned over the keys to the State based on rule of law to terrorists” and that “the Attorney General is doing the dirty work of judicially legalizing Batasuna” (El País, 6-04-2006). In full verbal escalation, a couple days later Acebes himself went so far as to say “right now, Zapatero’s platform is the platform of ETA” (El País, 6-06-2006).

When the meeting between López and Otegi finally happened on July 6, 2006, the PP’s reaction was extremely harsh. María San Gil said, speaking about a photo of the two, that “this is the photo of political negotiation with ETA, of the surrender of the State based on rule of law” and she compared the photo with “the one of Hitler and Franco” (El País, 7-07-2006). In addition, the PP judicially denounced the meeting. And Rajoy, to finish off, said that Zapatero “does not represent either the State or Spaniards as a whole” (El País, 7-07-2006).

The PP’s opposition on the issue of ETA has many times been naturally “preventative”: the administration carried out by the government was not criticized, but

instead hard attacks were launched professing that the government had made important concessions to ETA (recognition of the right to self-determination, handing Navarra over to terrorists). The attack of December 30, 2006 at the Barajas airport cleared up doubts about the existence of concessions or political costs.

The PP's harassment of the government has not only materialized in Parliament and in the abundant declarations by the leaders of that party. It has also been carried out in the streets. Between March of 2004 and December of 2006 five protests were held, organized by the Association of Victims of Terrorism and which the People's Party joined with^{x1}. All of these demonstrations led to acts of protest against the policies of the government.

The division created by the use of terrorism as an oppositional instrument was made clear after the attack on December 30, 2006. The parties were not able to agree on holding a joint protest and each one held its own. It was an unusual situation, unprecedented, responding to the strategy of confrontation that the PP has put to work on this terrain.

3. Has the Government Broken with Consensus?

The right defends itself against accusations of creating confrontation alleging that it's the PSOE who, with a radical platform, has broken with the consensus that governed Spanish politics since the transition era. The rupture with consensus, the questioning of the Constitutional order, would explain the harsh reaction by the PP. According to that theory, the PP has had to confront the government on key issues when facing the dangers for Spain's future that the political transformations initiated by Zapatero pose. In that way, the argument goes on, if the government had not dared to touch such sensitive issues, or if it had done so by looking for the main oppositional party's support ahead of time, the relationship between the two big parties would have been very different.

This theory appears systematically in the speeches given by Mariano Rajoy in the debates about the state of the nation. May 11, 2005 he spoke these words in Congress:

“But Señor Rodríguez Zapatero, you have strived to make everything a mess: the Constitution, the Statutes, financing of the Autonomous Communities, or our own history. You have created many divisions. You have created fierce confrontation among many people.^{xii}”

The message was the same in the 2006 debate. May 30th he said this:

“Members of the house, Spanish democracy of 1978 was set up under a great foundational consensus: consensus in reconciliation, consensus in the rules of the game, consensus in the defense of the values of the new State. Well now, Señor Rodríguez Zapatero, for unexplained reasons, has unilaterally decided that things were not done properly in 1978, and since everything has gone wrong it's necessary to correct everything.”^{xiii}

Though it's not easy to identify exactly what the subjects of consensus are, or for how long they have existed, in essence the complaint revolves around three specific points that apparently before 2004 had bases of agreement: (i) consensus on territorial policy; (ii) consensus on the need to not stir up the past (silence about the Civil War and Francoism); (iii) consensus on how to combat ETA terrorism.

The accusation of making the country "a mess" is strengthened by what the PP understands as a deliberate strategy of the PSOE of politically isolating the right. The PSOE, instead of trying to reach agreement with the PP, has preferred marginalizing it looking for support from extremist parties like the IU or the ERC.

The crystallization of that strategy of isolating the right would consist of, according to this argument, the so-called Pacto del Tinell (really, the *Acuerdo para un Gobierno Catalanista y de Izquierdas en la Generalitat de Cataluña* signed on December 14, 2003 by the parties of the Catalan tripartite). The following text appears on an appendix of that agreement:

"The signing parties of the present agreement commit themselves to not establishing any agreement of governability (investiture agreement or stable parliamentary accord) with the PP in the Government of the Generalitat. Likewise, these political forces commit themselves to impeding the presence of the PP in the Government of the State, and they renounce the establishment of government pacts and stable parliamentary pacts in state congresses."

According to many PP leaders, this clause anticipated the exclusive strategy later followed by Zapatero's government. In accordance with the most radical version, the PSOE, in order to stay in power, would have united with the nationalists with the aim of proceeding a second transition where the Constitution would be broken, Spain would be dismembered and ultimately they would give in to ETA's demands.

The PP's opposition would be, therefore, an answer, on the one hand, to the radical agenda of Zapatero's government, that breaks the points of understanding between conservatives and progressives, and, on the other hand, to the policy of allying with extremist and nationalist parties.

Both accusations have grounds. The government has carried out policies with a certain amount of radical content. The most noticeable measures have been the withdrawal of troops from Iraq soon after taking power, a clear turn in the foreign alignment with the U.S., the law on same-sex marriage, and the Law of Historical Memory. In summery, three issues could be discussed where a certain radicalization can be detected: foreign policy, civil rights, and historical memory.

In this way, it's true that the PSOE has obtained parliamentary support of parties that are somewhat extremist like the IU and the ERC. These alliances could provoke suspicion about a government hidden agenda, or about a government too indebted to groups whose ideology is very removed from the moderate positions that dominate Spanish society.

Now then, has the socialist government really broken with consensus? And even if it has, is that rupture enough to explain the strategy of confrontation?

With respect to the first question, if a consensus of long standing tradition has been broken between the two principal parties of the country, the two following comments are worth making:

Beginning with the territorial issue, the constitutional consensus that the PP talks about proves to be strange. It seems rather that since the passing of the Constitution, far from any consensus, the PP has always been reluctant. Thus, the same party that today defends the inconvenience of modifying the Statutes is the party that, under the acronym at that time, the Popular Alliance (AP), refused to vote for Title VIII of the Constitution, voted against the Statute of Guernica (1979), and abstained in the vote on Catalonia (1979). In reality, consensus on the subject of territory was established between the UCD and the PSOE because both parties upheld moderate stances. The PP can only say to have joined that consensus starting from 1991, when it adopted a conciliatory stance on the statute reforms that took place between 1991 and 2001.

As far as historical memory, it's very doubtful that there was any consensus on the matter. Simply, neither during the Transition years nor during the years with the left in power were there the necessary social and political resources to deal with that question. Felipe González, referring to the Transition era, recognizes that the main problem that the commitment reached between all the political groups had was that "it excluded, for example, an explanation (I'm not saying the demand for responsibility) about what had happened during the Franco years, through truth commissions, as has been done in other countries. There was not enough strength to ask for not only justice, but even explanations about the past weren't asked for.^{xiv}" It's true that later the PSOE reached power with absolute majority, but Felipe González resisted opening the debate about the past due to its divisive potential. To justify his decision, he recalls a conversation with General Gutiérrez Mellado when the General asked him to wait until the generation of the Civil War had died, adding, "under the embers there is still fire, I ask that you have patience.^{xv}" In that sense, Zapatero's government has not broken any consensus, but rather it considers that conditions exist today, seventy years after the start of the Civil War and more than thirty years after Franco's death, to repair some of the historical injustices that could not be avoided during the Transition and the first years of democracy.

Finally, in the case of terrorism, it's important to clarify first of all that it cannot be affirmed that anti-terrorist policy was another piece to the socialist government's political platform. The PSOE's electoral program in 2004 didn't include any reference to the peace process, but not because it was part of a hidden agenda, but because at that time no one was thinking about that possibility. Only when it is verified, after a long period with no victims, that ETA might be contemplating abandoning violence, when it is decided to explore the possibility of discussing an end to terrorism. Though according to article I of the Agreement for Liberty and Against Terrorism (signed December 8, 2000), it is the governments place to "lead the anti-terrorist fight," and despite the fact that in that same article the two parties commit themselves to "eliminating from the sphere of legitimate political and electoral confrontation between our two parties policies for ending terrorism," the PP decided to situate terrorism in the middle of the political debate. Thus, it renounced joining the consensus of all the parliamentary groups in the Congressional Declaration of May 17, 2005, and from then on it dedicated a good part of its time and resources to criticizing the anti-terrorist policies of the government. It is

difficult, therefore, to affirm that the PSOE has broken consensus in this terrain. In any case, it has changed the direction of its policies in sight of new circumstances that the PP, against the other parties and an overwhelming majority of public opinion, has refused to recognize. On the other hand, it's not absolutely clear that the government would gain anything electorally by getting involved in a risky and uncertain process concerning the end to terrorism, above all when the economy is going well, employment is being created, and important results from social policies can be offered. The term would have been calmer, y more favorable to the government's interests, if the issue of terrorism had not been situated at the center of public life.

Beyond the government's stance on mentioned policies, the PP's accusations are not very credible when considering the style with which the PSOE has governed in the last few years, when a fluid dialogue with the autonomous communities has been established, getting annual presidential conferences started, as well as with social agents, with whom the government has reached agreements on main points of social policy.

Additionally, several arguments can be offered about the PP's own reasons for insisting on a strategy of confrontation.

First off, it isn't the first time the PP has turned to a strategy of de-legitimizing the government. It did it before during the 1993-96 term, when characteristics specific to the current moment in terms of a radical platform and alliances with extremist parties were not present. Just like now, a collusion of interests between the PP, reactionary communication groups, and certain elements of the judicial system was obvious at that time as well^{xvi}. That strategy was born out of frustration and surprise produced from an electoral defeat that the leaders of the right were not counting on. Both in 1993 as well as in 2004, PP partisans were fully convinced they were going to win the elections. That there is such a clear historical precedent, with the same actors leading, is the most powerful reason to consider that a climate of confrontation in this term is the effect of a planned strategy by the PP, independent of the administration being carried out by the government.

Secondly, the PP did not wait until the government initiated its "radical" reform program before preparing a destructive opposition. The first attacks that can be considered part of the strategy of confrontation took place with the issue of March 11th in the investigation committee that was formed in May of 2004.

Thirdly, the strategy of confrontation has been compatible with normal legislative behavior, as shown with detail in the following section. If the government's agenda were as radical as the PP sustains, or if it had really broken with basic consensus of Spanish democracy, then it would be strange that the PP could offer to cooperate with the PSOE in some spheres (perhaps most visibly the Dependency Law, but there are also the Statutes on Valencia and Andalusia, some of whose articles are identical to the articles of Statute on Catalonia that the PP turned to in the Constitutional Court).

The fourth argument involves performing a simple mental experiment. Let's suppose that the PSOE, instead of looking for a parliamentary alliance with the ERC or the IU, had formed an alliance with the CiU, a moderate nationalist party that the PP has kept a very good relationship with in the past. Is it plausible to imagine that if the partners had been different, the PP's behavior with respect to the Statute or the peace process would have been very different? That the answer is clearly negative reveals to what

Fundamental laws passed	38	41	18	24	38	40	33	17	249
Laws passed with the vote of main party of opposition	37 (97.4%)	18 (43.9%)	10 (55.5%)	16 (66.6%)	29 (76.3%)	31 (77.5%)	24 (72.7%)	9 (52.9%)	174 (69.9%)
Party in opposition	PSOE	AP	AP	AP/PP	PP	PSOE	PSOE	PP	---

Source: Period 1979-2003, Alejandro Mújica e Ignacio Sánchez-Cuenca, "Consensus and Parliamentary Opposition: The Case of Spain". Government and Opposition, 41 (2006), pp. 86-108. Period 2003-2006, own production based on www.congreso.es.

Compared with that 65% of the 1982-2004 period, 53% consensus of the current term thus far indicates little cooperation, though staying above 44% of the 1982-86 period, the smallest percentage of all of Spain's democratic period. However, 53% could be considered worrisome if we keep in mind that, when there are no absolute majorities in Congress, consensus tends to rise. Overall, although less cooperation is clearly noted, reading table I does not give the impression that this term is one marked by complete confrontation between the government and the opposition.

On the other hand, of all the amendments the percentage of amendments that the PP has presented to bills (government legislative initiatives) processed during the 2004-06 period is within the normal range. In Table 2 the number of amendments by the PP, out of all the amendments, appear in the terms when the PP was the main opposition party. It can clearly be seen that the present term does not show a percentage of rejection that is too high: in fact, it's under the percentage from the 1982-93 period.

Table 2. Legislative initiatives of Socialist Government and amendments by PP out of all the amendments.

	1982-1986	1986-1989	1989-1993	1993-1996	2004-2006
Legislative initiatives	205	125	128	130	78
Amendments by PP out of all the amendments	71 (34.6%)	46 (36.8%)	51 (39.8%)	21 (16.1%)	24 (30.8%)

Source: Period 1982-1996, tables 3 and 4 by Jordi Capó, "The Spanish Parliament in a Triangular Relationship, 1982-2000". Journal of Legislative Studies, 9 (2003): pp.107-29. Period 2004-2006, own production based on www.congreso.es.

From a qualitative point of view, it's worth reviewing the main agreements and disagreements on laws that have been subject to discussion. In Table 3 the most important laws of this term, or at least the most visible ones, have been included.

As one can see, there have been important disagreements. This has occurred, for example, with the Education Law. But it's important to remember that education has always been an extremely divisive issue between the two big parties: in the past there has never been consensus on fundamental education laws, perhaps because his terrain is one where the differences between right and left crystallize with greater clarity. Like education, questions regarding people's fundamental rights usually provokes profound disagreement between the parties, as what's at stake are the basic values with which we construct the ideologies that distinguish these organizations from each other. That's why, for example, the law on same-sex marriage created a huge clash between the PSOE and the PP. The PP presented an amendment to the legislation, vetoed the law in the Senate, voted against the final text in Congress, and presented an unconstitutionality appeal. On June 18, 2005, a protest of multitudes was held, organized by the Family Forum with support by the Episcopal Conference and the PP.

The comparison between the law on same-sex marriage and the Dependency Law is interesting, as both laws had wide popular support, even among voters of the People's Party (see chapter on government and citizens). However, the PP voted against the law on same-sex marriage and in favor of the Dependency Law. The difference lies in the fact that the law on dependency does not affect basic moral content as directly. That's why the PP, aware of the wide support for this law, did not have much room to maneuver to oppose it^{xviii}.

Table 3. Main legislative agreement and disagreement, 2004/06.

Agreement	Disagreement
Domestic Violence Law	Law of modification of Law 6/85 of Judicial Power
Driving Law	Same-sex marriage Law
European Constitution and EU extension	Education Law
Dependency Law	Law of Public Radio and Television
Autonomy statute of Valencia, Andalucian and Balears.	Autonomy statute of Cataluña
	Law of Tax Reform

If we set aside the autonomy statutes, that are dealt with in the next chapter, the agreements have been focused on issues with little ideological weight, such as the point card (the right has the same interest as the left in avoiding highway deaths), the Domestic Violence Law (again, no one is in favor of this kind of violence and there are no major disagreements on the means for putting a stop to it), or European issues, like the passing

or the broadening of the Constitution, which in Spain has never been a reason for confrontation between the two parties.

Aside from its behavior in Parliament, another way of gauging to what degree the PP has become radicalized in its stance or in its strategy consists of analyzing the proposals it has carried out during this term. For instance, during the fall of 2006 four political conferences were held on immigration, citizen security, the territorial model of the State, and the economy. The purpose was to call attention to people's real problems, as opposed to "imaginary" conflicts the PSOE creates in society (the Law on Historical Memory, alliance of civilizations, Spain's relationship with its nationalities, etc.). Well then, reading the speeches delivered at these conferences, it is hard to talk about confrontation or radical ideas. Not even in the territorial sphere are proposals made that are too out of the norm: although the criticism is hard, it is kept within normal limits of a parliamentary democracy. Institutional reforms arose for the central State to recover part of the power given to the autonomies, but the catastrophic tone adopted when speaking of the Statute on Catalonia discussion was not used. They are proposals belonging to a conservative party of the right (distrust of immigration, great emphasis on citizen safety, a more centralized territorial model, measures to limit public expenditures...), but they do not permit one to guess that this same party has followed a strategy of argument, confrontation, and division with the socialist government.

5. Confrontation Politics

The policies that the PP chooses for its strategy of confrontation are central questions, removed from the ideological debate between the left and right, like territorial policy and terrorism. Discussion on these issues takes place in Parliament when debates occur with public repercussions, such as debates about the state of the nation or the control sessions. Under these circumstances, the PP stops being the party that on many occasions cooperated with votes on fundamental laws. Congress then becomes a stage of pure confrontation following the interests of the PP. The questions by the main party of opposition to the government have been counted in the last two terms: from the PSOE to the PP between 2000 and 2004 and from the PP to the PSOE between 2004 and 2006. The questions have been classified by topic, with relatively broad categories, although some quite more than others. For example, the section "democracy" includes very diverse questions about government workings, from policies on appointments to relationships with the media. In the same way, under "economy" questions have been included from the workings of macroeconomic indicators to sectarian economic policy. On the other hand, domestic violence is a section with very set content.

The classification includes four basic categories: principal matters (democracy, economy, and foreign policy), central matters (territorial policy and terrorism), social matters (housing, social policies, education, and domestic violence), and other matters (where, on the one hand, citizen security and immigration go, and on the other hand, the environment and infrastructures). Questions that have not been able to be included in one of these categories, usually related with very precise problems, have been placed in the section designated as "other issues".

Table 4 reveals that in the last two terms great differences were not produced on topics that occupy matters of control sessions, save transversal matters and policies on well being. While general issues, like democracy, the economy, or foreign policy occupy a similar space in the two terms (around 45% in total), and the same happens with other policies, especially with the environment and infrastructures, the transversal matters and social policies have a very different weight when the PP is governing and when the PSOE is governing. In this term, 23% of questions by PP partisans have been focused on territorial policies and terrorism, issues that didn't even occupy 1% of the question total under the last government of Aznar. With social policies the standard is the opposite: they represented 25% of all questions from the Grupo Parlamentario Socialista (Socialist Parliamentary Group) in the opposition and they represent only 7% of all questions from the Grupo Popular in these last two years. In this sense, we can conclude that the clear presence of questions on transversal matters during this term indicates that, as far as the PP is concerned, there is intentionality in the choice of policies.

Table 4. Clasificación de matters in control session in the last two terms.

	VIII Term (2004-2006)		VII Term (2000-2004)	
	Number	Percentage	Number	Percentage
Main Affaires				
Democracy	95	20.4	73	12
Economy	77	16.5	126	20.1
Foreign Policy	45	9.6	78	12.8
Sum		46.5%		44.9%
Traversal Matters				
Territorial policy	89	19.1	3	0.5
Terrorism	17	3.6	1	0.2
Sum		22.7%		0.7%
Social Matters				
Housing policy	7	1.5	38	6.2
Social Policies	3	0.6	66	10.8
Education	15	3.2	34	5.6
Domestic violence	7	1.5	12	2
Sum		6.8%		24.6%
Others				
Civil Security	6	1.3	38	6.2
Immigration	19	4.1	20	3.3
Sum		5.4%		9.5%
Environment	24	5.1	37	6.1
Infrastructures	19	4.1	18	3
Sum		9.2%		9.1%
Diverse matters	43	9.2	66	11
Total	466	100%	610	100%

Source: Own Production based on Presidential Ministry.

6. The Weakening of the Ideological Vote of the Left

The PP's strategy of imposing transversal matters on the political agenda is old. Since 1993 the conservative party shunned discussion on purely ideological issues. The reason is none other than the clear advantage of the PSOE over the PP in competition in the ideological field, the main axis of political competition in democracies. In short: the problem for the PP is that there are far more people on the left than on the right. That is the information that ultimately permits making sense of the strategy of confrontation.

Table 5 displays the unfavorable conditions that the PP competes under in Spain. Considering Spaniards positions on an ideological scale from 1 to 10, where 1 represents the extreme left and 10 the extreme right, the scale has been divided into two areas: the left, which includes positions from 1 to 5, and the right, which takes positions from 6 to 10^{xix}. Well then, it's clear that the majority of Spaniards situate themselves in the ideological area of the left, reaching 60% on two occasions, in 1986 and 2004. On the other hand, the right doesn't add up to even one fourth of the electorate, except in 2000 when it reached 26.5%.

It's striking that until 1989 there were more people without ideology than people of the right, and that, from then on, conservatives did not outnumber by much those who said to not have ideology. It might be thought that this category really collects concealed rightists. But that is not the case. Citizens with no ideology in Spain vote for the governing party, but they do it with a delay: within this group the PSOE was voted for more than the PP until 1996 and the PP was voted for more in 2000 and 2004, though in this last election the advantage was quite smaller than in previous elections.

Table 5. Ideological position of Spanish population in an ideological scale from 1 to 10.

	1986	1989	1993	1996	2000	2004
Left (Positions 1-5)	60%	55%	54%	58%	53%	60%
Right (Position 6-10)	17.5%	21%	23%	24%	26.5%	21%
Non Ideology	22%	24%	22%	18%	21%	19%
Total	100%	100%	100%	100%	100%	100%

Source: CIS, Postelectoral Studies.

Therefore, if we keep in mind that there is between double and triple the amount of citizens ideologically closer to the PSOE than the PP and that, in addition, those who declare no ideology usually vote for the party in power, the outlook is rather distressing for partisans of the PP. Not even the PSOE's competitor on the left, the United Left (IU), cushions the problem very much, as not only is the extreme left (positions 1 and 2) sparse (6.6% in 2004), but also 40% of those extreme leftists tend to vote for the socialists.

What, then, has supported the PP's victories? How is it possible that it has won two consecutive elections with an electorate that does not view it favorably? Actually, the answer is quite simple. The PP wins when the vote based on ideological proximity of its citizens is weakened, that is, when voters have other considerations in mind when deciding their vote other than merely their ideological closeness to the parties.

Tables 6a and 6b reflect the weakening of the ideological vote of the left in Spain in the last twenty years. In these tables the percentage of votes in past years for the PSOE and the PP after the general elections is included in the different ideological positions. What one notices first is that while the PP has increased its electoral support on the right, the opposite has occurred with the PSOE on the left. If in 1989, 59% of rightist citizens (positions 7 and 8) voted for the PP, in 2000 82% voted that way. Contrarily, while the PSOE achieved 68% of the left (positions 3 and 4) in 1986, in 2000 the vote dropped to 48%.

In this weakening of the ideological vote within the left there are, of course, some errors committed by the PSOE. Corruption, or more specifically, the latest socialist government's lack of reaction to corruption, had electoral effects. As did the perception among progressive citizens that with some policies the socialists did not act in accordance with the PSOE's ideological postulates, which shows that parties do not always win by moderating their stance^{xx}. But the weakening of the ideological vote on the left is also a consequence of the PP's strategy, especially since it took power in 1996.

Table 6a. Voting memory to PSOE according to ideological positions.

	Radical Left (1-2)	Left (3-4)	Center Left (5)	Center Right (6)	Right (7-8)	Radical Right (9-10)	Non Ideology
1986	41.8	68.3	26.3	6.2	4.4	2.7	23.3
1989	30.7	57.4	23.9	7.4	5.7	7.6	22.1
1993	36.6	60.9	26.5	5.9	3.2	0.7	21.6
1996	38.2	52.7	26.2	4.5	3.0	0.7	19.9
2000	40.9	47.8	17.1	1.6	0.8	0.8	9.2
2004	49.3	67.5	38.2	11.2	5.5	6.3	20.1

Source: CIS. Postelectoral Studies.

Table 6b. Voting memory to PP according to ideological positions.

	Radical Left (1-2)	Left (3-4)	Center Left (5)	Center Right (6)	Right (7-8)	Radical Righ (9-10)	Non Ideology
1986	0.0	0.3	6.1	29.9	63.4	78.9	7.3
1989	0.4	0.3	7.3	32.6	59.1	60.8	5.6
1993	0.5	1.6	22.0	53.9	73.0	86.8	10.9
1996	1.8	3.5	27.8	59.5	77.6	78.6	14.0
2000	0.9	5.7	35.3	70.0	81.6	82.9	22.0

2004	1.1	1.8	18.7	62.5	79.5	77.7	15.9
------	-----	-----	------	------	------	------	------

Source: CIS. Postelectoral Studies.

Both of the PP's victories are based not only on a greater penetration of the party in its potential electorate, but also on the abandonment of the PSOE by part of the left. In 2004, the PP switched to the opposition despite having mobilized the conservative electorate, as it only lost half a million voters. It was the mobilization of citizens of the left and center-left in favor of the PSOE, with a gain of 3.1 million votes, that really brought the defeat of the PP.

It's possible, therefore, that the PP's objective during this term is keeping the PSOE from maintaining the support of its new voters. In fact, given that the PSOE beat the PP by 1.3 million votes, taking half of those 3.1 million new socialist voters would be enough for a PP victory. The PP's strategy, aimed at weakening the ideological vote, is directed at two kinds of voters, those of the left and those of the center. The hope of the right is that some leftist voters decide not to vote and that centrists decide either not to vote or to vote for the PP.

To achieve that, the PP is trying to dominate the political agenda centering it on non ideological (transversal) issues. There are two kinds of non ideological matters that the PP turns to in order to mount its strategy. On the one hand, the PP places issues on the agenda that in and of themselves do not divide the citizenry, given that the objectives are the same for the right and left. What the PP does is insert the division not in the objectives (that the right and left share), but in the means and, specifically, the parties' ability to deal with those issues. The PP tries to convince citizens that it is a more capable party than the PSOE.

On the other hand, the PP turns to matters that do divide the citizenry, but that divide them through other "focal points of competition" that are not ideological, and which the PP believes its stance to be closer to that of the majority of the citizenry than the PSOE's stance. The clearest example is territorial policy, which divides citizens and parties between "centralizing" and "non-centralizing", at the margin of ideologies, as self-government can be defended from a leftist stance or a rightist stance.

Between 1993 and 1996, the PP focused its attention on the trinomial "unemployment, misspending and corruption." None of these three elements are divisive among citizens. All three are ills to be fought against regardless of ideology. Between 1996 and 2004, the PP mounted a double strategy: to show that it was the most capable party when faced with non-divisive issues and to position issues of competitive focal points, distinct from ideology, at the foreground of the political agenda. During its governing years the PP presented itself as the party that embodied economic efficiency, at the same time it tried to center the political debate on issues like terrorism and nationalism. The success of the PP's strategy is not only seen in the evolution of electoral support for the parties. Some testimonies of those years, from qualitative studies, explain how the PP's message managed to affect some citizens^{xxi}. These are some of the testimonies of citizens that had voted for the PSOE in the past and justified switching their vote in 2000 with:

"There is no right and left anymore, you vote on administration, efficiency, and decency."

“I voted for the PP with an aching heart, because I would like to say that I’m a leftist and that I vote for the left, but voting for the PP interests me more.”

“Ideology is a thing of the past.”

When the PP inaugurated its era of opposition in 2004, its strategy was *continuista* as far as its content was concerned. The party focused on territorial policy and terrorism, with its double aspect of March 11th and ETA, though it does so maximizing confrontation with the government, as with a quieter opposition its harder to impose the terms of the political debate. Given that the Executive holds, in principle, a greater ability to determine the political agenda, the PP must exaggerate in order to keep citizens and the media in suspense.

The ultimate objective for this term is still minimizing the weight of ideology in the political debate. Mariano Rajoy himself, in an interview with the radio chain Intereconomía in May of 2006, hinted at this strategy:

“I think the debate in Spain is not between right and left, but rather between those who are violating rules of logic and common sense and those who are trying to make Spain a normal country. The greater, the better. But above all a normal country.”

With respect to the statute reforms, it must have been clear from the beginning, both for PP and PSOE strategists, that such reforms were not going to enjoy popularity among Spanish citizens. As it is evident in the chapter dealing with relationships among different government levels, Spaniards show an ambiguous attitude regarding the autonomous State: they favor decentralization, but are very reluctant to cede sovereignty. In this sense, survey 2535 by the CIS (Center for Sociological Research) in September, 2003, reveals that 51% of those surveyed were in favor of a State of autonomies as there was, against 23% who favored the autonomous communities taking on greater responsibilities. At the extremes, 10% wanted a State with no autonomies and 8% preferred a State that recognized the possibility of independence. In December 2005, at the height of the debate on the Statute on Catalonia, a new CIS survey (2610) showed that the attitudes of Spaniards had not varied on the subject^{xxii}.

The People’s Party has exploited this lack of support for the Statute reform by placing it at the center of the political debate, clearly damaging the government’s image. The government was highly debilitated during the critical months of its processing^{xxiii}. The PP’s campaign caught on with particular ease due to an extended anti-Catalan feeling in many regions of Spain.

After the Statute was passed in the central Parliament in March, 2006, the PP gradually abandoned the territorial issue, among other reasons because of the closeness of the autonomous elections in May, 2007, and because of the Statute reforms of autonomous communities governed by the PP (the Balearic Islands, Valencia), which in many aspects were quite similar to the Catalan reform.

The other essential issue that the PP bases its opposition on this term is terrorism. Again, terrorism (or the way of fighting it) is something that’s beyond ideological considerations based on left or right. And like the territorial case, the PP from the beginning counted on a certain favorable tendency of public opinion on this subject. In Spain there is an overwhelming majority opposed to self-determination in the Basque Country. And surveys reveal that Spaniards are not really in favor of making penitentiary

concessions. Only a slim majority is seen in favor of reintegrating prisoners without violent offenses. That's why the PP could imagine that the majority of Spaniards would back its opposition to the peace process.

It's interesting comparing this situation with that of Northern Ireland. In the Anglo-Irish conflict public opinion plays a smaller role, since citizens were strongly divided on the matter^{xxiv}. Additionally, British citizens never saw the Northern Ireland issue as a priority problem, perhaps because Northern Ireland is geographically separated from the rest of the territory and because 95% of lethal attacks by the IRA took place in Northern Ireland, hardly affecting Great Britain. That's why terrorism did not turn into an issue of political confrontation and the successive British governments had a certain amount of maneuvering room to negotiate in the peace process with Northern Ireland.

In Spain, on the other hand, the socialist government has not had much autonomy. The Basque Country is geographically, economically, and socially integrated within Spain, and 35% of fatalities have been killed outside of the Basque Country. In addition, terrorism appears systematically in Spanish surveys as one of the main problems of the country. Conditions were such that the PP could exploit this issue as part of its opposition strategy.

Even so, from an electoral point of view, the PP's opposition to the peace process doesn't seem to have worn down the government (not, of course, like the Statute of Catalonia did). Not even the attack of December 30, 2006, at Terminal 4 of Barajas airport, the day after the President of the Government declared that regarding the terrorism issue things would be better within a year, seems to have had a price in terms of votes. Citizens have not only backed the government in its attempt to find an end to terrorist violence with dialogue, but they have also criticized the right's strategy of opposing the government on this issue.

In short, the success of the PP's choice of territorial policy to make its opposition was pretty clear: the months when the reform of the Statute of Catalonia was debated were of the greatest debilitation to the government. On the other hand, it remains to be seen whether the PP will gain electorally by exploiting anti-terrorist policies.

At the margin of electoral advantages on non-ideological issues, it is the choice itself of these issues which is capable of causing a weakening of the ideological vote. Voters, if they consider the future of the country to be at risk in its territorial structure and in the fight against terrorism, can forget about classic redistributive matters (the size of the Welfare State, investments in infrastructure and human capital, education and healthcare policies, etc.). On the other hand, the act itself of introducing confrontation into political life by speaking of those non-ideological topics has the goal of discouraging the participation of citizens in the elections. Confrontation creates a climate of discontent and distrust in politics. People perceive that the parties are not able to come to an agreement on fundamental issues and they react by turning their backs.

Although it is a question that has not been completely resolved, there are numerous empirical studies carried out in the U.S. that show how negative campaigns reduce participation in elections^{xxv}. Without equivalent studies for the case of Spain, it's logical to imagine that confrontation has a similar effect. What we do know is Spain is that abstentionism is not uniformly distributed throughout the electorate, but rather it occurs with greater frequency among the left^{xxvi}. Therefore, it can be concluded that, through confrontation, the PP is confident in being able to reduce electoral participation

enough to make up for the initial disadvantage that it started with (majority of citizens of the left as opposed to those of the right).

Conclusions

1. The PP's strategy has had an impact on electoral support of the main parties. The climate of confrontation has allowed the PP to maintain its electoral base, as the party hardly loses voter approval, although its electorate does suffer certain internal ups and downs: the PP retains much of the right and the extreme right at the expense of certain losses of the politically low-profile electorate, like centrists and citizens without ideology.

2. Something similar happens with the PSOE: voter approval, which drops somewhat more than with the PP, is maintained in the left, but not as much among those of the center and those who declare no ideology. In this sense, tension has caused a certain polarization among the electorate, consolidating the vote in their own ideological areas for the two parties and falling back among citizens with less political identification.

3. Respect to political assessments, Rajoy's assessment is poor, always worse than Zapatero's (3.7 against 4.8 in the CIS barometer of December, 2006) and, even more serious, the assessment of the PP's performance as the opposition is catastrophic, the worst registered since 1993. The lack of agreement, in the PP's case, between a relatively high voter approval and a low assessment (of the party's leader) responds, in part, to the climate of polarization itself which has triggered rejection of PP partisans by PSOE voters.

4. The climate of confrontation has been detrimental to the government above all. In general terms, it has highly restricted the visibility of the administration. Fundamental achievements, like the Dependency Law and the Law of Equality, are barely known of among citizens. The social agenda has not made a great impression on them. And assessment of the economy, better in any case than assessment of politics, is also not very high, despite the continuity of a long expansive cycle.

5. But, in addition, one of the fundamental intentions of the government was to revitalize democracy. This was to be the term of understanding and dialogue, compared to the years of the PP's government, which ended with very critical opinions on the way the PP had governed. In this area neither the reforms (the law limiting institutional publicity, the Code of Good Government...) nor the improvement in certain democratic practices (the President's control in the Senate, the Socialist Group's relinquishment of questions in the control sessions, etc.) have been detected. In fact, Spaniards' level of satisfaction with respect to the workings of democracy has waned, almost returning to the levels of the PP's years. If in September 2003, 53.5% of Spaniards declared themselves to be satisfied with the functioning of democracy, in April 2004, the percentage increased to 63.5%, falling again in October 2006, to 55.5%. The strategy of confrontation has reduced the

results of the reforms directed at improving the quality of democracy. This has been, without a doubt, the main price for the country carried out by the PP.

ⁱ On this subject, the unpublished study, *Los profetas de la crispación. Un estudio de la crítica política extrema* (The Prophets of Confrontation. A Study of Extreme Political Criticism), by Pablo Lledó (2006) is essential reading. Luxembourg.

ⁱⁱ The contrast with the committee investigating the attack of September 11th is articulate. See, *The 9/11 Commission Report. Final Report of the National Commission on Terrorist Attacks Upon the United States*, New York, Norton, 2004.

ⁱⁱⁱ Appearance by José María Aznar before the Investigation Committee of March 11th, November 29, 2004. The document can be found on the website of the newspaper *El Mundo* (www.el-mundo.es).

^{iv} *Boletín Oficial de las Cortes Generales* (Official Report of Congress), No. 242, July 14, 2005, p.405.

^v *Ibid.*, p. 405.

^{vi} An example of the success of this strategy by the PP is one of the slogans they used at the mass protest on June 6, 2006, organized by the Association of Victims of Terrorism, where central leaders of the PP, Mariano Rajoy, Ángel Acebes, and Eduardo Zaplana participated. The slogan was “We want to know the truth,” referring to March 11th.

^{vii} In 2006 the incident that stood out the most was the one involving boric acid. Some experts a report to *El Mundo* that established a connection between islamists and members of ETA as a result of the discovery of boric acid in the residences of both groups. Police commanders believed that it was speculation without basis (boric acid is a common insecticide in Spanish homes) and they did not include it in the final report sent to judge Juan del Olmo. As for judge Garzón, he accused the expert, but because he didn't have jurisdiction over the case, it was handed over to judge Gema Gallego (from the Professional Association of the Magistracy) who, changing Garzón's decision, accused the police, not the experts, upholding the theory defended by *El Mundo*.

^{viii} Congressional Record, 2006, no. 166, p. 8286 and p. 8288 respectively.

^{ix} On the Perpiñán meeting and its consequences, see Florencio Domínguez (2005), *ETA en Cataluña. De Terre Lliure a Carod-Rovira*, Madrid, Temas de Hoy, p. 211-23.

^x Congressional Record, No. 88, May 11, 2005, p. 4350 and p. 4349 respectively.

^{xi} The protests took place on the following days: 1-22-2005, 6-04-2005, 2-25-2006, 6-10-2006, and 11-25-2006.

^{xii} Congressional Record, No. 88, May 11, 2005, p.4350.

^{xiii} Congressional Record, No. 182, May 30, 2006, p.9096.

^{xiv} Felipe González and Juan Luis Cebrián (2001), *El futuro no es lo que era* (The future isn't what it was). Conversation, Madrid, Aquilar, p.42.

^{xv} *Ibid.*, p.35.

^{xvi} See José María Maravall, *El control de los políticos* (“Politician Control”) (2003), Madrid, Taurus, p.203-10.

^{xvii} Congress's passage of the Statute on the Autonomy of Andalusia (with a vote in favor by the People's Party) in November of 2006 has not been kept in mind, since its passage is pending in referendum. If we had included it, the consensus rate during the March 2004-December 2006 period would increase to 55.5%.

^{xviii} A strong disagreement was also produced on the modification of the workings of the General Council of Judicial Power (CGPJ). The government found itself with a majority of CGPJ members in favor of the PP and it tried to neutralize that majority by changing the decision-making procedures of that body, in such a way that appointments had to be approved with a majority of three-fifths. The PSOE upheld that a qualified majority promoted consensus and forced the consideration of minority opinions. But the PP did not accept those reasons and condemned the government's political interests after that maneuver.

^{xix} It might be doubted that 5 is a center-left position: many people might see it as a center position. In fact, it's possible to predict which party governs in each period simply by looking at which party has more support in that position. It makes sense, however, to divide the ideological scale as proposed if the ideological positions that citizens attribute to the parties are kept in mind: the PSOE usually sits between 4 and 5, while the PP is always above 7. In the current term, the positions of the PSOE and the ePP are 4.1 and 7.6 respectively. That's why for a citizen who positions himself in position 5 the PSOE ends up being a party ideologically closer than the PP. This is consistent with the supposition that position 5 represents the center-left.

^{xx} For a detailed study on the weakening of the ideological vote, where the socialist era is also included, see Ignacio Sánchez-Cuenca (2003), *How Can Governments Be Accountable if Voters Vote Ideologically?*, *Estudios/Working Papers* 191, Juan March Institute.

^{xxi} See Juan Jesús González, *Voto y control democrático* ("Vote and Democratic Control: the elections of March 11th.") CPA *Estudios/Working Papers* 7-2004. (<http://www.uned.es/dcpa/estudios.html>).

^{xxii} If one looks a little further at attitudes towards reforms of the autonomous State, it can be observed that resistance not only occurred in the conservative electorate. In the left (positions 3 and 4) the rate of support for the autonomous State fell below 50%, although those preferring the *status quo* continued to outnumber those preferring reforms. And, of course, at the political center (position 5) there was a clear majority in favor of leaving things exactly as they were. Actually, only at the extreme left was the reform for a more de-centralized State the preferred option. In the same way, analysis according to the social class of the interviewee reveals that neither the middle class nor the working class showed any desire for reform. In fact, the preference for greater decentralization remained limited to three autonomous communities: the Basque Country, Catalonia, and the Balearic Islands.

^{xxiii} We cannot discard, however, the fact that Spaniards end up showing themselves as supporters of the reforms. In general, public opinion doesn't usually have an intense preference about institutional regulations. Thus, in 1978 the majority of Spaniards recognized that Spain was a country of regions, but they denied that there were nationalities. At that time, citizen opinion was not an obstacle to drawing up a Constitution that recognized the existence of nationalities, but later the citizenry changed its mind once it became familiar with the new system of territorial organization.

^{xxiv} Between 1980 and 1996, in view of the question about what the desirable status was for Northern Ireland, the answers were very heterogeneous: a little more than a fourth of those interviewed preferred the conversion of Ulster into an independent State, another fourth was in favor of Northern Ireland remaining part of Great Britain, a little less than a fourth favored uniting with the Republic of Ireland, and the rest didn't reveal any preference. See Peter F. Trumbore (1998), *Public Opinion as a Domestic Constraint in International Negotiations: Two-Level Games in the Anglo-Irish Process*, *International Studies Quarterly*, 42, p.545-65.

^{xxv} The fundamental reference in this field is Stephen Ansolabehere and Shanto Inyegar (1995), *Going Negative. How Attack Ads Shrink and Polarize the Electorate*, New York, Free Press.

^{xxvi} See Belén Barreiro, *La progresiva desmovilización de la izquierda en España: un análisis de la abstención en las elecciones generales de 1986 a 2000* ("The Progressive Demobilization of the Left in Spain: An analysis on Abstention in the General Elections from 1986 to 2000"), *Revista Española de Ciencia Política*, 6, 2002, p.183-205.

Government and its Citizens

1. Introduction

2006 has been a year of important changes. The government has open the door to significant reforms in the field of autonomies and it has approved regulations of social and economic content that were incorporated into the electoral program that the socialists won the elections with in 2004. For example, during the year a new Statute on Catalonia was set in motion, a new law was passed that universalized assistance for dependent persons, and labor reform was promoted aimed at reducing employment instability in our country. Governments' success or failure is not always conditioned by how much they comply with the electoral platform that they were elected on. It is of little use complying with electoral promises if at the same time one is not able to bring the improvements to the citizenry in order to electorally benefit from those achievements. In fact, it has served Rodríguez Zapatero's government very little. Since the beginning of the term the loss of electoral votes for the PSOE has been constant, and though the PSOE has kept a certain advantage over the PP, it is true that the PSOE has not benefited from its reformist effort. On the contrary, the PP, exercising a fierce opposition based on general discredit, has maintained and even increased its electorate, according to the main polls. These facts do not reveal contradictions and deserve to be studied with greater detail. In this chapter we set out precisely to understand that contradiction. The reason that the government is not able to make the most out of its efforts could lie in a lack of communication, or it might be due to the appearance of new issues on the political agenda which monopolize most of the political debate. The idea shown to be most probable is, however, a combination of the government's inability to bring the impacts of its changes to the citizens and to consolidate itself as the only actor setting the political agenda and, secondly, the PP's tense opposition that has kept the government from expressing its achievements, diverting attention of the citizens to more thorny issues.

2. Government Actions: Fulfilment of Electoral Promises

2.1. What is an electoral promise?

Government actions are each of the proceedings carried out by the Executive Branch. This vague definition becomes more concrete if we relate the government's political action with the promises made during the electoral season and for which voters cast their opinion. Electoral promises in this way become an important tool to gauge the degree of the government's involvement with citizens. For voters, knowing how many electoral promises have been carried out can be an indicator that serves to award or punish the government in the next elections.

By electoral promise we shall understand any declaration for which the parties express their support for certain policies, actions or omissions, which must be demonstrable. Not all electoral promises are the same. Two kinds of promises can be distinguished: strong electoral promises and weak electoral promises. Strong electoral

promises reference specific and well-defined commitments whose objective is perfectly identifiable. These promises can be observed in a specific legislative measureⁱ achieved also at a specific moment, or it can be composed of a series of measures whose ultimate end is achieving what was promised by the end of the termⁱⁱ. Weak electoral promises are commitments which are not perfectly defined or which depict a wish or a declaration of principles. These promises generally have a vague formulation and lend themselves to broad interpretation. They are not measures that are usually identified with their own legislative initiatives, but rather with guidelines that will motivate government initiativesⁱⁱⁱ.

The distinction between strong and weak promises is not equivalent to establishing a hierarchy of importance between the two. It is not about distinguishing between first and second-rate promises, but rather between promises that are perfectly identifiable by voters and others which are not so easily identifiable. It's also important to underline that although this classification supports itself on the kind of objectives it pursues, the intention here is not to observe whether or not said result is achieved, but rather if a government action is identified with some kind of electoral promise. Evidently, governmental actions associated with strong promises are easier to distinguish from government actions supported by weak promises, but even the latter should be able to be identified.

The document which is going to serve as a guide for observing the kind of actions carried out by the government is the PSOE electoral document titled "100 Government Measures: We Deserve a Better Spain"^{iv}. Of these 100 measures, 47 would fall under the definition of weak promises and 53 under strong promises. However, we are not going to measure government actions only according to this document. We will also use the stated announcements by the President in his investiture speech^v.

2.2 Evaluation of Government Activity

Since the beginning of the term, the Executive has achieved considerable reforms which affect practically all fields, but that above all, have noticeably altered the social *status quo*. Between 2004 and 2005 the government fulfilled its promise to withdraw its troops from Iraq; it promulgated a Comprehensive Law against Domestic Violence; measures were adopted to allow stem cell research; the banning of tobacco use was established in public places; a reform of the civil code was passed that allowed members of the same sex to form families under the same conditions as people of the same sex; procedures for processing divorces were streamlined, and the previous Education Law was reformed, reducing the curricular importance of Religion as a school subject, among other measures. This reformist attitude of the government has continued during 2006.

To count government actions we have used Cabinet resolutions signed since January 13, 2006. In these resolutions we have focused on what are called "general issues", which is where different resolutions are found that are adopted in each one of the different departments. Government actions have been classified into two different kinds: first, there are administration measures and, secondly, programmatic measures. Administration measures are actions adopted to maintain the normal workings of the country^{vi}. As for programmatic measures, they are those governmental actions that clearly alter the existing *status quo*. These measures might respond to some of the

electoral commitments acquired during the electoral campaign, permitting, therefore, the detailed observation of the advancement of said promises^{vii}.

The following table displays the number of observed actions in the 46 analyzed cabinets^{viii}.

Table 1. Carried out actions by the government in 2006.

Ministry	Management measures	Electoral proposal
Presidential	148	17
Economy and Treasury	177	7
Foreign Affaires	195	7
Justice	85	8
Defense	29	3
Home Office	27	1
Labor	62	8
Public Administrations	85	1
Culture	10	1
Environment	246	2
Of Public Works and Highways	209	1
Agriculture	71	0
Education	65	1
Health	29	2
Housing	10	1
Industry	115	1
Total	1.563	61

Source: Own production.

The government has produced a total of 1,624 actions between January and December of 2006. As Table 1 shows, the actions carried out by the government have to do in great part with measures adopted for the proper working of the country. Specifically, around 96% of these actions (1,563) are measures which here are designated as administrative, and whose objective is assuring the proper functioning of our country. However, 4% of government actions have a different objective than the previous measures. These are actions which pursue, to a greater or lesser degree, a change in policies that affect all citizens. They are alterations of the existing *status quo* where signs

of the government's identity can be observed. In addition, these measures usually respond to commitments that the government's party promised to fulfill if it received the support of voters and came to power. They are measures, therefore, that can be contrasted with the previous commitments. Thus, out of the 61 programmatic actions carried out by the government in 2006, in at least 48 (79%) one can encounter a direct correspondence with previous promises.

The assessment that can be made of the socialist government's action with respect to its electoral promises in the second year of its mandate is the following: it has fulfilled 12 of the 35 promises made that could be brought to fruition with specific commitments. This means around 34% of the total. Among these specific actions labor reform stands out, which fulfils a series of promises, like the reorganization of labor contracts or the promotion of part-time permanent contracts. It's also important to point out the announcement of the Dependency Law, which fulfils the promise to create a system of attention for dependent persons. Another government action carried out during 2006 and which is associated with a specific measure is the establishment of driver's license based on points or the Law of Equality. If we assume that during the first year the government carried out an approximately equal number of actions, it would have fulfilled in total 68% of this kind of electoral promises. Table A1 of the appendix compares the measures gathered in the electoral program with the dates of the Cabinet meetings when these promises have been fulfilled.

The government, in addition, has carried out 16 actions that are not identified with specific measures. These actions correspond to strong and weak promises that can only be compared at the end of the term. If we look closely at the promises announced in the electoral program, the number of those promises which are not identified with specific measures rises to 65. That means that a little more than 24% of this kind of promise carried out by the PSOE has been considered in government actions. Again, if we were to assume that in 2005 the government completed an approximately equal amount of actions as this year, it would have accumulated around 48% deducting 52% of actions still to be carried out in respect to those unspecific promises.

Finally, there is a series of actions that alters the *status quo* and that does not fall under any previous kind of promise. These actions represent approximately 21% of government actions of this kind. Such is the case, for example, with the passage of the law recognizing sign language as an official language or the passage of the aid worker statute. This kind of action must be understood as the government's wish to fill gaps on subject matter considered to be sensitive for the Executive. Nevertheless, and insofar as the current government needs support of other parliamentary parties, there are actions that might be promoted in order to support electoral actions of those parties, or they might be understood as payments made to those parties for the support they have lent. Such might be the case with the Historical Memory bill, which corresponds to a petition that Congress made to the government and where there was considerable insistence by the UI and the ERC. Table A2 of the appendix displays a list of this kind of measure.

2.3. Main Measures

As this has been a year rich in reforms, it would be appropriate to analyze with greater depth the main measures carried out by the team led by Rodríguez Zapatero. Table 2

shows the measures of greater significance that the government has carried out during 2006.

Table 2. Measures of greater significance that the government has carried out during 2006.

Areas	Measures
Foreign policy	Statute of Spanish emigrants
	Statute of Cooperation supporters
Economy and taxes	Reform of Taxes
	Law of transparency on financial relationships
	Law of defence of the competency
	Law of struggle against fraud
Employ	Labour Reform- Reduction of temporality
	Law of entrepreneurs
Education and Culture	Increase the scholarships
	Reform of the Organic Law of Universities
	Law against doping
	Law of Reading
Social Politics	Dependency Law
	Law of Biomedical Research
Housing	Ground Law
Sciences and Technology	Statute of researcher in training
Security	Driving Law
	Plan of Road Safety
	Plan of Transport Safety
	Reform of Law about minors
Civil Right	Recognition of Language of signs
	State Observatory of Domestic Violence
	Law of improvement about consumers and users rights
	Law of registral correction, mention relative to the gender of persons
	Law of Equality
	Law of Historical Memory
	Law against racism, violence and xenophobia in sports

Source: own production.

From strictly quantitative criteria, based on the number of measures that each of the different plots receives, the areas where the government has worked the most in 2006 have been the economy and civil rights. However, this reasoning does not gauge the real importance of the measures adopted by the government. There are laws that mean a considerable change in the concept of the state as a lender of services (Dependency Law) or as a guarantor of equality between men and women (Law of Equality) and because of

the changes they pose they must be held with special consideration. The same thing occurs with measures such as the point card, which since June of 2006 affects all drivers in the country, the Ground Law, that the government intends to use in order to slow down land speculation and urban development disorder, and the promised reform of the Organic Law of Universities, where the government established a new model for faculty selection, as well as financing the universities themselves. Lastly, they so called Law of Historical Memory, which recognizes and broadens the rights of those who suffered from the Civil War and Francoism, means for the first time in our democracy a legislative proposal on an issue which, despite being demanded by diverse sectors of society, had not been dealt with by previous governments for different reasons.

2.3.1. Point Card. January 27, 2006, the Cabinet established the so-called point card, with the aim of reducing the highway accident rate. This modification implied a radical change in the way drivers are sanctioned, inasmuch as financial infractions combined with the reduction in a series of points could cause the habitual offender to lose driving privileges. This measure went into effect in July, and it has been well received among drivers, according to some polls. The measure has produced quite positive results: if we observe the number of deaths starting from July, when the card entered into effect, the mortality rate of accidents declined to 15%^{ix}.

2.3.2. Dependency Law. On April 21, 2006, the government sent to Congress the Personal Autonomy bill, also called the Dependency Law. In the words of the Vice-President of the government, María Teresa Fernández de la Vega, this law strengthens the fourth pillar of the Welfare State, and on the subject of conquest and social advancement “it is a law that joins other rights of great social significance, as in their day were the right to education, the right to free and universal healthcare, and the right to receive pensions.”^x As far as the Minister of Labor and Social Affairs, Jesús Caldera, he described it as “a true revolution from a social point of view.” This new law, born out of the purpose of creating a system that universally attends to all people who can not maintain an autonomous life and that depend, therefore, on third parties, establishes important support measures for families and assistance for dependent persons. The Dependency Law is, in addition, one of the electoral promises the PSOE made in its electoral campaign of greatest social significance^{xi}.

2.3.3. Law of Equality. The Cabinet passed the so-called Law of Equality on June 23, 2006. Again, it is a law of a clearly social nature and which affects the expanse of civil rights. The government, when it presented the law, said that it was “one of the most important initiatives of this term, one of the most significant steps on the road we are all taking to attain real equality between men and women,” that additionally “places our country among the most advanced in the world in civil rights.”^{xii} In the words of Secretary Caldera, the head of the field of Labor and Social Affairs, this law “is a law that favors, through positive actions, incorporating women into the workplace, and it is a law that seeks equal pay for equal work, facilitating the conciliation of family life and work life, facilitating professional careers of women and facilitating them especially when they have become mothers.” It is, therefore, another measure that because of its content is

going to considerably transform citizen life, above all for women, them being the principal beneficiaries of the adopted measures.

2.3.4. Law of Historical Memory. The debate on the need for establishing compensatory measures for those who suffered from the Civil War and, above all, the oppressing effects of Francoism, has its starting point in a unanimous agreement approved by the Constitutional Committee of the House of Representatives in November of 2002, with José María Aznar in the President's office. It was the first time that Congress condemned Franco's coup and urged the Executive to offer services to those people and associations that wanted to reclaim the remains of those who received reprisals resting in communal graves. After the change in government in the elections of March 2004, the minority nationalist parties, with the IU –government partner–, presented in June of 2004 a proposal in Congress that was approved by all parliamentary groups with the exception of the PP, which abstained. This text requested that the government create a law that meant the moral, social, and economic recognition of the victims of the Civil War, Francoism, and the Transition. The mandate was accepted by the government, and in the Cabinet meeting on September 10, 2004, a Royal Decree was approved which created an interdepartmental committee presided over by the first Vice-President of the government which would study the situation of the victims of the Civil War and Francoism and it would seek measures for their moral and legal rehabilitation. This is, therefore, a measure by the Executive that it was not contemplating in its electoral program. However, it has caused a great impact in society due to the issue's extreme sensitivity and also due to the pressure exercised by the government's main parliamentary partners, who even managed to declare 2006 as the "year of historical memory" as it was the 75th anniversary of the declaration of the Second Republic. All of this has created a debate that has extended beyond the political spectrum and that has provoked intense intellectual disputes, publications, and even an increase in a revisionist movement of recent Spanish history, that was destined only for social minority groups.

The government's commitment to produce the law has been much more difficult than what was originally thought. Up to four times the Executive failed to fulfill its commitment to present the text to Congress, and its attitude became described as "passive" by its own partners on an issue they considered fundamental. In fact, the determination of these groups to have the presentation of the law coincide with symbolic dates like November 20th (the day of Franco's death) or April 14th (the arrival of the Republic) was such that they even presented alternate texts at the parliamentary site. Finally, the bill was approved at the Cabinet meeting held on July 28th and passed by the House of Representatives in November^{xiii}.

There is little data on public opinion on this issue. The Center for Sociological Research (CIS) included in its barometer of October 2005^{xiv}, three questions that made reference to possible reparation measures for those who suffered from the Civil War. Unfortunately, the survey did not include questions on Francoist repression and, therefore, it is hard to sense if when asking those surveyed about the Civil War, whether they implicitly referred to the authoritarian regime established thereafter. It's hard to argue with the idea that there was a great deal of suffering on both sides during the Civil War and because of that the numbers produced by the survey are not very informative: 54.1% of those surveyed are in agreement that an initiative of recognizing the victims of

the Civil War should be adopted. Of that percentage, 61.4% said to have voted for the PSOE in the past elections and 42.9% for the PP. In disagreement with the law's measures were almost 25% of those surveyed, of which almost 35% had voted for the PP and around 20% had voted for the PSOE. It's clear that on this issue voters of the PP disagree more with possible measures of the government than voters of the PSOE. The division deepens even more when asked if they agree with the idea that the help be used to mend victims' suffering. Of the 44.8% that answered that they were in agreement, more than 51% had voted for the PSOE in the previous elections and around 38% had voted for the PP. Not only that, but of the 53.3% agreeing with the idea that the victims of the Civil War had been forgotten and that now was the time to mend that injustice, 60% were PSOE voters and almost 43% were PP voters. Finally, and to illustrate the fracture there is in respect to this issue, almost 66% of those surveyed agree with the idea that the victims received different recognition based on the side they were on, and of those 71.5% were voters of the PSOE in the last elections and 60% were PP voters.

2.4. Are the Government's Promises Credible?

Apart from the nature of the measure (strong or weak promise), we can classify government actions depending also on the cost that it involves for the government: the greater the cost, the less likely the government will successfully undertake the measure exactly as promised. When we refer to cost we are not just limiting ourselves to the economic cost, but we're also referring to the political cost. The government, in fulfillment of its program, can undertake important reforms that assume a considerable change from the *status quo* and whose success or failure depends on the budgetary items that it allocates to the reform. If these reforms do not come with the sufficient amount of financial resources to guarantee that it is set in motion, it might be thought that the government's reformist claim does not match up with its true intention and, therefore, there are reasons to doubt the credibility of the promise.

It's advisable, then, to know to what degree actions carried out by the government are not merely statements of principles but which are serious programmatic commitments. Reforms of great social significance like the modification to the Civil Code are relatively inexpensive decisions in economic terms which, however, send a sign of commitment to a specific part of the electorate that can strengthen the seriousness and capacity of the Executive's decision. This law, let us remember, was passed during the first year of the term before the government began to notice its debilitating effects and when the support of the government's parliamentary partners –the IU y ERC– was not questioned. The Law of Equality passed in 2006 is also a law that has not meant great economic costs for the government, because of which the bill sent to Congress has not been excessively contested^{xv}.

But there are decisions that require more specific commitments. For example, proposals of social significance need not just political will but also an economic budget. There are people who govern not only based on legislative initiatives, but also using their checkbooks. Only in that way can we check that the will exists for the main reforms that are undertaken to reflect in society.

The section related with expenditure policies of the State budget of 2006 offers data on this^{xvi}. Those departments that have carried out the most administration measures

are the Departments of the Environment and Public Works. These measures don't only make reference to actions that maintain the proper working of the country itself, but they might also be measures derived from great programmatic promises of the government. For example, the Strategic Plan for Infrastructure and Transportation (PEIT) promoted by the Department of Public Works in July, 2005, that would fulfill the electoral promise of increasing "investments to guarantee highway access"^{xvii}, is reflected in the Budget. Thus, for 2006 a 13.3% increase in spending was foreseen over the year before in order to modernize land transport infrastructures, both railways and highways.

The commitment on education and research also has a lot of importance in the government's program. The reform of the Organic Education Law (LOE) carried out in 2005 finds its corresponding budget allocation in 2006 in the form of an increase in public spending; the portion allocated to education was increased almost 20%, to be able to put the LOE in motion and to multiply resources for scholarships and to extend out free early childhood education. The commitment to civilian research is also clear with the increase in spending 31.8% with respect to the figures from 2005. In the first two years of the term budget spending on Research and Development has increased 55%.

Actions like the Dependency Law, the new labor reform, the National Strategic Plan for Childhood and Adolescence, the law to fight domestic violence, or the creation of renting assistance plans in 2005 indicate a significant reformist tendency socially, exemplified in the State budget, where the allocated items of social spending increase 8.3% compared to the year before and they constitute more than 50% of spending undertaken by the State.

Without a doubt, in this section we can extract two important conclusions: past the halfway point of the term, the government has fulfilled about half of the programmatic commitments it competed with in the elections; secondly, these commitments have not exclusively consisted of the creation of legal orders, but they also are reflected in the Budget.

3. Voter Reactions

If a government is efficient and reformist, it seems logical to think citizens would be able to perceive those achievements and reward its labor. In this section we'll see if that has occurred in the case of Rodríguez Zapatero's ministers.

3.1 Variations in Electoral Support for the Government

In the elections of March 2004 the PSOE received more votes than the PP: 42.59% of the votes were for the socialists, against 37.71% for the PP. Almost three years after the legislative elections one has to wonder if the government maintains that advantage, if it has lost it or if it has increased it. This information will be decisive in observing to what extent citizens perceive and evaluate the government's legislative activity. Table 3 displays that information for us.

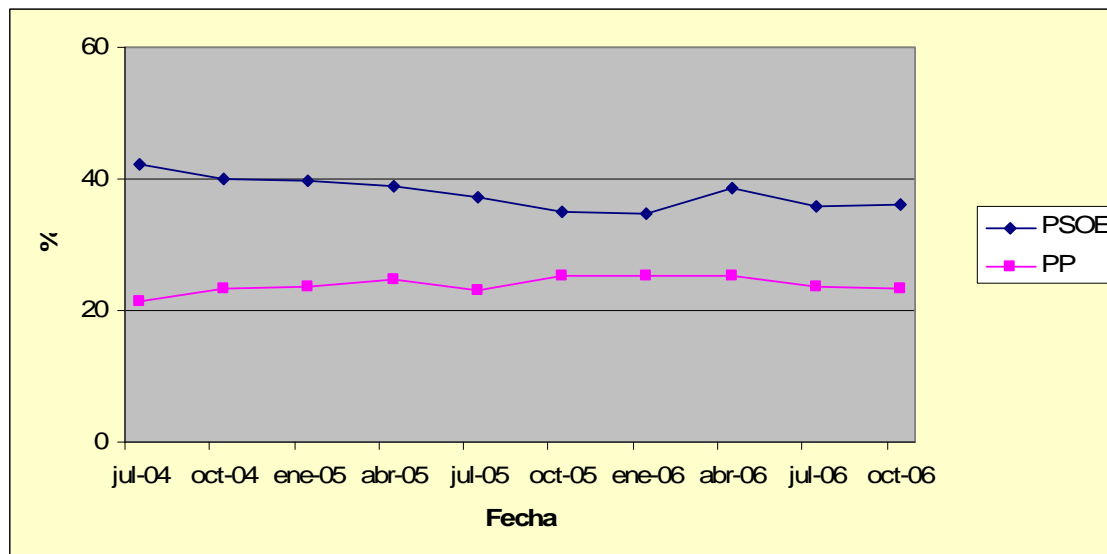
Table 3. Direct voter approval during first term.

	Jul-04	Oct-04	Jan-05	Apr-05	Jul-05	Oct-05	Jan-06	Apr-06	Jul-06	Oct-06
PSOE	39.2	35.5	36.5	34.9	33.1	30.0	29.5	34.4	31.5	31.2
PP	19.5	20.7	21.2	21.8	20.5	22.3	22.2	22.9	21.0	20.3
IU-ICV	3.3	4.0	3.6	4.3	3.4	3.2	3.3	3.7	3.5	3.7
CiU	1.4	1.9	1.7	2.1	1.6	2.0	1.5	1.5	2.3	1.9
ERC	1.6	1.6	1.1	1.0	1.7	1.5	1.2	1.2	1.7	1.4
PNV	1.0	0.8	1.0	1.2	1.2	1.0	1.0	1.0	0.8	1.0

Source: CIS. Data calculated on electoral roll.

The data we present here corresponds to the quarterly barometers the CIS produces. Table 3 shows direct voter approval starting from the first barometer produced after Rodríguez Zapatero took over. If we take a look at the two main parties we can observe the evolution of electoral support since the beginning of the term. There are two criteria worth highlighting. First off, if we look at the evolution of support for the PP we see that it practically has suffered no loss. What's more, the difference between the support the PP had in July, 2004, and what it received in October, 2006, a positive balance of almost one percentage point is produced. If we just look at the year 2006, the balance is negative –two percentage points–, though always keeping a direct voter approval above what was received after the CIS barometer of July, 2004. The second criterion that's worth pointing out makes reference to the party in government, the PSOE. In July, 2004, just a few months after Rodríguez Zapatero took power, the PSOE had a direct voter approval rating of 39.2%; a little over two years after, in October of 2006, its support was at 31.2%, 8 percentage points less. This tendency remains practically the same for the PP, and is somewhat mitigated for the PSOE, if we add to the direct voter approval the sympathy of those undecided for one party in particular^{xviii}. Graph 1 shows the direct voter approval plus sympathy for both of these parties.

Graph 1. Direct voter approval plus sympathy.



Source: CIS.

The distance between the PSOE and the PP in July 2004 was almost 21 percentage points. In October 2006, that distance was at 13 points. While the PP maintains a tendency of light growth in its electoral support, the PSOE has suffered a continual loss of voters in the term up to now. That loss becomes apparent above all in October 2004, to January 2006. During those 15 months the PSOE lost 4 points while the PP very lightly increased its electoral expectations –0.1 percentage points–. In the four quarters of 2006, the PSOE has had an average direct voter approval plus sympathy of 36.35%, with a positive balance of 1.3% between January and October 2006. It's important to point out that the barometer of April 2006 shows an increase of almost 2.5 percentage points with respect to January's barometer. One of the big political issues of 2006 has been the statement of permanent cease-fire that ETA gave March 22. April's barometer showed citizen support for the President's declared intention to begin a process heading towards an end to the violence. For this reason, one would have to understand the information from April's barometer situationally and not as a reliable reflection of the general feeling. The situational nature of the data from April's barometer is seen in the direct voter support plus the fondness that the government receives in the following barometers. In surveys of July and October of 2006, the government lost part of that "europhoric" support and received results more in line with those before ETA's statement. As far as the PP, as we've already pointed out, it barely suffered any electoral loss in the entire term. Its lowest point occurred at the beginning of the summer of 2005, but was later recovered, receiving an average direct voter approval plus sympathy of 24.32% in 2006, a positive balance of almost three percentage points in comparison to the barometer of July, 2004^{xix}.

The data offered in Table 3 and in Graph 1 continues to be paradoxical. How can it be explained that a government who fulfils electoral promises in an efficient way and which isn't afraid to undertake important social reforms loses electoral support? Three possible explanations, of different overlapping levels, can help us to understand this supposed paradox.

Let us suppose for a moment, first of all, that an efficient government is only that which fulfills its electoral promises. If that were the case, one explanation to understand that loss of votes could be that the socialist government has not known how to explain its policies in a clear enough way, so as to be able to capitalize on them. Let us reconsider the Dependency Law, one of the “star” measures. We shall see what the main problems were on the political agenda when presenting that regulation: April is the month of the so-called “Malaya case” when a police and judicial operation ended in the prosecution of city hall members in Marbella for supposed urban development corruption scandals; April is also marked by political reshuffling in the department of Education (María Jesús San Segundo is substituted by Mercedes Cabrera), Defence (José Bono decides to leave politics and his post is occupied by José Antonio Alonso), and the Interior (Alfredo Pérez Rubalcaba takes the place of José Antonio Alonso) and, in addition, at the autonomous level a new crisis occurs in the tripartite Catalan government which Maragall takes advantage of to expel six ministers of the ERC from the government team. But, without a doubt, the issue that most leaves a mark on the daily political agenda is ETA’s cease-fire declared at the end of the previous month. Practically all political attention is centered on those issues and the government’s announcement to launch this new Dependency Law happens with little uproar. This is shown in the data offered by May’s barometer produced by the CIS^{xx}. It is revealed in this survey that almost 65% of the 2,490 interviewed have not heard of the initiative to attend to dependent persons launched by the government, though 66% of those interviewed agree with the idea that the State should be responsible for the well-being of everyone.

We find ourselves, therefore, before a law proposing a vast broadening of social rights that, in addition, enjoys the unanimous support of all voters^{xxi} and, nevertheless, the government is unable to capitalize electorally on this achievement: the barometer of July, 2006, reveals a loss of direct voter approval plus sympathy (2%) in relation to the barometer of April. The government’s inability to clearly explain to citizens the “true revolution” that this reform means could be, among other causes, a reason to understand that loss of support.

The second explanation carries with it the broadening of the concept of efficiency mentioned above. A government is efficient not only because it fulfills its electoral program, but also because it is able to respond to the most urgent needs of the country, related to day-to-day administration, many of which are impossible to schedule. To see if the government is in keeping with this added way of understanding efficiency, it’s necessary to reconstruct the most significant events that have shaped the political agenda in 2006. The most recurring political issues during this period have been the territorial debate, and particularly the negotiation of the Catalan statute, negotiation with the terrorist group ETA and, in the economic sphere, the takeover bids for the electric company Endesa. With these issues there has been a series of issues that have also shaped the national political agenda, though at precise moments; thus, at the beginning of the year we found ourselves with the so-called “Mena case” (a General questioned the Constitution in view of the process of statute reforms) or the out of control controversy about the transfer of Civil War era documents from the archive in Salamanca to Catalonia. Halfway through the year the most important urban development scandal emerged in the history of Spain’s democracy, which ended with the dissolution of Marbella’s city council. Also in May the scandal of alleged fraud emerged committed by

two stamp-collecting companies Afinsa and Forum Filetético, which affected thousands of people and uncovered a network of bogus corporations that left a shortfall of nearly 3.5 million euros. During the summer, the specific issues that affected the political agenda were the migratory crisis caused by spectacular rise in immigrant arrivals to the coasts of the Canary Islands or the wave of fires that occurred in Galicia. With the political year already started, the opposition, supported by certain communication groups, brought to the political agenda again the supposed conspiracy plot regarding the attacks of March 11th. Despite all that, what most shaped the last quarter of 2006 was the stalemate in the peace process with the terrorist group ETA, which was worsened with the appearance of incidences of street violence, actions of supply logistics by the terrorist group (theft of arms in France on October 23) and, above all, the definitive rupture with the peace process on December 30 with the attack in the parking garage of the new terminal at Barajas airport, that took the lives of two people.

Throughout 2006, the Executive had to face those unforeseen events with immediate administrative measures with varying luck. Some of these measures ended the conflict in question; thus, the “Mena case” ended with that general being summarily dismissed from the army; the “Salamanca papers” were finally transferred to Catalonia; the Marbella city council was dissolved in the first week of April and its administration was put in the hands of a provisional administration. Other important problems, like the mass arrival of immigrants in small boats, called *cayucos*, that occurred during the summer, taking advantage of the good weather, have required diverse cabinet proceedings to mitigate a problem whose solution goes beyond national borders and belongs to the European Union as a whole. In general, there hasn’t been any urgent case where government intervention has not taken place, or that has been clearly delayed^{xxii}, though the results have not been the same.

Table 4 displays the main problems that citizens perceive for Spain and for themselves.

Table 4. The three main problems that citizens perceive for Spain and for themselves.

	Spain	Citizens
January	Unemployment Immigration Terrorism	Unemployment Income Housing
February	Unemployment Terrorism Immigration	Unemployment Income Civil insecurity
March	Unemployment Immigration Terrorism	Unemployment Income Housing
April	Unemployment Immigration Terrorism	Income Unemployment Housing
May	Unemployment	Unemployment

	Immigration Civil Insecurity	Income Housing
June	Unemployment Immigration Housing	Income Housing Unemployment
July	Unemployment Immigration Terrorism	Income Unemployment Housing
September	Immigration Unemployment Housing	Unemployment Income Housing
October	Immigration Unemployment Housing	Housing Unemployment Income
November	Unemployment Immigration Terrorism, ETA	Housing Unemployment Income

Source: CIS (www.cis.es).

As one can see, there is a concern that systematically matches up between the two columns: unemployment. Like unemployment, immigration is the problem that repeats the most in the section referring to Spain, while economic difficulties and those resulting from the shortage and high cost of housing are what affect citizens the most. Let's analyze whether the government has been conscious of these problems and if it has promoted measures to try and reduce their impact. We're going to focus fundamentally on unemployment and housing, as immigration is dealt with in greater depth in another chapter of this report.

According to data from the National Statistics Institute (INE), in the second quarter of 2006 (the latest data consulted) the rate of unemployment fell to 8.53%. This percentage is lower than the community average in 2005. In that year, the average rate of unemployment in the 25 countries of the EU was at 8.8%, while the average rate of those countries using the euro reached 8.6%. Historically low percentages, in addition the descent of unemployment is widespread for both men and women, a significant fact, given that women usually suffer most from the effects of a lack of job positions. In the second quarter of 2006, the number of unemployed, males and females, dropped at the same rate, putting the rate of unemployment at 6.36% for men, and 11.53% for women^{xxiii}.

One of the evils of our labor market is, without a doubt, the high rate of temporary workers. The problem was harshly criticized by the PSOE when it was the opposition and measures to fight this situation were incorporated into its electoral platform. These measures found an answer in July, 2006, when the cabinet passed a Royal Decree by which it backed up the agreement reached unanimously among company management, unions, and the government to reform the labor market just a month before. The key objective of that reform was to change a million people from having temporary contracts to being permanent; or in other words, reduce by 20% the number of temporary

employees. The government and social agents hoped to reduce the temporality rate from 33% where it was at that time to 26 or 27% in 2008^{xxiv}.

A second problem to deal with has been that related to acquiring housing. The problem of accessing an apartment, above all for the youngest sector of the population, as well as those with lower incomes, is considered one of the most serious problems. Not only economic data demonstrates it, which blames indebtedness of families on the astronomical prices of apartments, but also citizen perceptions demonstrate it. The CIS barometers from October and November show housing as the main problem affecting citizens. The government knows this very well and as a result it has been advanced both in its electoral platform as well as the governments program presented in the investiture debate^{xxv}. What has been done to fight it?

April 8, 2005, the cabinet approved the SPA, the Sociedad Pública del Alquiler (“Public Corporation on Renting”). The creation of this new agency occurred to comply with an electoral promise acquired with voters and thus manage to “reduce the cost of apartments for rent, because the supply is going to increase”^{xxvi}. The SPA began working on October 15 and its welcome hasn’t been exactly positive from tenants, who are the cornerstone of the plan. At an appearance in the House of Representatives requested by the CiU, in May of 2006, the director of the SPA stated that since the day the agency began its operations, only 1,208 contracts had been signed, a figure that seemed to all the political groups –except the socialists– very insignificant, and because of which they harshly criticized the administration and even the purpose of the agency itself. The general feeling that the problem of housing in Spain had not been fixed at all, not even with the creation of the SPA, did not ease up despite the fact that beginning from the second half of 2006 a certain slowing down in the increase of prices of new housing could be noted^{xxvii}. On the contrary, unease has been on the rise. Citizen protests against housing policies of the government have gone to the streets in the way of demonstrations organized at the margin of the political parties. During the months of May, June, November, and December youth demonstrations were held protesting the high cost of housing, the difficult accessibility to housing and the lack of government efficiency on the subject of something that had been one of its favorite issues when in the opposition.

On July 14, 2006, the cabinet approved the so-called Ground Law. Although the objective of this law is fundamentally to establish an urban development model that is clearer and more sustainable, the Vice-President of the government emphasized that the new regulation “would fight urban development speculation”, in addition to “guaranteeing more available ground for protected housing”^{xxviii}.

Meanwhile, the housing problem has become one of the main shadows over government action in this term. Above all, as compared with raised expectations during the period of socialist opposition.

The third explanation that we propose of the government’s decline in the polls is a combination of its lack of pedagogy and effective communication about its achievements and reforms with the strategy of confrontation put in place by the opposition, that in many cases shapes the political agenda.

An illustration of this whole effect of the government’s lack of pedagogical ability and an intense strategy of negative opposition by the PP might help to better understand the last proposed explanation. Let us recall another of the “star” measures of this government: the Law of Equality. Coinciding with Working Women’s Day (March 8th),

the CIS barometer for that month included a series of questions referring to the bill for the Law of Equality that had been passed on March 3rd by the cabinet^{xxix}. The survey reveals not only the need for this law, but also the wide support that it has. The poll reveals that 94.2% of those interviewed are “very much in favor” or “quite in favor” of full equality between men and women. These percentages are also convincing if taken with how voters voted in previous terms; thus 96.5% of PSOE voters believe in the importance of equality, 90.4% from the PP, and 93.9% of IU voters. But the survey shows other interesting data; for example, all of those surveyed mostly think that the woman’s situation in Spain is worse than the man’s on the subject of salary, perspectives on professional promotions, opportunities for finding work, labor stability, access to posts of responsibility within a business, possibilities for combining work life and family life, and with respect to access to positions of responsibility in political life. It’s because of this that a convincing 90% of those surveyed are quite in agreement with the government establishing measures guaranteeing equality between men and women. This fact is also reinforced by the 90% of interviewees, who think the law ought to ensure equality in the opportunities for men and women and in addition, almost the same percentage is “quite in favor” or “very much in favor” of sanctioning businesses that pay women less than men for the same work.

Because of all that, one could venture that the Law of Equality had all the ingredients to allow the PSOE to receive a return on the law, in electoral terms. However, the fact is that the socialists didn’t manage to capitalize on it. As we’ve already pointed out, the plan for the Law of Equality was passed in the cabinet meeting held on June 23, 2006. That whole month was intensely marked by the peace process in the Basque Country. During those days the chances that the two main parties would work together in that process broke down: the PP supported a rally organized by the Association of Victims of Terrorism (AVT) on June 10th where thousands of people attended to protest the government’s negotiations with ETA, as well as ask for clarification of the March 11 attacks. The Executive tried to attract the PP, offering “daily” contacts to Rajoy^{xxx}; however the uniting of the two parties didn’t happen and on June 29 the President of the government announced in Congress the start of talks with ETA without the PP’s involvement.

The second front marking the political agenda the month of May was the referendum on the Statute of Catalonia. The Statute was voted on by barely 50% of voters, who overwhelmingly defended it^{xxxi}, but left behind a crisis in the Party of Catalan Socialists (PSC) that ended in Maragall’s renunciation to run in the autonomous elections, position occupied by José Montilla, then Secretary of Industry and Tourism.

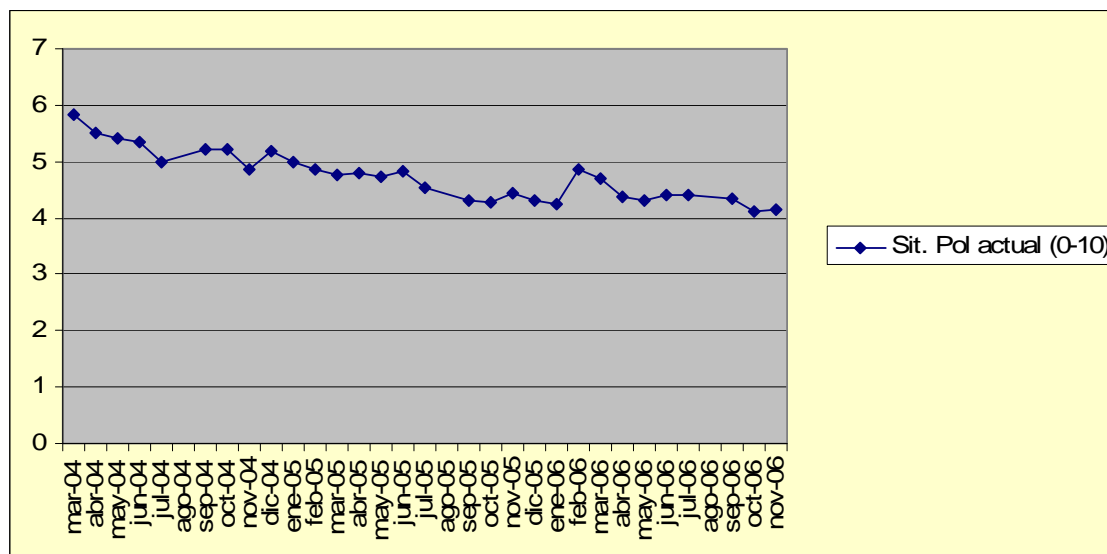
Both the rupture with the PP in the case of the Basque Country and the complicated administration on the Statute of Catalonia reform –whose opposition the PP tries to capitalize on—suffocate the government. The Executive dedicates more time responding to the opposition in this area than defending its social and political reforms, its home-field advantage.

3.2 Citizen Perception

The government's inability to get to citizens in a convincing way and the straining of the political atmosphere created by the opposition has an impact on the perception of citizens. We've placed these perceptions into five indexes that are shown below^{xxxii}.

3.2.1 Indicators of the Political and Social Situation. Graph 2 shows us the value corresponding to the perceptions of citizens about the political situation in 2006. If we look at the evolution of these perceptions from July 2004, we see that the falling tendency corresponds with the loss of party support in the government. As the term progresses, citizens perceive how politics become more and more cloudy; while the PP lightly increases its support, the PSOE loses its support. From July 2004, the average value that citizens grant to the political situation is slightly higher than 4.5; it doesn't reach approval. The last months of 2005 were particularly negative, which coincides with the most critical period of the Catalan Statute^{xxxiii}; during these months the PP's opposition was particularly harsh and it managed to place the debate about the territorial model at the center of the public debate. After those months of political tension, citizen perception of the political situation rises above the average. Possibly the agreement that Artur Mas and Rodríguez Zapatero reached to unblock the new Catalan Statute helped calm tensions in the months before. However, that optimism was short-term and the following months reduced citizen perception on the current political situation to values near 4. Not even ETA's announcement declaring a permanent cease-fire got Spaniards to increase their positive perception of the political situation. The confrontation created by the PP's opposition strategy made such a take-off difficult.

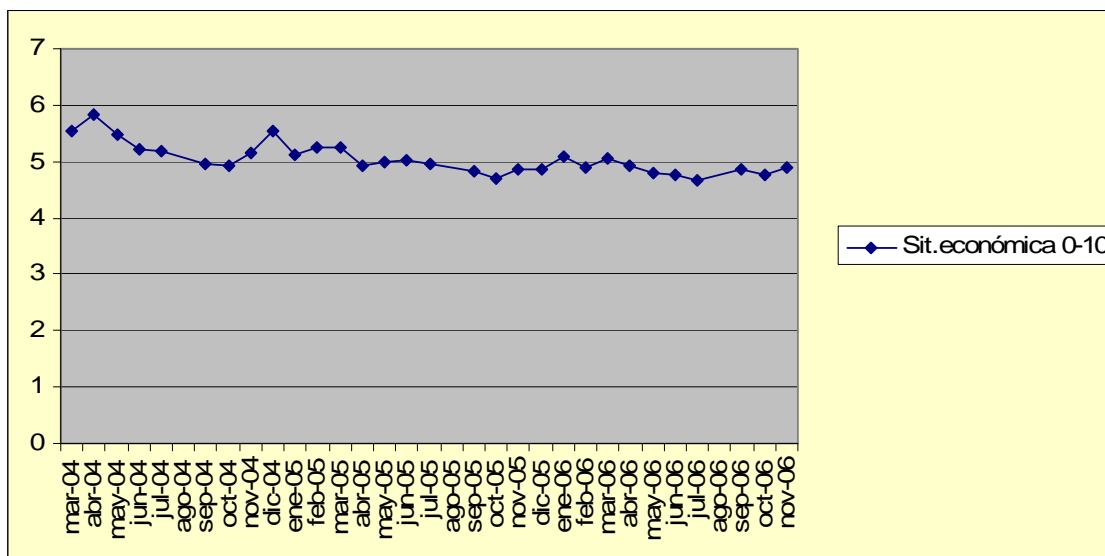
Graph 2. Perceptions in relation to political situation from the beginning of the term to November of 2006.



Source: CIS.

With this index it is useful to analyze another thermometer that allows us to take the political climate's temperature. Graph 3 shows citizen perceptions with respect to the economical situation.

Graph 3. Perception with respect to the economical situation from the beginning of the term of office to November of 2006.

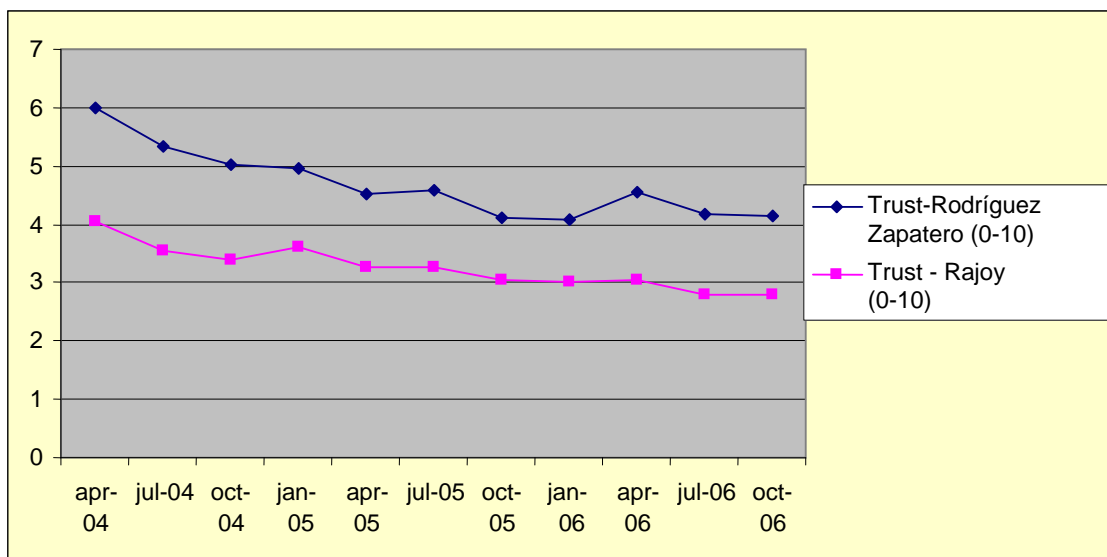


Source: CIS.

Citizen assessment of the economic situation is slightly over the assessment made on the political situation. The average value of these perceptions from July 2004 is 4.96, which is 0.4 points above the average for the political situation during the same period. If the opposition has tried to treat the government's economic successes poorly, what is true is that the government has not known how to effectively pass on to citizens the pleasant period our economy is passing through: above-average growth, declining inflation, job creation, surplus in public accounts, constant rises in the stock market, etcetera. It's true that some indicators are negative, like the spectacular current-account deficit, among the highest in the developed world, but it is a technical indicator, not likely to stir up the citizenry. The lack of a perception of an almost unbeatable situation by any other moment in history is another example of the government's ineffectiveness in "selling" its political and administrative practices.

3.2.2. Confidence in the President of the Government and in the Leader of the Opposition. The following index we present corresponds to citizen confidence in the President of the government and in the leader of the opposition, Graph 4 shows the evolution of these perceptions.

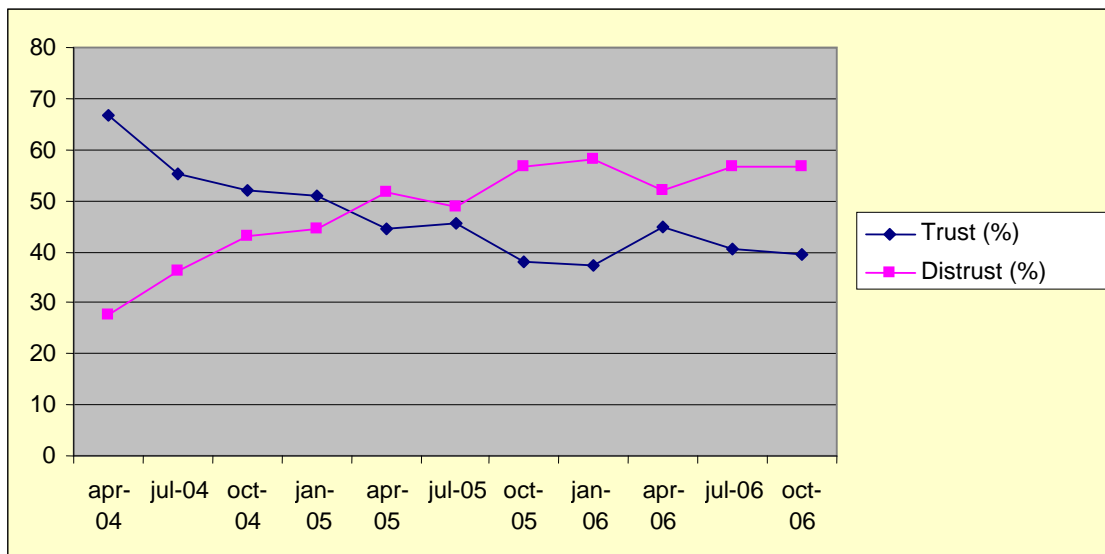
Graph 4. Index of trust development in the President of the government and in the leader of the opposition from the beginning of the term.



Source: CIS.

In this graph one can see a decreasing tendency for both leaders. However, it's worth pointing out the differences between the two. Between July 2004, and October 2006, confidence in Rodríguez Zapatero fell 1.2 points on our scale. Looking at these months, he went from being “approved” (5.33) to “failed” in a clear way (4.15). If we only look at the values for 2006, the loss of confidence is even more obvious. Discounting the level of confidence that Rodríguez Zapatero receives in April, the average level observed is at 4.13 on a scale of 1 to 10. In April, the assessment is slightly higher (4.53) but we've already commented that April's barometer appears to be “contaminated” by the optimism awoken in the citizenry by ETA's announcement of a permanent cease-fire. In reality, those low levels of confidence are observed more clearly in Graph 5. This Graph measures the percentage^{xxxiv} of those who have confidence in the President's work and those who do not. The point of inflection, as seen, occurs in April 2005. From then on, distrust in the work of the President of the government will always be higher than confidence awoken in the citizenry. That this occurs is not a coincidence, as the PP's opposition gradually increases and such sensitive issues like the Civil Code reform to allow same-sex marriage, the Education Law, and the reform of the Catalan Statute work as a relentless attack on the government with all kinds of defamatory remarks and actions that mobilize its political activists^{xxxv}.

Graph 5. Development of the trust and distrust in Zapatero since the beginning of the term.

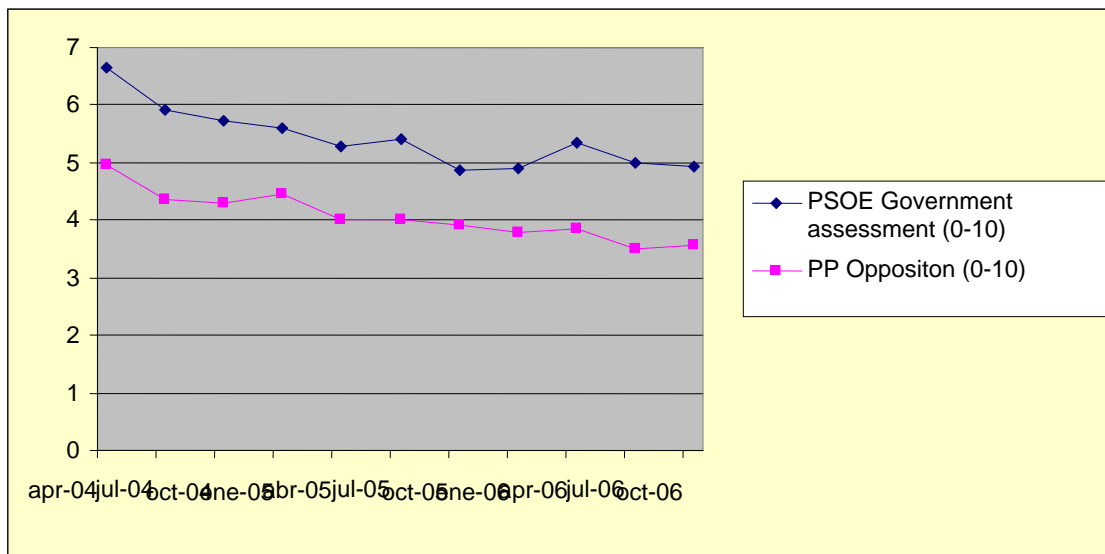


Source: CIS.

But Graph 4 also shows a decline in confidence created by Mariano Rajoy. Between July 2004, and October 2006, he loses 0.77 points on our scale. This loss is 0.43 points lower than the loss suffered by the President of the government. In any case, at no time does the leader of the PP border on approval and during the months of 2006 the average assessment on him is lower than 3, falling to an evaluation of 2.78 in July, 2006. In view of this information, it's clear that Mariano Rajoy does not inspire much confidence among the citizenry. In fact, if we look at the percentages of those who have confidence in him and those who don't, we see that the values of those who don't trust in him are way above those who do. If in July 2004, the percentage of those who distrusted Rajoy was 33%, in October of 2006 that percentage increases to over 55%. The PP's strategy to wear down the government and reduce confidence placed in it has an affect on the citizenry as we've just seen. However, the leader of the opposition receives the same in return, that creates more and more distrust.

3.2.3. Assessments of the PSOE Government and the PP's opposition. The final index we present refers to the evaluations made by citizens on the government's performance and on the opposition in general. Graph 6 shows the evolution of these assessments.

Graph 6. Development of assessments (0-10) about Government and opposition from the beginning of the term.

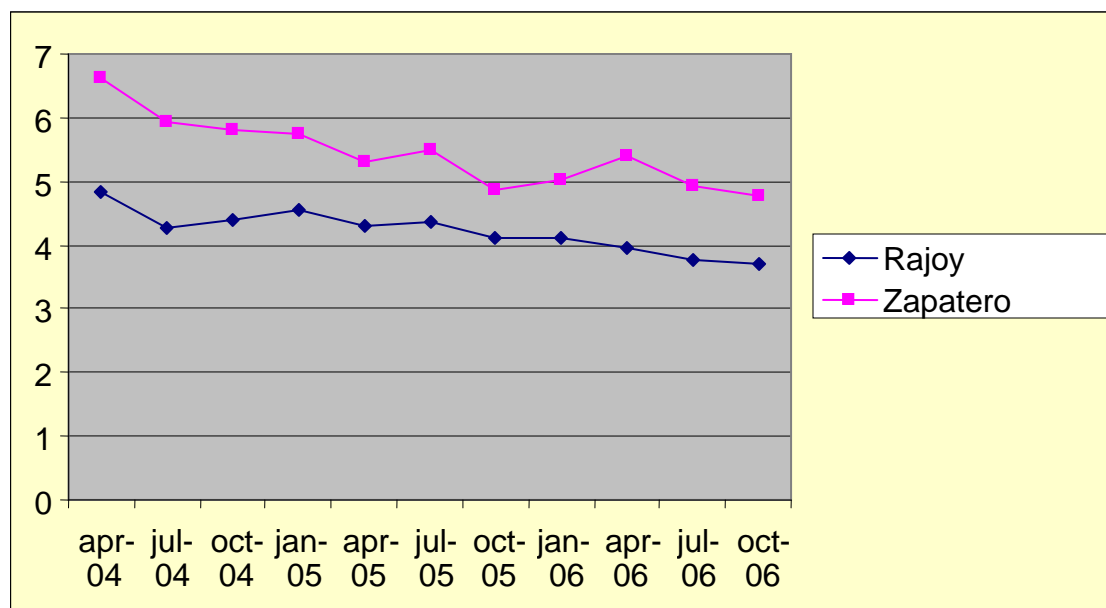


Source: CIS.

The straining of the political situation that we saw above has a direct consequence on the assessments citizens make on the government and the opposition: both assessments continuously descend since July, 2004. This descent, as the Graph shows, is parallel, though the PP suffers a worse assessment than the PSOE. Between July 2004, and October 2006, the PP loses 0.8 points, ending the year with an assessment somewhat higher than 3.5 on our scale. The PSOE, on the other hand, loses 1.7 points but, in general, receives approval of citizens^{xxxvi}. This fact makes us think that citizens are aware of the work the government does. That might aid the argument confirming the (third) explanation on the effect of confrontation and the government's lack of pedagogical ability. Citizens positively assess the government's administration; however, its electoral support systematically decreases due to the opposition's strategy of confrontation that paints a catastrophic picture.

Citizen assessments given to Rodríguez Zapatero and Rajoy go in the same direction. As shown in Graph 7, during all of the current thus far, assessment of the President of the government has descended a little less than a point on a scale of 1 to 10: in July, 2004, he received a scoring of 5.92 and in October of 2006 that scoring was 4.96. The "grades" the President has gotten in all that time has always been above or slightly below 5. In July of 2004, citizens assessed his administration with a 4.28 and in October 2006, with a 3.71, which is 0.58 points lower. Again, the strategy to wear down the President of the government has an effect though not so much so as citizens rate Rodríguez Zapatero below 5 in a systematic way.

Graph 7. Development of assessment of Rajoy and Rodríguez Zapatero from the beginning of the term.



Source: CIS.

Lastly, assessment of the government has to consider how citizens evaluate those in charge in each department. Table 5 shows the value citizens grant to the heads of each department before and after the government crisis last April 7th. If we look at the facts of the CIS barometer for January we can see that of the 18 Secretaries only five of them receive a value over 5. Of those approved, he who receives the best grade is Economics Minister Pedro Solbes (5.28), followed by then Defence Secretary, José Bono (5.28), and Secretary of the Interior, José Antonio Alonso (5.21). Before the change in secretarial departments, those departments rated the lowest were the Housing Ministry (4.02), followed by the Education and Science Department (4.38). The lowest grade, and with a declining tendency, belongs again to María Antonio Trujillo at the head of the Housing Ministry.

Table 6. Assessment of Government ministres.

	Average				Average apr-oct 06
	Jan-06	Apr-06	Jul-06	Oct-06	
José Antonio Alonso (Home Office)	5,23				5,23
José Antonio Alonso (Defense)		5,28	4,83	4,86	4,99
Magdalena Álvarez	4,69	4,37	4,4	4,32	4,36
Mercedes Cabrera			4,25	4,31	4,28
José Bono	5,28				
Jesús Caldera	4,65	4,6	4,39	4,29	4,42
Carmen Calvo	4,44	4,46	4,42	4,28	4,38

Joan Clos				4,01	4,01
Elena Espinosa	4,45	4,53	4,28	4,29	4,36
María Teresa Fernández de la Vega	5,21	5,38	5,13	5,32	5,27
Juan Fernando López Aguilar	5,07	5,04	4,87	4,81	4,90
José Montilla	4,5	4,31	4,26		4,285
Miguel Ángel Moratinos	4,48	4,4	4,35	4,36	4,37
Cristina Narbona	4,51	4,45	4,28	4,19	4,30
Alfredo Pérez Rubalcaba		5,03	4,85	4,66	4,84
Elena Salgado	4,6	4,64	4,49	4,38	4,50
María Jesús San Segundo	4,38				4,38
Jordi Sevilla	4,57	4,47	4,37	4,26	4,36
Pedro Solbes	5,29	5,24	4,89	4,96	5,03
María Antonia Trujillo	4,02	3,91	3,8	3,76	3,8

Source: CIS.

3.2.4. Changes Produced in the Electorate. In the previous section we have seen how direct voter approval of the PSOE has considerably diminished since the beginning of the term. This means that a change has occurred in the electorate with respect to the last elections of 2004. With the PP the situation has been different; as we've already pointed out, direct voter approval of this party has not only not gone down, but it has even slightly gone up. This means that, in the PP as well, a change has occurred in its electorate. To analyze these variations we will produce a general description of citizens that voted for the PSOE in 2004 and what voters are like who would vote for the PSOE in 2006. Next we will produce a similar exercise with respect to the PP. Data we use in this section corresponds exclusively to surveys carried out by the CIS^{xxxvii}. It's important to point out that the use of the survey corresponding to the month of April, 2006 is due to the fact that April coincides with the half-way point in the term. We are aware that April's survey represents widespread optimism due to the cease-fire declared by ETA: because of this, each time we refer to that survey we will display the caution that we've already shown in previous analyses.

The CIS post-election survey just after the 2004 elections offers rich information to conduct an X-ray of the voter who opted for the PSOE. A brief description, observing the highest values of each category indicated in Tables A3, A4, A5, and A6 of the appendix, shows us that the PSOE received more votes from women between the ages of 45 and 54 identified with the left, without studies, and belonging to the unskilled working class. On the other hand, the PP principally won its votes from men older than 65 residing in small population (up to 2,000 habitants) who identify with the right, without studies, who are either unemployed or belong to the old middle class.

Have these tendencies been maintained in 2006? Tables A3, A4, A5, and A6 of the appendix show data from two surveys conducted by the CIS in January and April that allow us to observe some significant differences. With respect to age, one can see that between March 2004, and January 2006, the PSOE loses support in all age groups. In the 35 to 44 age bracket it loses up to almost 30% of the vote, the biggest loss. Citizen support between ages 55 to 64 is reduced by just 0.33%, and they are the ones who

increase voter approval the most if data from March 2004 is compared to that of April 2006. For the PP the picture is different. While it manages to obtain greater voter approval in the youngest age brackets (18 to 44), it loses support in the highest age brackets (45 and up). The greatest loss is seen in the 45 to 54 bracket and it means a negative balance of a bit more than 29% of the votes that had been received in March of 2004 and those it had obtained in January 2006. From the support it has gained it's important to highlight the increases of 6% and 34% in the 18 to 24 and 25 to 34 age brackets respectively, between March of 2004 and April of 2006. Once again, we can see how the fierce opposition of the PP manages to demobilize the PSOE's electorate and in turn mobilize the youngest sectors of the population.

The effects of the PP's strategy and the PSOE's inaction are also detected when observing voter approval, keeping in mind the ideological position of voters. The PSOE receives a widespread decline in support between March, 2004, and January of 2006. It is not especially significant that the greatest difference (57%) occurs between those who voted for the PSOE but who belonged to the right, while it is more interesting to observe that the PSOE loses quite a lot of votes from sectors situated at the middle of the political spectrum –almost 28% of center-left and 39% of center-right–. If we keep in mind that in the April survey the extreme-left vote looks to be strengthened, the loss of leftist voters is mitigated and, oddly, extreme right votes increase 14.3%. With respect to the PP, the loss is also widespread between March 2004 and January 2006, but, surprisingly, voter approval increases in citizens situated on the left (28%) and also on the extreme right (23%). If we look at April's survey, the PP loses votes in a widespread way^{xxxviii} less so in the right and extreme right sectors. The country's political atmosphere helps to polarize part of the electorate and demobilize another part. This data can support this hypothesis when seeing how voters of the right increase their voter approval of the PP and how citizens that voted for the PSOE in 2004 withdrew their support in 2006.

The political climate of this term has high mobilizing effects among certain sectors of voters. As we show in Tables A3, A4, A5, and A6 of the appendix, voters that mobilize the most with regard to March 2004, are those aged 25 to 34, and those who demobilize the most are voters between the age of 45 and 54. But it's at the ideological axis where one sees the most differences. Voter abstention falls 40% between March 2004 and January 2006 among voters of the right, and 69% if April's data is taken into account. The left, on the other hand, increases voter abstention in January of 2006 as compared to March of 2004 by 8%, although it drops considerably (34.34%) if we look at April's data. Here also, it seems very clear that the PP's strategy has worked to mobilize part of an electorate that appeared demobilized.

Conclusions

1. A government that is efficient is not enough to guarantee it continued support in the citizenry. Besides fulfilling its electoral promises and effectively facing different conflicts that appear daily, the Executive, to guarantee support of its future voters must do something more: make its political practices visible. In this respect the government of Rodríguez Zapatero leaves much to be desired during 2006, for several reasons.

2. Since taking the reins of the Executive Power in April of 2004, Rodríguez Zapatero's government has been characterized by a clear reformist effort. In the first two years of the term it has promoted reforms that cover practically all arenas. Standing out, above all because of their social impact, are the Civil Code reform, that allows members of the same sex to marry with the same rights and responsibilities as members of the opposite sex, the Dependency Law, that extends social security benefits to all dependent persons, as well as caregivers, or the Law of Equality, that pursues a society free of discrimination based on gender. They are important measures and have a large impact on the way we conceive of our society. All of them, in addition, are electoral promises that the PSOE committed itself to if it won the 2004 elections. Now that the midpoint of the term has passed, it can be said that the government has completed approximately half of its program, by which it's feasible that at the end of the term (if an unforeseen move up in elections doesn't occur) the amount of the program fulfilled will be quite high.

3. The government's political action has not been limited to its electoral platform, but rather it has had to face different events arisen in the political course. For example, during 2006 it had to confront the issue of corruption in urban development, which came from several scandals, and authorize the dissolution of a city council (in Marbella) for the first time in our recent democratic history. During the summer months the most intense incident of immigrant arrival occurred, by way of *cayuco* (a small boat), and a wave of uncontrolled fires devastated Galicia. Though the Executive's performance in these cases had its ups and downs, at no time did it fail to act. The year ended with the terrorist attack at Barajas airport (December 30), which put an end to the so-called peace process, just as it had advanced up until then. Its consequences will have to be analyzed in the 2007 report.

4. It has also had to deal with the statute reform process in diverse communities, the Statute of Catalonia being the most representative example. Its entire administration, up until the final referendum passage by Catalan citizens, has caused a decline in the polls for the national government.

5. Facing a panorama of more wise decisions than disasters in the outcomes of government action, the government has suffered a continuous loss of electoral support. Why? How can a government that is apparently responsible to its voters and considerably efficient, especially relating to the past, not receive clearer citizen support? The answer is twofold: it has been unable to achieve a pedagogical effort in communicating its actions and, at the same time, it has found itself with an opposition that has adopted a strategy of confrontation, based on a negative dialogue that has managed to mar socialist achievements and redefine the political agenda. The government has not been able to consolidate its leadership and, though it continues to hold an advantageous position in polls over the PP from an electoral point of view, it has not been able to slow the continued loss of support. The PP, on the other hand, has maintained and even slightly increased its support, with respect to the results in the past general elections.

6. The combined effects of that strategy of confrontation provoked by the opposition and the government's communicative inability are detected when one analyzes indexes like citizen perceptions of the current political and economical situation. The case of the economic situation is paradigmatic: Spain is now living in long-term economic prosperity, with historically minimal rates of unemployment that are comparable with average European rates, with a growth rate at the head of the developed world, and

matching Europe with an economic situation about to reach the average for the twenty-seven nations that make up the EU. It is the best situation out of the last 30 years. However, Spaniards don't perceive it as such. Citizens see a shadow over the government's action regarding housing, which figured as one of the most paradigmatic promises of its electoral platform. The shortage and difficult access to housing (property and rentals) has not only not lessened but, but it has caused protests on various occasions in the streets of those groups who suffer the most. In all the polls, the Housing Ministry appears in the worst condition in the opinion of citizens.

7. Despite that, the Executive's pedagogical inability has a lesser effect than the strategy of confrontation practiced by the PP. The offered data confirms this hypothesis. Citizen confidence in the President of the Government and the opposition leader falls since the beginning of the term; however, assessment of the President has at no time been overcome by assessment of Mariano Rajoy. Similarly, citizen assessment of the government also descends since the beginning of the term, although, as in the previous instance, it is always above an opposition that clearly and emphatically fails.

8. The strategy of confrontation appears again in this chapter about the government's relationship with citizens as a determining factor for the year 2006. And it has clear effects on the electorate: the loss of votes for the PSOE is widespread through age and ideological brackets, while PP voters closer to extreme positions strengthen support for that party. The PP, in addition, manages to mobilize pro-abstentionists situated further towards the right of the ideological axis and demobilize part of the voters situated further towards the left.

9. Clearly, 2006 appears to be a year when the relationship between citizens and the government is not as solid as one could hope for. It is surprising the government is unable to benefit from the reforms it practices and, above all, unable to more clearly overcome an opposition that does not convince citizens and whose almost sole political practice is that strategy of confrontation.

ⁱ "...The right to civil matrimony shall be recognized for all persons, regardless of sex." Measure 86 in PSOE (2004).

ⁱⁱ "Minimum wage shall increase to 600 euros" Measure 25 in PSOE (2004).

ⁱⁱⁱ "The government shall protect and defend freedom of creation and cultural expression, ending the sectarianism practiced by the PP." Measure 41 in PSOE (2004).

^{iv} Here appear succinctly the most important actions that the PSOE promised to carry out if it won the election.

^v A copy of the speech can be obtained at <http://www.la-moncloa.es/Presidente/Discursodeinvestidura/default.htm>.

^{vi} Measures of this kind are, for example, the agreement adopted at the suggestion of the Ministry of Economy and the Treasury Department for the distribution of the result attained by Spain's stock market commission in 2004 (cabinet resolution, January 20, 2006).

^{vii} An example of this kind of action is found in the Ministry of Labor and Social Affairs sending the bill for the Promotion of Personal Autonomy and Attention to Individuals in Dependent Situations, commonly known as the Dependency Law, to Congress (cabinet meeting, April 21, 2006).

^{viii} The first cabinet meeting analyzed is from January 13, 2006 and the last one is November 24, 2006. The content of cabinet meeting can be viewed at www.la-moncloa.es.

^{ix} Court appearance by the Minister of the Interior on January 2, 2007. Information appeared in *El País*, January 3, 2007.

^x Press conference given jointly by the First Vice-President of the government and the Minister of Labor and Social Affairs after the cabinet meeting held on April 21, 2006.

^{xi} Measure 44 in PSOE (2004).

^{xii} Press conference given jointly by the First Vice-President of the government and the Minister of Labor and Social Affairs after the cabinet meeting held on June 23, 2006.

^{xiii} Discontent due to the final result of the law has been, however, as high among the main groups that initially promoted it, the IU and ERC, as among those who voted against it. The law also has received important criticism from international organizations like Amnesty International, which even compared it to the Argentinean Full Stop Law. See *El País* on November 17, 2006.

^{xiv} CIS (2005).

^{xv} The greatest criticism has come from the People's Party and the Spanish Confederation of Business Organizations (CEOE).

^{xvi} Economic and Financial Report of the General State Budget for 2006. Expense Policy. Economic Office of the President of the government.

^{xvii} Measure 62 in PSOE (2004).

^{xviii} The survey's question is formulated in the following way: "Which party do you feel greater fondness for or which party do you consider to be closer to your own ideas?"

^{xix} In any case, the direct intention to vote plus fondness is removed to a certain degree from the hypothetical results that would be obtained if the elections occurred when performing the survey. To know those results it is necessary to make some estimates considering other factors than those mentioned here. Given the differences that the different estimates present offered by different study companies, we prefer to use gross data like the direct intention to vote and fondness. At any rate, in the appendix we attach a table with the main electoral estimates given throughout 2006.

^{xx} CIS (2006d).

^{xxi} In fact, the PP's interest in this law is seen in its agreement reached with the PSOE to move it forward on September 26.

^{xxii} From the opposition the President of the government was accused of acting too late in the management of the wave of fires that devastated Galicia last August. However, such a delay can be called into question: if the magnitude of the fires began to be clear on August 5, on the 7th the government met with the inter-ministerial commission on fires, that decided among other things to send the army to help with patrolling and security. But what's more, on August 9, President Rodríguez Zapatero called off his vacation in Lanzarote and traveled to Galicia along with the Ministers of the Environment and Agriculture to "take responsibility" in management of the crisis. (Source: *El País*) The situation could be compared to another ecological catastrophe (the largest in Spain) that occurred under José María Aznar; November 13, 2002, the news was given of flotation problems with the Turkish-Cypriot ship *Prestige*, which was loaded with fuel. Its sinking caused an oil slick that splashed all the Cantabrian coast and especially Galicia. When the first patches of oil got to the coast the Minister in charge of port infrastructure, Francisco Álvarez Cascos, was hunting in the Lleida Pyrenees and the Minister of the Environment, Juame Matas, was visiting Doñana. The first public summons to deal with this matter was made by then First Vice-President Mariano Rajoy and it wasn't until the first days in December when the President of the government, José María Aznar, took charge of the crisis cabinet created by the government and he didn't visit the region until almost a month had passed since the catastrophe (Source: *El Mundo* <http://www.elmundo.es/especiales/2002/11/ecologia/prestige/index.html>).

^{xxiii} National Statistics Institute (2006).

^{xxiv} These objectives appear in the press conference given by the First Vice-President of the government and the Minister of Labor after the cabinet meeting was held on June 9.

^{xxv} Measures 57 through 60 (inclusively), from 100 Government Measures: We Deserve a Better Spain, make explicit reference to the creation of new conditions to facilitate and encourage renting. In his investiture speech, José Luis Rodríguez Zapatero also promised the creation of 180,000 new homes.

^{xxvi} Press conference of the First Vice-President of the government, María Teresa Fernández de la Vega, after the cabinet meeting held on April 8, 2005.

^{xxvii} According to the Sociedad de Tasación (a real estate appraisal company), the price of new housing went up just under 10% in 2006. See *El País*, January 3, 2007.

^{xxviii} Press conference by the First Vice-President of the government, María Teresa Fernández de la Vega, after the cabinet meeting held July 14, 2006.

^{xxix} CIS (2006b).

^{xxx} See the interview with President Rodríguez Zapatero in *La Vanguardia*, June 11 and in *El País*, June 12, 2006.

^{xxxi} According to information from the *Generalitat* of Catalonia, participation was 49.41%, and the “yes” received 73.9% of voters and the “no” 20.76%. The informations can be consulted at <http://referendum2006.gencat.cat/ctlno/refe/REFTOP.htm>

^{xxxii} Since the beginning of the term we’ve produced these indexes based on the historical series by the CIS. All the indexes have the same scale that fluctuates between 0 and 10. This is a very convenient way of presenting the results, since it allows us to evaluate each of the indicators using easy concepts to understand like “pass” and “fail”.

^{xxxiii} A quick timeline of the Statute negotiation might be useful. The negotiation between the Catalan parties took place throughout summer of 2005. On September 20 of 2005, the reform proposal was passed by Parliament and five days later it went to the House of Representatives. On November 3 of 2005 it was considered and December of that year many disagreements arose between the Catalan parties and the PSOE: in January of 2006 the agreement took place between Artur Mas and Rodríguez Zapatero which unblocked negotiations. On March 9 of 2006 it is debated in the Constitutional Committee and on March 30 it is voted on in Congress. The text is voted on in the Senate on May 10 and finally signed in referendum on June 18, 2006. More information in Díaz Soltero, P. (2006).

^{xxxiv} The line showing trust comes from adding the percentages of those that have a lot or quite a bit of confidence in Rodríguez Zapatero. The line showing distrust has been calculated by adding the percentages of those that have little or no confidence.

^{xxxv} To this regard, protests held on June 18 and November 12 of 2005 against same-sex marriage and against the education reform end up being fundamental in the PP’s mobilization strategies.

^{xxxvi} The average assessment that the PSOE government’s administration receives between July of 2004 and October of 2006 is 5.3 on a scale of 0 to 10.

^{xxxvii} The surveys used are CIS 2559 (post-election survey), CIS 2633 (January), and CIS 2640 (April). Keep in mind that all the information is adjusted based on the census.

^{xxxviii} However, the difference between voters of the left that voted for the PP in March of 2004 and those who would vote for it in April of 2006 only produced a negative balance of 4 percentage points.

Appendix

Table A1. Government acts and electoral program.

Promise	Type	Fulfillment in 2006
Foreign Policy		
Reestablishment of Consensus in Foreign Policy	Weak	
Peace promotion, obeying International legality and Human Rights	Weak	12/05/2006
Contempt for Irak war and support to ONU	Weak	
Push towards the new European Community	Strong	
Increase to Cooperation until 0.5% of Gross domestic product in 2008 and 0,7% in 2012	Strong	
Latin America as priority area	Weak	31/03/2006
Support to European policy of security and defence	Weak	03/02/2006
Making of statute of Spanish citizens in the World	Strong	13/01/2006
Tax Policy		

Policy of support to the saving and productivity	Weak	
Keeping current tax pressures – Without an increase of Public Spending	Weak	
Tax Reform	Strong	10/03/2006
Increase of Social Spending – Getting the EU average	Strong	
Spending priorities: Education, Infrastructures, Communications and Transports	Strong	
New system of autonomic financing	Weak	
End of interventionist policies in markets	Weak	13/10/2006
Creation of a unique window	Strong	
Restraining the public services deteriorated	Weak	
Measures of corporative transparency	Strong	05/05/2006
Creation of a State Agency of quality assessment in public policies and services	Strong	
Labor		
Fight against precarious working conditions and for the Labor stability	Weak	09/06/2006
Labor contracts revision	Strong	09/06/2006
Support to permanent part-time contract	Strong	09/06/2006
Bonus to Companies for decreasing precarious working condition	Weak	
Public Labor Service Reform- Program of professional reinsertion for unemployed workers in 6 months	Strong	
Increase of minimum wage to 600 €	Strong	
Approval to Statute of Self-employed workers	Strong	24/11/2006
Fight against occupational injuries	Weak	
Unemployment improvement for >45 years old people and domestic violence victims	Strong	09/06/2006
Implementation of Employment Offices for immigrants in their home countries	Strong	
Education and Culture		
Equal between Private and Public Schools	Weak	
Increase of offers in Education	Weak	
Improvement of academia performance	Weak	
English and IT formation as core matters	Strong	
Religion Subject	Strong	
Approval of Teachers statute	Strong	
Creation of a new models in professional education	Strong	
Increase of number and amount in scholarships	Weak	16/05/2006
Univerity law reform	Strong	01/09/2006
Decrease of VAT for cultural goods	Strong	
Measures of culture support	Weak	03/11/2006
Defence of freedom in creation and cultural expression	Weak	
Social Policy		
Family care as Government core goal	Weak	16/05/2006
Pensions improvement	Strong	
Creation of a System of attention to persons in situation of dependency	Strong	21/04/2006
Special attention to disable persons	Weak	
Strong investment in Health System	Weak	
Reduction of waiting lists	Strong	
Oral health attention to 7-15 years all children	Strong	
Ophthalmologic operation covered by Public Health System	Strong	
New Law of Assisted Reproduction- Support of Research in stem cells	Strong	15/09/2006
Development of Special Plans: reduction of traffic, tobacco addiction, cancer	Weak	
Attention to Alzheimer patient	Weak	
Creation of an Agent-Defender of patients	Strong	
Reduction of pharmacy expenses	Weak	
Support of National Deal of Immigration	Weak	13/01/2006
Housing, infrastructures and enviroment		
Fight against property speculation and urban corruption	Weak	14/07/2006
25% of building land for council housing (VPO)	Strong	14/07/2006
Public land preferential for council housing (VPO)	Weak	14/07/2006

180.000 families per year will access to housing with a reasonable cost	Weak	
New social and economic benefits for renting- Increasing renting housing from 11% to 20%	Strong	
Measures of support to free public transport for Youth and Old people	Weak	
Increase of investment to guarantee access to roads	Weak	
Gradual closing-down of nuclear power station	Weak	
Observance of Kyoto protocol	Weak	
New system of security and sea salvage	Strong	
Sciences and Technology		
Public Funds raise up to 25%	Strong	
Increase of university staff and improvement of scholars right	Weak	27/01/2006
State agreement with regional authorities to support access to PC – Benefits to broad band	Weak	12/05/2006
Apoyo a las nuevas empresas de telecomunicaciones	Weak	
Formación para adultos en nuevas tecnologías	Weak	
Adaptación de la Administración a nuevas tecnologías	Weak	
Security and Justice		
Antiterrorist Deal Keeping- highest priority for combating terrorism	Strong	
Implementation of 45000 new policemen	Strong	
A police station in towns of 30000 inhabitants	Strong	
Creation o fan unique head of police	Strong	
Driving license of points	Strong	27/01/2006
Fast trials – Courts of proximity– 1.000 new magistrates	Strong	
Access to judicial information on Internet	Weak	
Free choice of legal aid lawyer	Strong	
Role of attorney general	Strong	
Crimes of minors	Weak	20/01/2006
Citizens right		
Whole law against domestic violence	Strong	
Law of equality of gender	Strong	03/03/2006
Democracy of parity	Weak	23/06/2006
Abort 12 weeks	Strong	
Law of homosexual marriage – Law De facto partnership	Strong	
Youth Emancipation	Weak	
Increase of consumers protection		24/03/2006
Documentation in the Administration	Weak	28/04/2006
Statute of Journalist Profession	Strong	
Democratic Reforms		
Partial reform of the constitution	Strong	
Senate Reforms–Conference of Presidents–Participation of regional governments in EU	Strong	
Supreme Court of Justice of Regional Government- last resort	Strong	
Creation of Regional Tax Agencies	Strong	
Regional government reform in relation to EC	Weak	
Law of Parties	Strong	
Electoral debates by law	Strong	
Media independency- Reform RTVE	Weak	
Parlament measures	Weak	
Creation of a Budgetary Office of the Congress	Strong	

Source: own production.

Table A2. Government Acts with non electoral measures.

Ministry	Number of Measures	Goal
Presidency	5	Approval plan Jaén XXI (20/01/2006) Organic Law against doping (10/03/2006) Creation "Energy City" in the Bierzo (12/05/2006) Bill of law against violence, racism, xenophobia and intolerance in sport (23/06/2006) Law Historic Memory (28/07/2006)
Foreign Affairs	1	Creation of International Aid Workers Statute (28/04/2006)
Economy	1	Plan Business Promotion (27/01/2006)
Labor	2	Bill of Law recognition signs language (13/01/2006) Inclusion of countryside workers in special status of National Insurance for self-employed (24/11/2006)
Justice	2	Bill of Law of Professional Societies (27/01/2006) Bill of Law registral rectification, mention in relation to gender (Law of Gender Identity) (02/06/2006) Law of voluntary jurisdiction (20/10/2006) Law of sea navigation (3/11/2006) Law of incapacitations(10/11/2006)
Public Adm.	1	Public Employed Statute (07/09/2006)
Defense	1	Law Army Career (24/11/2006)

Note: in brackets the date when the Cabinet meeting approved the measure.

Source: own production.

Table A3. Electoral Development of PSOE and PP attending age criteria

PSOE					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April-Jan	Difference April 2006- March 2004
18-24 years old	31,3	28,2	27,1	-1,1	-4,2
25-34 years old	31,1	24,5	26,9	2,4	-4,2
35-44 years old	33,8	23,8	28,8	5	-5
45-54 years old	35,9	29,5	36,7	7,2	0,8
55-64 years old	29,6	29,5	30,3	0,8	0,7

> 65 years old	30,1	26,8	26,7	-0,1	-3,4
PP					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006-March 2004
18-24 years old	16,8	17,3	22,9	5,6	6,1
25-34 years old	20,8	24,5	28	3,5	7,2
35-44 years old	26,2	27,7	26,2	-1,5	0
45-54 years old	33,2	23,4	24	0,6	-9,2
55-64 years old	37,3	27,1	29,6	2,5	-7,7
> 65 years old	37,5	32,1	37,7	5,6	0,2
NON-PARTICIPANT					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006-March 2004
18-24 years old	27	21,6	24,8	3,2	-2,2
25-34 years old	24,8	17,6	13,3	-4,3	-11,5
35-44 years old	15,9	16,1	13,1	-3	-2,8
45-54 years old	10,6	11,1	11,6	0,5	1
55-64 years old	11	12,2	11,2	-1	0,2
> 65 years old	11,3	10	11,1	1,1	-0,2

Source: Own production.

Table A4. Electoral development of PSOE y el PP attending gender criteria.

PSOE					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006- March 2004
Males	31,2	26,4	30,8	4,4	-0,4
Females	32,5	26,8	27,6	0,8	-4,9
PP					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006- March 2004
Males	28,6	27,8	26,8	-1	-1,8
Females	27,9	24,2	30,5	6,3	2,6
NON-PARTICIPANTS					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006- March 2004
Males	18	14,1	14,7	0,6	-3,3
Females	16,4	15,1	12,5	-2,6	-3,9

Source: Own production.

Table A5. Electoral Development of PP and PSOE attending ideology criteria.

PSOE					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006- March 2004
Radical Left. (1-2)	44,3	43,2	49,3	6,1	5
Left (3-4)	62,3	55,4	61,3	5,9	-1
Centre-Left. (5)	33	23,8	27	3,2	-6
Centre- Right. (6)	8,4	5,1	6,7	1,6	-1,7
Right. (7-8)	3,7	1,6	2,8	1,2	-0,9

Radical. Right. (9-10)	4,2	2,9	4,8	1,9	0,6
Non ideology	17	11,5	12,2	0,7	-4,8
PP					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006-March 2004
Radical Left. (1-2)	1,5	1,2	0,5	-0,7	-1
Left (3-4)	2,5	3,2	2,4	-0,8	-0,1
Centre-Left. (5)	24,1	20,8	20,4	-0,4	-3,7
Centre-Right. (6)	70,2	61,2	57	-4,2	-13,2
Right. (7-8)	79,4	77,3	85	7,7	5,6
Radical. Right. (9-10)	75,5	92,6	88,1	-4,5	12,6
Non ideology	19	8,5	15,8	7,3	-3,2
NON-PARTICIPANTS					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006-March 2004
Radical Left. (1-2)	11,1	9,9	10,3	0,4	-0,8
Left (3-4)	9,9	10,7	6,5	-4,2	-3,4
Centre-Left. (5)	16,8	15	19	3	2,2
Centre-Right. (6)	7,4	7,1	8,8	1,7	1,4
Right. (7-8)	7,2	4,3	2,2	-2,1	-5
Radical. Right. (9-10)	12,6	0	0	0	-12,6
Non ideology	20,9	36,9	36,6	-0,3	15,7

Source: Own Production.

Table A6. Electoral Development of PP and PSOE attending socioeconomic class.

PSOE					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006- March 2004
Landlord	24,3	20,9	26,5	5,6	2,2
Services Class	29,4	25,9	21,2	-4,7	-8,2
Not manual	31	21,4	33,3	11,9	2,3
Manual qualified	33,9	31,1	32,2	1,1	-1,7
Manual not qualified	36,9	34,2	38,8	4,6	1,9
Unemployed	35,1	23,1	30,9	7,8	-4,2
Pensioner	31,4	27,6	28	0,4	-3,4
Homemaker	32,1	26,9	30,1	3,2	2
PP					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006- March 2004
Landlord	35,1	34,3	29,1	-5,2	-6
Services Class	33,6	30,4	29,8	-0,6	-3,8
Not manual	24	20,8	23,4	2,6	-0,6
Manual qualified	17,1	24	21,3	-2,7	4,2
Manual not qualified	18,3	16	20,8	4,8	2,5
Unemployed	21,2	26,4	24,2	-2,2	3
Pensioner	35,1	31	36,1	5,1	1
Homemaker	34,1	25,9	33,7	7,8	-0,4
NON-PARTICIPANTS					
	March 2004 (% vote memory)	January 2006 (% direct voting intention)	April 2006 (% direct voting intention)	Difference April - Jan	Difference April 2006- March 2004
Landlord	19,1	12,8	11,1	-1,7	-8
Services Class	11,8	11	14,3	3,3	2,5
Not manual	18,8	16,3	16,7	0,4	-2,1

Manual qualified	23,4	17,9	15,8	-2,1	-7,6
Manual not qualified	18,8	21,9	12,4	-9,5	-6,4
Unemployed	23,5	20,4	13,5	-6,9	-10
Pensioner	12	11,1	10,6	-0,5	-1,4
Homemaker	15,7	12,4	12,1	-0,3	-3,6

Source: Own production.

Table A7. Estimación de voto en las elecciones generales (en %).

Year	Month	Enterprise	PSOE	PP	IU	CiU	PNV	Others
2006	October	CIS	39,3	37,9	5,1	3,1	1,7	9,6
2006	July	CIS	40,6	36,9	5	3,2	1,4	12,9
2006	July	Institute Opina / <i>El País</i>	45	39	3,5	3,5	1,8	7,2
2006	July	Institute Noxa / <i>La Vanguardia</i>	44,4	36,8	4,8	3,2	1,5	9,3
2006	June	Institute Opina / <i>El País</i>	45	38	4,5	2,5	1	9
2006	May	Sigma- Dos/ <i>El Mundo</i>	41,7	40,2	4,6	2,8	1,5	9,2
2006	April	CIS	40,3	38,2	5,4	2,9	1,4	11,8
2006	April	Gesop / <i>El Periódico</i>	43,3	39,5	5,4	2,8	1,5	7,5
2006	March	Sigma-Dos / <i>El Mundo</i>	42,3	39,6	5,2	3	1,5	8,4
2006	March	Metroscopia / <i>ABC</i>	44,5	36,8	5	13,7		
2006	March	Institute Opina / <i>El País</i>	46	38	4,5	4	1,5	6
2006	March	Sigma-Dos / <i>El Mundo</i>	40,8	40,7	5	2,5	1,6	9,4
2006	February	Gesop / <i>El Periódico</i>	41,9	40,1	5,5	2,9	1,4	8,2
2006	February	Institute Noxa / <i>La Vanguardia</i>	41,3	42,6	5,3	2,8	1,5	6,5

2006	January	CIS	39,6	38	4,9	3,6	1,5	12,4
2006	January	Institute Opina / <i>El</i> <i>País</i>	41	40	4	3	1,5	10,5
2006	January	Metroscopia / <i>ABC</i>	39,3	40,4	5,6	14,7		

Source: Own production.

Bibliography

CIS — Centro de Investigaciones Sociológicas (2004), Estudio 2559, Postelectoral elecciones generales y autonómicas de Andalucía 2004. En http://www.cis.es/cis/opencms/ES/1_encuestas/estudios/ver.jsp?estudio=3754&cuestio=3927&muestra=7662

CIS — Centro de Investigaciones Sociológicas (2005), Estudio 2622, Barómetro octubre 2005. En http://www.cis.es/cis/opencms/ES/1_encuestas/estudios/ver.jsp?estudio=4977

CIS — Centro de Investigaciones Sociológicas (2006a), Estudio 2633, Barómetro enero 2006. En http://www.cis.es/cis/opencms/ES/1_encuestas/estudios/ver.jsp?estudio=5318

CIS — Centro de Investigaciones Sociológicas (2006b), Estudio 2636, Barómetro marzo 2006. En http://www.cis.es/cis/opencms/ES/1_encuestas/estudios/ver.jsp?estudio=5458

CIS — Centro de Investigaciones Sociológicas (2006c), Estudio 2640, Barómetro abril 2006. En http://www.cis.es/cis/opencms/ES/1_encuestas/estudios/ver.jsp?estudio=5498

CIS — Centro de Investigaciones Sociológicas (2006d), Estudio 2644, Barómetro mayo 2006. En http://www.cis.es/cis/opencms/ES/1_encuestas/estudios/ver.jsp?estudio=5657

Conferencia de prensa de la vicepresidenta primera del Gobierno, María Teresa Fernández de la Vega y la ministra de Vivienda, María Antonia Trujillo, 8 de abril de 2005, en www.mpr.es/Centro+de+prensa/Consejo+de+Ministros/RPCM_20050408.htm

Conferencia de prensa de la vicepresidenta primera del Gobierno, María Teresa Fernández de la Vega y del ministro de Trabajo, Jesús Caldera, 21 de abril de 2006. En www.mpr.es/Centro+de+prensa/Consejo+de+Ministros/RPCM_20060421.htm

Conferencia de prensa de la vicepresidenta primera, María Teresa Fernández de la Vega, y del ministro de Trabajo, Jesús Caldera, después de la reunión del Consejo de Ministros, 9 de junio de 2006. En http://www.mpr.es/Centro+de+prensa/Consejo+de+Ministros/RPCM_20060609.htm

Díaz Soltero, P. (2006), El Estatut, paso a paso. *El Mundo*, 18 de junio de 2006 en <http://www.elmundo.es/elmundo/2006/03/30/espana/1143708437.html>

Discurso de Don José Luis Rodríguez Zapatero en la sesión de investidura como presidente del Gobierno, Congreso de los Diputados, 15 de abril de 2004 en <http://www.la-moncloa.es/Presidente/Discursodeinvestidura/default.htm>

El País: 12 de junio y 17 de noviembre de 2006, 3 de enero de 2007.

Informe Económico y Financiero de los Presupuestos Generales del Estado para 2006. Política de Gasto. Oficina Económica del Presidente del Gobierno.

INE — Instituto Nacional de Estadística (2006), Encuesta de Población Activa (EPA), 2º trimestre, 28 de julio de 2006 en www.ine.es/daco/daco42/daco4211/epa0206.pdf

La Vanguardia: 11 de junio de 2006.

PSOE (2004), 100 medidas de gobierno: merecemos una España mejor. En <http://www.psoe.es/media/000000024500/000000024794.pdf>

www.la-moncloa.es

The Different Levels of Government

1. Introduction

The debate around the statute reforms has completely thrown the Spanish political system into confusion. The continuation of or the starting of statute reform processes in some autonomous communities –with the issue of terrorism- has dominated the confrontation agenda of the People’s Party and the Socialist Party during the present term. These parties have traditionally maintained conflicting positions regarding the design and evolution of the State’s territorial organization. These differences have emerged with particular intensity during the passing of the reform bill of the Autonomy Statute of Catalonia and its processing in Congress. The impact of the statute reforms has not only extended over the government-opposition relationship, but it has also reached the workings of the autonomous governments, the regional parliaments, intergovernmental relationships and the internal structure of nationwide parties. The progressive destabilization of Catalonia’s tripartite government and its final rupture form an example of the secondary effects associated with the administration of the new Statute. The production of reform proposals in other communities has subjected regional parliaments to intense activity and political debate which has reactivated relationships between the different political formations.

The impact of the statute reforms on horizontal intergovernmental relationships (among autonomous communities) has not been without conflict. For example, several regional governments have presented appeals of unconstitutionality on the powers presented in the texts of other communities¹. In addition, there has been a majority protest by the regions against the exhaustive control of autonomous funding in the Catalan text, considering that it’s a subject affecting all regions belonging to the system of the Common Regime and which, therefore, cannot be unilaterally regulated. In spite of these disagreements, the main characteristic of the relationship between the autonomous communities in the statute reform process has been the relative homogenization of the content of the different statutory texts. The Catalan Statute has become a reference text for other autonomous governments, especially on the subject of civil rights, financial sufficiency, and national identity.

The debate on the statute reforms has also revealed the intense penetration of the political parties in the autonomous State’s intergovernmental relationships. Interaction between the different regional administrations is deeply conditioned by inter-partisan electoral competition. Clashes between the PP and the PSOE with regard to territory usually transfer over to the relationships between the autonomous governments led by each of the parties. On many occasions the conflict between the government and the opposition is placed over matters whose magnitude is purely regional. This creates dysfunction in the organization of the autonomous system, for example in the workings of mechanisms for multilateral cooperation and coordination.

Though an integrating role is conferred on the national parties in decentralized contexts, in Spain the integrating ability of these parties is more and more limited. The party link between the autonomous representatives and the central administration has an integrating effect, as it contributes to uniting the agendas of the autonomous governments

of the same political persuasion. However, this impact is counteracted by the centrifugal tensions of the system, which go in the opposite direction. The national party leaders of the autonomous regions not only put decentralizing pressure on their demands of the central administration, but also within the structure of their parties. These leaders face dilemmas in the design of their competitive electoral strategies in regions dominated by the nationalist vote. The alternatives fluctuate between the creation of an “identity” discourse to compete with the discourse of the nationalist parties or moderating their discourse in the interests of cohesion with the national line of the party. The analysis of the reform process of the Catalan Statute in the next section illustrates the tension created by these dilemmas. In that process the PSOE’s national machine of using party ties to moderate legislation passed in the autonomous parliaments was put to the test. The dilemmas also reached PP partisans, who have had difficulties in maintaining coherency in the territorial discourse about the party’s direction and the protests of the statute reforms by some of the leaders of the autonomous communities.

Despite the tension the territorial debate has subjected inter-governmental relationships to, since the beginning of the term a significant decrease has occurred in the conflicts over jurisdiction between the autonomous communities and the central government as well as a drive cooperative relations, in particular the starting of mechanisms of autonomous community participation in the cabinet and the EU committee.

There continues to be, however, much room for improvement in the mechanisms of cooperation and coordination of the autonomous State. The advancement of Title VIII of the Constitution has meant an enormous transfer of authority to regional administrations. Inasmuch as autonomous governments have assumed those powers, the system of intergovernmental relationships has become more complicated. However, the evolution of mechanisms of inter-governmental coordination which formulate and grease the workings of the system has not occurred with the same intensity. Multilateral inter-governmental cooperation continues to be limited and, like the whole of inter-governmental relationships, it is conditioned by inter-party electoral competition. The weakness of the mechanisms of coordination shows how the levels of inter-governmental conflict have traditionally been high, as the lodging of constitutionality appeals became the most common way of resolving jurisdictional disagreements between the central administration and the autonomous communities. Regarding cooperation among the communities, no agreement has yet been signed where all or the majority of the communities participate, which is quite exceptional if we compare Spain with other multilevel systems of government.

Finally, the recent statute reforms seem to create a double effect in public opinion which is, in itself, partially contradictory. The majority of citizens distrust the transferring of elements of political sovereignty to the autonomous communities, but, on the other hand, they show to be in favor of decentralizing more jurisdiction of spending over the autonomous communities. Support is even greater regarding city councils, a “second decentralization” still unresolved in the autonomous State. Citizen assessment of the performance of the different administrations is more positive the more localized the government. However, these differences are not reflected in the evaluation of the services that each administration manages. This might be due to citizens being unaware of the jurisdictional map, which is reflected in the low level of people’s knowledge of the

main government responsible for several public policies. This lack of knowledge makes them more vulnerable to the manipulation of politicians when they use this confusion over the distribution of responsibilities to exonerate their responsibility in the results of policies from other government levels or to take credit that doesn't belong to them.

2. Effects of the Statute Reforms and Decentralization on Inter-governmental Relationships

2.1 Statute Reforms as the Focal Point of the Government–Opposition Confrontation

The main argument of attack from the People's Party towards the government regarding the territory issue has consisted of accusing the PSOE of causing the disintegration of Spain, both because of its alliance with Esquerra Republicana (left-wing coalition party in Catalonia) in Congress and because of the passing of a Statute (the Catalan Statute) that PP partisans define as unconstitutionalⁱⁱ. The People's Party has repeatedly characterized the PSOE as a party “prisoner” to the interests of Catalan nationalist parties because in Zapatero's investiture he relied on the support of the Esquerra Republicana de Catalunya (ERC) and Izquierda Unida-Iniciativa per Catalunya Verds (IU-ICV), partners of the Catalan socialists in the Government of the Generalitat. From this perspective the passage of the Catalan Statute in Congress is interpreted as surrender by Zapatero's government to nationalist demands. However, the reform of the Catalan Statute cannot be compared with the reforms driven as “compensation” for parliamentary support of nationalist parties. In this kind of reform a parliamentary alliance creates a change in the stance of the central government on a certain issue. For example, neither the PSOE nor the PP defended the joint fiscal responsibility of the regions until its alliance in Congress with *Convergència i Unió* (CiU) forced them to increase the bracket assigned on income taxes. On the other hand, Zapatero's support for the new statutes of autonomy made up part of his electoral commitments and no change occurred in that position when forging support for his investiture.

The image represented by PP partisans of a Socialist Party held prisoner by its alliances with the ERC is diminished above all by the development of events during the parliamentary proceeding of the Statute. Zapatero avoided participating directly in the negotiation of the Catalan text until the final phase, when he entered the scene to reach an agreement with the leader of the CiU, Artur Mas, that guaranteed an absolute majority in the parliamentary passage of the bill. With this pact Zapatero weakened negotiations held with parties of the Catalan government, mainly blocked by the matter of Catalonia's name and its location in the text. The ICV, the ERC, and the *Partit dels Socialistes* (PSC) itself attended as mere spectators of the securing of a pact between the central government and Catalonia's principal party of opposition.

When sealing the first political agreement on the Statute with the CiU, Zapatero conceded to this party the privilege of appearing before citizens as the guarantor to seeing the statute reform move on, just as what had occurred with the passage of the text in the Catalan Parliament. Pro-independence parties, bothered by the leading role granted to the convergents, demonstrated their disagreement with the central government's proposals

and, without being able to avoid that in a consultation with their support bases, these bases decided to reject the Statute bill, the parties had to vote against the new statute text in Congress. In short, the central government, through the pact with the CiU, made it precisely so that the ERC's position was irrelevant in guaranteeing passage of the new text by absolute majority.

On the other hand, the PP's discourse on some of the new statutes contradicts performances that the PP Executive advanced during term VII on the matter of territory. Before the first statute reform was passedⁱⁱⁱ, the main change in the Autonomous State had occurred under the PP's term. In December of 2001 the process was completed of equalizing jurisdictions that was initiated with the signing of the Autonomous Pacts of 1992 and the respective statute reforms of 1994. The transfer of the public healthcare system to the regions under INSALUD, the previous healthcare system, ended the principal differences between those communities more advanced or those less advanced in terms of spending^{iv}. In addition, the jurisdictional transfer was linked to the success of autonomous financing that advanced significantly under the joint fiscal responsibility of the regions.

The PP's current discourse on statute reforms, therefore, is very much removed from actions carried out during its last term in the central government. The distance between discourse and action is intensified if one considers that the implementation of these reforms occurred at a moment when the PP governed with absolute majority. The innovations introduced by PP members on the matter of finance or jurisdictional transfer was not linked to the dependency of parliamentary support on nationalist parties, but rather they made up part of the political agenda of the PP government. In a very different context the income tax transfer to the communities of the Common Regime took place in 1996, when the PP government initiated the sixth term having signed an investiture pact in Congress with the CiU, the Basque Nationalist Party (PNV), and the Canary Coalition (CC)^v. In fact, participation of non-national parties in the configuration of parliamentary majorities in one of the characteristics of the party system in Spain. The Spanish system is exceptional when compared to other European democracies, owing not only to the fact that minority governments have relied on external support from different parties, formed by a pact written for the entire term, but also because that support comes exclusively from regional and nationalist parties^{vi}.

The effects of these coalitions on the political system are conflicting. On the one hand, support by the nationalist parties has contributed to the political system's governability when allowing the formation of stable parliamentary majorities with single-party minority governments. Additionally, it has improved communication between political leaders and driven cooperative relations among parties. Due to their moderate and pragmatic nature on socio-economics, support by the CiU and the PNV has strengthened the centrist dynamic in the formulation of policies dominated by the ideological debate.

However, these parties have introduced profound centrifugal impulses on territory matters. The alliances with national parties have been exclusively made up in terms of compensation, and parliamentary support has been on condition of certain concessions by the central government. In addition, the commitment of these parties to the governability of the system must be explained, as, though they have favored the formation of majorities in Congress, they have not formed part of a coalition government^{vii}. In this way, they

have combined the best of both worlds, being able to maximize the securing of political concessions for their regions without sharing direct responsibility in the central government. Their alliances with national parties and their direct link to compensation have legitimized to a certain degree a kind of relationship between the regions and the central government based on the claims of some (the autonomous representatives) and the concessions of others (the central Administration).

On the other hand, some of the changes introduced in the inter-governmental relationships as consequence of the concessions to nationalist parties have created dysfunctions in the system, especially in the autonomous finance arena. When meeting some of the nationalist demands on this matter, the model has changed not only for the autonomous regions, but also for the whole of the communities. These communities find themselves affected by reforms they have not promoted and have they been able to decide on them. There were three autonomous communities that did not sign the agreement of the Council for Fiscal and Financial Policy on the transfer of income tax to the autonomous communities in 1993, and others decided not to apply the new financing system passed in 1997^{viii}. To the existing differences between the Common Regime and the Autonomous Regime other differences were added with regard to the heterogeneous acceptance of the income tax transfer, which increased the complexity of the system's implementation. These divergences later provoked new rounds of negotiations between the central government and the communities that had not accepted the reforms, with the goal of integrating them into the new model. Finally, although reforms of this kind settled some of the autonomous issues that had not been defined well in Title VIII of the Constitution (or in the Organic Law of Financing for the Autonomous Communities, LOFCA), the rhythm that was imposed in the definition of the general regulations was marked by the political cycle and not as much by the debate on the suitability of the agreements or the overall framework they were placed under. This debate, as analyzed in the following sections, also did not occur before the autonomous governments got involved in the statute reforms.

Finally, despite the investiture pacts with the nationalist parties taking place in Parliament, the negotiations that drive those agreements are not carried out by the spokespersons of the parliamentary groups in question, but rather by the central and autonomous government authorities directly. The predominance of bilateral negotiations between governments not only reduced the role of multilateral organs of cooperation in the negotiation of issues affecting the regions as a whole, but also both national and autonomous legislation are pushed to the background.

2.2. The Negotiation of the Catalan Statute and its Effects on the PSOE

Despite the final content of the Catalan statute text not being restricted by congressional alliances of the socialists with the ERC, the ERC's participation in the government coalition in Catalonia has had negative effects on the relationship between the PSC and the PSOE's federal executive and Zapatero's government. The socialists hoped their partners in Catalonia would check the ERC's (and the CiU's) extremist plans in the production of the statute reform bill. But Maragall could not prevent a Statute of Autonomy bill from arriving to Congress whose content incorporated articles of questionable constitutionality. This fact increased the complexity of the parliamentary

proceeding of the bill and placed on the central government the task (and wear) of negotiating the text's amendments with the parties.

The choice of trimming the bill before its passage in Catalonia's Parliament was not an appropriate strategy for the PSC. Promoting a less ambitious text would have created conflict among members of the coalition. On the other hand, during the process of parliamentary proceedings, the parties of the Catalan government showed reluctance in introducing amendments, especially regarding the definition of Catalonia. "They looked at each other out of the corners of their eyes. No one wanted to be the first to speak," a leader of the PSC described the positions of the tripartite parties when they sat in front of the central government during the negotiations of the statute text^{ix}. This phrase reveals two things. First of all, the fragile stability of the coalition, with the existence of an electoral competition hidden in each of the tripartite decisions. And secondly, the political discourse in Catalonia is currently moving towards the more nationalist stances. Catalan parties interpret any diversion from proposals of maximum autonomy as meaning a potential loss of votes. This is a consequence, as will be analyzed in section 2.3, of the kind of existing electoral competition in Catalonia^x.

If one of the tripartite parties had ceded in the negotiations, the rest of the parties in the coalition could have accused it of "selling out to Madrid" and presenting it before the electorate as the party responsible for impeding the aspirations of the Catalan people. This argument, given the dominant political discourse in Catalonia, would have been detrimental to the electoral interests of the party that accepted the amendments proposed by the central government. The rest of the parties in the coalition would have benefited at its expense: they would have broken the deadlock in negotiations while before the Catalan electorate they would have been able to show themselves to be the guarantors of the "resistance" to the reductions in the bill. Finally, if the three parties had agreed on the kind of concession, the price in electoral terms of a reduction in the text would have disappeared. Had the responsibility for moderating the text been divided among the three parties, its potential use as an electoral argument against one another in the autonomous elections would have eliminated. The reform of the Statute of Autonomy had become the main objective of the tripartite for the term, which makes it reasonable to presume that the three parties of the coalition each wanted to pass it holding a leading role in the agreement. Because of this it is likely they were ready to cede more than what was publicly displayed. None of them assumed that responsibility due to fear of eroding their electoral perspectives against their coalition partners, which brought them to defend practically immovable stances that deadlocked the negotiation process and ended up working against them.

Maragall maintained a "maximum" strategy in the negotiation, which probably pushed the amount of trust that Zapatero had placed in him during the production of the reform bill in Catalonia. The party link that unites the two presidents was not enough so that Maragall reduced the bill's plan before arriving to Congress. And that surely explains that belonging to the same party did not determine the negotiation strategy adopted by Zapatero. Zapatero reached a political agreement with the CiU knowing it did not benefit the PSC facing the electoral competition in the next autonomous elections. In the first place, the agreement detracted from the leading role of the Catalan socialists in the final phase of negotiation. In addition, it revealed that the power of determining the final shape of the text belonged to the central government and not in the ability of the

negotiators of the Catalan government to put on pressure. Secondly, the fact that Zapatero had gone past the tripartite in the negotiations served on a platter for the convergents one of their traditional attack arguments against the PSC: that Catalonia's true negotiator with the central government is the CiU and the role that the PSC can take is a mere server of the PSOE^{xi}. In any case, it was unlikely that the CiU would come out behind. In the agreement with Zapatero the convergents showed that they were willing to adopt any strategy that would provide them with a political return. If an amended text had been passed, the CiU would have been able to play the nationalism card (as it did in the creation of the bill in Catalonia) and accuse the parties of the Catalan Executive of "surrendering" to Spain. If the statute text had not been passed in Congress, the break would have been a failure for those promoting the reform bill, that is, for the PSC mainly and also for its partners in government. In this case the CiU also would have gained an electoral return on the bill's failure.

The production of the statute bill and its parliamentary passage made relationships tense within the PSOE. The origin of the tension was found in a difference of interests: the statute text that Maragall and his government passed in Catalonia probably maximized the interests of that government and guaranteed the stability of the tripartite. But it was far from being the most convenient text for members of the national PSOE who had to negotiate it in Congress. Maragall did not foresee that the problems arisen out of the negotiations of the bill, which he believed would guarantee those interests, would not be resolved in his favor through Zapatero's agreement with his main political opponent. That agreement would end up penalizing the PSC's electoral interests and negatively affecting the coalition's stability. On the other hand, Zapatero acted as chief of government, giving priority to the securing of the statute reform just as had been promised, that is, passing a bill without any unconstitutional components, though to do so he had to make a deal with the principal political opponent of his fellow party members in Catalonia.

2.3. The effects of Decentralization on Nation-Wide Parties

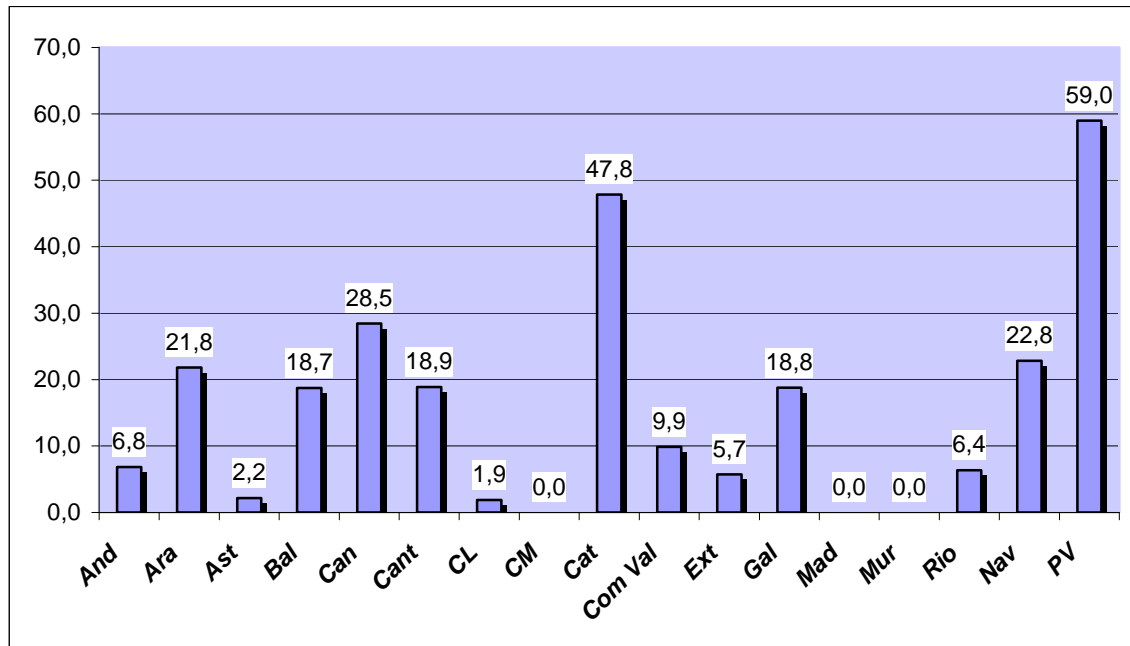
The tensions created in the PSC-PSOE in the production of the Statute of Autonomy illustrate the problems decentralization puts on national parties when forming electoral competition strategies throughout the nation. The appearance of these problems is directly related to the advancement of the autonomous State and the resulting appearance of the territorial focus as a second dimension of electoral competition.

The process of creating the autonomous State in Spain meant the emergence of a new level of government –the regional level- where a considerable amount of authority was transferred on spending and incomes, and which was equipped with its own institutional structure. As administrative and fiscal decentralization of the State extended, the autonomous governments brought together enormous political resources. The progressive institutionalization of the autonomous elections meant for regional leaders the development of their own electoral agenda, formed around issues of a regional nature and with which they appealed to their respective electorates. The regional focus thus became the second dimension of electoral competition, which gave rise to the coexistence of a national party system with a varied group of regional party systems^{xii}. As can be seen in Graph 1, there are important differences in the distribution of votes among the

autonomous communities. The presence of nationalist parties deeply implanted in very few autonomous communities stands out (the Basque Country, Catalonia, and the Canary Islands), with a wide variety of regionalist parties in almost all of the communities. Only three autonomous communities –Madrid, Murcia, and Castilla La Mancha- lack parliamentary representation of regional parties.

In those communities where the percentage of nationalist votes is greater, the first dimension of electoral competition is regional. It is here where regional organizations of the nation-wide parties have more difficulties producing a platform that they can compete with in the autonomous elections without excessively harming the coherence of the national party's discourse. Nationalist parties formulate their governmental proposals based on territorial factors, invoking "regional interests" against "central" interests. Their proposals strengthen the predominance of the regional core over any other dimension of inter-party competition. When this kind of party dominates the community's electoral stage, presenting oneself before the electorate as the torch-bearing party for regional interests does not distinguish that party from other competitors. Differentiation is established in the kind of demands placed on the central government, which culminates in a rise in demands for greater autonomy and the intensification of the center-periphery conflict. To be able to compete for the nationalist vote, regional leaders of nation-wide parties must produce a discourse focusing on the securement of higher levels of autonomy and resources to confront the central Administration. This creates differences in competitive strategies of the nation-wide party, at times contradictory differences, and weakens its ability to maintain a united discourse.

Graph 1. Voting average to regionalist and nationalist parties with parliamentary presence in Autonomic Communities (1980-2005).



Source: own production based on electoral data published on www.eleweb.net.

Centrifugal pressures are not confined to communities led by nationalist parties. For example, Andalusia, a region with a low percentage of nationalist votes (see Graph 1), has passed a statute text inspired by some of the demands introduced in the Catalan Statute. In fact, demands of nationalist parties have traditionally unleashed petitions in the rest of the autonomous communities, who have feared being discriminated against in the distribution of powers. The great majority of the communities' territorial leaders that accepted autonomy with a lower level of authority right away showed themselves to be in favor of equalizing jurisdictions.

Centrifugal pressures also occur when the central and autonomous government belongs to the same party, as illustrated in the tension between the PSOE and the PSC. In this case, difficulties in government labor are added to the strategic dilemmas of the nation-wide parties mentioned before, when having to struggle with the demands that the regional leaders of its own party formulate from the autonomous governments.

How can nation-wide parties minimize these effects and control the centrifugal demands that come from the party's regional leaders? It depends on the organizational structure. For example, if it is the central organs that decide the political race of the regional leaders, these regional leaders will have incentive to adjust their demands to the necessities of the national office. The PSOE, though it had formally adopted a federal structure, it functioned as a very centralized and disciplined party until the end of the 80's. The transformation of the territorial organization of the State in turn modified the internal structure of the party, where the so-called regional barons focused important amounts of power. The emergence of regional powers within the organization of the PSOE carried with it an important price in terms of a cohesive discourse and it made the different stances within the party on the evolution of the autonomous State more visible. These differences have surfaced again from the production of the new statute text in Catalonia. On the other hand, the internal organization of the People's Party has been

characterized by a higher level of cohesion and discipline than the socialists^{xiii}. Despite this, the PP also currently faces problems in preserving the strategy of electoral competition created from national authorities. The statute reforms initiated by some regional leaders of the PP have weakened the argument that the national authorities use in their opposition to the government (which consists of linking the breakup of Spain with the statute reforms). The reform of the Andalusian Statute questioned the national strategy of the People's Party. Javier Arenas finally voted in favor of the reform, which created tension among some national leaders of the PP and the Andalusian representatives of the PP^{xiv}.

Regardless of the particular internal organization of each party, the consolidation of the autonomous State itself progressively weakens the integrative ability of nation-wide parties, that is, their ability to moderate centrifugal demands from the different territories. This happens because the regional level of consolidation has decreased the dependence of regional election results on the results of general elections. The more independent the electoral future of regional politicians is from the party's results in the general elections, the less incentives regional leaders will have for moderating their demands.

The demands and conflicts between the national authorities and the regional leaders electorally erode the party, as voters usually punish the political parties that appear divided or that do not appear very united. This fact only has a dissuasive effect on the demands of regional leaders if their electoral results appear greatly conditioned by the results of the general elections. But citizens, in greater measure, believe the autonomous elections to be an opportunity to assess the autonomous Executive's administration over its jurisdiction and not as much as a referendum on national policies. The considerations that citizens have in mind when voting are different in every kind of election. This can give rise to citizens voting differently and, therefore, to a greater distance between the electoral results of the parties in different elections.

On the other hand, regional politicians have accumulated important political capital during the development and broadening of their jurisdictions. They make their electoral agendas based on regional factors and with growing autonomy. Some, like the autonomous presidents of Extremadura, Andalusia, and Castilla La Mancha, have repeatedly shown that they rely on electoral support that is not easily influenced by fluctuations in socialist votes in the general elections. The strategies of differentiating regional politicians from the party's national authorities vary according to the party's position in the central Administration. If the party loses the general elections and the opposition takes power, regional politicians will strive to isolate themselves from the negative effects which that loss might mean for their electoral perspectives. In this situation the national apparatus of the nation-wide party loses its directive ability, especially in respect to the party leaders with government responsibilities in their regions. For example, currently the People's Party, as the opposition, is appreciably less efficient than when it led the central Administration in its attempts to direct, from the party, the actions of its representatives at all levels of government.

In short, the dynamics of the autonomous electoral competition limit the role of integration that nation-wide parties exercise in a decentralized context. This does not only happen in Spain. In Canada, for example, the party system experienced a profound change in the 1993 elections when two of the most important nation-wide parties lost a

good number of votes in favor of provincially based parties (the Québécois Block and the Reform Party). The case in Belgium, on the other hand, is extreme. In that country it is a dual party system and there is no party that competes in various regions.

2.4. The Third Wave of Reforms and their Characteristics

The process of equalizing jurisdictions among regions was finished in 2001, but the debate on the territorial organization of the State did not close because of that. The presentation of the Ibarretxe Plan and the statute reform in Catalonia initiated a third wave of reforms that culminated in the passage of new Statutes of Autonomy. Until that time the transfer of jurisdiction had as reference the Autonomous Pacts and constitutional provisions. Now the process is less certain. When not preceded by a reform of the Constitution, the motor for territory change mainly works from the ground up, that is, from the communities and their statute reform proposals to the central Administration and, therefore, the autonomous map will not be finished until the last reform is passed (see Table 1 of the Annex).

The central government has a fundamental role in directing the process during the parliamentary proceedings of the statute texts. However, that participation has not been enough to avoid that on certain matters some regions have anticipated the central Administration's performance, leaving it limited room for intervention. We can find an example in the regulation of autonomous finance in the statutes^{xv}. After the start of the new Valencian and Catalan Statutes and the passage in Congress of the Statute of Andalusia, the central government has warned that in the following statutes it will not accept the establishment of the percentage of investment from the State into the autonomous community (as has been done in the three previous statutes)^{xvi}. It's possible this decision will result in clashes with those regions considering the possibility of regulating state investments^{xvii}. On the other hand, if the clause on investments were extended to all regions, the coordination of the system would not be feasible for the central Treasury Department. These considerations place Zapatero's government in the dilemma of assuming the cost of an intergovernmental conflict in the short term and having its hands tied on the investment matter in the medium term. Given these alternatives, it's foreseeable that in the next few months the central government will develop its action in the context of the first arena, that is, with an increase in conflict with the autonomous governments.

Another characteristic of the statute reform process is that the design of jurisdictions has been conceived as a horizontal positive-sum game^{xviii}: the regional governments have produced statutes with more jurisdiction and have looked to one another to be sure their list of demands of the central Administrations is at least as demanding as the demands from other regions. This has given rise to a horizontal process of diffusion and the imitation of content of different statute texts. The Catalan Statute has become a reference text for the autonomous governments of Valencia, the Balearic Islands, Andalusia, Galicia, and Aragon. The similarities in the statute texts are a result of the jurisdictional race and the differentiation of identity that the autonomous governments are immersed in. In this way the articles that the texts have been inspired by are those which imply new jurisdictional demands on the central Administration or those that affirm the particular national identity of the region as opposed to the whole of the

State's territories^{xix}. However, this diffusion of statute norms has not been justified by a demonstrated efficiency or effectiveness of those statute norms. The increase in each region's jurisdiction has been put on the reform agenda as if were valuable in and of itself, without being accompanied by previous reflection on the reasons why the regional level is the most appropriate arena for the regulation and provision of some jurisdictions.

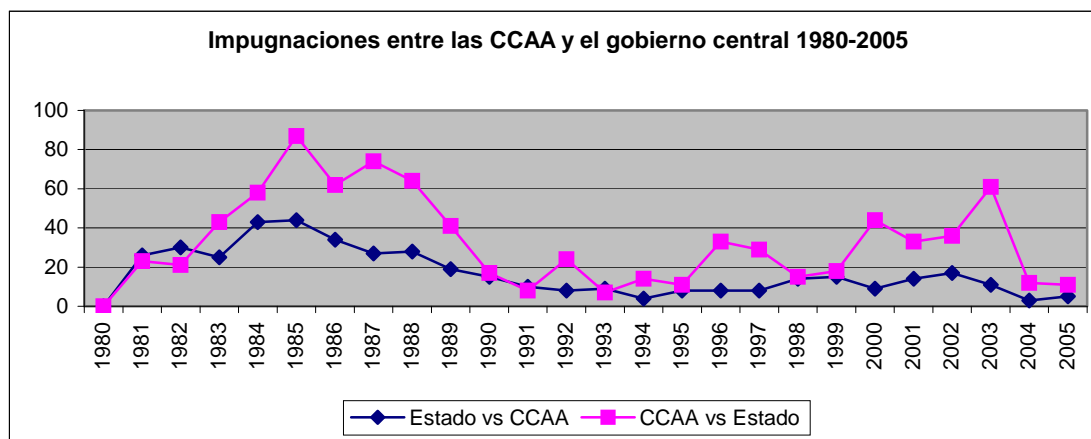
Autonomous demands for jurisdictional and financial transfers represent a zero-sum game, as the new powers the regions gain will mean a reduction in the powers of the central Administration. This is one of the reasons explaining why the level of confrontation caused by the statute reforms among the autonomous governments has been relatively low, while the demands in the new statutes have been a source of conflict between the central Administration and the autonomous communities.

3. Conflict and Cooperation in Intergovernmental Relationships

3.1. Intergovernmental Conflict

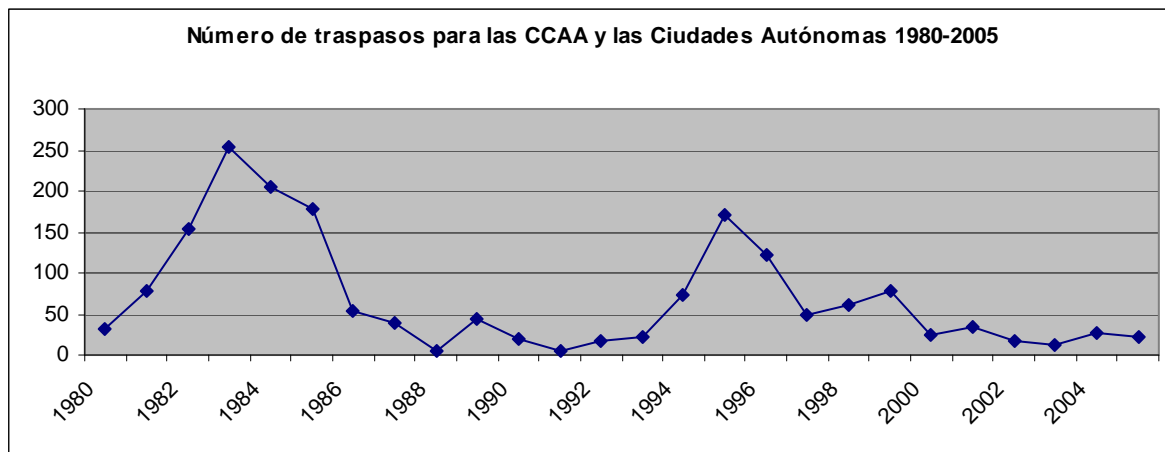
Intergovernmental relations in Spain have been characterized by a high level of jurisdictional conflict (though decreasing) between the autonomous communities and the central government. The disputes, measured by the number of appeals and conflicts presented by the autonomous communities and the central government, was highly intense during the first years of the running of the autonomous State (see Graph 2). The number of jurisdictional conflicts and unconstitutionality appeals brought about by the autonomous communities was greater than the number of challenges presented by the central Administration. The origin of these conflicts is found in the process of jurisdictional transfer. Graph 3 shows how the high points in conflict during the 80's and 90's coincide with to a certain degree with periods when a greater transfer of jurisdictions to regional administration occurs^{xx}.

Graph 2. Conflicts between Central Government and Autonomous Communities.



Source: own production based on data of the General Management of Autonomic Development.

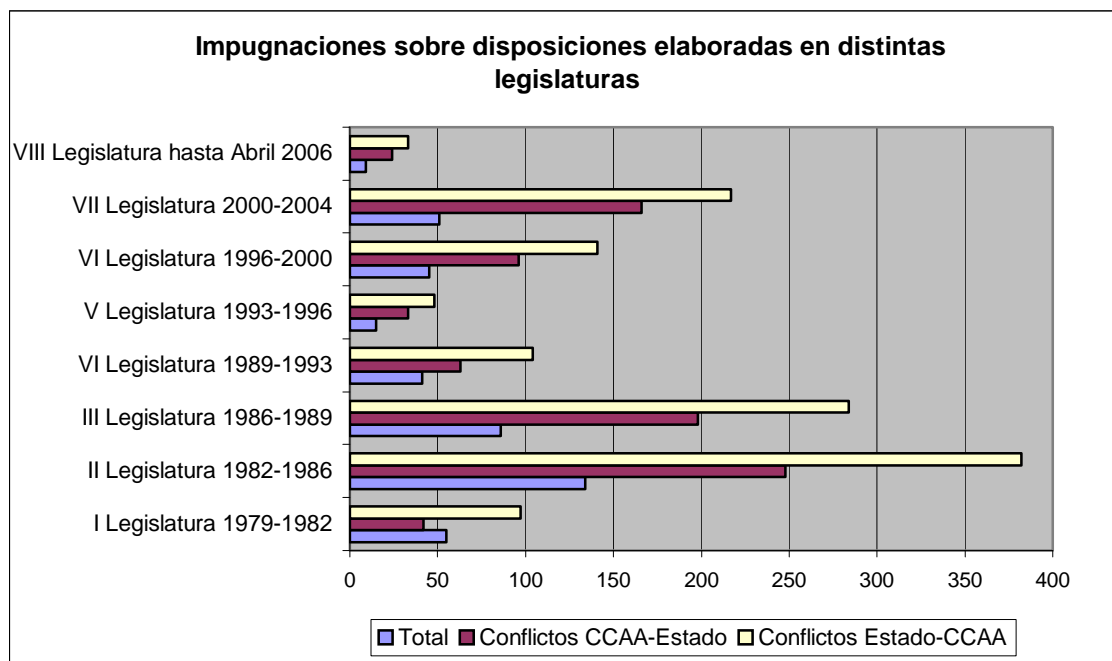
Graph 3. Development of transfer of jurisdictions to regional administrations 1980-2005.



Source: own production based on data of Public Administration Ministry (MAP).

Beginning with 2000, intergovernmental disputes and transfers of jurisdictions evolve differently. While the volume of transfers to the regions considerably falls, the same does not happen with the number of conflicts and appeals, which increase during the 2000-2003 period. The level of contesting does not respond to the advancement of jurisdictional transfers or to the content of what is decentralized^{xxi}, but rather it is the result of the clash between the political parties that govern in the different administrations. These disputes have to be interpreted with political factors. The political nature of the conflict shows how the adoption of technical measures directed towards reducing the disputes has not worked^{xxii}. Bilateral meetings between the President of the government and the autonomous presidents fall considerably during term VII, which eliminates the chance that bilateral intergovernmental cooperation works in the reduction of disputes.

Graph 4. Disputes by terms.



Source: Own production based on data of MAP.

Since March 2004, the fall of disputes is highly significant. If one looks at the volume of challenges in the 1979-2006 period (see Graph 4), and supposing that the number of conflicts that take place in what is left of term VII will be the same as those that took place in the first half, it's very likely that one of the lowest level of conflicts will be reported for this period. This might be due to the limited amount of jurisdictional transfers that have occurred since March of 2004 and to the successful operation of preventative acts^{xxiii}. Nonetheless, the most important factor in explaining the reduction in disputes is probably the impetus of the informal mechanisms of intergovernmental cooperation. This has made possible the settlement, through bilateral agreement, of the appeals and conflicts posed by the central Administration and the autonomous communities.

3.2. Intergovernmental Cooperation and Coordination

3.2.1. Principal Features. Relationships of intergovernmental coordination and cooperation^{xxiv} in the autonomous State are fundamental in guaranteeing that the mechanisms of a system as decentralized as ours work appropriately. The progressive extension of decentralization after the next statute reforms increases, even more, the need for the different government levels to cooperate and coordinate among themselves in the formulation and implementation of policies where they share responsibilities.

Currently, we can say that these considerations have only been partially dealt with and with uneven results depending on the matter and the kind of cooperation. Bilateral intergovernmental relations continue to dominate over multilateral relations, and the former mainly advance vertically, that is, between the central government and an autonomous government. The autonomous communities continue to conceive

multilateral cooperation as the sum of individual negotiations that each of the communities carries out with the central government. Horizontal cooperation is still rare, despite the fact that currently the communities face the same problems on many occasions when administering their jurisdictions, since the asymmetry of jurisdictions over spending has disappeared. A fact illustrative of this is while during the 1996-2002 period 3,589^{xxv} vertical cooperative agreements^{xxvi} were signed, only twelve agreements among autonomous communities were made^{xxvii}. On the other hand, the operation of intergovernmental organs of cooperation is profoundly conditioned by inter-party competition and by the majority configuration in Parliament. On many issues, the regions' stance is determined by the political color of its autonomous government, and because of which the conference negotiations end up reflecting the political lineup in Congress.

Though since 2004 significant advances in intergovernmental cooperation have been attained, it is still a weak spot in the autonomous structure. Politicians from different levels of government have on frequent occasions declared the need to promote cooperative relations. However, in practice these declarations have far exceeded the real political will of each of those involved to make it happen. Today there is no body where the central government and the communities can hold talks and negotiate in a systematic way the most important problems affecting them, and often they end up dealing with each other through the media (Aja, 2003:233).

3.2.2. Multilateral Cooperation: Sectorial Conferences. The basic instrument for collaboration between the central government and the regions is the sectorial conference calls, which consists of the meeting of a minister, often with another representative of the central Administration or other body, with the autonomous advisers of the same field. The central government created these conferences as a way of avoiding that the creation of the seventeen regional administrations during the first years of the autonomous State's operation gave rise to problems resulting from a lack of coordination^{xxviii}. Later, the progressive decentralization of spending and income was accompanied by a regulating impetus of the sectorial conferences, which has recently been complemented with a greater political commitment to the effectiveness of these bodies^{xxix}.

It's difficult to assess overall the effectiveness of the sectorial conferences due principally to two factors: their diversity and opacity regarding their operation. In the first place, under the category of sectorial conferences are incorporated bodies that legally have very different jurisdictions and origins. Currently the Ministry of Civil Service (MAP) includes thirty organs as sectorial conferences^{xxx} (see Table 2 in the Annex). These organs differ immensely in their amount of activity and level of institutionalization. Some are convened occasionally and others stand out for their intense activity, like the Sectorial Conference on Agriculture and Rural Development or the Inter-Territorial Council on the National Healthcare System. The level of institutionalization also varies: there are conferences that do not have technical organs of support at their disposal, while others boast a stable structure where second and third level organs carry out extensive preparation labor and monitoring of the conference's issues, in addition to producing agreements on more technical decisions. The array of policies that the conferences cover is broad, from matters where the central government

has exclusive jurisdiction (like Justice) to matters where responsibility falls mainly to the autonomous communities (like Agriculture).

The design of the system of intergovernmental relations is confusing. An example of this is represented by the fact that, in practice, there is no distinction between those conferences created by law and those which are solely consultative. The Constitution grants the central government exclusive jurisdiction over the coordination on some matters^{xxxii}, like general planning of economic activity, the coordination of healthcare, or scientific and technical research^{xxxiii}. Conferences where the coordination takes place of those subjects mentioned (such as the Council for Fiscal and Financial Policy and the Inter-Territorial Council on the National Healthcare System) have been created by law^{xxxiii}, unlike the other conferences that are purely voluntary. However, the organs created by law have in reality taken the shape of sectorial conferences, and both the law^{xxxiv} and the central government balance the organs created by law with the consultative sectorial conferences^{xxxv}. The complexity of the system has only increased due to the proliferation, in the last few years, of a multitude of mixed organs whose appearance does not indicate higher levels of efficiency.

On the other hand, assessing what the sectorial conferences do is not an easy task, due to the opacity of its operation. The minutes of the meetings are of limited access and many of the agreements are advanced in informal negotiations that have no transcriptions. To find out in detail whether these organs work and what degree of efficiency they offer one has to go directly to the autonomous and central government representatives that have participated in the conferences. The data published up until now by MAP is insufficient to evaluate the effectiveness of the conferences. For example, from the figures shown in Table 2 of the Annex we could infer that coordination has increased, since the total number of meetings is greater and the subject matter of the sectorial conferences of the last period (1992-2005) has widened. However, a greater number of organs do not necessarily indicate greater effectiveness and, in a more detailed analysis, we would verify that some of the conferences with a greater number of participants have not been the most effective in cooperation.

The two features that characterize the sectorial conferences –their great diversity and opacity- weaken the mechanisms for control, supervision, and assessment of the relationships between the different administrations. The lack of information on the practice of these organs reduces the visibility of the performances of the political representatives that participate in them and because of this their actions escape assessment by citizens, who only receive occasional information on relationships among the different levels of government through the media, especially when disagreements occur between autonomous leaders and central government leaders. Aside from these occasional news items, the system of intergovernmental relations is completely alien to citizens. Ignorance even extends to representatives of the Administration, who generally ignore how cooperation works in other sectorial conferences that they are not a part of. The exchange of transversal information (among conferences) is practically non-existent. In fact, just Catalonia, Madrid, and the Balearic Islands depend on organic units of monitoring and promoting vertical cooperation and inter-autonomy cooperation (García, 2006:12), and this limits both the diffusion of kinds of organization and procedures that have been successful in some conferences when reaching agreements such as on the

exchange of information on innovative experiences of autonomous governments in the formulation and implementation of public policies.

3.2.3. Why the cooperation? Mechanisms for intergovernmental cooperation in Spain have been described overall as weak and not very institutionalized^{xxxvi}. However, experts recognize that the success of cooperation varies enormously among different conferences, and currently those standing out for their high assessments are the Conference on Agriculture and Fishing and the Consultative Council on Agriculture Policy for Community Affairs. What factors explain why some organs are more successful than others? We have asked a group of experts made up of academics, members of the central and autonomous Administration, with a broad understanding of the organs of intergovernmental cooperation^{xxxvii}.

A decisive factor in the promotion of the sectorial conferences is political will, especially from the central Administration, as the operation of the conference depends largely on the willingness of the current minister, on whom the responsibility falls of the convening and setting of the agenda. The fact that the success of multilateral cooperation oscillates according to the level of political commitment to its working greatly increases the system's instability. Currently the conference that has experienced a greater impetus due to the political commitment initiated during the current term has been the Conference on EU Affairs (CARCE, *Conferencia de Asuntos Relacionados con las Comunidades Europeas*). Only the change in the stance of Zapatero's government explains that in 2004 participation was opened to the regions in the Spanish delegations of the Council of Europe, after that issue had been debated for ten years in the Conference without any possible agreement between the communities and the central Administration^{xxxviii}. We find another example in the two Conferences of Presidents held so far, or in the bilateral meetings between the President of the government and the autonomous presidents.

One of the main "disincentives" to cooperation is due to the fact that the conferential agreements are not binding (they take the shape of recommendations). If in the end each government level can act independently on the field of jurisdiction conferred on it on a certain matter^{xxxix}, why wear itself out negotiating towards consensus? The agreements only apply to the autonomous governments that have endorsed them. But even when the communities demonstrate their support on a certain decision, for example on an agreement about a national regulation, there is nothing to keep them from challenging the regulation before the Constitutional Court^{xl}. The autonomous governments cannot be forced to cooperate, that's why it is so complicated impelling cooperation through laws^{xli}. All in all, despite the importance of political commitment in making the conferences work, impetus has a limit, which is situated where the autonomy of each level of government begins.

New mechanism of intergovernmental cooperation
Conference of Presidents
<ul style="list-style-type: none"> - First Conference: 28 de octubre de 2004. - Second Conference: 10 de septiembre de 2005. - Third Conference: 11 de enero de 2007.

Participation Autonomous Communities in the Council *
<ul style="list-style-type: none"> - Number of EU Councils in which Autonomous Communities have joined (2004-2005^{xlii}): 23 - Participation in preparatory meetings: 164 <p>Attendance of Regional responsible: 42 Attendance of members of the Regional Affaire Council of the Permanent Delegation of Spain in the EU (REPER): 28 Attendance of members of the Oficce of Autonomous Community in Brussels: 98</p>

* Data of Public Administration Ministry.

When the Administration alone cannot manage a certain policy, cooperation is then more likely. On those matters where the central and autonomous administrations are more dependent, it's easier for understanding to emerge. For example, in Agriculture and Fishing the autonomous communities have exclusive jurisdiction. But they need to collaborate with the central Administration in order to participate in decisions on agricultural policy that are made in the European Union. Both levels of government need each other mutually: regions are in charge of managing policies made in Brussels, while the central Administration speaks before the European Union. This largely explains why the Consultative Council on Agricultural Policy for Community Affairs is one of the better working sectorial conferences.

Intergovernmental cooperation greatly benefits from the proper working of informal relationships and personal treatment among autonomous representatives and representatives of the central Administration. Agreements are much more likely when conference activity is steady. Frequent encounters of members create an atmosphere of trust which facilitates negotiation and, therefore, adoption of agreements. Trust is an added bonus, an intangible value that reinforces itself the longer the political representatives have been interacting with each other. If during the first period of the organ's operation frequent meetings take place, it's feasible that an atmosphere based on trust and understanding is established and, if there isn't a lot of rotation in the political representatives who attend, that atmosphere will be maintained through time. Or, said another way, once a certain amount of trust is "accumulated" it is harder to destroy it. And, conversely, if distrust and immobility of positions in negotiation are established from the beginning of the conference building cooperation becomes highly difficult, as the bases for "accumulating" trust and understanding are damaged. This deadlock situation is what the operation of the Interterritorial Council of the National Health System (CISNS) has experienced since the transfer of the public healthcare system to the regions of the previous "INSALUD territory" in January 2002. The Council's negotiations have been paralyzed since then due to the repeated "empty seat crisis", that is, due to continuous withdrawal from the plenary sessions of the Council by regions governed by socialists, first, and by the communities currently governed by the PP. The socialist communities opened the new era of the CISNS transferring party conflict to the

core of the Council. And they thereby not only rendered the Conference useless during that period, but also undermined the bases of trust for building cooperation in the future. Penetration of inter-party competition in the development of intergovernmental relations is widespread in all the conferences, to greater or lesser degrees, though it appears less intensely on more technical issues. The configuration of parliamentary majorities also affects the functioning of sectorial organs of cooperation. Autonomous representatives that belong to the party in central government or to parties key to the formation of congressional majorities have at their disposal a greater ability to negotiate with the central Administration than the rest have. For these representatives a multilateral agreement is not as attractive, as they know they have a privileged bilateral relationship with the central Administration.

Finally, on many occasions intergovernmental cooperation consists of an agreement to transfer resources from the central Administration to the regions so that these regions negotiate a certain policy. For example, at the Sectorial Conference of Social Affairs joint plans between the central and autonomous administrations are often adopted –like the Action Plan for the Elderly- where the objective of national activity is to co-finance projects and encourage a common procedural line throughout the nation^{xliii}. However, this practice has had some negative effects. On the one hand, the role of the central Administration has been reinforced as the supplier of resources, a function that has at times been used to condition conduct in the regions. On the other hand, a dynamic has been strengthened where the regions see their relationship with the central government as the exercise of demands for increases in their financing. An example illustrating the role played by the transfer of resources in intergovernmental relations and its negative effects can be seen in the development and ending of the second Conference of Presidents.

3.2.4. The Conference of Presidents and the New Agreement on Public Health Financing. At the second Conference of Presidents, held in September of 2005, the autonomous communities and the central government negotiated a new model for public health financing. The central Administration managed to reach an agreement with the regions on a division of resources to ease the public health deficit which was backed by the great majority of autonomous governments (some explicitly and other implicitly by abstention). The agreement granted some short-term successes to the central government. The pact guaranteed the viability and stability of the system for a period of time (at least until the revision of the general model of finance anticipated for 2007). In addition, the agreement temporarily softened the conflict with (and among) the autonomous governments, which provided a certain institutional calm and withdrew from public debate an issue citizens are very sensitive on^{xliv}. However, the advancement and final result of the agreement some of the negative dynamics that occur in intergovernmental cooperation when there are resources involved. It's likely that in the middle and long-term these negative effects exceed the benefits obtained in the short-term by the central Administration.

The limited fiscal decentralization that has accompanied the profound spending decentralization in the evolution of the autonomous State (except in the Basque Country and Navarra) (see Graph 1 in the Annex) has made financing of the regions enormously dependent on the central government's transfers. The problem of the regions' financial

shortage has traditionally been resolved with an increase in transfers from the central Administration. And this is due to two reasons: because until the reform of the financing system of 1997 the ability to expand resources through tax revenue given by the central government (ceded taxes) and taxes collected in the autonomous regions (regional taxes) was highly limited, and because the option of raising taxes is never welcome due to the political price it carries with it. After the finance reform in 1997 and, above all, after broadening joint fiscal responsibility of the communities with the 2001 reform (see Table 3 in the Annex) the first reason can no longer be used (as tax revenue given by the central government provides the regions with ample resources), but the political price of increasing taxes is still there. The autonomous communities prefer, then, to call for the central Administration to cover their resource demands because it is the option that carries the lowest cost.

At the second Conference of Presidents the central government did not use the negotiations to change that dynamic. The progression and end result of the negotiations did not contribute to the regions committing to a greater degree to income contribution (using tax instruments within their reach) and to the maximization of efficient administration of public health resources. The regional governments are the ones who decide, for example, what part of the new public health funds will be destined to reducing the deficit or whether they use their new regulating ability over some taxes to generate more income. Even the success of measures to limit public spending that was anticipated in the proposal approved at the Conference (reasonable use of medications and evaluation of public health technology) is subject to the particular performance of each autonomous government in its advancement. Despite these responsibilities, the autonomous initiative during the negotiations to ease the deficit in public health was reduced to a call for a greater volume of transfers to the central Administration, in this way moving responsibility for the deficit to Zapatero's government. Zapatero decided to take on the responsibility and proposed to finance the deficit through a greater transfer of resources from the central Administration to the regions and an increase in alcohol and tobacco taxes.

Overall, the fact that all the regions ended up receiving more resources from the central Administration reinforced the idea that an expansion in financing amounts to intervention by the central government in the form of transfers. The chance to even out autonomous responsibilities on spending and income was lost, which would have guaranteed greater stability in the financial system. On the contrary, with the result of the negotiations at the second Conference of Presidents it's likely that in the future the communities deal with the financial shortage with a call to revise the transfers from the central government.

4. Public Opinion and Intergovernmental Relations

4.1. Public Opinion and Decentralization

The statute reforms are picking up new powers for the autonomous governments, but are these reforms in keeping with what citizens want? Public opinion is partially contradictory, according to available data. Surveys by the Center for Sociological

Research (CIS) show that when Spaniards are asked if they want to keep the autonomous State just as it is or if they would prefer greater decentralization, the majority says they would rather keep things just as they are. In this sense, it can be interpreted that, before the statute reforms of this term there wasn't a majority in favor of advancing decentralization. However, the data also shows that citizens systematically express support for the central Administration's transfer of more jurisdiction on spending to the autonomous governments. This opinion does not appear to be exclusive to those individuals residing in the so-called fast-track regions (Catalonia, the Basque Country, Galicia, and Andalusia). In a recent study on the outcome of autonomous institutions during the 1980-2000 period (CIS, Study 2386), individuals residing in slow-track regions (the remaining 13 communities) call unanimously for the transfer process to be completed and for all autonomous communities to have the same amount of powers^{xlv}. Additionally, support for decentralization is not limited to the regional level and it is even greater regarding decentralization towards local Administration, a second decentralization that is still pending in the autonomous State^{xlvi} (see Table 4 in the Annex). Perhaps what these contradictions really reflect is the fact that two aspects are mixed in with the development of the autonomies: political and administrative sovereignty. Spaniards are reluctant to cede sovereignty, but they favor greater decentralization with their sights set on improving the administration of policies.

It's likely that the majority of support for an increase in transfers to the local Administration is related to the fact that it is the level of government viewed most favorably by citizens. In fact, evaluation of the Administration's conduct improves the more local the level of government. That's why at three different points in time –1998, 2002, and 2005- the administration systematically least favored is the central Administration (see Table 5 in the Annex). In addition, data reveals that citizens demonstrate having greater levels of information on activities carried out by their city councils than on the performance of their autonomous government or the central government. And they also believe that the decisions made in their city councils are those which might affect them or their families more (see Tables 6 and 7 in the Annex).

The importance and assessment that citizens give to the level of government that is most local to the citizenry shows the importance the Spanish public opinion grants to the proximity of the institutions where decisions are made. It also reveals the fact that a majority of individuals think the development of the autonomous State has served to bring the administration of public affairs closer to citizens, and this development is the effect of the autonomous State that consistently provokes greater agreement (see Table 8 in the Annex). In addition, the factor of the local and regional Administration's proximity as opposed to the central Administration seems to dominate over budgetary considerations. Greater support for decentralization occurs despite the central Administration being the one that appears to be the better administrator of tax revenue (see Table 9 in the Annex). This does not mean that citizens don't consider performance on spending by autonomous communities and city councils, since a great majority of public opinion favors the central government intervening to prevent autonomous and local governments from going into excessive debt (see Table 10 in the Annex).

4.2. The Conferring of Responsibilities

Despite the existing differences in the assessment of institutions (parliaments and governments) of the different government levels revealed in previous paragraphs, these differences are not reflected in the comparison of the functioning of public services that each administration operates. This may be due to two factors. The first, related to what we have noted above: that positive assessment of local government is directly linked to its proximity to citizens, and not so much to the quality of administration of services. The second explanation consists of the limited knowledge citizens have on the responsibilities that fall on each government level.

The system of intergovernmental relationships in the autonomous State is complex. A great portion of powers are concurrent, that is, they are responsibilities of more than one government level. Additionally, during the development of the autonomous State modifications have occurred to the distribution of jurisdictions among government levels, especially as a consequence of the jurisdictional leveling among regions and changes to the finance system. However, how citizens assign responsibilities on such a complex and ever-changing jurisdictional map has barely been explored nor has whether this has varied throughout time.

Citizen knowledge of jurisdictional distribution in the autonomous State is a fundamental aspect to the working of democracy. If citizens don't know how to correctly assign responsibility for public policies, then voting can become a random mechanism of punishing and rewarding political leaders. For example, let us imagine that in an individual's vote education and public health weigh heavily and that individual believes the central government is the responsible administration –despite the fact that both education and public health are transferred to the autonomous communities-. When that individual votes he or she will be punishing or rewarding, based on results of those policies, a government which is not the administration responsible for those policies. On the other hand, ignorance of who does what in a decentralized context increases citizens' vulnerability in the face of temptations of manipulation by politicians. National, autonomous, and local leaders can take advantage of jurisdictional confusion to point to another government level as the responsible party for those policies that produce negative results. And, vice versa, they can use that confusion to take credit in political spheres where they don't have jurisdiction.

The little data available shows that citizens' knowledge on the existing distribution of jurisdictions in the autonomous State is quite limited. In a CIS survey in 1998 citizens were asked to identify the principal government level responsible for a group of public policies. The result was, on average, correct answers lower than 50% (see Table 11 in the Annex). The information also reveals that there are differences among communities. Individuals who reside in those regions with the highest degree of decentralization (the Basque Country and Navarra) show a "regionalist slant" in their answers. This means that they overestimate the responsibilities which fall on the autonomous government. Or, in other words, those policies that are principally the jurisdiction of the central Administration are affirmed by those citizens (in greater measure than residents in other regions) as the responsibility of the regional government. The opposite happens in those communities where the process of decentralization occurred later (slow-track regions). Residents in these communities hold a "centralist slant" which makes them keep affirming the central government as the main responsible

party for policies that have already been transferred to the autonomous communities (see Table 12 in the Annex).

The transfer of powers might create more confusion among citizens during the first few years when a service begins to be administered by the autonomous community. It's likely that people need time to learn that their autonomous government has assumed new powers^{xlvii}. For example, in 1998 residents of the Balearic Islands were asked which government level was responsible for education (CIS, Study 2275). Little more than half of those who responded continued to identify the central government as the responsible body, though the region had received jurisdiction over education throughout the two previous years. When services are transferred to the communities it is a good time to emphasize through institutional publicity the importance of the transfer that has been made and clarify how responsibilities are divided in the end among the different administrations. However, this kind of practice is virtually nonexistent^{xlviii}, and that is due perhaps to the fact that confusion about the jurisdictional map can at times serve the electoral interests of politicians from different government levels.

Conclusions

1. In 2006 intergovernmental relationships have been profoundly marked by statute reforms. Throughout the drawing up of the reform bills, autonomous governments have looked to one another to be sure their list of demands of the central Administration were at least as demanding as those passed in other regions. This jurisdictional race has given rise to a process of diffusion and content imitation, where the Catalan Statute has become the reference text for the other regions. The broadening of the autonomous governments' jurisdictions has been conceived as valuable in and of itself, without being accompanied by reflection on the most appropriate sphere for the regulation and provision of some of the newly transferred services. The result is that there is no overall design of the system that frames the changes introduced by the statute reforms. The autonomous State transforms from the bottom up, that is, through the drive of each autonomous community, and the resulting model cannot always be spread throughout the country.
2. The clash between the government and the opposition regarding the Autonomy Statute of Catalonia has revealed the intense penetration of intergovernmental relationships in the inter-partisan electoral competition. The conflict between regions governed by an opposition party and the central government continue to encumber the working of organs of intergovernmental cooperation and coordination. In addition, negotiations among different government levels continue to be opaque and only pervade public opinion when disagreements between autonomous leaders and the central Administration are of a political nature. Nevertheless, since the beginning of the current term an important drive has occurred in relationships of cooperation among administrations. This has had a positive impact in the reduction of jurisdictional conflicts between the central Administration and the regions.
3. While the party link unites the agendas of autonomous and national representatives of the same party, the centrifugal tension of the system moves in opposite directions.

4. The evolution of the autonomous State has provided regional leaders with an important amount of resources and power. It's foreseeable that they are going to continue using that to design their electoral agendas based on regional factors and with growing autonomy.

5. Finally, the recent statute reforms seem to cause a double effect on public opinion which is partially contradictory. The majority of citizens distrust the cession of elements of political sovereignty to the autonomous communities, but, on the other hand, they show support for the decentralization of more powers on spending to the autonomous communities, and that support is even greater with respect to city councils, a second decentralization still pending in the autonomous State. Assessment is higher the more local the level of government, though those differences are not reflected in the evaluation of services that each administration runs. This is partly due to citizen confusion about the division of jurisdictions between the central, autonomous, and local governments. If individuals don't know how to correctly attribute responsibility for the results of policies, then their vote may become a random mechanism for punishing or rewarding governments. This ignorance weakens citizens' ability to control the performance of their representatives.

Appendix

Table A1. Process of reforms of Statutes in the Regional State.

Autonomic Community	Situation of the process of reform	Parlament Support
Comunidad Valenciana	Valid Approved definitely by Fundamental Law 6/2006, of 19th of July.	Approval in Congress: 9th Votes in favor: 294 (PSOE) Votes against: 32 (CiU, EF)
Cataluña	Valid Approved definitely by Fundamental Law 1/2006, of 10th of April.	Approval in Congress: 30th Votes in favor: PSOE, CiU Votes against: PP, ERC y I Abstentions: Nafarroa Bai
Andalucía	<i>In process</i> Approved by the Congress, 2nd of November of 2006. In Regional Commission of Autonomic Communities of Senate- Stage: Amendments presentations and Veto propositions.	Approval in Congress: 2nd Votes in favor: 306 (all the White votes: 2 (of Eusk Galego)

Islas Baleares	<p><i>In process</i></p> <p>Approved by the Autonomic Parliament 13th of June of 2006 and presented in Congress in order to continue procedures.</p>	<p>Approval in Congress: 21st</p> <p>Votes in favor: 295</p> <p>Votes against: 1</p> <p>Abstentions: 13 (IU y ERC)</p>
Aragón	<p><i>In process</i></p> <p>Approved by the Autonomic Parliament 21st of June of 2006 and presented in Congress in order to continue procedures.</p>	<p>Approval in Regional Parliament</p> <p>Votes in favor: 58 (PSOE, PSC)</p> <p>Votes against: 0</p> <p>Abstentions: 9 (Chunta Aragonesa)</p>
Canarias	<p><i>In process</i></p> <p>Approved by the Autonomic Parliament 13th of September of 2006 and presented in Congress in order to continue procedures.</p>	<p>Approval in Regional Parliament</p> <p>Votes in favor CC (with Mixed Group (2 de 3).</p> <p>Votes against: 15 (PP)</p> <p>Abstentions: GC-NC y (segregation of CC), a M.P.</p>
Castilla y León	<p><i>In process</i></p> <p>Approved by the Autonomic Parliament 29th of November of 2006.</p>	<p>Approval in Regional Parliament</p> <p>Votes in favor: 81 (PP, PSOE)</p> <p>Votes against 1 (Mixed Group)</p>
<p>Agreed document by PP and PSOE in Castilla La Mancha. In negotiations in Galicia, Asturias, La Rioja y Murcia. In Navarra y Madrid in Extremadura and Cantabria there is no intentions to start them.</p>		

Table A2. Sectorial Conferences 1981-2005 (amount of meetings per periods).

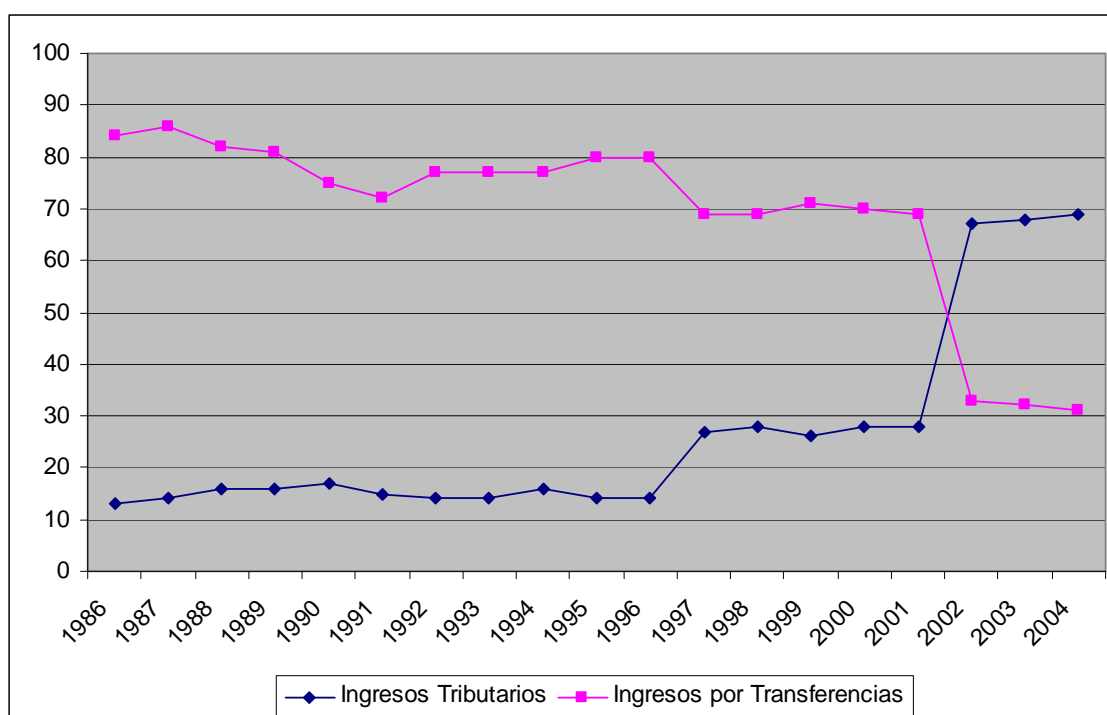
	1981-1991	1992-2005	TOTAL
Commission of Coordination of Council of University Coordination	44	66	110
Sectorial Conferences of Agriculture and Rural Development	29	80	109
Inter-region Council of National Health System	27	46	73
Council of Tax and Financial Policy of Autonomic Communities	25	32	57
Consulting Council of Agriculturalist Policy for Community Affaires	0	54	54
Sectorial Conferece of Education	13	37	50
Conferences for Affaires related to European Communities	5	43	48
Sectorial Conference for Social Affaires	5	31	36
Sectorial Conference for Enviroment	4	30	34
Consulting Council of Fishing Policy for Community Afares	0	32	32
Sectorial Fishing Conference	0	31	31
Sectorial Conference for Labor Affaires	0	27	27
Sectorial Conference of Housing	4	18	22
Sectorial Conference of Consumption	5	15	20
Sectorial Conference of the National Plan about Drugs	8	12	20
Sectorial Conference of Gender	0	17	17
Sectorial Conference of Turism	3	13	16
National Conference of Transports	6	7	13
Sectorial Conference of Culture	4	8	12
Sectorial Conference of Small and Middle-sized Company	0	11	11
Sectorial Conference in Justice Administration	0	11	11
Sectorial Conference of Domestic Trade	0	10	10
Sectorial Conference of Indutry and Energy	0	8	8
Sectorial Conference of Infrastructures y Territorio Ordination	0	4	4
Sectorial Conference of Public Administrations	0	1	1
Sectorial Conference of Local Affaires	0	1	1
Sectorial Conference of Science and Technology	0	1	1
Sectorial Conference of Game	0	1	1
Council of Security Policy	0	1	1
Sectorial Conference of Patrimonial Policy	0	0	0
Total	182	648	830

Table A3. Tax corresponsibility of Autonomic Communities about regional financing valid since January of 2002.

Yielded Taxes
<i>With Normative Competence</i>
100% Patrimony
100% Successions and Donations
100% Patrimonial Transfers and Legal Documented Acts
100% Game
33% Income Tax
100% Vehicle to Transport
100% Retail Trade of Hydrocarbons
Without Normative Competence (participations of regions)
35% VAT
40% Alcohol, petrol and tobacco
100% Electricity

Source: Treasury.

Graph A1. Tax vertical unbalances. Percentage of Tax Incomes and Incomes of transfer about the whole autonomic financing.



Source: own production based on Badespe Series of the Instituto de Estudios Fiscales.

Table A4. Public Opinion and public support to decentralization processes 2000-2005*.

In relation to the Administration of Money from Tax Collection, Do you think State should spend less in order to be able of affording more...						
	2000	2001	2002	2003	2004	2005
...Autonomic Communities?						
YES	53.3	59.6	61	56.4	56.4	52.6
NO	22.3	16.1	18.5	19.5	17.8	20.15
...Local Authorities?						
YES	60.9	64.4	64.1	60.1	60.4	57.6
NO	16.4	14.2	17.3	17.4	16	18.4

*Percentages are not equal to 100 because DK is not counted

Source: CIS – Series of Public Opinion and Tax Policy.

Table A5. Public Opinion and valuation of Institutions.

Following, I would like to ask you how you would value each organism task			
	2005	2002	1998
Town Council			
Very Good		3.32	4.51
Good		39.47	44.33
Average		40.85	38.02
Bad		11.98	10.51
Very bad		4.39	2.63
Total		100	100
Regional Authority			
Very Good	1.76	1.35	1.65
Good	35.84	34.24	36.76
Average	48.73	48.60	46.88
Bad	12.05	13.54	13.20
Very bad	1.62	2.27	1.51
Total	100	100	100
Central Government			
Very Good	1.39	1.79	2.14
Good	31.10	30.16	32.50
Average	49.13	46.14	46.35
Bad	15.07	17.10	16.38
Very bad	3.31	4.81	2.63
Total	100	100	100
Autonomic Parliament			
Very Good	1.95	0.84	1.07
Good	37.81	31.97	35.08
Average	49.51	53.34	50.44
Bad	9.22	11.89	11.84
Very bad	1.51	1.96	1.57
Total	100	100	100

Central Parliament			
Very Good	1.41	1.27	1.10
Good	32.54	29.60	31.53
Average	51.49	51.59	50.24
Bad	12.50	14.80	14.96
Very bad	2.06	2.75	2.17
Total	100	100	100

Source: CIS 2286, 2455 y 2610.

Table A6. Public Opinion and subjective information.

Do you consider yourself aware of...		
	2002	1998
...national policy?		
Very aware	1.74	
Quite aware	18.39	
Little aware	48.13	
Non aware	31.74	
Total	100	
...regional policy?		
Very aware	1.99	1.70
Quite aware	25.38	22.46
Little aware	49.34	50.82
Non aware	23.29	25.03
Total	100	100
...local policy?		
Very aware	4.12	4.24
Quite aware	30.13	29.28
Little aware	41.95	42.31
Non aware	23.79	24.17
Total	100	100

Source: CIS 2286, 2455 y 2610.

Table A7. Public Opinion and degree of affectation from Administrations decisions.

How: very much, quite, little or nothing, do you think it affects your and your family's wellness, the decisions from...			
	2005	2002	1998
...Central Government?			
Very much	28.43	24.52	22.06
Quite	47.43	49.56	47.63
Little	18.13	19.92	21.47
Nothing	6.02	6.00	8.85
Total	100	100	100
...Regional Government?			

Very much	29.42	23.92	21.47
Quite	48.14	48.41	48.96
Little	16.97	21.45	21.04
Nothing	5.47	6.22	8.53
Total	100	100	100
...Local Government?			
Very much	34.81	27.59	26.40
Quite	44.05	45.97	46.45
Little	16.32	19.75	18.54
Nothing	4.82	6.69	8.61
Total	100	100	100

Source: CIS, estudios 2286, 2455 y 2610.

Table A8. Public Opinion and Development valuation about Autonomic States.

Next, I will read you several opinions about the development of a Autonomic/Regional State and I would like to ask you the degree of agreement about each of them. Autonomic Communities...			
	2005	2002	1998
have helped to make Public Affaires Administration closer to citizens			
Very agree	13.65	10.82	11.47
Quite agree	56.75	59.52	57.63
Nor agree/ Nor disagree	11.36	10.53	11.52
Quite disagree	15.30	15.90	15.77
Very disagree	2.94	3.23	3.61
Total	100	100	100
Have helped to reduce separatism			
Very agree	11.10	8.50	10.20
Quite agree	39.53	40.05	42.09
Nor agree/ Nor disagree	13.49	15.31	13.34
Quite disagree	28.13	28.93	27.57
Very disagree	7.76	7.22	6.81
Total	100	100	100
Have helped to increase Public Expenditure, without improving Public Services			
Very agree	13.07	12.11	14.70
Quite agree	38.74	37.63	41.99
Nor agree/ Nor disagree	16.68	15.40	13.51
Quite disagree	26.55	29.76	25.69
Very disagree	4.96	5.11	4.12

Total	100	100	100
Have helped to improve coexistence among regions and regional identities			
Very agree	6.34	5.10	6.11
Quite agree	37.98	39.47	37.81
Nor agree/ Nor disagree	18.47	18.12	19.02
Quite disagree	28.71	29.06	29.68
Very disagree	8.49	8.25	7.38
Total	100	100	100

Source: CIS, reports 2286, 2455 y 2610.

Table A9. Public Opinion and valuation of Resources Administration.

Which organism is better at tax collection distribution?						
	2000	2001	2002	2003	2004	2005
Central	40.51	35.04	36.04	39.29	42.18	39.16
Regional	29.00	33.21	38.98	35.25	29.27	35.85
Local	30.49	31.71	26.98	25.46	28.55	24.98
Total	100	100	100	100	100	100

Source: CIS – Series of Public Opinion and Tax Policy.

Table A10. Public Opinion and valuation of Regional Indebtedness's rate.

Do you think Central Government would have to implement any acts in order to avoid an excessive Indebtedness's rate of...						
	2000	2001	2002	2003	2004	2005
...Regional Governments?						
Yes	69.9	69.6	71.7	68.6	74.5	74.9
No	12.4	13.1	13.7	14	7.9	8.2
...Local Authorities?						
Yes	69.4	69.8	71.9	69.1	74.5	73.7
No	12.9	12.9	13.5	13.5	8	9

Source: CIS – Series of Public Opinion and tax policy.

Table A11. Index of good choices in responsibilities -distribution process.

Amount of acuracy policies	Percentage
0	13.67
1	3.73
2	11.50
3	17.11
4	26.31
5	19.93
6	6.53

7	1.22
Total	100
Average	3.3

Source: CIS, Report 2286.

Table A12. Distribution of responsibilities about unemployment.

	Respondent residence		
	CA quick way	CA slow way	País Vasco and Navarra
Central	53.14	59.43	72.39
Regional	41.8	35.32	23.32
Local	5.06	5.25	4.29
Total	100	100	100

Source: CIS, Survey 2286.

Table A13. Distribution of responsibilities about housing policy

Government with competence	Respondent residence		
	CA quick way	CA slow way	País Vasco and Navarra
Central	21.14	30.76	42.65
Regional	58.73	47.09	34.47
Local	20.13	22.15	22.88
Total	100	100	100

Source: CIS, Survey 2286.

ⁱ Aragon and the Balearic Islands are appealing against the the Catalan Statute's proposal to manage the archives belonging to the Crown of Aragon. Aragon is also lodging an appeal against the Valencian Statute's reserving of rights over surplus water from the Ebro River.

ⁱⁱ In January, 2006, Rajoy promoted gathering signatures throughout the nation with the goal of presenting a motion urging the government to call a referendum on the Statute of Catalonia. Later, at the end of July, the PP presented an appeal of unconstitutionality against the reform of the Catalan Statute. At the end of September the ombudsman, Enrique Múgica, appealed against some aspects of the text of the Catalan Statute before the constitutional court.

ⁱⁱⁱ The first statute passed in Congress was from the community of Valencia, finally passed through the Organic Law 1/2006, on the 10th of April.

^{iv} On the matter of revenue the dual system of the Common and Autonomous Regime continues.

^v The same happens with the changing of the autonomous finance model in 1993. That year the PSOE lost absolute majority in the general elections and relied on the support of the CiU in Parliament, as opposed to the cession of 15% of income tax collections to the autonomous communities, among other concessions.

^{vi} For a detailed analysis on this topic consult Linz and Montero (1999: 57 and ss). The importance of the nationalist parties within the nation-wide party system originates with their congressional representation, their potential for forming coalitions with any nation-wide party (nonexistent in any other political party) and the leadership they hold in the party system of their autonomous communities. The lack of a national party that operates as a hinge party in the configuration of majorities with the PSOE and the PP has

allowed the CiU, PNV and, more recently, the Canary Coalition (CC) to monopolize the coalition potential of the party system in Spain.

^{vii} Both the PNV and the CiU and CC refused to form a coalition government with the People's Party. Parliamentary support was made official through a "Pact for Investiture and Governability".

^{viii} The regions that did not sign the agreement of 1993 were Extremadura, Galicia, and Castilla and León. In 1996 Andalusia, Extremadura, and Castilla –La Mancha stayed out of the new finance system.

^{ix} Statements made by Miquel Iceta in *El País*, January 22, 2006, Galán, L. (2006).

^x There is evidence that the increase in demands of autonomy by subnational politicians depends on the kind of electoral competition in their region. For example, in the study by Van Houten (2001) it is shown how demands for fiscal autonomy are more frequent if the regional leaders electorally compete with other regional parties and they are less frequent when they compete with national parties.

^{xi} Artur Mas warns in the pre-electoral campaign that "If the PSC wins, Zapatero will govern Catalonia" (*La Vanguardia*, September 11, 2006).

^{xii} See Pallarés, Montero and Llera (1997); Linz and Montero (1999).

^{xiii} See García-Guereta (2001) and Astudillo and García-Guereta (2005). According to these authors, the People's Party's answer to the creation of intermediary governments (between national and local) in Spain has been to create a new organizational level: the regional level. Although it has been established that the regional management organs are not formally designated by central organs, in practice it seems the "moral" influence of top leaders is decisive in the election or re-election of regional leaders in such a way that the chances that the regional bases elect or keep "unruly" leaders are reduced.

^{xiv} A good example of this is the fact that no national representative of the PP attended the Statute's passing in the autonomous Parliament of the community of Valencia. Discrepancies between national leadership of the PP and some regional leaders also emerged during the negotiation on the agreement of public health finance at the second Conference of Presidents. While national leadership was against accepting the new finance model, some autonomous leaders of those communities governed by the PP went along with the new agreement, given that it guaranteed them greater resources.

^{xv} Another subject where the new statutes have anticipated the central government's performance is regulation of water resources. In five statutes (Catalonia, Andalusia, Aragon, Castilla-La Mancha, and Valencia) articles and provisional stipulations are included that mean new autonomous powers over water management. If the remaining communities regulate their water resources in the same way, then the central government will find itself faced with important difficulties when forming the general system on this matter.

^{xvi} Regulation of national investment is also anticipated in the reform proposal of the Statute of the Balearic Islands and of Galicia.

^{xvii} On the matter of water resources intergovernmental conflicts have emerged in a similar way. At the end of November there is conflict between the central government and socialist presidents of Castilla-La Mancha and Aragon, as these presidents believe Zapatero's government to be halting regulation over water examined in its statute reform proposal, while other regions like Andalusia or Catalonia have been able to integrate it in their texts without limitations.

^{xviii} It is positive sum because everyone wins in the distribution of powers. What one community gains does not affect what another may gain, that is, the powers a region takes on are not at the expense of another region (as it would be in a zero-sum game).

^{xix} Some of the statute texts have also been inspired by the Catalan text in the introduction of a civil rights title (for example, the text of Aragon or the community of Valencia).

^{xx} For example, in 1983, 1984, and 1985 the greatest number of transfers to the regions is registered, and the maximum amount of jurisdictional conflicts occurs over the regulations passed in the following years: from 1985 to 1988. The conflicts, therefore, are related to the adaptation of the exercise of powers for each of the administrations –central and autonomous- to the new regional power structure that is created with each transfer.

^{xxi} It might be thought that the difficulties arisen out of the negotiation of the Public Health transfer (during 2001) continued once the new powers were assumed, and that the consequence of that is an increase in the level of intergovernmental conflict. However, these considerations do not explain the existing conflict during that timeperiod. Of the total number of challenges presented on 2002 and 2003 regulations, only one is related to Public Health. It's a positive conflict of powers introduced by Aragon regarding the Agreements of Collaboration on professional healthcare training (see Informative Report on Conflict 4th quarter, 2002, page 46) (Ministry of Civil Service, MAP 2006:46).

^{xxii} For example, in 2000 preventative actions are introduced with the aim of reducing conflict between the State and the autonomous communities. Specifically, Organic Law 1/2000, of January 7th, modifying Organic Law Organic Law 2/1979, of October 3rd, from the Constitutional Court, establishes a new

function for bilateral committees on cooperation. This function consists of the ability to adopt agreements resolving differences that avoids the lodging of appeals of unconstitutionality. According to available data, in the last quarter of 2002 an appeal of unconstitutionality is avoided with Navarra thanks to cooperation by the central Administration and the autonomous government of Navarra at the corresponding bilateral committee on cooperation. During 2003 and the first quarter of 2004 nine meetings are held by bilateral committees on cooperation. In six of these meetings an agreement is made between the autonomous community and the central government. Nonetheless, these figures are relatively modest if we compare them with previous preventative actions (described in the following paragraphs).

^{xxiii} Regarding these preventative actions, from the beginning of the term twenty-six meetings have been held in bilateral committees on cooperation: nine in 2004, thirteen in 2005, and four during the first quarter of 2006. In these committees the lodging of eleven appeals of unconstitutionality have been avoided (eight from the State and three from autonomous communities) and seventy challenges have been rejected.

^{xxiv} Though throughout this section we will use interchangeably the terms coordination and cooperation, there is a debate among experts on the differences among the principles of coordination, cooperation, and collaboration. The principle of cooperation is not regulated in the Constitution, while the constitutional text has established State jurisdiction of coordination over three subjects (economic planning, research, and public health).

^{xxv} Despite this figure being spectacular, many of those agreements end up being “photocopies” of a general agreement that the autonomous communities later sign bilaterally (where the actions that are going to be developed by the autonomous community and the corresponding financing are specified) (Aja, 2003:221 and García, 2006:7).

^{xxvi} Though these agreements lack regulation in the Constitution, they have become the most important mechanism for intergovernmental cooperation between the central government and the autonomous governments. In 2005, 941 agreements of collaboration were signed. The Ministry that signed the most agreements was the Ministry of Labor and Social Affairs, followed by the Ministry of Education and Science (information from the MAP updated May 23, 2006).

^{xxvii} In addition, the scarce existing horizontal agreements are bilateral (normally between neighboring autonomous communities) and the matters that they regulate are of little importance. No horizontal agreement has yet been signed where all or the majority of the communities participate (García Morales, 2006:17).

^{xxviii} Sectorial Conferences were included in the bill for the failed Organic Law on the Harmonization of the Autonomy Process (LOAPA), in 1981, and they were finally incorporated in legislation as part of Law 12/1983, of October 14th, of the Autonomy Process. Later progressive regulation of sectorial conferences took place through their introduction into the Autonomous Agreements of 1992 and in Law 30/1992 of the law establishing the responsibilities and procedures for public administration (*Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*, LRJAP-PAC), where a series of specific criteria was adopted regarding establishment and operation. The last modification of principles and content of sectorial conferences was regulated in Law 4/1999, of January 13th (modifying the LRJAP-PAC), which stressed the importance of the sectorial conferences as organs of cooperation between the State and the autonomous communities.

^{xxix} See previous entry.

^{xxx} An example of the existing confusion about the characteristics and the nature of the organs of intergovernmental relations is that in the MAP report of 2002 there are twenty-five organs classified as sectorial conferences and a list with twenty-two more is included, classified as “Other organs of participation in the autonomous communities”.

^{xxxi} This power of coordination consists of establishing lines of homogeneous political performance on a certain subject, that is, harmonized proceedings in order to obtain agreements between those with jurisdiction. In those instances where an agreement can’t be reached on common criteria for carrying out those powers, the central power cannot impose an agreement unilaterally, and each party can exercise their powers freely and independently (Tajadura, 2000:23 and s. Cámara, 2004Ñ227-8). Additionally, coordination cannot modify ownership of jurisdictions.

^{xxxii} Articles 149.1.13, 149.1.15, and 149.1.16 of the Constitution.

^{xxxiii} The law regulating these sectorial conferences allows a decision-making mechanism to regulate, including a majority system, while in voluntary conferences –that have not been regulated by law– the procedure for reaching an agreement is unanimity.

^{xxxiv} Law 30/1992, of November 26th, LRJAP-PAC.

^{xxxv} The MAP, in its latest report (MAP, 2004) points out the following: “[In the sectorial conferences created by law, the] regulation references barely contribute greater detail in their regulation or greater legal security; by which, legal regulation of the conferences does not imply, in and of itself, neither greater institutionalization nor greater efficiency in their work.”

^{xxxvi} Some scholars on the issue have defined them as forums of “institutional courtesy” where autonomous representatives and representatives of the central Administration report their plans and activities to the others, though the information almost always comes from the central Administration. In the majority of instances sectorial conferences become meetings where the central government makes reports and proposals and the autonomous communities protest or demand financing for their own projects (Grau 2000:62).

^{xxxvii} Interviews held in the framework of research project “Intergovernmental coordination and cooperation in the autonomous State” which is being developed at the *Unidad de Investigación de la Escuela Galega de Administración Pública*

^{xxxviii} An example of the invisibility of the system of intergovernmental relationships is that this important reform went completely unnoticed (see assessment Autonomous Communities Report 2005).

^{xxxix} This safeguard of autonomy by decision of the actors has been backed in several ruling of the Constitutional Court and it originates in the distrust awoken with the establishment of the sectorial conferences in the autonomous governments. These autonomous governments opposed its creation from the beginning, as they interpreted it as a mechanism of the central government to control and intervene in the powers given to the regions. This determined later relations, perhaps of distrust (see the 2004 Report of the MAP), in the role played by the central Administration, which later disqualified itself from legally regulating differently those matters that the Constitution confers on it power of coordination.

^{xl} At the Inter-Territorial Council on the National Healthcare System all the communities reached an agreement on the calendar for vaccinations, but, when the time came, some of those communities decided to apply some vaccines that were not listed in the agreement.

^{xli} The failure of the Law of Cooperation pushed in 2002 by the then minister of Public Administration, Jesús Posada, represents an example of the limitations of political force. All the parliamentary groups – except the PP- rejected the bill in the General Committee of Autonomous Communities in the Senate and the minister ended up abandoning drafting the law.

^{xlii} Se han contabilizado desde septiembre de 2004.

^{xliii} Administrative performances in the sphere of social services is in keeping with powers conferred on the autonomous communities, especially regarding the “welfare system”, formed in article 148.1.20^a of the Constitution. For that reason, the objective of State activity is, basically, collaboration with the autonomous communities in order to increase its financial revenue, through the cofinancing of projects, and to encourage a common procedural line throughout the nation (MAP 2006:97).

^{xliv} According to CIS data, citizens place public health among those services they are least willing to reduce government funding on.

^{xlv} It’s possible that autonomous leaders’ demands for the leveling of powers are the result of some politicians who take citizen opinion under consideration when forming their agendas. But it might also be the result of the work of regional leaders who create a demand where before there was none.

^{xlvi} The central government has tried to promote local autonomy through the reform of the Law of Local Regime Bases of 1985. Some of the measures considered in the bill are: the establishment of a list of subjects which are considered to be of municipal jurisdiction and obligatory municipal services, the listing of those subjects over which municipalities have legal authority within the framework of all municipalities setting rules which follow the law of the State and the autonomous communities, or the creation of the General Conference of Local Policy, an organ for the meeting of the central government with the autonomous and local governments in order to improve the participation of local entities in the setting of State policies.

^{xlvii} Regarding the subjective information on their regional government’s activities there seems to be a change through time that points towards the learning process we mentioned above. Between 1998 and 2002 there is a significant increase in the percentage of individuals who feel very well informed or well informed on the activities their autonomous government carries out.

^{xlviii} An exception is the Community of Madrid, that decided to put out an announcement on t.v. that reported on the management of healthcare services of the regional government.

Bibliography

Aja, E, (2003), El Estado autonómico, Federalismos y hechos diferenciales, Madrid, Alianza Ensayo.

Astudillo y García-Guereta (2005), Elena, 2005. La distribución territorial del Poder en los partidos políticos: El caso del Partido Popular español, Papel presentado en el VII Congreso de Ciencia Política y Sociología.

Cámara Villar, G (2004), El principio y las relaciones de colaboración entre el Estado y las Comunidades Autónomas, ReDCE i:197-240.

García-Guereta, Elena, 2001, Factores Externos e Internos en la Transformación de los Partidos Políticos: El caso de AP-PP, Madrid: Instituto Juan March de Estudios e Investigaciones.

García Morales, M, J, (2006), Las relaciones intergubernamentales en el Estado Autonómico: Estado de la cuestión y problemas pendientes, Jornada sobre la Reforma de la estructura territorial del Estado, Aragón, Fundación Manuel Jiménez Abad.

Grau i Creus, M, (2000), Spain: Incomplete Federalism, Federalism and Political Performance, U, Wachendorfer-Schmidt, Londres, Routledge:58-77.

Linz, Juan J, y Montero, J, R, Llera, F, J, Non State-wide Parties in Spain: An Attitudinal Study of Nationalism an Regionalism, en Publius, 4, 1977, pp, 135-169.

Tajadura Tejada, Javier, 2000, El principio de cooperación en el Estado autonómico, Granada, Comares.

Van Houten, P, The Politics of Fiscal Autonomy Demanda, Regional Assertiveness and Intergovernmental Financial Relations in Belgium and Germany (Departamento f Political Science, University of Chicago), September 1999.

Informe de Cooperación 2002, MAP, Madrid.

Las Relaciones de Colaboración Estado-Comunidades Autónomas, Informe Anual 2004, MAP, Madrid.

Informe Comunidades Autónomas 2005, Institut de Dret Públic, Barcelona.

The Justice Administration

1. Introduction

The Justice Administration is a complex institution where jurisdictions of diverse State powers converge which, as is well known, are not always in harmony with one another. Namely: the Ministry of Justice, as the main expression of the jurisdiction which the Executive branch (the government of the State) holds on the matter; Parliament, organic legislator of the Judicial branch and procedural legislator, as well as the organ responsible for appointments of members of the General Council of the Judiciary and controlling its proceedings; the General Council of the Judiciary itself, government body of this branch; and, finally, the autonomous communities, that have assumed important powers in the provision and management of material and personnel resources in the service of the Justice Administration. In addition, it's to be emphasized that the Judicial branch evaluates its administration and annual results at the beginning of each school year; it's not for nothing that the status report of the Judicial branch and its statistical data are presented to public opinion at the same time as the solemn opening act of the judicial year, held every year mid-September. Therefore, at the end of the calendar year, the Judicial branch is still in its first quarter. However, circumstances and events between January and December of 2006 may be unclear if no reference is made to the background and implications for the future of some unresolved problems.

Despite all these barriers, if one were to define the year 2006 from a Judicial branch point of view, the key words would be “transition” and “uncertainty”. Transition, first off, because in the last quarter of 2006 the General Council of the Judiciary finished its five year mandate, a renowned Council in the context of a term when the People's Party enjoyed an absolute majority in Parliament, and a Council that was in turn the fruit of the – in the end- failed State Pact for the Reform of Justice of May 28, 2001. Transition also because since the summer of 2006 the relieving of Juan Fernando López Aquilar as Minister of Justice had been announced, who would assume the role of PSOE candidate to the presidency of the government of the autonomous community of the Canary Islands. However, the provisional nature thus created in the Ministry of Justice has not been concluded until February 12, 2007, with Mariano Fernandez Bermejo taking over the office. Transition, finally, because in 2006 (and fundamentally in 2007) the legal and physical foundations are being laid of the new judicial office, that will allow the crossover of an old-fashioned organizational model to a more up-to-date and efficient system, highly modernized, the judicial office of the twenty-first century. This office that, logically, must be accompanied by the aid of new spaces that have been taken to the main judicial centers –Madrid and Barcelona- to take on the building of ambitious “judicial cities”, that will have to be in full operation in the next few years.

The situation and feeling of transition is worsened, in a way, because it is accompanied by uncertainty. Uncertainty, first of all, because the restructuring of the General Council of the Judiciary began in November with a tortuous and complex process, which has not culminated in reasonable deadlines and terms and that leaves the institution in a clearly deteriorated state. On top of which, the current climate of political tension –which will die down with difficulty in the next year and a half, in what will be a

continuous pre-electoral and electoral campaign- does not foretell a happy ending for said process. Uncertainty, also, because important legal reforms are in process in Parliament, which- in a very worrisome way- find themselves paralyzed for months (this is the case, singularly, with the legislative initiatives –which we will refer to later- regarding the Judicial branch’s adaptation to the current state of development of the autonomous State, incomprehensibly linked to the passage of the new statutes of autonomy), which doesn’t even allow us to discard the fact that some of them may deteriorate in the final stretch of the term.

Specifically, 2006 has also been an important year on the subject of autonomous development, since different communities (the community of Valencia, Catalonia, Andalusia) have brought ambitious –and, at least in some cases controversial- processes of statute reforms that provides, to a greater or lesser degree, an appreciable change in the definition of the Judicial branch. As we will see ahead, the new statutes, especially the Catalan statute, may also pose (and they already have) sensitive constitutional controversies and, thus, important imbalances if the reform process for the Organic Law of Judicial Power is not completed in keeping with that new statute framework.

Thus, reflection, necessarily tentative, proposed here is situated on two central themes. One, of a political-institutional character, is directed at analyzing and evaluating the behavior of the Judicial branch in its relationships with other State powers and regarding the fulfillment of the role the government organ of judges must play in a democratic State. And the object of the second theme is an analysis of administration, that is, an analysis that links with the idea that the Judicial branch offers a public service to citizens.

2. The Justice Administration as a Power

2.1. Justice and Politics: the state of the Judicial Power’s administration

2.1.1. The General Council of the Judiciary as a setting for political confrontations.

The myth of its political neutrality. Throughout 2006 criticism by the General Council of the Judiciary of certain political initiatives of the government has increased. This criticism has gone beyond mere misunderstandings on judicial policy matters and, at times, it has even turned into sharp discrepancies on general policy matters. Thus, for example, the judgeship government organ decided to report on the content and constitutionality of the new Statute of Autonomy of Catalonia proposal sent by the Catalan Parliament to Congress in fall of 2005, despite that report not having been requested either by the autonomous Parliament or Congress (from there described as a “study”). Probably ill timed was also the moment chosen to make the mentioned study known, in the middle of parliamentary proceedings of the statute reform proposal in the House of Representatives, becoming a prominent element in the political controversy out of the positioning of different political groups.

There is no objection to the CGPJ carrying out studies of its powers on its own initiative (Regulation on the Organization and Operation of the General Council, without going further, holds the relevant authorization), but the exact context that framed the production of the mentioned study on the new Catalan Statute proposal allowed itself to

be referred to in terms of “consultative activism”. First off, it was a document that, though directed at the public powers with jurisdiction, it was not mandatory, as it was adopted precisely in the implementation of a “spontaneous” initiative by the Council itself. Secondly, the study did not seek a regulation once and for all debated and passed by the organ with jurisdiction, Congress, but rather it planted the recently concluded proposal in the Catalan Parliament before starting the processing of the proposal in Congress, and because of which the study could not disguise its intent to influence legislative labor. Finally, the initiative has been shown to be precise and asymmetric, in other words, it was drawn up solely with respect to the new Catalan Statute proposal, and not other statute reform proposals debated (and some passed) throughout 2006 and which also affected –though not to the same degree- the judicial sphere.

In addition, the Council’s decision to produce a study on the new Catalan Statute proposal was not peaceful at heart; quite to the contrary, an important sector of members (those not appointed at the suggestion of the People’s Party) openly opposed its production, and they expressed that both to the core of the Council itself as well as to public opinion, through statements and interviews. Once more, the General Council of the Judiciary appeared to be a divided organ, broken up in blocs: a conservative majority and another minority defined as progressive; in sum, a kind of “judicial parliament”.

Even so, the study on the new Catalan Statute proposal cannot be considered an isolated event, as throughout 2006 the Council (*rectius* the majority bloc of the Council) assumed a marked leading role in the criticism and opposition to different reforms and initiatives emblematic of the government, whether it is the new marriage regulation –the echoes of controversy still continue about weddings of members of the same sex- or (though in this case more subtly) whether it is the government’s position regarding Batasuna and the so-called “peace process.” Add to the previous case the equally critical position essentially shown –this time, at least, regarding initiatives of its unequivocal jurisdiction- with respect to the reform bills of the Organic Law of Judicial Power (justice of proximity, autonomous judicial councils, the redistribution of jurisdictional powers between the Supreme Court and the Superior Courts of Justice, etc.). In both cases the Council’s message seems to always be the same: namely: the socialist government’s reforms threaten the independence of the Judicial branch, as they constitute an intent to capitalize on and politicize it.

However, the impression is almost always enforced that members of the majority sector of the General Council of the Judiciary confuse the organ’s political neutrality with their own approaches to judicial policy, that is, they consider the Judicial branch to only act with political neutrality if the initiatives they adopt are in agreement with their own opinions and proposals. In reality, it is not known that the Council’s political neutrality is a myth. But not only because its members can’t hide their (legitimate) political commitment in the exercise of its powers and daily conduct, but because the General Council of the Judiciary is, by definition, a political organ. A political judicial organ, indeed, but a political organ at the end of the day. Or, can a branch of government not be political? The problem arises when, as has been happening, the Council becomes a “general” political organ, blatantly incorporating into its operation true features of an organ of such characteristics (clear affinity of blocs of members with political parties, members joining blocs with disciplines typical of Parliamentary groups, a clear prevalence of political issues in much of the debates and adopted decisions, etc.). In that

sense, it escapes no political observer that the political positioning of the Council, adopted by initiative of the majority of its members, has coincided too many times with the general political positioning of the main opposition party.

On the other hand, with the expiration of the CGPJ's mandate some questions have been newly posed which have arisen cyclically since 1985 –date when the Organic Law of Judicial Power modified the election system of the Council's members- regarding the politicization of the judgeship organ of government and the reproduction of the dynamics and clashes that occur at its core, no longer in Parliament, but in the general political debate among parties.

Throughout its more than twenty-five years, the poor operation of the Council has been marked by the election system of its twelve members of judicial background. In the first Council, these twelve members were elected by all the judges and magistrates through a majority system, favoring, as a result, a situation where all those elected belong to the conservative Professional Association of the Magistracy (APM). In 1985 the socialist parliamentary majority radically changed the system, with them turning out to be all the members elected from then on by Congress, both the twelve of judicial association as well as the eight of recognized prestige with degrees in magistracy (this system was applied in the CGPJ restructuring in 1985 and 1990, with parliamentary majorities of the PSOE, and in 1996 with a PP majority). However, the “party-cratic” dynamic greatly frustrated expectations created by the parliamentary election system, when provoking a mere distribution of memberships by the party quota system, instead of a balanced presence of “the principle attitudes and opinions existing in the whole of judges and magistrates” (the Constitutional Court declared), in keeping in turn with the ideological plurality of civil society.

In the past term, with a PP majority, the State Pact for the Reform of Justice, signed by the two big political parties, allowed a consensual reform of the Organic Law of Judicial Power which has established a new, third model, namely, a mixed system for the election of CGPJ members. This system has intended -though with little success, as can be inferred from the analysis made before- to overcome the defects warned of in the previously applied systems (the solely corporate system and the solely parliamentary system).

The discourse of 2006 takes on special importance because for many observers it provides evidence of the failure of the member election model of the Council that arose out of the State Pact for the Reform of Justice. This reform, made in 2001, established a complicated mechanism by which all judges and magistrates may elect –through judicial associations (or back up those without association)- a group of representative candidates both from the existing associations and from the group of judges and magistrates without association, in proportion to their respective weight within the judicial profession. These candidates make up a list of 36 contenders, among which Congress and the Senate must finally choose the twelve members of judicial association who, with the eight members chosen from among those of recognized prestige holding degrees in magistracy, make up the full body of the General Council of the Judiciary.

Just like what happened with the solely parliamentary system, the new mixed system has not avoided either “labeling” in public debate or the political aligning of the members of the Council, in such a way that those who were once proposed by the PP have made up a majority bloc that, in a hardly disguised way, has identified itself with the

political stances of the PP, while the other members have come to integrate themselves into a (quite heterogeneous) minority that, as a reaction, has distanced itself from those positionings.

In this context a qualitative factor, novel in a certain way, stands out in the last few months which must be especially evaluated, namely: the Council has not only shown its disagreement with the government through corresponding agreements with the usual organs (the full body and committees), but it has used informal means –but in public debate normally more immediate and effective than previous means- to show evidence of that disagreement. In this sense, it has been above all the frequent public protests by the president of the Council and the almost constant presence of its spokesperson –majority member- in the media which has transformed the General Council of the Judiciary into a qualified leader of the daily political debate.

In 2006 it can be asserted, with little risk of erring, that the General Council of the Judiciary has a very damaged public image, which helps little or not at all with the improvement of the widespread unfavorable opinion that citizens have of the running of the courts.

In this way, the risk is run that the CGPJ stops being the government organ of a State power and becomes a counter-power; that is, the risk that it neglects its true responsibilities as the ruler of the Judicial branch and guarantor of judges and magistrates' independence and becomes a reactive instrument against government policy, judicial or not, provoking on top of that confusion about whether the CGPJ acts in the exercise or the protection of its true constitutional and legal powers when questioning the government's work.

These demonstrations as a counter-power determine the true political dimension of the Council to be practically dissolved during the last year and it has left its own terrain of judicial policy –the organization of the Judicial branch, the selection and education of judges and magistrates, disciplinary regulations, the protection of judges from unjustified public attacks, etc.-, finding the general political debate and party conflict an area of continuity in the performance arena of the government organ of the Judicial branch. As previously mentioned, the problem does not lie, therefore, in the fact that the General Council of the Judiciary acts as a political power, but rather because at its core it reproduces the logic and dynamics, the good and evil art, of party politics. This circumstance is particularly serious in the sphere of the Judiciary, as on many occasions the conflicts between Council members motivated by political issues have run over into the complete and true judicial labor, and political decisions not based on Law become visible in judicial resolutions –the most significant or striking ones for the public-.

The CGPJ also acts as a counter-power which, due to its institutional status, has at its disposal a certain ability for de-legitimizing the Executive branch when it condemns the reforms pushed by the government as an attack on the independence of judges, the system of constitutional guarantees, or rule of law itself. In this way, not only its presence in the political debate has been normalized, but it also constitutes an element of polarization and not of consensus.

Thus, throughout the last few months a new red line has been crossed; the in and of itself regrettable politicization of judicial government has reached an even more serious politicization: that of jurisdictional function as a whole. We have gone beyond the political “labeling” of the CGPJ members in an attempt to label some judges and

magistrates –those of the Supreme Court, the High Court, and even magistrates of some cities who instruct on or have knowledge of issues of particular economic or social impact-, reaching the point of analyzing their resolutions in an openly political way.

In this context, a case where two judges investigate one event, for example, is puzzling –the expert report on boric acid– and the two judges differ diametrically in their conclusions. This disparity causes concern and confusion at the least, and it projects a subjective image of the exercising of jurisdictional labor which, at the same time it undermines the credibility of the judicial system, it increases citizen distrust before judges.

The Council and its members, on the other hand, seem to be much more comfortable with these tasks of counter-powering the Executive branch, and these tasks have become a good portion of the Council's work (the most visible labor to a broad public) in reflection of those behaviors and political tensions. This is an especially worrisome matter regarding appointments and when adopting decisions of whether or not to show support for judges brutally attacked by certain media for the direction exercised in their jurisdictional labor. The equidistance previous Councils maintained with some political problems that clearly ran over the sphere of judicial policy itself has been abandoned, that equidistance of the institution that had allowed the defending of the Council's political neutrality, which –and it's worth emphasizing- must not be confused with the perception of the Council as a mere politically aseptic administrative organ.

In sum, 2006 has ended in a deviation by the government organ of judges, which has removed itself from its true responsibilities and labor in the sphere of judicial policy, in order to become a pole of tension and opinion in partisan debates. The reform of the election system of members brought about in 2001 not only doesn't prevent the Council's transformation into another stage for the tensions of the political parties themselves, but it has also contaminated the core of the judicial associations with some of these party dynamics. One cannot assert that judicial associations automatically respond to party logic, as the reality of the judicial associations is clearly more complicated, but what's certain is that in public opinion they enter into the discussion on many occasions as though they were another link in the political machinery.

As noted, an added problem occurs at the same time: the risk that the marred operational dynamics of the Council transfer over to the entire structure of government organs of the Judiciary –the Governing Chambers of the Courts (The Supreme Court, the Superior Court of Justice, and the National Court), Presiding Judges of the Provincial Courts, *Decanatos* (doyens of the judgeship in each region forming a council)–and the mirage is produced that the tensions of the judicial labor itself, which are none other than resolving conflicts in a complex society, are really previous tensions from conflicts or political positionings among judges and magistrates.

2.1.2 Assessment of one manifestation: discretionary appointment of high judicial posts. One of the functions conferred on the CGPJ by the Constitution (article 122.2) and the Organic Law of Judicial Power refers to the (discretionary) appointment of certain judicial posts (magistrates and presiding courtroom judges of the Supreme Court, presiding judges of the National Court, presiding judges of the Superior Courts of Justice and Provincial Courts, presiding courtroom judges of the National Court, and the Superior Courts of Justice, and courtroom civil and criminal magistrates of the Superior

Courts of Justice, among which those proposed for the autonomous parliaments). It is also charged with appointing its General Secretary, the head of the Inspection Service of the CGPJ, the Director of the Judicial School, and, in general, all lawyers who direct or offer their services to the technical organs of the Council itself, which are of utmost importance for its daily internal operation. While they are in all cases non-regulated appointments, obviously they are subject to the constitutional principles of merit and ability.

The Council's appointment policy has always been marked by the slant of its majorities, above all the provision of the more important posts –especially, those of the Criminal branch of the Supreme Court (...)- repeatedly creating an undesirable political “labeling” on appointed individuals, already noted, that at times negatively and unduly affects citizen trust in the independent and unbiased exercise of their jurisdictional laborⁱ.

In 2004, after the triumph of the socialist party in the general elections, the government imposed, and Congress passed, a reform of the Organic Law of Judicial Power which says that appointments of magistrates and presidents of the Supreme Court chamber and the presidents of the Superior Courts of Justice must agree with a qualified majority -3/5 of the Council's members, at least 12 of the 21 possible votes-. With the current divisions in Council forces, this reform makes these forces reach a consensus on appointments to the full body to eliminate majorities and minorities, in this way attempting to keep an automatic majority from choosing candidates lacking in qualifications or disrespectful to the plurality represented within the core of the Council and of the judicial profession itself. The reform was bitterly questioned, in both political and constitutional terms, by the majority of the Council itself and in institutions by the People's Party, which not only denounced the change in the rules of the game halfway through the mandate, but it also lodged an appeal of unconstitutionality before the Supreme Court which has not yet been resolved.

The change in the system has greatly slowed down the appointing of posts, to the point where filling some vacancies considered delicate –like those of the Criminal Court- was shelved for months, with the resulting dysfunctions for the jurisdictional organ. Despite this, throughout 2006 several appointments have taken place with the new system, and public opinion has verified that during the year of reforms being applied the magistrates named have not been monolithically conservative.

Even so, the reform did not resolve a problem affecting the root of the system, which was none other than the lack of motivation of the discretionary appointments by the jurisdiction of the full body of the CGPJ. This is a paradoxical circumstance when considering, in the first place, the principle of merit and ability which should always control appointments, and in second place, that the Council itself has at its disposal a Judicial Appointment Board (*Comisión de Calificación*) whose purpose lies precisely in evaluating candidates' merits and establishing a short list of their preferences.

The Supreme Court's *Contencioso-Administrativo* courtroom, for cases brought against the State by individual organizations, starting from the essence of both rulings pronounced by the full body of that courtroom on May 29, 2006, has revised its previous doctrine and has rejected the implicit consideration of the motivation of appointments in the act of voting itself, demanding instead that the determining factors for said appointments be expressly stated, at least in the reports that accompany the short list proposals that go to the full body of the CGPJ from the Judicial Appointment Boardⁱⁱ.

This demand for motivation constitutes a historical vindication of some of the judicial associations and its acceptance by the Supreme Court can be considered a milestoneⁱⁱⁱ.

As mentioned, the application of this new doctrine established, in particular, the overturning of an appointment as significant as the appointment of the presiding courtroom judge of the Criminal branch of the National Court. The overturning, which caused retroactiveness in proceedings, did not prevent, however, the CGPJ from naming again the same candidate. But that was based on a report by the Judicial Appointment Board that evaluated the candidate selected in the end based on merits previous to the announcement of the vacancy. From there the Supreme Court has again overturned that appointment, through proceedings on November 27, 2006, based on the incident of implementation promoted by one of the candidates, showing that “being determined by a ruling of retroactiveness of proceedings in the administrative inquiry (...), limited to the making of a new proposal by the Judicial Appointment Board based on the merits of the candidates, it’s clear that this new proposal must be made about those already making up the inquiry, for having contributed in the proceedings of presenting requests and contributions of merits, without opening a new stage of the ruling considering added or later merits, and much less so when that is done so for only one candidate and not others”^{iv}.

Both the modification of the Organic Law of Judicial Power (that demands a qualified majority for some appointments) and the previously cited Ruling of the Supreme Court in May, 2006, reveal the worry that the existing political tension at the core of the CGPJ compromises the adequate management of appointments, and that the chosen magistrates are marked by the political bias of those who have named them, the jurisdictional labor exercised by those appointed could thus be stigmatized, above all on those matters of greater public significance or where political interests are affected. This is something that especially affects the Criminal branch of the Supreme Court (with jurisdiction over privileged matters), but also the National Court, which tries –among others- crimes of terrorism, and even the *Contencioso-Administrativo* Courtroom of the Supreme Court, which oversees agreements of the Cabinet. As noted, in all of these matters the –frequently self-interested and frivolous- identification (by third parties) of those magistrates who know of the issue with a certain political affiliation may introduce, however, undesirable elements of doubt in public opinion about the independence and impartiality of the jurisdictional authority in our country.

2.1.3 The difficult restructuring of the General Council of the Judiciary. On November 7, 2006, the members of the General Council of the Judiciary should have been dismissed and a new Council should have been formed. What is true is that this restructuring has not been possible so far and the game of parliamentary majorities and minorities foretells a torturous restructuring process, given that the restructuring requires a three-fifths majority in Congress, a qualified majority that the party in government does not have at its disposal, not even relying on the support of all the other groups, except the PP.

However, the political and institutional wear associated with a slow and complicated negotiation process in Parliament will surely contribute to the even greater strengthening of the image of the Council as another instrument in party politics, making

it hard to justify the fact that Congress and the Senate are not able to agree on twenty judges qualified to govern the Judicial branch during the next five years.

The judicial associations and the judges and magistrates without association have now finalized the selection process of their respective candidates, so Congress has at its disposal connections with 36 judges and magistrates to cover twelve of the twenty empty seats (those seats reserved for members of the judicial profession itself). As it was foreseeable in light of previous processes, the media has fully taken part in the well-known speculation game about the candidates' joining different parties.

Just as discerned from the electoral defeat of the People's Party in March of 2004, the first opposition party does not seem to have much interest in restructuring a Council that was formed in the context of its absolute majority in Parliament and that, probably due to that, usually matches up with the positions of the People's Party regarding controversial matters between political parties –the sensitivity of criminal justice before the so-called peace process, the reforms of the Civil Code on matters of marriage and divorce, the law on comprehensive protection on domestic violence, reform of the Autonomy Statute of Catalonia, etc.-. On top of that, keeping in mind the reform of the Organic Law of Judicial Power, which has established the requirement of a qualified majority for discretionary appointments of high judicial posts, the People's Party is demanding that a minority bloc be recognized in the new makeup of the Council, that is, that nine of the twenty members be proposed by the PP. Logically, such a demand makes it difficult to recognize a majority position in a proposal capacity to the party in government, if it's also expected that at the same time the other parliamentary groups (minorities) are not deprived of the ability to participate through their own proposals in the restructuring of the Council.

This phenomenon does not only affect the General Council of the Judiciary (for example, the CGPJ elected in 1990 to extend its mandate for more than a year), but also frequently, in similar terms, other constitutional organs or institutions (regulatory organizations, various independent administrations, etc.), such as the Constitutional Court, the National Audit Office, the Board of Administration for RTVE, *Radio television Española* (until its recent restructuring, once its reform was finished the members of this body remained at their posts for more than two years). Even –though logically to a lesser degree- in those cases where, even when appointments are exclusively for the government itself to make, appointments are intended to be plural and essentially technical (Banco de España, Spain's stock market commission CNMV, the National Energy Commission, the Telecommunications Market Commission, the Nuclear Security Council, etc.). Thus, the appearance of independence of these institutions suffers, their proper operation is paralyzed in good measure for months, and their mandates are begun with deep wounds that prevent them from dealing with their jurisdictions in peace on many occasions.

There are, then, many voices demanding that the restructuring of institutions be normalized and that it take place within the given timeframe, and that it not be used in accordance with the parties' needs or situations, so that it doesn't end up being a mere exchange of candidates, or another component in the political strategies of the parties.

In the current restructuring process of the General Council of the Judiciary, shadows are easily warning that don't at all benefit the future of the institution. Once again, the parties –and, this time above all others, the first opposition party- are awaiting,

above all, the results of the next electoral competition (municipal and autonomous elections in May of 2007 and general elections, at the latest, in the spring of 2008), as according to the elections they could improve their chances for placing a greater number of people close to their respective positions in the Council. Finally, another profound distortion comes from the growing tendency of political groups to “package” negotiate the restructuring of different institutions with the aim of reaching an overall political balance, without attending to the specific and diverse demands and needs of each of the affected organs.

In the CGPJ’s case, the deterioration of the outgoing organ, where two vacancies have already arisen (one due to the resignation of the current Defense Minister in order to run in the general elections of March, 2004, and another due to a death), will become even more intense, if such a thing is possible, if its provisional status is prolonged (soon a third resignation of a member of judicial background will be added when reaching retirement age). Such a provisional status, which holds bills and important decisions at a standstill, does not impede, however, the Council and its members from remaining in the epicenter of public controversies. When restructuring the organ in its entirety –as opposed to the Constitutional Court or the National Audit Office, which do restructuring in thirds, thus guaranteeing that their proper functioning continues-, the feeling that is created in public opinion is not only that the Council is going through a temporary and uncertain situation, but that this uncertainty transfers over to all judicial activity.

2.1.4 Prominent features of the outgoing Council’s management. That said, however, we run the risk of erroneously considering the CGPJ –and in particular the outgoing Council- to be essentially limited to playing the part of a qualified actor in political life. On the contrary, since the beginning of its operation more than 25 years ago, it has carried out very important administrative tasks, that have been consolidated through time and that have enhanced the status of the institution beyond our borders.

The Spanish system, with all of its defects and problems, is doubtless the most ambitious system with regard to independence and the powers of the organ of the government’s Judicial branch. The 1985 reform and the Council’s gradual taking on of jurisdictions regarding the selection and training of judges, international cooperation or managing economic means, has allowed our model to be used at a reference for other countries that have, when joining the democratic system without incident, opted for judicial systems similar to the Spanish system. That intense management labor carried out by the Council often goes unnoticed by Spanish public opinion, when kept secret by the central political players of the institution.

Throughout this last year, the Council has intensified its management to become in the near future the permanent site of the European Network for Councils of the Judiciary, which would coordinate the government organs of European judges.

The Spanish judicial tradition has also allowed, through time, the strengthening of ties with the Supreme Justice Courts, as well as the Superior Councils of the Judiciary of Latin American countries, with the final goal of consolidating a Latin American judicial community.

The labor of the Council and Spanish judges is also notable in those countries recently incorporated in the European Union, carrying out support projects for processes of reform, modernization and institutional strengthening of judicial power.

One of the most ambitious projects regarding the international scope of the Spanish judicial system has been created by the Council, which set in motion in 2006 the first stable exchange program among judges of the European Union, a kind of judicial study-abroad.

Just as important is the work carried out by the Council regarding judicial training^v. In keeping with demands of the so-called information society, and in that progressive modernization of the Justice Administration, the Council's presence falls within the virtual network. The Council's web page –www.poderjudicial.es– is not only a spot for institutional information, but it has also become an important search engine, with the inclusion of a very complete database of judicial resolutions able to compete with the repertoire of classic jurisprudence linked to publishing houses.

Also within the new technology field, one of the most important labors carried out by the Council has been the implementation of the so-called “neutral judicial point” in judicial organs. It is a network that allows communication among different judicial networks of the autonomous communities, the Ministry of Justice and the CGPJ, providing the courts with access to services offered by other institutions, in the interest of the better operation of the Justice Administration. Among those services we can highlight consultation with the Taxation Agency, the General Treasury of Social Security, or the Central Registry of Criminal Records, among others.

2.1.5 Appendix: application of the law and the “peace process”. The legal mandate for applying and interpreting laws in accordance with the social reality of each moment and without moving away from the principle of law isn't always an easy task. The working itself of the courts causes judicial responses to rarely be current with the moment the events take place, especially in complicated proceedings, and more often than we want several years pass from the beginning of judicial proceedings until a ruling is delivered. This circumstance causes the determining factors for rules and their interpretation and application, both when they are adopted and when events occur that fall under their application, to not always agree with those rules that come together when delivering a ruling.

As can clearly be seen in recent times, this reflection takes on especially sensitive dimensions regarding the fight against terrorism. Throughout 2006 significant judicial proceedings have been advanced, or even finished, regarding both terrorist attacks (the killing of Professor Tomás y Valiente, on February 14 of 1996, and Ermua councilman Miguel Ángel Blanco, on July 13, 1997) as well as proceedings linked to the political and social structure of the terrorist organization ETA (different proceedings on the banning of Batasuna, processes against “street terrorism”, proceedings against Segi, Jarrai, Haika and other youth organizations of the same setting, etc.). The proper working of judges and courts, principally of the National Court and the Supreme Court, has turned these processes into regular news, reproducing in each of them the same scenes of violence or disdain of the accused towards the courts that prosecute them.

2006 has been a year of utmost importance for the fate of the so-called “peace process”, not a peaceful term given to characterize the situation resulting from the “permanent cease-fire” declared by ETA in the Spring of 2006. That peace process, which was ended with the attack by ETA on December 30, 2006, at Madrid's Barajas airport, and which has broken political consensus regarding the fight against terrorism

and has polarized political opinion into extremes previously unknown, has caused all the social and political pressure associated with expectations created by the peace process to be cast on the judges and courts, such that certain elements provoked by the truce have transferred over to the courts (for example, reports have been made against Lehendakari or against autonomous representatives from nationalist or leftist parties for having initiated or maintained contacts with the banned Batasuna party).

Political tension has been cast on the courts to such a degree that the main political negotiators –of the government, the socialist party, the PP, directors of the banned Batasuna party- believe that the judges play (or must play) a fundamental role in the designated peace process, though they differ, obviously, on what ought to be the direction of that role (whether actively contributing to the proper finishing of the process, or, contrarily, whether keeping strictly within the limits of the law).

However, it doesn't seem reasonable to have political processes of such magnitude and complexity pivot entirely on the Judicial branch. Matters of political strategy shouldn't be transferred over to the judicial level, nor should matters competing for justice be resolved in a political venue, as the certain risk is run of compromising the jurisdictional work that, -less we forget- is none other than judging in accordance with the principle of law.

On this subject, it's not for the judges to modulate the reach of pending sentences for crimes of terrorism –the right to pardon belongs to the government, which exercises that right by partial or complete pardons-, nor is the bringing of charges (that, first of all, are the job of the Attorney General's office and private prosecution). The application of the law is a guarantee of the democratic system itself, and the exercising of that work should be left to the courts without interference, without the peace process leading the district attorney to modify sentencing requests –always with regard to the law-, or to request the adoption of preventive measures or even suggest pardoning measures. Steps taken against De Juana Chaos for terrorist threats (by way of press articles written from prison) make up a pretty clear example of how judicial processes shouldn't be exploited on (making way, as well for added problems difficult to resolve, such as the substitution or reduction of preventative custody awarded for De Juana as a result of the critical state of health he suffers due to his hunger strike). The same can be said regarding those who encourage judges to initiate or file penal suits against those who have initiated approaching the ETA camp, and they criticize them if they don't act in accordance with their plans.

In a climate of constant questioning of the judicial labor, and with an open, extremely controversial, debate on the “politicization” of judges and the Judicial branch, the application of laws –calm, independent, and impartial- can become an almost impossible task in a tense and complex context like the one in which we live.

The attack on December 30, 2006, has meant a point of no return for the process of dialogue, which bears witness to the need for making a clear distinction between the task belonging to jurisdictional organs and the task that strictly belongs to the contact process between the government and the terrorist group. It is not legally possible, nor politically advisable, to require any role of the judges (neither proactive or contributory, nor hindering) in the dialogue process.

2.2. The Judicial branch's adaptation to the development of the State of Autonomies

During the current term the government brought to Parliament reform initiatives of the Organic Law of Judicial Power aimed at adapting the organization and operation of the Judicial branch and its government organs to the current situation of the autonomous State.

In theory it seemed these reforms would be basically “peaceful”, given that they already appeared in the White Paper on the Justice System prepared by the CGPJ in 1999-2000, as well as in the State Pact for the Reform of Justice endorsed by the People's Party –then in government- and the Socialist Party –then as the opposition- in 2001.

Nonetheless, despite that initially favorable situation, what's true is that when introducing the initiatives in Parliament at the end of 2005, these initiatives have found themselves seriously compromised, to the point where the deadlines for introducing amendments have been successively extended, creating the doubt whether, begun in 2007 the last leg of the term, the introduced legislative initiatives won't end up deteriorating.

Before getting into analysis of the content of the specific reforms proposed, it might be useful to introduce some elements of general reflection on the obstacles the proceedings of these reforms has come across, obstacles that respond to a change in political strategy by the PP which, after the loss in the 2004 general elections and in view of the drive of ambitious (but also controversial) statute reform processes in certain autonomous communities (distinctly in Catalonia), has found itself to be comfortable in the role of sole defender of the unity of the “Spanish nation”. Regarding this matter, we shouldn't ignore the fact that the statute reforms –principally the Catalan reform but also the reforms in Valencia, Andalusia, and the Balearic Islands- have at times set limits of self-government and the assuming of powers regarding the Justice Administration higher than those set in the reform bills of the Organic Law of Judicial Power, which has caused the reforms to create different expectations from those initially presented.

The current General Council of the Judiciary has not contributed to the reform's success, given that in its public statements and reports it has severely criticized the reform because it affects, in its opinion, the independence of judges and the unity of the Judicial branch, a unity that critics of these reforms tend to identify with a rigid centralization of the Justice Administration, even in aspects of material and administrative order.

This collection of circumstances and the Council's opinion on the opportunity of some of the reforms right now cause there to be no certainty that the bills can finish their complex parliamentary proceedings successfully in the timeframe of the current session, the Parliament sessions being concluded in December of 2006.

2.2.1 Decentralization and loss of territorial concentration of the Judicial branch and statute reforms. The nation's government ended 2005 with the passage of two legislative initiatives with great repercussions in the justice sphere, namely: the bill for the Organic Law modifying the Organic Law of Judicial Power regarding justice of proximity and Justice councils, and the bill for the Organic Law by which procedural legislation is adapted to the Organic Law of Judicial Power, the cassation appeal is

reformed, and the *doble instancia penal*, the right to seek an appeal in a higher court, is created (both published in the Official Report of Congress on January 27, 2006)^{vi}.

Both bills, passed at the same time, respond both to commitments assumed by the party in government in its agenda that it presented in the general elections of March, 2004 (which included the aim of adapting the system of administering the Judicial branch and the distribution of powers among the Supreme Court and the Superior Courts of Justice to the state of evolution of the autonomous State), as well as to the need for incorporating to the Organic Law of Judicial Power the very modifications that made the predictions legally feasible (or at least some of them) that regarding those matters already held the statute reform bills which at that time were starting or had just started the process of parliamentary proceedings (Statute of Autonomy of Catalonia and the Community of Valencia).

Certainly, expecting the reform bills of the Organic Law of Judicial Power and with a view to the imminent negotiation of the statute reforms in Congress, the government was confident in marking some limits which the ambitious –and, at times, even questionably constitutional- predictions for the new statutes regarding judicial administration should adapt to (above all in the case of the Catalan Statute), as well as the conferring of new jurisdictional powers to the Superior Courts of Justice and the conferring of powers relative to the Justice Administration, both executive and normative, to the autonomous communities. And as Aguiar De Luque warned in 2005, “it is perfectly possible that certain statute reform processes feel tempted to use the Statute of Autonomy as a rule for the *territorialización* of the Justice branch, that is the assigning of powers to designated territories, going beyond the sphere established in article 147.2 of the Spanish Constitution (broadened with the content of article 152.1 of the same) or invading the sphere that article 122 of the Constitution grants to the Organic Law of Judicial Power”^{vii}. Hence the reminder that Xiol Ríos made then too: “The Judicial branch’s adaptation to the autonomous State must not be a unilateral work by the Statutes of Autonomy (...), but rather the state nature of the Judicial branch, in combination with its close connection to the basic institutional character of the autonomous communities, demands that an adequate reform regarding this matter be upheld with regulations in the double legal pillar of the Statutes of Autonomy and the Organic Law of Judicial Power”^{viii}.

However, the government’s two legislative bills, though they contributed – regarding their purpose- to the modulation, to a certain degree, of the initial content of the bill of the new Catalan Statute sent to Congress by the Catalan Parliament (the Statute reform bill for Valencia was, from the beginning, much less ambitious in this regard), have not allowed the complete reformulation of its predictions to those more moderate ones considered by the government in the projected modification of the Organic Law of Judicial Power. Among other reasons, because the passage of the statute reforms happened before the passage of the reform of the Organic Law of Judicial Power. It is such that the parliamentary proceedings of the two mentioned legislative bills of the government have not yet been concluded.

As just indicated, the predictions for the new Catalan Statute, particularly relating to the powers of the Justice Council of Catalonia, have ended up exceeding what was foreseen in that respect by the government in its reform bill of the Organic Law of Judicial Power. In effect, article 98.2 of the new Catalan Statute grants certain creation

powers to the Justice Council of Catalonia that were not planned to be conferred on the justice councils in autonomous communities, at least to the extent foreseen in that statute, - rather these powers were regulated by the reform of the Organic Law of Judicial Power designed by the government (article 148.5) -, such as the investigation hearing and the exercise of disciplinary, inspection, and reporting powers on lawsuit appeals used against the governmental organs of Catalonia's courts, or the investigation of the interpretation, development, and application of the CGPJ's rules in the realm of Catalonia. Specifically regarding the constitutionality (in light of article 122 of the Constitution) of the conferring of such powers to a different territorial organ other than the CGPJ (though it is described as an "organ of the State" of the CGPJ^{ix}) the Constitutional Court is now being called to take a position as a result of the lodging of diverse appeals of unconstitutionality against the new Catalan Statute, some of those appeals (specifically, that lodged by PP parliament members) especially emphasize the constitutional questioning of the entire Title III, dedicated to Judicial power, of said Statute.

Facing such a perspective, in the statement of grounds for the bill relating to the justice councils, it is affirmed that the makeup of these councils "strengthens (...) the necessary job of the governing of the Judicial branch with the principle of autonomy," considering that "the unity of the Judicial branch's governing is safeguarded with the constitutional power of one single organ –the General Council of the Judiciary- of the essential nucleus of the governing work of the judges, which does not impede the conferring of powers and the consideration of reports sent by these organs of a smaller territorial area, closer to the targets of those decisions adopted by the General Council of the Judiciary."

Now, granted such reasoning, it can't be ignored that between the reform planned by the government and, specifically, the new Catalan Statute, already in effect, there is a clearly noticeable imbalance, particularly referring to the reach of jurisdiction that the Catalan Statute confers on the Justice Council of Catalonia, being such that, as Xiol Ríos has indicated, "this conferring of powers would require (...) not only that it be included in the corresponding statute of autonomy, directly or by referencing a previous law of autonomy, but also that the harmonization of these predictions with the Organic Law of Judicial Power be guaranteed"^x.

The problem then lies in determining what rule must be in harmony with what other rule; should the Organic Law of Judicial Power be adjusted to the statutes of autonomy, or rather should the statutes be adjusted to the Organic Law of Judicial Power? In short, which of the two reforms (that of the Organic Law of Judicial Power or that of the statutes) should have been a priority through time? Once the two statutes of autonomy were approved (at least the Catalan Statute which has set the highest levels on the matter we are concerned with), what kind of margin for maneuvering does the organic lawmaker of the Judiciary have when forming justice councils and providing them with powers?

Likewise, among the not peaceful predictions of the Catalan Statute, that which stands out is the prediction regarding the demand that magistrates, judges, and district attorneys holding a position in Catalonia prove an appropriate amount of knowledge of Catalan and law specific to that autonomous community in the manner and to the degree as determined by law (article 102 of the Statute). To that regard, Xiol Ríos warns that, "the establishment of this demand without any clarification, combined with the system of

transfers and appointments and admissions itself of the judicial profession and of the different bodies of officials, may mean in fact, a limit to the possibilities for access to destinations in the autonomous communities with their own language (and, therefore, the principle of mobility throughout the entire nation that must be considered essential in guaranteeing the unity of the Judicial branch dedicated to the Constitution)^{xii}. Aguiar de Luque also concludes on this point that “the satisfaction of linguistic rights of residents that can be judged in autonomous communities with a co-official language does not demand the conversion to one language based on ability, a legislative choice with numerous problems and complications of all kinds, rather the reinforcement of one’s ability until becoming obligatory in order to perform the selection of judges to cover vacancies, a solution that while having greater operational capacity, it would noticeably make it difficult for a judge or magistrate directly affected or a parliamentary group to be able to raise objections of unconstitutionality before a legislative choice whose constitutional legitimacy at the core appears hard to question”^{xiii}.

2.2.2 The redistribution of powers among the Supreme Court and the Superior Courts of Justice of the Autonomous Communities. The extending of the right to seek an appeal and the cassation reform. As previously indicated, at the beginning of 2006 the government sent to Congress, in addition to a legislative initiative to nationally lessen the concentration of the governing system of the Judicial branch, an organic bill that, by extending the right to seek appeal and an cassation reform (in penal, *contencioso-administrativo*, and civil orders), redistributes the distribution of powers between the Supreme Court and the Superior Courts of Justice, strengthening the power of the Superior Courts of Justice. In this way the adaptation of the Organic Law of Judicial Power to the statute reforms that strengthen the powers of the Superior Courts of Justice is pursued as well, specifically to the predictions of the new Catalan Statute, in accordance with which “The Superior Court of Justice of Catalonia is the last jurisdictional instance of all processes initiated in Catalonia, as well as all appeals processed in their territorial spheres, whatever the applicable right cited, in keeping with the Organic Law of Judicial Power and without detriment to the power reserved for the Supreme Court for unification of doctrine” (article 95.2 of the new Catalan Statute).

According to the statement of grounds for the organic bill by which cassation is reformed, “the present reform changes the nature and shape of the annulment appeal, that comes to be, essentially, an appeal for the unification of doctrine, limiting its sphere to infractions that have occurred in the application of national legal code “on the grounds of dissenting pronouncements from lower judicial organs”.

Also some have questioned the constitutionality of the proposals to form the Superior Courts of Justice as true courts of final instance and, correlatively, to limit the work of the Supreme Court, essentially, to the unification of doctrine^{xiii}. Simplifying things a bit, such a proposal involves the taking away of current “ordinary” cassation from the Supreme Court, in order to investigate it (with that name or another, and not only regarding autonomous law, as currently happens) in the Superior Courts of Justice.

Is this clearly unconstitutional? It doesn’t seem that way. In principle, neither the existence itself of an “ordinary” cassation appeal in all jurisdictional orders, nor the Supreme Court’s knowledge of the cassation appeal are constitutional imperatives. The prediction or not of such extremes in procedural legislation are legislatively political

decisions, with which one certainly may agree with or not, but whose compatibility with the Constitution does not appear to be in doubt. Article 123 of the Constitution (only) demands that the Supreme Court be throughout all of Spain the “highest jurisdictional organ in all orders”, and for it to be such it is not imperative, in effect, that an ordinary cassation appeal be imposed on the Supreme Court like the one we currently know. The Supreme Court will continue to be the highest jurisdictional organ in all of Spain in all orders so that the resolutions of the Superior Courts of Justice are subject to a possible revision by the Supreme Court. This possibility for revision will be basically broad, but while it guarantees equality and, therefore, the essential uniformity in the jurisdictional application of the national legal code (and it doesn’t seem that a cassation “for the unification of doctrine” is markedly insufficient for such an end) it will satisfy the basic demands of article 123 of the Constitution. In any case, one must bear in mind that article 152 of the Constitution establishes that all Superior Courts of Justice “finish the judicial organization in the regional sphere of the autonomous communities” and that “the consecutive procedural instances will become exhausted faced with judicial organs based in the same region of the autonomous community where the competent organ of first instance is”. It also cannot be forgotten that the Superior Courts of Justice are, in all cases and like all of those from this country, “national” courts (not “autonomous”), served by magistrates belonging to a sole body of the State (article 122 of the Constitution).

3. The Justice Administration as a public service

The understanding of the Justice Administration as a public service has not been accepted pacifically until today, either in its doctrine or among the members themselves of the judicial profession, many of which have given priority to the “power” factor over and above the “service” factor. Despite this, what’s true is that the Constitutional Court itself has spoken of “the Administration of the Justice Administration”, in the context of the distribution of jurisdictions regarding the Judicial branch between the State and the autonomous communities.

Both the State Pact and the Letter of civil rights confronting the Justice Administration have driven the idea that the Judicial branch is, besides a State power, a public service from which we can and ought to demand standards of quality and from which certain measurable parameters must be demanded regarding the treatment of matters, the duration of proceedings, the effectiveness of the resolutions in executive seats, etc.

After the Letter of civil rights, that was presented as a motion and which, therefore, did not create rights and obligations to be demanded, the need was considered to express in a legal text some of the principles and objectives regarding administration and citizen services was included in the State Pact. In 2003 the Organic Law of Judicial Power was reformed to establish the bases of a new judicial office, and throughout 2006 the first signs of that new concept of the Judicial branch have taken place. The reform, however, is not advancing with the speed initially foreseen and there are many obstacles, both legal and practical, that have been revealed.

It is paradoxical that, despite the consensus coming out of the State Pact, both the People’s Party and the nationalist parties have made problems for many of the pending

bills, obstacles that represent, in good measure, a reflection of the tension affecting all judicial policy.

3.1. Some elements of administration and their impact on the workings of public service

3.1.1. The evolution of the judicial base. Since the passage of the Law of the Judicial Base in 1989 and until today, the base of jurisdictional organs has very noticeably grown. In just 25 years it has gone from little more than a thousand courts in all of Spain to the more than four thousand current judicial sites. Throughout the PP's government the rhythm slowed of both the creation of new courts as well as the availability of posts for new judges and district attorneys (the latest promotions called by the government of the PP barely foresaw 50 judgeship posts). In 2005 and 2006 the socialist government created more than 120 judicial courts annually and foresaw a similar pace for 2007 and 2008.

Despite this effort in the creation of new judicial courts, what's true is that there are worrisome factors that have greatly stood out throughout 2006. On the one hand, the image citizens have of the Judicial branch (on this respect, *vid. Infra*) continues to be negative and the survey results are more and more severe. On the other hand, and despite the effort in creating new courts, taken up again in the last two years, what's certain is that the comprehensive information of the Judicial branch produced from statistics show that the number of pending issues is increasingly greater and that even during the last year the ratio of rulings per judge has decreased.

The initial goal was 1.5 judges for every 100,000 inhabitants, to be at a level with countries like Germany, but it has been revealed that this ratio may be insufficient.

Part of the problem comes from a worrisome fact: the definition of the judicial base, that is, the organization and distribution of the courts and their auxiliary means throughout the region. This definition comes from the laws of the 19th century which established a not overly dynamic organization and which responded to communication problems of its time. The new judicial base needs to incorporate new technology, streamline procedures, and establish different working systems. In Spain the figure of the judge has been identified with the figure of the court, and the court, in turn, has been identified with a population or relatively close group of populations. In other countries, like France, the judge is not identified with the court, which allows the establishment of judicial schools that, depending on real needs, increase or decrease the number of incumbents, extend or decrease the staff, both of judges as well as auxiliary personnel. Paradoxically, the creation of new judicial parties has not occurred and, thus, towns like Las Rozas, Rivas-Vaciamadrid, or Sant Cugat del Vallés, "dormitory" cities but that have grown during the last five years from a judicial point-of-view, are covered by justices of the peace and must resolve more complicated conflicts in nearby towns. These are examples of the lack of harmony between the demographic reality and the judicial base.

In 2006 two important reforms of the judicial base have been consolidated: the starting of the so-called courts for domestic violence and commercial courts. In both cases the courts have transversal powers that cover several jurisdictions (courts of domestic violence cover penal and civil jurisdictions; and commercial courts cover civil and labor jurisdictions, they form the first display of social, economical and cultural demands that are more complex and which require specialized judges and courts that

respond to conflicts of great significance). The government has other reforms pending directed at this specialization, like, among others, the proposal to create a true family jurisdiction, or the grouping of courts of violence in order to provide comprehensive assistance in several places. All of these projects respond to a more ambitious perspective, the perspective of tackling a reform of the judicial base that responds to the current social, economic and urban configuration of Spain.

3.1.2. Systems for assessment of the performance of judges and magistrates. Interest for an appropriate performance stimulus of jurisdictional work is not a novelty in the Spanish judiciary. On the one hand, the assessment of jurisdictional activity –and the appropriate salary of that activity based on its quality and also (why not recognize it) its quantity- is claimed for years by judges and magistrates as a fair recognition for their work and performance incentive. On the other hand, the introduction of objective systems for measuring the performance of judges and magistrates and incentives for productivity also constitute necessary measures for organization of labor for a better and more able provision of effective judicial guardianship of legitimate rights and interests of those who fall under the court’s jurisdiction. This is of special significance in the context of a jurisdiction, many of whose organs and orders find themselves loaded and overflowing with the incessant number of cases, whose average response time has not stopped growing, as a general rule, in the last few years.

Moved by this diagnosis, the General Council of the Judiciary in May of 2000 passed for the first time, and by way of a test solution, some “labor modules for judges and magistrates”, that it completed and perfected after several years (October, 2003). However, these modules initially lacked the power of enforcement, and compliance with them initially held significance or repercussions for the salaries of members of the judicial profession. Both circumstances considerably limited, therefore, its virtuality. In line with this, law 15/2003 was passed, however, on May 26, regulating the payment regimen of the judicial and prosecuting profession, which in article 7 and on, for the first time, the payment of members of the judicial profession was foreseen based on “variable salaries by objectives”, linked to “the individual performance proven by each judge or magistrate in the carrying out of their jurisdictional and professional labor.”

For the advancement of said law, relative to the variable salaries (for reaching objectives) of the members of the judicial profession, on December of 2003 the General Council of the Judiciary adopted, based on the authorization contained in the law itself, Rule 2/2003. In its provisional regulations it was established that as long as the CGPJ did not proceed to establish a different system for the setting of performance objectives relative to the judicial profession’s use, those objectives established in the labor modules of judges and magistrates passed by the CGPJ in October 2003, would be observed as such. In fact, the Rule incorporated said modules in its Annex I.

Against the cited Rule, the Francisco de Vitoria Judicial Association lodged a *contencioso-administrativo* appeal before the third courtroom of the Supreme Court. The appellant association based its contesting of the Rule on the fact that the Rule didn’t satisfy the regulatory authorization contained in articles 8 and 9 of Law 15/2003, and on the fact that legal coverage was improperly used that was granted for concrete regulation development to strengthen regulation of certain modules previous to the Law, which additionally was not in line with the legal authorization.

In its ruling on March 3, 2006, the plenary *contencioso-administrativo* court of the Supreme Court upheld the lodged appeal, declaring the nullity of the contested Rule, as not being in accordance with law.

As is obvious, the Supreme Court's ruling has left the variable salary system based on objectives of judges and magistrates, planned in Law 15/2003, bereft of the necessary development and regulatory supplement, for which the CGPJ's passage of a new assessment system of the performance of judges and magistrates is now necessary. In reality, the Council had started to work on a new model before the ruling, declaring Rule 2/2003 null, but the difficult internal situation and, now in addition, its term being up do not allow us to predict that this task will be finished by this Council before its restructuring.

3.2. The new judicial office: outcomes and prospects

As already indicated, the organization of courts even today responds to a large degree to the model set by the Organic Law of 1870. In fact, in 1989 the reform of the Judicial branch did nothing but utilize the judicial structure of the 19th century with the basic adjustment of converting district judges into judges of first instance and trial judges. Around each judge a complete judicial office was shaped, made up of a judicial secretary, a prosecuting secretary, a forensic scientist, and clerks. Only in some big cities were common services for judicial notifications and subpoenas pushed.

In 2003, with the reform of the judicial office put forward, a model for the modernization of employee bodies was established by consensus, even modifying their name. Three years have passed since then and the true reform has yet to get off the ground. Until the end of 2006 opposition to the entry into new employee bodies has not been called for, and after 3 years with no announcement occurring, it has been determined that a percentage close to 25% of employees are not permanent but rather interim.

2006 has been a year of strong union mobilization and protests, not only by the judges themselves, but especially by the other groups, judicial secretaries and staff at the service of the Justice Administration. It is such that, starting in 2007, the serious existing conflict between the Basque Country and the judicial employees of that region has not been broken down, dragging on a strike for several months. Part of the problem must be linked, without a doubt, to the complexity of a system where three different administrations interact and collide, since many autonomous communities hold jurisdiction over administration of personnel and material means servicing the Justice Administration, despite which employee bodies are national. That causes the Ministry of Justice to retain those structural jurisdictions which, on many occasions, need a favorable report or to be viewed positively by the General Council of the Judiciary. In such a complex structure, the autonomous communities, especially the Basque Country and Catalonia, demand the possibility to establish employee bodies and even their own models of judicial office, dissociated from the other judicial offices.

In this situation, from 2003 until now the new offices have not entirely been developed, and the modernizing steps taken are insufficient, despite the effort made, for example, in the computerization of civil registries and the equipping of judges and judicial secretaries with electronic signatures.

What is certain is that an important reform is at a standstill in Parliament that affects the entirety of procedural norms and that would appropriately and legally provide for the drive of reforms that concern us now, allowing secretaries to take on greater powers and act without the need for supporting papers. These procedural reforms should be passed in the first period of 2007 sessions, and there are planned pilot programs in several judicial parties for the same year.

The proximity of autonomous elections, however, foresees a new delay in the modernization process. All in all, 2006 did not fulfill the expectations created regarding the shaping of a regulation framework for the reform, and 2007 is not free of uncertainties, each time that autonomous communities establish a reference date of 2008 for the implementation of the new office model, when, in addition, general elections will take place.

The new office is designed on very flexible judicial units, where the post of a judge will have at its disposal just a staff of two or three employees, the rest being assigned to common services, not only of notification or implementation, but also administrative services of the system. Thus, the staff will lose the image of the old files, sewn and stapled, and it will become a digital expedient that will cover itineraries by email or disks. In the same way, the intention is to equip lawyers, paralegals, and social graduates of necessary computer instruments that avoid the physical presentation of statements, substituted by data archives which will oblige us to maximize the computer security systems and demand validation through appropriate electronic signature programs.

2007 and 2008 will allow us, as well, to visualize some of these reforms in large judicial offices, already begun in Barcelona and Madrid (“Cities of Justice”), along the line already set by the buildings of the Basque Country of the Valencian “City of Justice”.

3.3. The approaching of the Justice Administration to the citizen: justice of proximity

The so-called “justice of proximity” arises at the beginning of the nineties in cities like Barcelona, which demanded judges linked to city councils with the ability to resolve small conflicts. The first regulation of justice of proximity appeared in the bill Municipal Letter of Barcelona, and from there the concept is taken of the Law of Great Cities (Law 57/2003).

The need to bring justice closer to citizens quickly takes shape in the electoral programs of all the political parties, and with that name it appears in the State Pact passed unanimously in Parliament. However, this consensus (regarding the need to bring judges and courts closer to citizens, especially in the big cities) has not caused there to be as well a pacific model of justice of proximity.

It must not be forgotten that in 1989 the legislature decided to abolish the district courts and unite the judicial profession in one sole body. From this perspective, the return to neighborhood justice of small conflicts runs across the same problems that occurred the abolition of municipal justice in its day. The Constitution (article 117.5) hinders the existence of a Judicial branch that is not unified and the creation of a kind of second judicial circuit to resolve conflicts of little importance runs into problems of legality.

City councils require greater involvement in justice matters, above all in conflicts which, despite their lesser significance, might create great tension of coexistence (evictions, neighbor fights, damage to urban property, etc.), whose resolution demands dynamic and informal procedures (both in trials and settlement of resolutions), searching for alternatives to conventional means of fines or a short loss of freedom. This system of municipal justice also established that the configuration of justice of proximity would not be accepted as a first step of the judicial profession being the first post of new judges. The city councils demanded judges with a certain amount of support by the city and experience; they didn't want these courts to be the testing ground for inexperienced judges.

The possibility was considered that these judges were to be elected or appointed out of the traditional channels of selection, that is, substituting the opposition with a merit system, a contest where the city councils participated in the proposal and election of candidates. This formula has opened up a field of criticism coming both from political parties as well as the judicial profession itself, which mostly considers with distrust the possibility that the performance of judicial duties may be assumed through unconventional channels, even more so if "making the jump" to ordinary justice is permitted.

City councils like Barcelona's have been champions of this system, but others of the same weight, like those in Madrid or Valencia, have already warned that these representative cities do not need courts with these characteristics and have committed themselves to other investments. Some autonomous communities have utilized the occasion to demand that the establishment of justice of proximity also serve to decentralize the Judicial branch.

In light of all these elements of conflict, the government's legislative bill, whose processing is currently shelved in Congress, doesn't have the greatest prospects, since the chosen model tries to incorporate and combine the diverse possible formulas of design for these new organs and, far from allowing consensus, it has ended up displeasing all operators. Thus, objections have arisen not only on constitutionality and political opportunity, but also the need itself for the reform is being questioned, as the large cities have experienced a great improvement in the last few years regarding means and infrastructure and as a response to judicial demands. It is the outlying groups that present greater problems. There are also outlying groups that do fit this model of justice in the frame of the new judicial office and that are compatible with the possible decentralization of powers and the specialization of courts.

In sum, despite the fact that the proximity of justice has become a widely shared objective, and that it appears in all the electoral programs, its exact organization continues to be very controversial. As we've said, the government's legislative bill has had its processing postponed on several occasions and 2007 is not a year of certainties. Additionally, it was a bill whose main driving force was former President of the *Generalitat* of Catalonia, Pasqual Maragall, and his withdrawal from the front political lines has caused there to be talk within the ranks of the Socialist Party itself of the need for revising the bill, for leaving it for another time or parliamentary context, or even for looking for other methods of proximity which create less controversy.

4. Epilogue: the image of the Justice Administration

The dramatic changes that have occurred in Spanish society since the democratic transition until our days have affected, and it couldn't be any other way, the Justice Administration. Throughout these more than twenty-five years the Judicial branch has doubled its contingent of personnel and modernized its material resources and systems. At the same time important legislative changes have occurred affecting both judicial organization and procedural laws.

In the same line, a considerable mutation of our judges can be detected regarding their age, sex, and social origins. The legislature has been rejuvenated (currently only 46% of judges are older than 40, while in 1984 this proportion was 57%), a direct consequence of the gradual expansion of its members: on January 1, 2005, there were 4,356 judges and magistrates making up our judicial profession. There are more women in the Justice Administration, result of the progressive but intense access of women to judicial labor. Currently they represent 44% of Spanish judges, compared with 11% in 1984. Nonetheless, at the pinnacle of the Judicial branch and, in general, of judicial posts the female presence continues to be residual. Also note there is a significant turn in the social origin of our judges and magistrates that contradicts more and more the inbred character of the judgeship. With a light reduction in the proportion of judges whose parents were likewise judges or judicial personnel, or professionals in law, a correlative increase occurs in the proportion of children of civil servants and, especially, in the proportion on children of manual or service workers^{xiv}. What is constant, however, in the Spanish legislature –since the first studies in 1984– is the broad range of ideological pluralism, parallel to the pluralism of the whole of Spanish society.

Despite those momentous changes in the Spanish Justice Administration and in the profile of its judges, the Judicial branch continues to have a negative image for the majority of citizens. The most widespread opinion among Spaniards throughout the last twenty years is that the Judicial branch in our country works poorly.

The CGPJ has worse luck; despite the quarter century passed since its beginning, 72% of Spaniards don't have even a reasonably clear idea of its labor and responsibilities. And if it doesn't manage to consolidate itself institutionally among citizens, assessment of its performance will be more critical: 83% accuse it of a lack of accountability, 79% do not consider it to be independent of the government and political parties, and 76% don't believe it adequately fulfills its duties of defending the independence of judges and courts.

In order to see the perception citizens and judges have of the Justice Administration, on the initiative of the General Council of the Judiciary, opinion studies of the Spanish Judicial branch have been carried out since 1984^{xv}.

On the whole we can extract a striking conclusion, the judiciary works better than what those who have never used it think and believe. As one of its authors indicates, Toharia Cortés: “In reality the image the Judicial branch has in our society is neither that negative nor solely negative. And, in addition, it seems to be experiencing slow but clear improvements in those facets that are perceived or assessed more critically by the citizenry”^{xvi}.

4.1 Citizens' image of the Justice Administration

Currently^{xvii}, the majority of Spaniards (44%) believe that the Judicial branch operates poorly or very poorly, while barely half of that figure (24%) consider, on the contrary, that it operates well or very well. However, there is a growing opinion among citizens that the operation of the Judicial branch tends to improve. 21% of citizens think that the operation of the courts of justice is now better than three or four years ago, compared with a 15% that believes the opposite.

Spaniards grant a considerable degree of credibility and power to their judges, to those they generally perceive as prepared (they're competent and as good as those judges of any EU country), independent (even when they are under widespread pressure of political powers, economic and social groups, and the media), impartial in their performance and honest (the corruption phenomenon is smaller, according to public perception, in the Judicial branch than in other realms).

The two main complaints of Spanish public opinion against its Justice Administration refer to the slowness perceived in its operation and its low degree of accessibility.

As concerning its slowness, the practically unanimous opinion is that the Judicial branch is usually so slow that it's better to avoid going to it (75 %) and that, in any case, when a lawsuit is won it helps very little, as rulings tend to not be worth the paper they're written on, since they are rarely executed quickly and adequately (73%). This opinion contrasts with judges' opinion, who hold a much more positive diagnosis of the slowness of the Judicial branch, as well as of its efficiency in achieving the execution of its rulings.

Among the possible causes of a slow Judicial branch, there is a majority of citizens who believe that more judges are needed: those that we have are insufficient. While, secondly, the antiquity of procedures is pointed out.

Regarding the accessibility of the Judicial branch, 82% of Spaniards deem the "the language and procedures of the courts to be excessively complicated and hard to understand for the average citizen", 63% believe that "judges don't usually dedicate the attention or the appropriate amount of time to each individual case", and finally 79% of those surveyed indicate that "the costs of all kinds that going to the courts implies generally end up not being worth it".

As we can see, the idea continues to take root among Spaniards of a slow and largely inaccessible Judiciary, in spite of the fact that, in the last few years, important advances in the modernization of our Justice Administration have taken place.

4.2. The image of the Justice Administration in the eyes of the members of the judicial profession

If citizen opinion of the Justice Administration is mostly negative, the opinion of judges is mostly positive. 46% generally consider that the situation of the Spanish Justice Administration is good or very good, compared with 17% that define it as bad or very bad. This perception among our judges has undergone a spectacular change in the last fifteen years, since in 1987 a negative opinion (60%) prevailed over a positive one (4%) regarding the operation of the Judicial branch^{xviii}. Without a doubt, the enormous budgetary effort aimed at improving the judiciary has contributed to this.

In April of 2006 the first survey carried out to all members of the Spanish judicial profession was presented^{xix}. The same survey was completed by 42.7% of judges and magistrates (1,803), which reflects the reality of the judicial profession in every sense.

On the questionnaire to be filled out by the judges big issues were included on which it's helpful to know the legislature's opinion. When asked about the description and assessment of the situation under which they carry out their work and the satisfaction brought to them, seven of every ten judges stated being satisfied in their work, the percentage of those satisfied with the financial reward significantly declining. 41% little or very little satisfied and only 17% is somewhat or quite satisfied. Referring to the workload, the vast majority (71%) of the judicial profession believes they are carrying out too much work. Judges declare working 45.95 hours a week on average, and of them 38% of the hours at home.

The judicial profession is very critical of the CGPJ in its duty as guarantor of judicial independence. Judges feel, in general, unprotected by the Council in its independence. The average score that the survey yields is, in this sense, very poor (2.7 out of 10). In addition, the longer a judge has been in the judicial profession, the more critical he or she is.

On the other hand, our judges believe that the Justice Administration needs to improve, as a priority, personnel training (20%) in the first place; in second place, increase the number of courts (19%); standing out in fifth place it needs to improve the public image and social appraisal (14%); and in ninth place, it needs more judges (10%).

A large part of female judges and magistrates (67%) state that their role as women does affect their professional activity. It's revealing that for every male who has requested a leave of absence to take care of children, ten females have requested it. It's reported that 31.8% of surveyed males explicitly admit that family burdens are a clear disadvantage for women in their options for professional promotion, an assessment that the majority of women affirm from the judicial profession (78.6%). This inequality based on sex is a reality shown by the fact that the great majority of management positions in the Judicial branch are in the hands of men, as we previously pointed out.

On other matters, 60% of judges believe that the habitual following of the media is not necessary or immaterial for their profession. Only 35% believe that it is necessary. This interest in following the media is more frequent in the 41-60 age bracket. Nonetheless, it matters to a majority of the judicial profession (75%), somewhat or a lot, that the media covers an issue under their jurisdiction. It's quite surprising that 22% of the judicial profession isn't worried about anything. An indifference more common among magistrates at the pinnacle of the Judicial branch (Supreme Court, National Court, and Superior Courts of Justice), and a greater preoccupation among those judges headed towards individual organs (first instance, hearing, penal and, especially, penitentiary surveillance, juvenile and domestic violence).

Finally, 22% of judges state they've had problems with the use in the courts of one of the two official languages, the Basque Country being the autonomous community where a greater percentage of judges say to have had difficulty. Conversely, Valencia, Galicia, and Catalonia are the regions where the greatest number of judges reports no linguistic problems.

Conclusions

1. Impermanence and uncertainty are the features that have characterized the Justice Administration in 2006. In the last quarter, the General Council of the Judiciary – appointed by Parliament in absolute majority by the PP- ended its five year mandate and its restructuring appears difficult and complex. Added to this, there is the prolonged provisional situation of the Ministry of Justice until the recent reshuffle by its previous head –PSOE candidate to the presidency of the government of the autonomous community of the Canary Islands-, and the important legislative reforms regarding the adaptation of the Judicial branch to the development of the State of autonomies, which is in parliamentary proceedings –but at a standstill for months- and with the risk that some could deteriorate in the final phase of the current term.
2. 2006 ends a detour of the government body of judges, which has been moving away from its genuine responsibilities and tasks in the arena of judicial policy, to become, because of its “informant activism”, a center of opinion and tension in partisan debates. And even in the strict arena of judicial policy, the message that repeatedly becomes apparent from the CGPJ (or more specifically from its conservative majority) is always the same: the reforms of the socialist government threaten the independence of the Judicial branch, as it moves towards the exploitation and politization of the Judicial branch.
3. The highly questioned reform of the Organic Law of Judicial Power regarding the appointments of high judicial posts has placed at the core of the Council a policy of consensus on the matter, that has prevented that those appointed be, in a wide majority of those presumed, conservative. At the same time, the new doctrine of the Supreme Court on the duty to motivate discretionary appointments that are of the plenary CGPJ might be considered a milestone, which will decisively contribute to the observance of constitutional principles of merit and ability.
4. The difficult restructuring of the CGPJ, taken up since November 7, 2006, and the extension to the CGPJ of the current climate of political tension established in our country have provoked many voices to demand the restructuring of the constitutional organs as normal and within the appropriate timeframe, thus preventing the accompanying exploitation of political situations and party strategies.
5. Regardless of the mentioned problems, the CGPJ has carried out a very important administrative task, that has been consolidating through time and that has enhanced the institution beyond our borders. The acceptance of powers on matters of selecting and training judges, international cooperation, or management of economic means has allowed our CGPJ model to be adopted by other countries when joining the democratic system.
6. Matters of political strategy mustn't be transferred over to the judicial level, nor should judicial matters be resolved in the political arena, as we run the risk of compromising jurisdictional labor. In this sense, it is not legally possible, nor politically advisable, to

demand of judges a role in the peace process (neither proactive or contributory, nor impeding).

7. Government initiatives of reform of the Organic Law of Judicial Power to adapt the organization and working of the Judicial branch and its government organs to the current shape of the Autonomous State, appearing in the State Pact of 2001 for the Reform of Justice, have run into a change in political strategy by the People's Party which, after the loss in the general elections in 2004 and from the drive of ambitious (and controversial) statute reform processes in some Autonomous Communities (namely Catalonia), has become comfortable in the role of sole defender of the unity of the "Spanish Nation". The CGPJ's alignment with the opposition's theories has been, in this regard, very marked.

8. Besides being a branch of the State, the Judicial branch is a public service and standards of quality can and ought to be demanded of it. This is the reason for which in 2006 legal and physical foundations of the new judicial office began to be laid down, which will allow changing from a 19th century organizational model to a more modern and efficient model, with a higher use of technology, namely, the judicial office of the 21st century.

9. While the need for bringing justice closer to citizens is a widely accepted objective, and included in electoral programs by all political forces, its exact organization remains controversial, without there being a pacific model of justice of proximity to date.

10. Despite the significant changes in the Spanish Justice Administration and in the profile of its judges throughout the last twenty-five years, the Judicial branch continues to have a negative image for a majority of citizens. The most widespread opinion among Spaniards, throughout these years, is that the Judicial branch of our country operates poorly, is slow, and not very accessible. This contrasts with the mostly positive opinion of our judges on the situation of the Justice Administration.

11. Concerning the CGPJ, conversely, there is agreement among citizens and judges on its critical assessment. The vast majority of Spaniards don't yet have a reasonably clear idea of its duties and responsibilities and judges feel, in general, unprotected by the Council in their independence.

ⁱ On the issue, see the works of Andrés Ibáñez, P., Rationalizing (and Moralizing) Appointment Policy, and by Martínez Alarcón, M.L., The Appointment of Supreme Court Magistrates, both published in number 52 (March 2005) of the magazine *Jueces para la Democracia. Información y debate* ("Judges for Democracy. Information and Debate").

ⁱⁱ See, likewise, the STS of November 27, 2006, which cancels the appointment of the President of the Labor Division of the Superior Court of Justice of Catalonia for lack of cause for the report of the Judicial Appointment Board (*Comisión de Calificación*).

ⁱⁱⁱ The issue also aroused concern in the administrative law doctrine. In this respect, see Bacigalupo, M., About the Motivation of Discretionary Acts Put Forward by Collegial Organs: Should Judicial Appointments by the General Council of the Judiciary be Discretionary?, *Revista Española de Derecho*

Administrativo (“*Spanish Magazine of Administrative Law*”), no. 107, 2000. And by the same author, Once More on the Motivation of Discretionary Appointments in the Judicial and Prosecuting Professions, *La Ley* (“*The Law*”), no. 5262 (March 7, 2001).

^{iv} Subsequent to the cited proceedings, the Plenary CGPJ, in its session on January 17, 2007, agreed once more –for the third time– on the appointment of D. Javier Gómez Bermúdez as President of the Criminal Court of the National Court. With that appointment, an incident of implementation has newly been promoted by a third contender to the post (a different contender than the one promoting the previous incident), to show that, once again, demands of motivation for the appointment have not been satisfied, because of how much the Judicial Appointment Board has only brought forth assessment of candidates’ merits included in the short list taken to the Plenary, but not of the other contenders to the post.

^v Some efficient mechanisms of training are, at a national level, one of the keys to quality justice and, as a result, to citizens’ trust in their justice. Public Trust in an Independent Judicial System in Europe. Speech given by Commissioner D. Franco Frattini before the General Assembly of European Network for Councils of the Judiciary. Wrocław May 25 and 26, 2006.

^{vi} Regarding this generally see Aguiar de Luque, L.; Prego de Oliver Tolivar, A.; Xiol Ríos, J.A. (2005), *La Justicia ante la reforma de los Estatutos de Autonomía* (“The Judicial Branch in view of the Reforms of the Statutes of Autonomy”). Madrid, Thomson/Aranzadi –The Center for Legal Studies of the Justice Administration (CEJAJ); General Council of the Judiciary (2005), *The Judicial Branch and the State Together: the Relationship Between the Supreme Court and the Superior Courts of Justice*. Madrid, *Manuales de Formación Continuada*, no. 27.

Likewise, it’s appropriate to refer to the works of Jimena Quesada, L. (2000), *The Principle of Unity of the Judicial Branch and its Regional Particulars*. Madrid, CEPC; López Guerra L. (2003), *The Judicial Branch in the State of Autonomies*. Madrid, In AAVV, *Constitution and the Judicial Branch*. XXXV Anniversary of the Spanish Constitution, CGPJ; Lucas Murrillo, P. (2000), *The Judicial Branch in the Autonomous State, Constitutional Theory and Reality*, no. 5; Martín Contreras, L., *The Judicial Branch and Autonomies*, *La Ley*, no. 6387 (from December 27, 2005).

^{vii} Aguiar de Luque, L., *The Judicial Branch and Reform of the Statutes of Autonomy*, in *La Justicia ante la reforma de los Estatutos de Autonomía* (“The Judicial Branch in view of the Reforms of the Statutes of Autonomy”), work cited, p. 31.

^{viii} Xiol Ríos, J.A., *The Judicial Branch and the Construction of the Autonomous State* in work cited, p. 92.

^{ix} As Aguiar de Luque points out, “such organs, as government organs of a State branch, the Judicial branch, must be considered equally national organs (...). This means that both the creation of these organs and the establishment of their legal regimen belong to the State and their organic position must be of organs hierarchically subordinate to the superior governing organ of the Judicial branch, that is, the CGPJ (...)”.

Work cited, p. 37.

^x Work cited, p. 90.

^{xi} Work cited, p. 91.

^{xii} Work cited, p. 50.

^{xiii} In this respect see Nieva Fenoll, J. (2006), *The Labor Reform of the Supreme Court and the Unification of Doctrine. Perspectives on the Introduction of the Anglosaxon Model in our Legal System*, *La Ley*, no. 6393 (from January 4, 2006).

^{xiv} Information obtained from the Report on the state, operation, and activities of the General Council of the Judiciary and the Courts for the year 2005, as well as on the work carried out by J.J. Toharia Cortés and J.J. García De La Cruz Herrero published by the CGPJ under the title *The Judicial Branch in the Mirror: 25 Years of Opinion Studies of the CGPJ*.

^{xv} In total, the Council has completed nine External Opinion Barometers, that is, assessment polls on judicial activity and the institution itself in reference to statistical samples representative of the national population, and six Internal Opinion Barometers, that is, polls referring to statistical samples representative of active judges and magistrates, with the first survey taken on all members of the judicial profession. The latter try to assess the internal opinion climate within the Judiciary.

^{xvi} Toharia Cortés J.J. and García de la Cruz Herrero J.J., *The Judicial Branch in the Mirror: 25 Years of Opinion Studies of the CGPJ*, work cited, p.XV.

^{xvii} External Opinion Barometer from the year 2005.

^{xviii} Internal Opinion Barometers from the years 1987, 1990, 1993, 1999, and 2003.

^{xix} To date, small sample surveys had been taken (the six Internal Opinion Barometers of the CGPJ).

Political Power – Economic Power

1. Introduction

“Power is simply the ability for one person or a group of people to reach their desired results, as opposed to those results sought by others”, write Linz and Stepan. These authors define this power as economic power if it is related to the production of goods and services in society, and as political power if it is related to ownership or distribution among citizens of that society. Agents exercising economic power are companies, unions, or consumers; while agents exercising political power are the government, congress, or judges, both at a national level and an international level. The need to analyze relationships between political power and economic power comes from the influence of the balance between the two on democracy. A country where economic power is much greater than political power would probably be a country where resulting economic inequalities would end up harming the principle of political equality which democracy is based on. While in a country where political power is much greater than economic power it would surely be a country where the absence of liberty and the distortion of the resulting incentives would economically impoverish its citizens and threaten democracy itself. Therefore, when the relationships between political and economic power are studied in a country one is measuring relative plots of control belonging to the State and the market.

This chapter’s conclusion is that relationships between political power and economic power in Spain have reduced their mutual interference and have increased in openness, thus contributing to an increase in the quality of democracy in Spain. The measures used to achieve this improvement and the objective information on which this conclusion is based are, however, are clouded by two events of broad repercussions in the media: the government’s performance in the takeover bids for Endesa and the urban development corruption cases. Both matters have contributed, without a doubt, to creating the public perception that the mutual interferences between political power and economic power in our country have increased throughout the last year, despite the fact that the remaining data appearing here points in the opposite direction.

2. The influence of political power over economic power

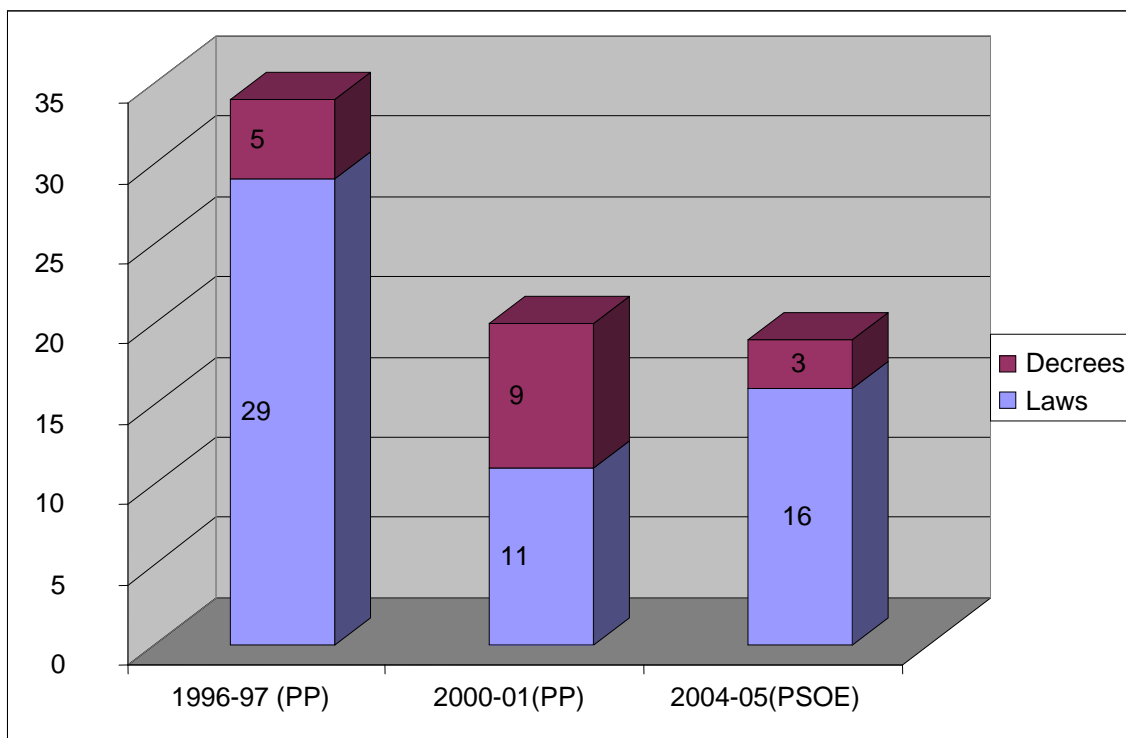
2.1. Changes in the normal setting

Traditionally, democratic governments concentrate their economic reforms in the first eighteen months of the corresponding term, with the aim that the desired results will occur before the next elections are held; this tendency depends on, in turn, the economic situation at all times. Thus, the first two years of the first two socialist terms in the eighties were characterized by multiple legislative changes in the economic arena, motivated by the restructuring of industry, the process of economic liberalization and opening-up, and the joining of the European Union (EU). However, throughout the PP’s

governments this activity was reduced, the need for reforms was less pressing, and thus the PP government concentrated on fulfilling Maastricht criteria (convergence criteria) and on completing the privatization of public sector companies that still held public capital.

The new socialist government of José Luis Rodríguez Zapatero maintained the continuist profile of the last PP government and developed moderate legislative activity in the economic sphere throughout the first phase of his term. As seen in Graph 1, the PSOE government (*Partido Socialista Obrero Español*) passed 16 laws and 3 decrees of economic content in the first 18 months in power between 2004 and 2006, while the PP passed 11 laws and 9 decrees in the same period of its second term, much lower than the 29 laws and 5 decrees from the beginning of its first term.

Graph 1. Laws and decrees of economic content in the first 18 months of term.



Source: Congress (www.congreso.es)

In general terms, one can affirm, therefore, that the normal setting where companies advance their activity in Spain did not vary substantially between 2005 and 2006. However, despite maintaining a moderate rhythm in the passage of economic legislation, there do seem to be significant results in areas pertaining to the business setting. Information offered by the World Bank is especially notable regarding the important reduction of administrative obstacles for businesses which occurred in Spain between 2005 and 2006 (see Table 1).

Table 1. Favourable development in business's bureaucratic costs

	2003	2005	2006
Days needed to start running a business	115	47	47
Minimum capital (per cápita income)	20	15,7	14,6
Days to register a business	29	25	17
Amount of processes to obtain licenses	15	12	11
Proceedings cost (per cápita income)	80,2	76,6	65,7
Difficulty to employ (index 0 - 100)	76	67	66
Inflexibility about work hours	88	80	60
Difficulty to sack (index 0 - 100)	65	50	50
Years to close a business	1,5	1,1	1

Source: Doing Business (2006). World Bank Group.

Likewise, some measures of greater significance passed by the socialist government during the first stretch of the term deserve to be mentioned separately, due to their long-term impact on the business arena. The three areas where government action directly modified the setting that businesses operate in between the end of 2004 and 2005 were the Dynamization Plan of the Spanish Economy, the National Allocation Plan, and the Code of Good Government. While the first concentrated fundamentally on activities that coming from the Administration itself could drive productivity and the economy, the latter two concentrated on modifying the regulatory framework under which businesses developed their activity, marking concrete limits of a productive and organic nature, respectively.

At the end of 2005, the government utilized the re-launching process of the Lisbon Strategy at a European level and grouped all of its economic policy under the National Reform Program, which since then guides all policies promoted by government ministries of the economic arena.

2.1.1. From the Dynamization Plan of the Spanish Economy to the National Reform Program. The Dynamization Plan of the Spanish Economy was presented in February of 2005 and it included 224 measures in different areas, fundamentally related to the improvement in market competition of goods and services and the drive in productivity. According to the balance sheet presented by Economic Vice President Pedro Solbes, after the first year of its application, the Plan meant the passage of a decree-law, four laws, twenty-four royal decrees, thirteen ministerial decrees, ten bills, and eight bill drafts.

The main objective of the Dynamization Plan was to reduce regulation and increase competition. Deregulatory policies affected different sectors, from the energy sector to the railroad sector, as well as the finance and audiovisual sectors. As we can see in Table 2, the government took initiative in all of these areas, with legislative measures of different magnitude.

Table 2. Desregulatory Policies in diferent areas.

	2004	2006
Energy		Creation of the Office Change of sumintraterCreación de la Oficina del Cambio de suministrador para romper la integración vertical
Electricity	Distribution and trade integrated	
	Topo de subida tarifaria: 2%	Tope eliminado
Gas	Calendario de supresión de tarifas: año 2011	Se adelanta la supresión de las tarifas por usos al año 2007
	No se contemplaba la supresión de tarifas	Eliminación de las tarifas a grandes consumidores (desde junio de 2005) Ley de Capital Riesgo y Reglamento de Instituciones de Inversión Colectiva
Financial Services	Regulación poco ágil	
Telecommunication/Audio-visual	Escasa competencia en telefonía móvil	Más competencia en telefonía móvil (Operadores Móviles Virtuales)
	Apagón analógico 2012	Adelantado a 2010
Post Services	Exención del IVA a Correos (ventaja frente a competidores)	Fin de la exención
Port Services	Limitaciones a la competencia de operadores privados por problemas de acceso a la red	Libertad de acceso de los operadores privados a la red pública
Rail Services	Tasas complicadas y sin ninguna flexibilidad entre puertos	Simplificación de las tasas y cierta flexibilidad
	Operador único (RENFE) para pasajeros y mercancías	Liberalización del transporte de mercancías desde el 1 de enero de 2005 (RENFE + operadores privados)
Funeral parlor	Segmentación del mercado por la habilitación territorial (licencia por territorio)	Unificación del mercado mediante la habilitación nacional (licencia para toda España)

Source: President Economic Office(2006a).

Among all those measures to reduce regulation those aimed at introducing greater competition and protection of market users in telecommunication markets stand out. Regarding this, this government completed the liberalization of Internet services through broadband, telephone information, cables, and prices of landlines. Likewise, the National Telecommunications Commission (CNT) defined a new setting for operators of virtual

cellular phones, and the Customer Service Office of Telecommunications was established.

In the audiovisual sector the government developed a new legal framework: it started Terrestrial Digital Television (TDT) and tackled the restructuring of Spanish Radiotelevision (RTVE). This process was guided by the search for more competition in the sector and greater plurality. In fact, licenses for a new national analog channel were granted, twenty new national digital channels, eight autonomous digital channels, and four local digital channels (up to eight in big cities). The Dynamization Plan also tackled the task of improving distribution markets of goods and services.

At the end of 2005, the government specified its objectives for economic policy for 2010, which was unprecedented. To do so, it published a comprehensive diagnostic of the Spanish economy and established a medium-term strategy around the six focal points of action of the National Reform Program (PNR) that was sent to Brusselsⁱ. A year later, in October of 2006, the Executive gave an account of the progression made in this Program, which meant an exercise in answering that until then was not customaryⁱⁱ.

According to the balance sheet for the first year, the PNR included 310 measures of economic, social, and environmental policy, of which 160 were already passed in the first year it was in effect (52%), another 211 measures (39%) were in the process of legislative advancement and the rest (9%) under study. The progress in the two big objectives was significant, and it's likely that they are reached before 2010. The full convergence of per capita income was very close (it had already reached 98.8%), and the employment rate was at 64.7% (very close to the 66% established as the objective). However, the government had to publicly recognize that no progress had occurred in the increase of productivity, a fundamental objective to carry out the change in model for economic growth that had been proposed.

Achievements in the partial objectives of each focal point of the PNR were also significant. For example, in the first focal point, aimed at budgetary stability, the goal of reducing the debt to 34% of the Gross Domestic Product (GDP) was achieved in half the foreseen time. The two main programs of the second focal point, the Strategic Plan for Infrastructure and Transportation (PEIT) and the Water Program, were carried out at 13% and 29%, respectively. Information from the third focal point showed progress in the schooling of 0 to 3 year olds and in continuing education, and a reduction in the dropout rate. In the balance sheet for the first year of the fourth focal point aimed at R&D (Scientific Research, Development, and Technological Innovation), the programs of Ingenio 2010 (CÉNIT, Consolider, and Avanza) were brought up to date and achievements stood out in the increase of available resources (budgetary increases above 25% each year), and in the gauges of scientific production (with a 21% increase), technological production (with a 40% increase), and information society for homes and businesses (with average increases of 50%).

Regarding the fifth focal point, the Dynamization Plan of the Spanish Economy was carried out 85% in its first year, significantly advancing the liberalization of the

telecommunication, gas, and electricity markets (with consumption increases in the liberalized gas and electricity markets of 83% and 40%, respectively). Achievements of the sixth focal point were clear, as a result of the multiple agreements of social dialogue for the reform of the labor market, the Dependency Law, and pension reforms, among others. Finally, the Plan for Business Development was begun in 2006 with the star measure of lowering business taxes by five points, beginning in 2007, though the first results regarding the creation of businesses are far from the established objective.

Finally, and in line with the effort to make justification a fundamental focal point of economic policy, the government used the PNR to fulfill the electoral promise to get rid of the “statistical blackout”. The results in terms of increasing statistical openness were very quick, as Table 3 demonstrates.

Table 3. Data Transparency Increase

	2003	2006
Sales, employment and salaries	Non available	Monthly available (www.aeat.es)
Unemployment registered and affiliation to Social Security	Indeterminate date	Concrete calendar (www.mtas.es)
Foreing affaires (Customs)	Indeterminate date	Concrete calendar
Autonomic Financing System Settlement	Spreading behind Schedule (only as paper format)	More details (www.meh.es)
Employment histories samples	Non available	Available: Social Security data
Income Tax samples	Non available	Available in IEF (Institute of Fiscal Studies)

Source: Presidential Economic Office (2006a)

2.1.2. The National Plan for the Allocation of Emission Allowances. When the new government took over, it had to urgently meet the requirements that came from the commitment to comply with the Kyoto Protocol, and that had been proposed by the previous Executive. In 2002 (a reference year for corresponding calculations) Spain had amassed a CO2 emissions increase of 39%, way over the 15% initially agreed on, and in clear contrast with the 2.9% reduction in EU emissions. The increase of emissions in Spain grew rapidly beginning in 1996 and it continued throughout the economy’s cyclical peak, which still continues. Sectors where emissions increase the most were the energy sector (44%) and the transportation sector (60%). Others, like the cement, ceramic, and paper sectors also registered considerable increases. The National Plan for the Allocation of Emission Allowances especially emphasized emission reduction in the iron and steel sector, refining, cement, whitewash, the ceramic industry, and the paste, paper and cardboard sectors (leaving out for the time being the transportation sector). In reality, the Plan froze emissions in the affected sectors at levels for the 2000-2002 period, with a

small increase of 3.5% allowed, aimed at increases in capacity and incomes for the 2005-2007 period.

Such constrictions are forcing businesses in the affected sectors to take on polluting emissions as fixed costs themselves that before were not counted, and it's forcing the investment in cleaner production technologies, production technologies that they would otherwise not turn to because of the implied costs.

According to some theorists this is one of the fundamental tasks of democratic governments: regulating the activities of economic powers which in free competition create negative external effects for citizens (in the form of pollution, in this case), due to the lack of incentives to integrate community well-being into its production considerations. Regarding such, both the National Plan for the Allocation of Emission Allowances and the Renewable Energy and Energy Efficiency Plan have meant decisive steps in that direction, from the socialist government.

2.1.3. The Code of Good Corporate Governance. The other issue which most mobilized the business sector against the Executive's legislative activity during the current term was the introduction of the Code unified with the Good Corporate Governance, on January 16, 2006. This code started as an updating of the Olivencia and Aldama Codes, passed during the PP's time, in order to incorporate the new recommendations created on this subject by the European Commission and the Organization for Economic Cooperation and Development (OCDE).

The initial draft held 74 recommendations, which ended up as 58 after the declaration period. In total 80 statements were presented, among them those of a group of 27 large businesses, among them 22 from Ibex 35 (some as important as BSCH, BBVA, Telefónica, Repsol-YPF, or PRISA)ⁱⁱⁱ. The direct reaction of the bigger companies of the country in the banking, energy, telecommunication, and construction sectors brought even the Spanish Confederation of Business Organizations (CEOE), management leaders, to offer themselves to draft a text gathering a majority consensus.

The initial proposal had been written by a group of experts appointed by the National Securities Market Commission (CNMV) (3), and it included as the most controversial issues the regulation of the figure of the independent director, among those that must be named by a vice-president that oversees the activities of the head executive defending stockholders' interests. Likewise, it recommended a greater female presence in the board of directors (up to 40%), it reduced the size of those boards, regulated the minimum of meetings that they must have each year, recommended the publication of salaries and contracts of the directors, and tightened control over relationships between umbrella companies and their subsidiaries listed on the stock exchange.

The definitive passage of the text was delayed two months, until May of 2006, due to the avalanche of statements. Among the modifications to the bill the following were included: the text's language was softened (the imperative was changed to the subjunctive), the recommendation that subsidiaries of listed companies also appear on the stock exchange was eliminated, as well as the recommendation that directors named by headquarters not be majority in the subsidiary companies. Also the minimum of eight meetings a year for the board of directors was taken out, and the controversial petition for an independent vice-president to counter balance the executive president was eliminated.

Finally, it was allowed that directors' salaries do not have to be published separately, but they can be published in the annual report.

The text, which will take effect in 2008, maintains some other points that have also provoked great controversy, specifically the established conditions for a director to be considered independent. Also the recommendation that the number of executive directors be the bare minimum is kept, and it is stressed that directors make up at least a third of the board of directors. Finally, the document is clearly linked to policies of equality, and it makes an appeal for gender diversity in the listed companies, affirming that "not making the most of the potential business talent of 51% of the population cannot be economically rational in the collection of big business of our country."

What's important in this controversy for this chapter isn't so much the content itself but rejection of economic power in the face of what was considered a clear interference of political power in the most private arena of decision-making, that is, the governing structure of the businesses themselves. Because of this, the businesses branded the Code as "interventionist", "regulatory", and "restrictor of free enterprise".

The text's editors stated their intention was to favor good governance through accountability and through the defense of small stockholders. The latter is especially notable, since it is an example of political power invading the autonomy of economic power under the pretext of protecting the rights of a group of stockholders, minority due to the capital they represent, but very numerous in terms of the affected population. In many cases they are citizens who bought shares in public companies that were privatized in the last decade in Spain.

2.2. Policy in business appointments

One of the most direct forms of political interference in the business world occurs through influence in the appointments of directors and presidents of the biggest companies of a country. Though formally political power does not have the capacity to influence those appointments in the private sector, as they depend on the majority stockholders of each company, the amount of influence is greater when the State retains some kind of shareholding or has only recently withdrawn.

Throughout the eighties, appointments in public companies were of a partisan nature in all instances, as the socialist government considered those appointments to be another tool for economic policy, where companies still in the public sector always played a prominent role. In the same vein, those appointments also formed part of an effort to counteract the strong conservatism of the post-Franco business elite in the private sector.

The controversy regarding political interference in business appointments arose during the privatization process of public sector companies, throughout the decade of the nineties, especially during the PP's second term. The PSOE, then the opposition, requested the congressional subpoena of nine presidents of privatized public sector companies in October of 2002, in order to see diverse controversial aspects related to the affinity among management of those companies (already privatized) and the PP government^{iv}. And as a response to what was branded PP government interventionism in business management, the PSOE included as an electoral promise in the 2004 elections the most complete respect for business decisions.

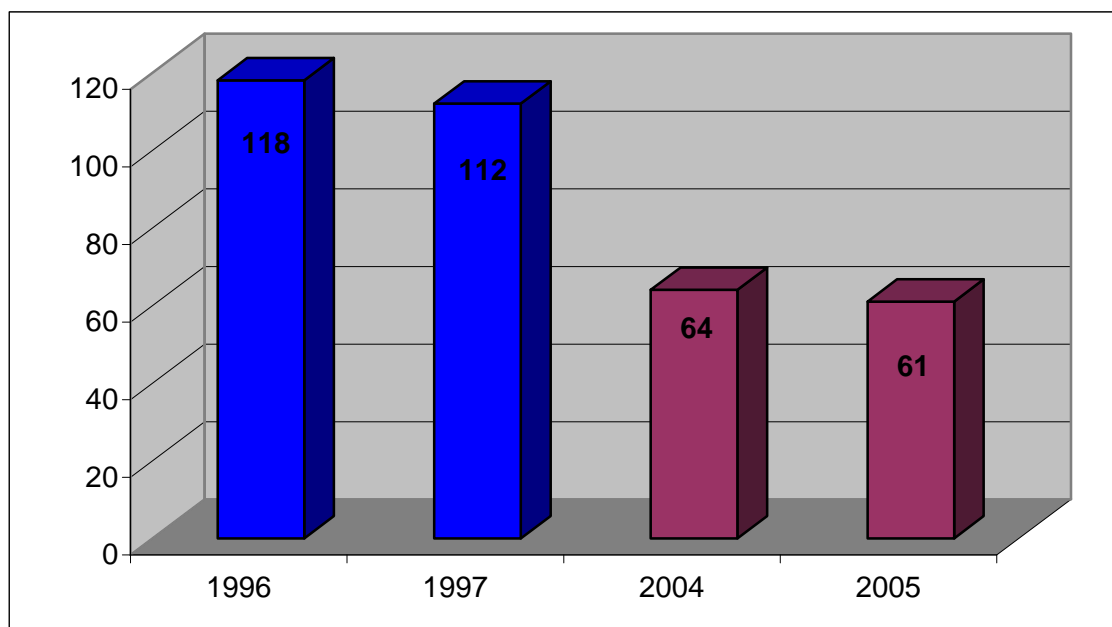
During the two years of socialist government, all the presidents of the large privatized companies appointed during the PP's years remained in their posts (see Table 4). In the same way, changes in business directors of Ibx 35 were cut in half during the first eighteen months of socialist government, relative to the same period of the previous term (see Graph 2).

Table 4. Changes about Big Companies Head at the beginnings of the term.

1 st term PP		1 st term PSOE	
Company	Date	Company	Date
Argentaria	17/05/1996	Repsol	01/10/2005
Repsol	06/06/1996		
Telefónica	07/06/1996		
Tabacalera	10/06/1996		
Iberia	24/06/1996		
Aldeasa	11/07/1996		
Cajamadrid	11/09/1996		
Endesa	08/02/1997		
Aceralia	19/11/1997		
Ebro	04/03/1999		

Source: Presidential Economic Office (2006a)

Graph 2. New Managing Director Appointment in Ibx 35 companies.



Source: own production from CNMV.

The exceptions were the dismissal of Alberto Cortina in favor of Antonio Brufau in Repsol-YPF, and of Pablo Isla in favor of Jean Dominique Comolli and Antonio Vázquez in Altadis. While the dismissal in Altadis went unnoticed, the Repsol-YPF dismissal aroused rumors that the government might have supported the operation, when being replaced by an executive from the setting of La Caixa, at once close to the Minister of Industry, José Montilla, and the tripartite governing in Catalonia at that time.

The reality of government interference in business appointments has been, therefore, quite a bit less in the first two years of the current term than during the past term.

Actually, there was only controversy in one case that didn't come to fruition. In that case, the government denied the interference that the political opposition and the affected business blamed on it, despite the vast data implicating it appearing in the media and difficult to refute. This case erupted on November 29, 2004, when the construction company Sacyr-Vallehermoso announced its intention to take over between 3% and 5% of the BBVA's capital, in order to become the majority stockholder of the bank. The operation was estimated at 1.950 billion euros^v, and it would grant to the construction company three of the fifteen posts in the bank's board of directors, and a majority opposition that would have easily been able to force the substitution of the president, Francisco González^{vi}.

The government's involvement was attributed to its interest in finding a more collaborative attitude in BBVA, like what was found in other financial institutions. The supposed involvement of the President's Office of Economy in the operation through its holder, Miguel Sebastián, and the interest of the economy vice-presidency in a resolution based on an agreement between both companies^{vii} gave rise to the opposition requesting the subpoena of Solbes and Sebastián in Congress and the Senate (Sebastián had been the director of Study Services at the bank, from which he left in the middle of a great controversy: he said that his departure had been caused by pressure from Rodrigo Rato on the president of BBVA, due to the critical analysis made there, which both Francisco González and Rato himself always denied).

The matter was further politicized when at the end of January 2005, with the deal still open, the CNMV opened an investigation into the operations of FG Valores, a company that the president of BBVA directed in 1995. The situation got to the point that the two vice-presidents of the government, María Teresa Fernández de la Vega and Pedro Solbes, were forced to deny the Executive's interest in the operation, highlighting the government's scrupulous respect for business decisions. The issue was diluted when Sacyr-Vallehermoso announced mid-February of 2005 that it was withdrawing from the operation "because it had excessively politicized", which came to be the logical answer to the direct rejection declared by the Council of BBVA, the Banco de España, and the market, which systematically punished the assessment of the construction company^{viii}, until it gave up its attempt and sold all the stock the bank had accumulated.

2.3. Interventionism in business transactions

Probably the most important political interventions of all those possible in business activities occur in the acquisition and/or merger process. This kind of political intervention means an even greater interference in the market than the interference of

appointments, insofar as it not only involves the managerial team of the affected company, but this interference is crucial in defining the structure of the whole sector in question. For that same reason, political intervention in this kind of business activity is usually justified by virtue of any government's obligation to safeguard the interests of its consumers, when this kind of activity affects entire sectors. Sometimes that intervention is to guarantee competition, other times to secure minimum services in strategic sectors, and on other occasions it is justified in the maintenance of the Spanishness of the capital of the company that is going to be acquired. In all cases, these interventions provoke great political clash between the involved parties.

If there exists a gauge that measures political interference in business activities, it is that of transactions that authorities paralyze in the sector where the acquisition or merger occurs. In a country where appointments of the directors of regulating organs are very partisan, as is the case with Spain, the number of failed transactions is a clear gauge of the degree of governmental intervention in business activities^{ix}. According to this gauge, there were obstructions both with PP governments and the socialist governments, though the PP governments were more actively obstructing business transactions of mergers and/or acquisition throughout its last term than the current socialist government. By what is shown in Table 5, in just two years (between 1999 and 2001) the PP government paralyzed five business transactions^x of merger/acquisition, as opposed to the approval of two with conditions of the current socialist government (between 2004 and 2006).

Table 5. Unsuccessful transaction since 8 years ago.

PP 2 nd term		PSOE 1 st term	
Company	Date	Company	Date
Gas Natural/Iberdrola	2003	Telefónica/Iberbanda	2005*
Iberdrola/Berruela	2001	*approved after changes	
Unión Fenosa/Hidrocantábrico	2000		
Salcai/UNINSA	2000		
Endesa/Iberdrola	2000		
Endesa/Gas Natural	1999		
PP Total	6	PSOE Total	1

Source: Presidential Economic Office. (2006a), Where are liberals in Spain? Conference of Miguel Sebastián of Summer Courses opening "El Escorial de la Universidad Complutense de Madrid (UCM)" Homege to Rafael Termes. El Escorial, Madrid, 17th June of 2006.

This quantitative data is not meaningful enough itself to rate the government intervention that occurred in the reorganization process of the energy sector in Spain, particularly in the takeover bids for Endesa, of great shrillness in the business world and in public opinion, and that has ruined to a large degree the credibility of the intentions appearing in the socialist electoral platform of broadening economic liberty with regard to the previous period.

2.3.1. Gas Natural's takeover bids for Endesa. The entire controversy was sparked on September 5, 2005. That day Gas Natural launched a takeover bid for all the capital of Endesa, a company doubling it in size in terms of stock market capitalization, offering its stockholders with 22.5 euros per share, as opposed to the 18 euros they were valued at during that time.

Gas Natural's offer, whose largest shareholder is La Caixa, rose to a total of 22.5 billion euros, and the transaction included the commitment to sell to Iberdrola (direct competitor to Endesa, and which Gas Natural had tried to take over in 2003) the assets that the resulting company had to disinvest in order to comply with the minimum requirements of competition in the energy market. Gas Natural's takeover bid for Endesa was approved on November 8 by the National Energy Commission (thanks to Maite Costa's decisive vote, president of the organ, appointed by the government and former socialist Representative), and two months later, the Spanish Antitrust Court, with the majority of its members conservative, recommended refusing the transaction (in this case with an individual vote in favor by its president, Luis Berenguer, also in common with the government). At that time, the European Commission had already indicated on November 15 that the issue was a matter of national dimension and that the decision on the transaction belonged to Spanish authorities^{xi}.

In light of both reports, on February 3 of 2006 the cabinet gave a green light to the transaction, establishing a list of requirements that Gas Natural had to comply with to ensure respect for antitrust laws. The period passed between September of 2005 and February of 2006 was the period of greatest politization of the transaction. Coinciding with the debate over the Catalan Statute, the PP opposition made a three-way identification with the Catalan tripartite, its representative in the central government (then Minister of Industry, José Montilla) and La Caixa.

In this way, the opposition drew a scene of submission of the government to Catalan interests, in such a way that the price Zapatero's government paid for keeping socialist in the governments of Madrid and Barcelona had a political face (the Statute), an economic face (support for Gas Natural's takeover bid for Endesa)^{xii} and even a European face (the relaxing of the Spanish stance in the negotiation of financial perspectives for the European Commission's disqualification in the matter). To give logic to such a over-elaborate argument, the opposition mixed the minister's interests in the transaction with a supposed cancellation of debt incurred by his party with La Caixa^{xiii}.

These accusations of interventionism in the energy sector were similar to those accusations the socialist opposition leveled against the PP government's performance during Gas Natural's takeover bid for Iberdrola in 2003^{xiv}. Just like the PP's accusations against Minister Montilla and the supposed favors he received from La Caixa, the accusations were very reminiscent of the insinuations the socialists made in their day regarding the supposed favor that the HSBC (bank of Gescartera) had made to the businesses of the Rato family in 2001.

With the cabinet's decision to approve the transaction on February 5, 2006, the politization of the takeover bid would have been in the partisan confrontational strategies mentioned before, had it not been for the Europeanization (first) and the judicialization (second) of the process.

2.3.2. E.ON's takeover bid for Endesa. This second phase of Europeanization and judicialization of the conflict began on Tuesday, February 21, when E.ON's president, Wulf Bernotat, presented a new takeover bid for Endesa in the Hotel Palace of Madrid. On this occasion the offer was for a much higher price than stock prices at that time, that was around twenty-six euros, adding up to an offer of 30 billion euros in cash^{xv}.

The government's reaction was immediate: not only did it meet with the German company to show its rejection of the transaction because of matters of national interest and reciprocity^{xvi}, but at the next cabinet meeting held on February 24th it used the approval of a package of measures liberalizing the electric sector^{xvii} to expand the powers of the National Energy Commission (CNE) and allow the supervision of the German offer in all respects (both matters of jurisdiction and energy security)^{xviii}.

The European Commission's reaction was immediate, through the Competition Commissioner, Neelie Kroes, and the Internal Market Commissioner, Charlie McGreevy. The European Commission first warned the government that it couldn't make unilateral decisions without consulting the European Commission, and as a consequence of the Royal Decree broadening the powers of the CNE, the Commission requested explanations of the government (March 13, 2006), notified it that the transaction had European magnitude and, therefore, fell under its jurisdiction (March 27), granted powers to Kroes to intervene if the CNE blocked E.ON's offer (April 7); it opened infraction proceedings (May 3) considering the government's action to have blocked the interior market and violating article 149 of the EU Treaty^{xix}; finally, the European Commission declared illegal eighteen of the nineteen conditions imposed on E.ON by the CNE in order to approve their offer for Endesa^{xx}, and labeled the Decree expanding the CNE's powers as opposed to the Community law^{xxi}.

Similarly to the Europeanization of the takeover bid resulting from the German offer, the matter became more complicated with its judicialization in Spain, responding to different appeals presented months before by Endesa. On Tuesday, March 21, the judge for the Spanish Commercial Court n^o3 of Madrid, Miriam Iglesias, ruled to paralyze the takeover bid as a precaution, until verifying whether Gas Natural and Iberdrola had taken part in a collusionary pact to push Endesa out of the market. And finally, on April 21 the Supreme Court decided to overturn as a precautionary measure the cabinet's approval of the takeover bid.

The judicialization of the process at a national level and the strong reaction by the European Commission that threatened to judicialize the process at a community level made the government change its stance. And the change of Minister of Industry facilitated the public presentation of the new governmental stance when returning from summer in 2006^{xxii}. On top of that was added the German government's pressure, which far from withdrawing from a presumably business only process, bilaterally negotiated with the Spanish government to be sure of the relaxing of the conditions passed by the CNE so the E.ON could finally take over the Spanish energy company. The agreement between the two governments (not stated explicitly so the European Commission did not accuse them of interfering in a matter with community scope) clearly revealed the political dimension that the matter had taken on for both countries since the beginning^{xxiii}.

As a result of that change in position, the Ministry of Industry substantially reduced the nineteen initial conditions imposed by the CNE on November 3 (see Annex

2). While this change in attitude satisfied the German company E.ON, it wasn't enough to prevent the European Commission from confirming on November 29th its stance of declaring illegal all the modified conditions, as it had already declared on August 25 regarding eighteen of the nineteen initial conditions. In view of the government's refusal to withdraw the modified conditions, the European Commission on January 24, 2007 denounced Spanish authorities before the European Court deeming that the expansion of powers of the CNE violated the Community law regarding the right to establish and freely circulate capital, and "went beyond what was necessary to guarantee the minimum supply of essential energy products and services". Likewise, it opened another independent infraction inquiry that would also end up in the European Court of Justice in Luxembourg, in view of the government's refusal to withdraw the modified conditions of E.ON's entry.

Another issue of this transaction was the irruption of Acciona in Endesa's capital, which on September, 2006, presented an offer for 15% of its capital at 32 euros a share and with the intention of taking over up to 25% of Endesa (the legal limit after which a company must make an offer for 100%). E.ON's reaction was immediate: in 24 hours they upped their offer to 35 euros a share and showed their willingness to negotiate with the Spanish shareholders^{xxiv}. Despite those initial intentions, E.ON sued Acciona on October 10, 2006, before the Securities Exchange Commission (SEC) of the U.S., accusing it of entering into Endesa's capital with the intention of blocking the takeover already underway and based on "undeclared compensations and interests with third-parties". Acciona reacted on January 21, 2007, with a similar suit before the CNMV in Spain for the alleged transfer of privileged information from Endesa to E.ON.

The reactions of the government and the opposition seemed to indicate that the activities of the national construction companies in the energy market have a background that is more business than political^{xxv}, though the government hesitated with the possibility of modifying existing legislation to favor those transactions centered on national capital, with the argument of not discriminating against Spanish businesses that wanted to build large energy groups, regarding the ability that European businesses enjoy who come to our country to carry out those acquisitions^{xxvi}.

[The end of the story for the energy takeover bids will be the subject of study for future reports, as at the close of this volume the legal battle was just beginning at the European level between the government and the Commission, as the legal mess was being cleared up at a national level, when on January 15 of 2007 the Supreme Court decided to lift the preventative measures that had paralyzed the takeover bid of Gas Natural at the end of April. This measure allowed the CNMV to announce February 2nd as the date when Gas Natural and E.ON would be able to present new confidential offers for Endesa, which will be the start to the resolution of the takeover bid, in its business dimension].

In light of all the information put forward throughout this section, it's possible to affirm that the government's involvement in this matter was obvious, despite erratic attempts to deny it. With the exception of the meeting between the president of the government and leaders of La Caixa and Gas Natural, the objective evidence of the supposed government interest in the transaction was scarce throughout the first few

months of Gas Natural's offer for Endesa (despite the opposition's insistence in mounting a conspiracy connected to the Catalan Statute). However, that involvement became clear when the government became involved at the highest level in demonstrating to E.ON its rejection of the transaction on the same day that offer occurred. The unusual meeting between the government and E.ON representatives the same afternoon the takeover bid was announced, the subsequent public declarations by the government^{xxvii}, the ad hoc legislative change (broadening the CNE's powers), and government pressure on the strengthened CNE to hamper the operation became signs that were too powerful for the government's non-intervention stance in the takeover of Endesa to maintain all credibility.

Just because the government's intervention has been very clear doesn't mean a priori that it has been without justification. Let's look at the positions:

- The government maintained its intervention on two clear premises: the first is irrefutable: when there is not yet a sole energy market in Europe, applying liberty of business establishment and free mobility of capital established by EU treaties may cause situations of abuse of power and supply risks which no government can ignore. The second premise is based on the possible so-called "effect" that an easy acquisition of one of our big "national champions" (small in European scale) might have on other Spanish businesses. The fear that big businesses with national capital might be easily acquired by other bigger European businesses, in an accelerated context of trans-European mergers, justified to a large extent the government position during different phases of the process.
- For the PP, the government's intervention was due to its pact with parliamentary partners of the Catalan tripartite, and the erratic management of the issue at the European level demonstrated the weakness of the government's foreign policy, and the contradiction between its apparently liberal discourse and its interventionist policy.
- Other analysts believe, for the most part, that the conditions imposed by the government to assure supply and for reasons of national security were justified, but under no circumstance was the government position based on the doctrine of the "national champions" justifiable, much less the ad hoc legislation or the hasty political reactions the government exhibited throughout many phases of the process.
- Finally, the European Commission turned the case of E.ON's takeover bid for Endesa into a fundamental political matter to strengthen its effort to complete the domestic market. From the freedom of establishment and free circulation of capital established in the foundational Treaties, the Commission intended to force the member states towards Europeanization of energy policy, convinced that this will be the only way out when each country realizes that it cannot hinder these actions alone. The opinion of the Commission is that the Europeanization of the energy market is the only solution to get the necessary reciprocity among different countries allowing the resolution of matters regarding the security of national supply which are resolved in the current context when merger and acquisition transactions occur at a European scale.

3. Economic power's influence on political power

The influence that economic power can exercise over political power in a democratic system is determined by the degree of pressure that economic and social agents exercise over the context in which the government advances its policies, by the direct contributions they make to political parties that are in government or who aspire to be, and by the collaboration they offer to the government to set the government's key bills in motion during each term.

The most destabilizing element for a government and, therefore, what makes it more easily influenced, is conflict in the labor market. To avoid or minimize potential conflict in the labor market, governments formulate mechanisms for dialogue and coordination among employers, unions, and the government itself. At those times when coordination and consensus are most desired (normally coinciding with minority governments), social dialogue spreads to other areas of economic and social policy, beyond the labor market.

3.1. Labor relations and social dialogue

Spain has a long tradition of negotiation and social dialogue extending throughout the entire democratic period. This tradition has gone beyond the strict representation of interlocutors at all times, since it has occurred equally with minority and majority governments, in a context where union affiliation was progressively decreasing, business affiliation was maintained, although it was fragmenting, but where the ability for dialogue remained almost immutable between parties throughout the last thirty years.

Social dialogue during the eighties was clearly marked by two different stages, one of collaboration and reform and another of intense conflict between the government and unions, separated by the general strike of 1988.

Throughout the PP's terms, the government reached an agreement between autonomous communities to reform the labor market in 1997, reinstating the tripartite dialogue that had broken down in the previous reforms (1988 and 1994). However, once again, conflict with the unions arose in 2001, because of the labor reform bill that the PP did not reach a consensus on with the unions, giving rise to large mobilizations and the final withdrawal of the bill. While during the PP's first term only agreements among autonomous communities could be reached (without the presence of the Executive), during the first term of the new socialist government the first tripartite agreement was reached in twenty-two years (since 1984).

To reach the 2006 agreement the government ruled out the possibility of a labor reform on its own, if the past failed. That effort to make any labor reform conditional on the agreement between parties is a clear example of the tendency of minority governments towards "democracy by consensus" (Lijphart, 1999), as opposed to the majority model of democracy typical of governments in power on absolute majorities. The search for agreement at all costs by Rodríguez Zapatero's office was based on the conviction that without that commitment accepted by all parties the application of any new legislation would always be very hard. That difficulty would have increased in a situation like the current one, where the Spanish economy creates jobs at a steady pace and keeps flexibility through temporality in a markedly dual market.

The government decided, therefore, to call on interlocutors to advance with partial agreements at the different tables of social dialogue that were set in motion (dependency, social security, on-going education, and the prevention of labor risks), and it let the more prickly matters of the labor market table come to fruition. Social dialogue for labor reform had important stops, associated with the elections of the CEOE and the UGT, with the formation of a unique stance at the core of the cabinet, with matters of general policy (the Statute), or with the sole decision not shared by employers that the government adopted, regarding the Law of Equality. Throughout the entire period, however, fifteen agreements were signed, prominent among them being the advancement of immigration law, the extension of collective agreements, the out-of-court solution of conflicts, continuous education, prevention of labor risks, improvement of agrarian unemployment protection, and the impetus to the National System for Dependency.

This strategy of advancement through continuous dialogue and the signing of partial agreements at parallel tables increased pressure on unions and employers to reach an agreement on the labor market. This pressure made parties abandon their extremist positions (for unions focused on the elimination of subcontracting and for employers focused on the reduction of layoff costs) and accept a smaller focus that allowed agreement. The government abandoned its hopes to reach a significant agreement that would make later reforms unnecessary^{xxviii}, and focused decidedly on placing necessary budgetary incentives on the table to reach the agreement between the parties.

Thus, the final agreement was “the possible agreement”, in the words of Labor Minister, Jesús Caldera. Fundamentally, the reform put in motion a system hindering the tying down of temporary contracts and establishing, on the whole, that each worker that has signed two or more temporary contracts with the same company and accumulates an active period in the same post of twenty-four months (within a period of thirty) will acquire automatically by law, an indefinite contract. As a transitional period, the agreement considered employers turning temporary contracts into fixed contracts able to benefit until December 31st from bonuses in unemployment contributions, and able to use the modality of indefinite contracts allowing less severance pay (thirty-three days for one year working). From that moment on, employers would only be able to benefit from reductions in unemployment contributions per indefinite worker up to half a percentage point.

The labor agreement followed, just a month later, a new tripartite commitment to reform pensions. Again a minimal reform, but one that allowed the 100 percent successful closure all the social dialogue tables and had been opened two years before.

The result of all these agreements was the important reduction in the number of strikes during the first year of the socialist government (see Table 6).

Table 6. Strikes and Lockouts in Spain.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total	830	744	632	749	750	737	688	678	708	685
Agriculture, livestock	17	8	7	6	4	5	15	3	14	13
Fishing	4	1	1	0	3	1	0	2	0	1
Mining Industry	101	106	57	64	45	38	16	17	14	19
Manufactures	362	319	274	237	299	319	252	326	303	297

Gas, electricity, water	10	2	3	11	3	10	12	3	6	8
Building industry	56	47	35	12	36	30	11	5	9	12
Wholesale/ Retail trade	28	35	22	18	26	16	16	21	18	12
Hotels and restaurants	22	11	19	15	11	9	16	9	8	14
Transports and communications	72	76	81	106	100	111	135	102	112	100
Financial Brokers	2	2	4	14	3	5	3	3	5	4
Property agencies, <i>renting</i> & business	24	25	21	38	39	40	56	38	38	34
Home Office and Defense	33	31	16	26	48	23	20	25	63	52
Education	18	22	25	29	45	28	29	16	19	18
Health & Social Work	20	17	18	126	35	50	48	47	50	65
Other services	57	38	40	42	47	41	52	59	47	36
House workers	0	0	1	1	0	6	0	0	0	0
Others Strikes	4	4	8	4	6	5	7	2	2	0

Source: International Labour Organization (*Yearbook of Labour Statistics*, 2006).

3.2. Political decisions and economic considerations

3.2.1. Financing of political parties. Business contributions to the financing of political parties is probably one of the most direct sources of influence over the political power that economic power has at its disposal. Because of this, existing legislation (Law on the Funding of Political Parties of 1987) is explicit when determining what kind of private contributions are legal or not and how the finances of political formations should be organized.

The criteria of the Law on the Funding of Political Parties for private financing and the publicity of the donations are as follows: in general parties must:

- a) Maintain detailed accounting registries, that allow at all times their financial situation to be known and their compliance with legal obligations.
- b) Plan a system of internal control that guarantees appropriate intervention and accounting of all acts and documents from which economic rights and obligations are derived from, according to the statutes.
- c) Donations to electoral accounts may not be anonymous, especially if the total amount in an annual economic report goes over 5% of the amount ascribed in the General State Budget (PGE) for that party.
- d) Funds from any public administration or corporation cannot be contributed to electoral accounts.
- e) Also prohibited are contributions coming from public businesses or businesses that, through existing contracts, offer services or carry out work for a public Administration.
- f) Finally, no individual may contribute more than 6,000 euros to a party's funds in an electoral year. Outside of that period, the limit is 60,000 euros.

Despite all these restrictions, the possible influence of economic power over political power through the financing of political parties is exercised fundamentally through the figures allowed by law, or through the granting of loans with advantageous conditions^{xxix}.

Given these restrictions, private funding of political parties in Spain is limited, compared to other countries. Regrettably, data to objectively analyze this matter is scarce and it is made public three years after the fact, which is a bad sign of democratic transparency.

According to the reports from the National Audit Office, political parties received a total of 9.6 million euros in 2003 as private donations and 161.6 million euros as public financing. If we analyze the available information for the two major parties, we can see that the PP has traditionally received much more private funding through nominal and anonymous donations than the PSOE.

For instance, between 1999 and 2003, the PP received 3.6 million euros in anonymous donations, while the PSOE only received 0.9 million in nominal donations and 1.6 million in anonymous donations (see Table 7). The growth rate between 2002 and 2003 shows, however, inverse tendencies in the financing of the two major parties: while anonymous donations received by the PP went down 35% in those two years, the anonymous donations received by the PSOE increased 100%.

The lack of more disintegrated and more recent data at a national level makes it impossible to extract more convincing conclusions on the contributed data, and it of course hinders the ascertaining of the impact that the private financing sphere could have had on the relationship between political and economic power, as well as its impact on democratic quality in Spain in the last year.

Tabla 7. Fuentes de financiación del PP y PSOE, 1999-2003.

		1999	2000	2001	2002	2003
PP		euros	euros	euros	euros	euros
Ordinary subsidies	operation	46.443.489	54.886.837	58.129.049	60.069.686	63.261.457
Electoral subsidies		20.744.758	19.473.254	3.090.223	3.090.223	17.508.298
Installments		6.646.676	7.314.452	484.460	8.632.237	8.846.640
Nominal donation		100.443	623.702	250.761	306.789	2.361.422
Anonymous donation		313.359	472.683	705.839	2.729.392	1.815.851
PSOE						
Ordinary subsidies	operation	39.201.125	41.323.877	42.966.972	44.936.716	47.309.151
Electoral subsidies		18.407.566	15.528.726	3.664.381	3.664.381	15.831.473
Installments		3.618.845	3.642.036	4.703.774	5.634.702	6.475.195
Nominal donation		86.826	89.820	325.630	160.146	282.960
Anonymous donation		112.120	16.407	108.182	438.954	917.707

Source: own production. Data: Court of Auditors(2006).

3.2.2. Local policy and corruption in urban development. Another common form of economic power's influence in political power's decision making directly occurs through economic compensations to the political party or to the politician in exchange for a certain decision. When this occurs we are in the clear presence of political corruption. The proliferation of cases of urban development corruption in the last few years, that

have surfaced with great impact throughout 2006 due to the proximity of 2007's municipal elections, show the growing influence of this sector in local policy in Spain and the resulting deterioration in the quality of democracy in our country.

Urban development corruption in Spain has been fed by the real estate bubble of the last few years and by the scarce financing of local entities. As seen in Table 8, the number of city councils administered by the PP with problems of urban development corruption goes over by 20% those city councils run by the PSOE, but the problem affects both political forces in an important way^{xxx}. It is striking that in only 40% of the cases there are accusations of direct acquisition of wealth aimed at the mayor or city councilmen, and the rest focus on irregularities in procedures for granting construction licenses. Though part of those irregularities could simply be hiding ways of acquiring wealth by a kind of shell company, it's likely that a large part is related to the financing of political parties at a local level.

Table 8. Urban development corruption in Spain

Total corruption cases	153
Total enrichment	56
Total irregularities	130
Total tow council PP	73
Total tow council PSOE	60
Total other tow council	20

Source: own production. Data: www.elmundo.es (Urban development Corruption Section. It is signed by José A. Navas)

Note: It is classified as 'enrichment case' those cases when the mayor, town councillor or their relatives are accused of having received commissions. It is classified as 'irregularity' those cases when it is reported as land reclassification and/or award of land by illegal processes. In addition, cases of land reclassification and construction in protected areas by environmental laws are included.

The problem of urban development corruption is of such magnitude that diverse NGOs and international organisms, like Transparency International or the UN, have warned of the seriousness of the situation for the quality of democracy in our country. While it's true that police and judicial performances are emphatic in some of the most striking cases (like the Malaya Operation in Marbella and Murcia), these performances must be increased several times over. Additionally, the two majority parties (the PP and the PSOE) should act jointly to modify the finance system of the city halls^{xxxii}.

3.3. Private participation in government programs

Finally, in addition to all the mechanisms mentioned in previous sections, another very powerful element through which economic power may exercise influence over political power is direct involvement in key policies that each government hopes to advance.

Throughout the eighties the need to rely on private collaboration for big projects of infrastructure of investment in technology was less than in the nineties for at least three reasons: the public business sector was of the right size to set out on those actions; Spain

had not yet accepted the requirements of fiscal discipline of the Economic and Monetary Union; and, finally, public-private partnerships were not yet that developed.

At the start of the nineties, participation by the private sector in large projects of infrastructure sped up, especially on the occasion of events of 1992, and later as a mechanism for financing public works that would put in danger fulfillment of the deficit objective of Maastricht.

During the current term begun in 2004, the socialist government received clear support from the private sector for two of its most emblematic projects: Strategic Plan for Infrastructure and Transportation (PEIT) and the Plan Ingenio 2010 to increase technology research and development. Both plans were presented in the first half of 2005 and are called to play a fundamental role in the reorientation of the Spanish growth model that the government proposed to carry out to increase productivity.

However, while the involvement of economic power (through the CEOE) in the PEIT occurred at the suggestion of employers themselves (worried about an eventual fall of public contracting of infrastructure), participation of some of the big companies of the country in the new research and development policy was the response to the starting up of new programs providing incentives to a greater degree than previous ones. At any rate, the country's big companies that wanted to get close to the new government always found in their acceptance of R&D a good inlet to achieve that^{xxxii}.

3.3.1. Business participation in the PEIT. At the end of November of 2005, the CEOE published its proposal to collaborate in the financing, in good measure, of the infrastructure that would be included in the PEIT, which would be approved on December 23rd by the cabinet.

During the following month, the Minister of Public Works, Magdalena Álvarez, began her presentation of the Plan to social agents and the autonomous communities. When on February 1, 2005, she met with the CEOE, the government received emphatic support for the Plan, as it included all the proposals that the CEOE had previously laid out on the matter, according to the declarations made by those attending the meeting^{xxxiii}.

The agreement that was reached at that meeting was that the private initiative would finance 20% of the 214.392 billion euros that the total investment of the PEIT went up to foreseen until 2020^{xxxiv}. That private capital, some 48.280 billion euros, was going to be focused on the construction of highways and less so in railway construction^{xxxv}.

The involvement of the private sector in central policy of the government was motivated by the need to ensure investment flows in vital infrastructure for the future activity of the big construction companies, which could be in doubt if the Plan was not set in motion due to a lack of financing. In turn, the government needed business collaboration to finance part of the ambitious plan that it intended to start and to which it had publicly committed itself.

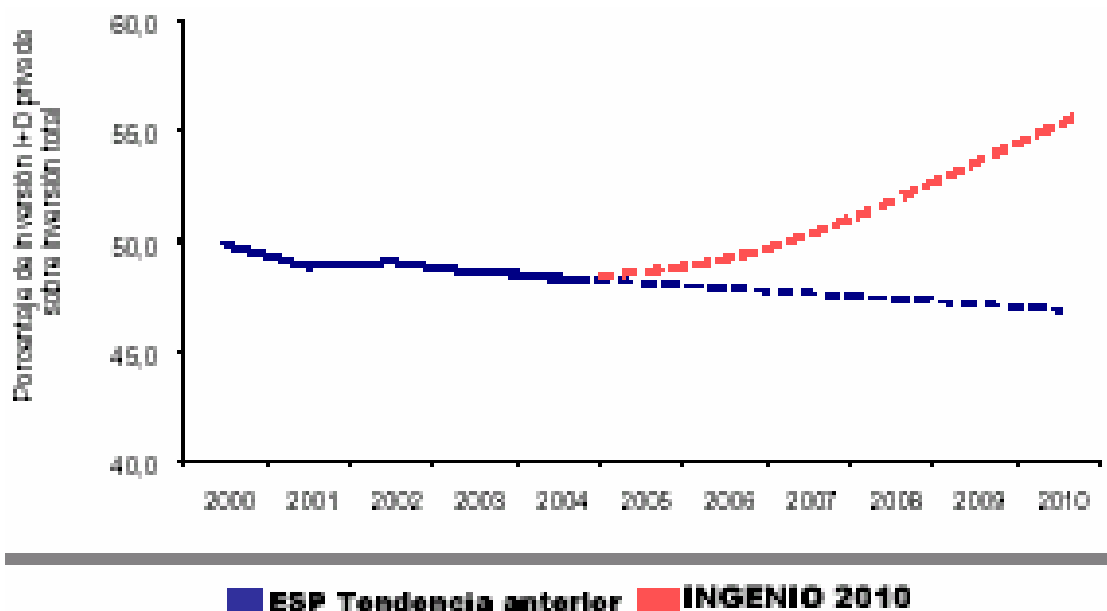
The commitment to the Plan by the CEOE and its ability to influence the Plan were such that management proposed to the government, just four months after that meeting, the production of and putting into motion of a "bridge plan" of infrastructure that put in motion in 2006 and 2007 the works planned by the PEIT, with the ultimate aim of maintaining the sector and continue building up necessary funding while the PEIT was just being approved and set in motion. That "bridge plan" of the CEOE was only

going to cost the government 900 million euros and it was going to mobilize the construction of infrastructure with a value of 21.85 billion euros^{xxxvi}.

3.3.2. Business participation in Ingenio 2010. The Ingenio 2010 Program was presented by the President of the government on June 23, 2005, with the aim of increasing investment in R&D in our country to 2% of the GDP in 2010, thus doubling the level of investment when the President of the government took power.

For this, in addition to committing added budget resources (with annual increases greater than 25% throughout all the years of the term), the government designed a battery of new programs to favor the increase in the critical research mass (Programa Consolider), to mobilize business investment in R&D (CÉNIT program), and to advance within the information society (Plan Avanca). Ingenio 2010 established as a fundamental objective that businesses would change the descendant tendency in terms of their participation in national R&D, to thus recover the proper direction headed to the objectives of the Lisbon Strategy (which established that 66% of total investment in R&D must be private). As can be seen in Graph 3, Ingenio 2010 set as an objective that private sector contribution to R&D would shift from 48% in 2004 to 55% in 2010.

Graph 3. Private sector contribution to R&D.



Source: Presidencial Economic Office.

*- **ESP Tendencia anterior**: Previous trend in Spain// - **INGENIO 2010** : 2010 INGENIO

When the program had been in operation a year, the President of the government took stock of the program in a public act where progress was pointed out and new budgetary and programmatic commitments were adopted^{xxxvii}. What was most important, however, was the presence and clear recognition of the important labor that the business sector was advancing to turn an important part of the whole Program into reality.

Throughout 2006 the sixteen first programs became reality (dedicated to connecting the system of public research to the system of business innovation) of the National Strategic Consortia for Technological Research Program (CÉNIT), mobilizing 200 million euros of public funds and 230 million euros of private funds, and gathering, likewise, 130 businesses and 200 research groups together. But what stood out most was that those sixteen big projects were chosen from among more than 50 applications, which brought the President of the government to commit to double for 2007, as a sign of appreciation to employers for their demonstrated dedication.

Conclusions

1. The relationships between political power and economic power in Spain during the 2005-2006 period show a moderate increase in the quality of our democracy in this field, with the caution that must be kept regarding the proliferation of urban development corruption cases (that are dealt with in an ad hoc chapter).
2. With respect to the influence of political power over economic power, what stands out is the improvement that occurred in the environment where businesses develop their activity (with less regulation and an improvement in the majority of business environment gauges), as well as a reduction in the political nature of business appointments. Also significant was the lower number of obstructions to business operations compared with those carried out in past terms. However, public interference in and erratic management by the government of the takeover bids for Endesa have increased the perception of a widespread interventionism in the economy, which smudges that result. Government interventions in other operations also did not contribute to that improvement (Sacyr-Vallehermoso's attempt to enter into the BBVA's board of directors) which, in the end, were not carried out.
3. Regarding the influence of economic power over political power, it can be said that both unions and employers exercise soft power over the government, affording it the support it needed to improve the socio-labor environment (through the agreements of different tables of social dialogue), and giving it their support in the two most important projects of the term in terms of investment in infrastructure and Research and Development. In exchange, representatives of economic power obtained influence over the design and result of those policies, which would have been beyond their reach if they hadn't embraced the offer of democracy by consensus in the economic sphere that the government afforded them since coming into power.

Appendix

Table A.1. History of takeover bids for Endesa.

	Main moments	Date
1.	Gas Natural's takeover bids for Endesa: share in 22,5 euros	5-9-2005
2.	1 st report favourable to takeover bid for Endesa from the National Energy Commission.	8-11-2005
3.	Endesa appeals to Ministry of Industry	9-11-2005

4.	The National Energy Commission (CNE) approves Gas Natural's takeover bids under conditions	20-12-2005
5.	The Defense Court of this competence turns down Gas Natural's takeover bids	5-1-2006
	Gabinet meeting approves Gas Natural's takeover bids under conditions	3-2-2006
6.	E.ON's takeover bids for Endesa in 26 euros/share	21-2-2006
7.	The government approves measures to stop E.ON's takeover bids for Endesa	24-2-2006
8.	The National Energy Commission (CNE) approves Gas Natural's takeover bids	27-2-2006
9.	Paralización judicial de la OPA de Gas Natural	21-3-2006
10.	The National Energy Commission (CNE) approves E.ON's takeover bids under conditions	21-4-2006
11.	The European Commission approves E.ON's takeover bids without conditions	25-4-2006
12.	The European Commission starts proceeding against Spain because of the barriers to E.ON's takeover bids	2-5-2006
13.	Brussels considers illegal the conditions of E.ON's take over bids	25-8-2006
14.	Joan Clos relieve José Montilla as Minister of Industry	10-9-2006
15.	Spain and Germany argument a solution about take over bid in a bilateral summit meeting	11-9-2006
16.	Acciona buy 10% of Endesa in 32euros/share	25-9-2006
17.	E.ON rise the offer to 35euros/share	27-9-2006
18.	The National Energy Commission (CNE) authorize Acciona's acquisition until 24.9% of the capital stocks of Endesa	27-9-2006
19.	Brussels starts proceeding Spain because of protecting Endesa	18-10-2006
20.	The National Energy Commission (CNE) ratify the conditions to the takeover bid.	31-10-2006
21.	The ministry of Industry strongly reduces CNE's conditions to E.ON's takeover bid.	03-11-2006
22.	The European Commission ratify as illegal the modified conditions of E.ON takeover bid.	29-11-2006
23.	The Supreme Court starts precautionary measures to Gas Natural's takeover bid for Endesa	15-01-2007
24.	The European Commission sue Spain in the European Court of Justice because of the illegal character of the previous decree which expanded CNE's competences. In addition, the European Commission start proceeding against Spain because of not removing the CNE's modified condition for E.ON's takeover bid.	24-01-2007

Source: *El País*, 5th of November of 2006, pp.83. And own production since that date.

Table A.2. The CNE's conditions to E.ON takeover bids for Endesa.

	First instruction of the National Energy Commission(CNE)	Approved Instrukcionas by the Government
1	During a deadline of 10 years E.ON will keep Endesa as a matriz society, head of the group.	Modificación: 5 años
2	Endesa will have to fulfil a service debt lower than 5.25	Modificación: 3 años
3	In 2006, 10 of the societies from the group result of controlled activities just could share dividend out when resources makes sure investment.	Se mantiene
4	E.ON asumirá y realizará las inversiones en gas previstas por Endesa.	Se mantiene
5	E.ON will have to assume all of investment commitment in activities regulated by Electricity Sector.	Se mantiene
6	Since 2010, E.ON will notify annually to National Energy Commission about the investment plans in gas and electricity.	Se mantiene
7	E.ON will have to keep useful residual service life of ordinary regime power stations of Endesa, for the same period that Endesa had planned their operation.	Se mantiene
8	E.ON will have to guarantee gas natural supply to Spanish Market.	Se mantiene

9	E.ON will have to start an assignment of the power stations management in which has shares. In case of Ascó I, E.ON will have to sell 10% of shares.	Desaparece
10	E.ON will have to sell Canarias, Baleares, Ceuta and Melilla electric systems.	Cancelled
11	E.ON will have to start transferring Compostilla's, Complejo Minero Eléctrico de Teruel's power station and Anllares's shares.	Cancelled
12	Assets transferring referred in conditions 9, 10 y 11 will have to be authorized by the National Energy Commission.	Cancelled
13	E.ON will have to notify to the National Energy Commission once a term the degree of fulfilment of the named conditions.	Cancelled
14	The acquisition of shares higher than 10% of Endesa's share capital will require CNE permission in advance.	It is kept up
15	E.ON will not have to prioritize own interests of the matriz society in making strategic decisions.	It is kept up
16	Failure to execute conditions will be able to cause permission reversal and the sale of Endesa in a year.	Modified: failure to execute will be just penalized
17	If a society wanted to acquire more than 50% of E.ON in the next 10 years, this society would have to let CNE know.	It is kept up
18	In case of lack of supply, CNE will be able to turn to the Government, and they would take measures.	It is kept up
19	The instructions have essential character and they are consider indispensable	Cancelled

Source: *El País*, 5th November 2006, pp.83.

Table A.3. Cases of Urban development corruption in Spain since 2005 to 2006 in Autonomous Communities and provinces.

Autonomous Communities and provinces	Amount of cases	of Enrichment	Irregularities	Town Council	PSOE Town Councils	Other Town Councils
Andalucía	43	13	38	10	23	10
Almería	10	1	10	3	6	1
Cádiz	11	4	10	3	8	0
Córdoba	3	0	3	0	1	2
Granada	3	2	1	1	1	1
Huelva	1	0	1	0	1	0
Jaén	2	0	2	0	2	0
Málaga	7	4	7	2	2	3
Sevilla	6	2	4	1	2	3
Aragón	1	0	1	0	0	1
Asturias	2	1	1	0	2	0
Baleares	10	1	10	8	1	1
Ibiza	3	0	3	3	0	0
Mallorca	7	1	7	5	1	1
Canarias	3	2	2	3	0	0
Fuerteventura	1	0	1	1	0	0
Gran Canaria	1	1	0	1	0	0

Tenerife	1	1	1	1	0	0
Cantabria	5	0	5	3	1	1
Castilla La Mancha	4	2	4	1	3	0
Albacete	2	1	2	0	2	0
Toledo	2	1	2	1	1	0
Castilla y León	6	2	5	5	1	0
Ávila	4	1	3	3	1	0
Salamanca	1	1	1	1	0	0
Valladolid	1	0	1	1	0	0
Cataluña	4	0	4	0	1	3
Lleida	2	0	2	0	1	1
Tarragona	2	0	2	0	0	2
Comunidad Valenciana	25	6	21	12	12	1
Alicante	10	5	6	6	4	0
Castellón	6	0	6	4	2	0
Valencia	9	1	9	2	6	1
Extremadura	2	1	2	1	1	0
Badajoz	1	0	1	1	0	0
Cáceres	1	1	1	0	1	0
Galicia	9	4	7	5	3	1
Coruña	6	2	4	2	3	1
Pontevedra	3	2	3	3	0	0
Madrid	22	16	13	14	8	0
Murcia	12	6	12	9	3	0
Navarra	1	1	1	0	0	1
País Vasco	1	0	1	0	0	1
Rioja	3	1	3	2	1	0
Totales	153	56	130	73	60	20

Source: own production. Datos: www.elmundo.es (Section of Urban Development Corruption. Signed by José A. Navas)

Note: It is classified as 'enrichment case' those cases when the mayor, town councillor or their relatives are accused of having received commissions. It is classified as 'irregularity' those cases when it is reported as land reclassification and/or award of land by illegal processes. In addition, cases of land reclassification and construction in protected areas by environmental laws are included.

ⁱ The PNR was created by the Permanent Lisbon Unit, where the following were represented: the Economic Office of the President and the Economic and Treasury Ministries, the Ministries of Labor and Social Affairs, the Environment and Industry, and Commerce and Tourism, under the coordination of the National Coordinator of Strategy of Lisbon, Miguel Sebastián. The PNR was approved on October 13, 2005, by the cabinet. It established as priority objectives for 2010 the full agreement of per capita income with the EU-25 and reaching an employment rate of 66%. To achieve these objectives, the PRN developed seven focal points of action; Focal point 1: the reinforcement of macroeconomic and budgetary stability; Focal point 2: the Strategic Plan for Infrastructure and Transportation (PEIT), and the Programa Agua; Focal point 3: the increase and improvement of human capital; Focal point 4: the strategy of R&D (Ingenio 2010); Focal

point 5: more competition, better regulation, efficiency, and competitiveness; Focal point 6: labor market and social dialogue; Focal point 7: the Plan for Business Development. See www.pnr.es.

ⁱⁱ The PNR even included an independent evaluation system by the State Agency for the Evaluation of Public Policy and the Observatory of Sustainability, which were put in motion in the first year of the PNR's operation and were assessed as "best practice" by the Committee on Economic Policy of the EU.

ⁱⁱⁱ Specifically, the letter of collective rejection of the Code was presented on February 26, 2006, by the president of the Stock Exchange, Antonio Zoido, and it was signed by the following companies of Ibx 35: Telecinco, Banco Popular, Endesa, Antena 3, Bankinter, Sacyr-Vallehermoso, Unión Fenosa, Sogecable, Iberia, BBVA, Prisa, Telefónica, Telefónica Moviles, TPI, ACS, Acerinox, NH Hoteles, Santander, Enagás, Repsol YPF, Gas Natural, and Banco de Sabadell. Five other companies not represented by Ibx 35 also signed this document of refusal: La Caixa, Aguas de Barcelona, Abengoa, Banesto, and Urbis.

^{iv} This petition occurred due to the decision from the Constitutional Court to protect the Grupo Socialista and overturn the decision of the Table of Congress by which it rejected in 1997 the socialists' petition for then president of Telefónica, Juan Villalonga, to appear before the Infrastructure Commission to explain Telefónica's purchase of 25% of the stock of Antena 3. According to information published in *El Mundo* and *El País* on October 18, 2002, the then congressional spokesman, Jesús Caldera, justified such summons to "find out the president of Telefónica was appointed and if the government authorized the distribution among its 100 managers 80 billion pesetas as stock options," as well as find out if the government "protected" Telefónica hindering free competition in order to facilitate its entrance into Antena 3. Regarding BBVA, the socialist manager affirmed that it was necessary "to request explanations from the president of that entity" about the credits granted to then Vice-president Rodrigo Rato, Argentaria then being a public company. Finally, the rest of the summons were justified to understand the way in which the government was making use of the "golden shares" in those privatized companies, and if it was intervening in the decision-making process.

^v The transaction was thought to be financed in the following way: a capital increase of 1.1 billion euros, board member contributions of Sacyr-Vallehermoso at a value of 700 million euros, and the remaining 150 million through resources generated by the company (self-financing).

^{vi} According to what *El Mundo* included on November 29, the transaction was headed by Luis del Rivero (President of Sacyr), by Juan Abelló (Director of Banco de Santander and one of the majority stockholders of Sacyr, who resigned in order to support the transaction and eventually be a candidate as the new president), and Demetrio Carceller (president of the oil company Disa). According to that information, Sacyr-Vallehermoso planned to unite its new capital in BBVA with stocks of some ex-directors of the bank itself, to take control over 8%-9% of the capital, which would allow a change in president.

^{vii} January 11, 2005, Vice-President Solbes fought for an agreement between Sacyr and BBVA that would guarantee that the bank was Spanish.

^{viii} In the first two days after Sacyr announced it would take a majority position in BBVA, its stocks fell 10%.

^{ix} The most important regulating organisms in Spain are: the Spanish Antitrust Court (TDC), the National Securities Market Commission (CNMV), the Telecommunications Market Commission (CMT), and the National Energy Commission (CNE). Throughout 2005 and 2006, the socialist government appointed new presidents of the same ideology in all those organisms. The government even broke an unwritten regulation of consensus and appointed the Director of the Banco de España with the opposition of the PP.

^x To which is added the halt to the merger of Gas Natural and Iberdrola in 2003, that caused a big political and media stir, due to the alleged government pressure in the president of the CNE's vote that decided the final result.

^{xi} On November 29, 2005, Endesa presented an appeal before the European Court of Justice opposing the decision of the European Commission to leave the issue in the hands of Spanish authorities and that requested the precautionary halt to the transaction. On February 15, 2006 the Court of Luxembourg rejected the appeal.

^{xii} The PP's theory which held the government's direct involvement in the design of Gas Natural's takeover bid for Endesa was strengthened when the daily *El Mundo* (February 10, 2006) reported (and the government later confirmed) that the President of the government had had breakfast with the presidents of La Caixa (Ricardo Fornesa) and Gas Natural (Salvador Gabarró) on February 5, 2006, just two days after the cabinet approved Gas Natural's takeover bid for Endesa.

^{xiii} On November 10, 2005, *El Mundo* affirmed “La Caixa had canceled a debt of PSC for 6.5 million euros” for an outstanding credit of 14 million when Montilla was minister of the PSC, “the exact minister in charge of key authorizations of the transaction.”

^{xiv} Gas Natural’s takeover bid for Iberdrola in 2003 was headed in the same way by its majority stockholder (La Caixa) and it also was not negotiated; however, the struggle lasted 62 days. That takeover bid was presented on Monday, March 10, 2003, and it was withdrawn on Monday, May 5th. Accusations of political involvement by the government were based on the veto imposed on the transaction at the last moment by the president of the National Energy Commission (CNE), ignoring technical reports of the organism recommending a conditional approval.

^{xv} While Gas Natural had offered just 34.5% in cash and the rest in stock of the new company.

^{xvi} According to *El País* (Noceda, 2006): “The President of the government found out about the takeover bid from the mouth of the German Chancellor, Angela Merkel, the night of February 20”. The following day, Zapatero met with the authorities of E.ON and its president Wulf Bernotat, who were in Madrid. The meeting that took place in La Moncloa on the afternoon of February 21 served for the government to announce to E.ON its intention to impede the transaction, arguing that there was no reciprocity, as a Spanish company couldn’t purchase E.ON because of the little participation the State of Bavaria maintains in the German company through Rhurgas.

^{xvii} That day the government passed a royal decree to introduce reforms into the majority electricity market (pool) with the aim of controlling the sector’s prices, do away with the tariff deficit (the difference between creation costs and the charged tariff, which is financed by the State), and reduce the market power of the dominant traders (Endesa and Iberdrola). This measure modified the cassation mechanism of offers of energy sale and acquisition presented simultaneously to the daily and intermediary production market by agents of the electric market belonging to the same business group. It was also approved that the electricity supply on tariff reached its end in 2011 and the gas tariff in 2008, as a consequence to the transposition of the community board for the Spanish energy markets.

^{xviii} With the legal decree liberalizing the energy sector, on February 24th the cabinet approved the modification of the so-called Function 14, by which the CNE analyzes the impact of a corporate transaction on regulated activities (like transportation and distribution of natural gas and electricity). Until then, the CNE only had jurisdiction if the purchasing company belonged to a regulated sector and was a domestic company. Since then, the CNE has legal authority to also decide when the company being purchased in a transaction belongs to a sector with those characteristics: in declarations by Minister Montilla during the subsequent press conference, “not only must purchasing energy companies be subject (...), but also those that acquire an energy company, regardless of nationality”. Montilla affirmed, “Spain is thus covering a legal loophole that other countries have already taken care of”.

^{xix} An interpretation that the economic vice-president and former European commissioner, Pedro Solbes, himself seemed to share, who on February 28 stated to the economic daily *El Economista*: “It is clear that we cannot go international and prevent outside companies from coming in”.

^{xx} On July 27, 2006, the CNE approved the purchase of Endesa by E.ON, as long as E.ON complied with 19 conditions. E.ON, Endesa, and Gas Natural appealed against these 19 conditions for opposing reasons before the Ministry of Industry, which finally decided to withdraw them almost in their entirety to comply with the suggestions of the European Commission (see Annex 2).

^{xxi} For a detailed calendar of all phases of the entire process relating to the takeover bids for Endesa see Annex 1.

^{xxii} On September 8 Joan Clos took over a Minister of Industry, who substituted José Montilla in his post, candidate to the Generalitat of Catalonia. From the beginning, the new minister began to make conciliatory statements that pointed to a change of attitude that later caused, in line with respecting the criterion of the European Commission, the Spanish government to end up complying with them.

^{xxiii} That agreement occurred during the bilateral summit meeting that both countries held in Berlin on September 12, 2006. On September 14, 2006, *El País* said: “the government will reassess the timeline in which Endesa must maintain its structure”, and as the news developed that decision was linked to the secret pact reached between Zapatero and Merkel during the French-German summit meeting held a few days before. In fact, on the eve of the summit, the Secretary of State for Communications, Fernando Moraleda, had affirmed that the two governments wanted to “find and favor, not negotiate, because it’s not possible and it’s prohibited by Community Law, a satisfactory solution for both countries and for the Spanish, European, and German energy sector”.

^{xxiv} Analysts' first interpretation is that between Acciona and the second largest stockholder of Endesa (Caja Madrid with 10%) they could form a Spanish blocking position that would make E.ON's takeover bid enormously difficult, or at least its ability to control the company without relying on that Spanish core.

^{xxv} The day following Acciona's offer for Endesa, ACS made an offer for 10% of Iberdrola, with the clear intention of merging it with Unión Fenosa, of which it already held 40%. The majority of analysts agree that those activities were owed to the abundant liquidity of these beneficiary companies during the years of high growth in the construction sector in Spain, and to the prospects for growth of the energy market in our country in the future.

^{xxvi} In statements to the radio station Cadena Ser, on September 28, the economic vice-president commented on this possibility as a topic for study where issues of jurisdiction and the ideal size for different energy groups "depended on the consideration of which is the relevant market: the Spanish market of the European market".

^{xxvii} The first member of government to take a side on the E.ON takeover bid for Endesa was the Secretary of State for Communications, Fernando Moraleda, who emphasized that the takeover bid "not only had significance in business, but it meant the presence of a European country in a strategic sector of another country, like Germany, in this case in our country". According to what *Europa Press* reported, Moraleda said that the government respected the regulations of the market, but that it had "the conviction that in a strategic sector like the energy sector it is in the interests of Spain to have a company with Spanish headquarters". Shortly thereafter, the President of the government would uphold similar arguments in press conferences and in congress.

^{xxviii} Vice-President Solbes stated on April 8th that "it is better to lower the bar if the achieved result is an agreement", and he specified that the securing of an agreement did not mean that we shouldn't continue the debate "because there are always things to do (...) just like what's done with the Pact of Toledo on pensions, that is revised every so often, it would be advisable to revise the workings of the labor market periodically" (*El Mundo*, April 9, 2006). These statements are similar to those that the Minister of Labor Caldera made in an interview in *El País* on May 14, 2006, once the agreement had been signed.

^{xxix} This excludes, logically, financing conspiracies on the fringes of the law, such as those related to the Filesa or Naseiro cases, that came to light in the nineties.

^{xxx} By autonomous communities, those most affected by corruption cases are Andalusia, Valencia, and Madrid, which accumulate 90 of the 153 corruption cases uncovered in our country in the last year (see Annex 3 for details on autonomous communities and provinces).

^{xxxi} This important issue is developed to a greater extent in the chapter of the present Report dedicated to corruption.

^{xxxii} In fact, business presence in the launching of the Ingenio 2010 program and the diverse acts related with its different lines of action were massive from the start.

^{xxxiii} Attending that meeting with the Minister was the president of the CEOE, José María Cuevas, president of the management for big construction companies, SEOPAN, Enrique Aldama, and managers of Sacyr-Vallehermoso, OHL, Abertis, Ferrovial, Siemens España, Alstom España, and Iberia.

^{xxxiv} In terms of investor effort, the PEIT means to increase investment in infrastructure from 0.5% of the current GDP to around 1.5% of the GDP on average throughout the period the Plan is in effect. Railway is the leading player of the Plan, as it focuses more than 48% of total investment. In addition to the investment program, the PEIT includes a broad group of transportation policies aimed at optimizing the use of infrastructure, increasing security, and improving energy efficiency.

^{xxxv} The rest of investment would be financed in another 60% by budgetary resources, and the remaining 20% by public employer entities dependent on the Ministry of Development; that is, AENA, Puertos del Estado, and Gestor de Infraestructuras Ferroviarias.

^{xxxvi} The Bridge plan proposed the construction of 700 kilometers of toll freeways for a total of 5 billion euros, to be put in for between 2006 and 2007, but also 900 more kilometers of lanes, for a total of 4.5 billion, to be financed through shadow tolls (the Administration pays the tariff depending on the traffic of the lane), and an investment of 7 billion more in conventional highway also to be financed through public-private collaboration systems. According to management, these two last programs only required an additional government expense of 200 and 700 million euros, and starting in 2008 they would be in service.

^{xxxvii} In the balance sheet of Ingenio 2010's first year the following stood out: a) the important increase in scientific production (with an increase in international publications of 21%, the highest rate in the last 10 years), and technological production (with an increase in European patent applications of 40%, more than

any other country in the EU); and b) a notable expansion in the information society in homes (with 2.2 million new homes with broadband, tripling the previous figure and reaching two points away from the European average), and in businesses (with an increase in electronic business commerce higher than 50%, almost double that of all the EU-15).

Bibliography

- Alesina, A. y Rodrik, D. (1994), Distributive politics and economic growth. *The Quarterly Journal of Economics*, 109 (2), 465-90.
- Dahl, R. (1998), *Democracy and its critics*. New Haven, CT, Yale University Press.
- Diario *Expansión*, 24 de marzo de 2006.
- Diario *El Mundo*, 18 de octubre de 2002, 10 de noviembre de 2005 y 9 de abril de 2006, en www.elmundo.es, sección La corrupción urbanística en España.
- Diario *El País*, 18 de octubre de 2002, 14 de mayo de 2006 y 14 de septiembre de 2006.
- El Economista*, 28 de febrero de 2006.
- Ferreiro Aparicio, J. (2003), Políticas de rentas y reformas laborales en España. *Revista del Ministerio de Trabajo y Asuntos Sociales*, 46.
- Ferrer Dufol, J. (2006), *Diálogo y concertación social en España*. Montevideo, Cinterfor/OIT.
- González Diego, C. (2005), El Plan Nacional de Asignación de Derechos de Emisión 2005-2007: Implicaciones para la Industria Española. *Revista ICE*, 822, 109-30.
- Linz, J. y Stepan A. (1996), *Problems of democratic transition and consolidation*. Baltimore, John Hopkins University Press.
- Lijphart, A. (1999), *Patterns of democracy: government forms and performance in thirty six countries*. New Haven, Yale University Press.
- Noceda, M. A. (2006), La feria eléctrica: segundo acto. *El País*, 28 de julio de 2006.
- Oficina Económica del Presidente. (2005), Programa Nacional de Reformas de España. (www.pnr.es)
- Oficina Económica del Presidente. (2006a), ¿Donde están los liberales en España? Conferencia de Miguel Sebastián en la inauguración del curso de verano de El Escorial de la Universidad Complutense de Madrid (UCM) Homenaje a Rafael Termes. El Escorial, Madrid, 17 de junio de 2006.
- Oficina Económica del Presidente. (2006b), Actualización del Programa Nacional de Reformas de España. (www.pnr.es).
- Organización Internacional del Trabajo (2006), *Yearbook of Labour Statistics*.

Strange, S. (1996), *The retreat of the state: the diffusion of power in the world economy*. Cambridge, MA, Cambridge University Press.

Tribunal de Cuentas (2006), *Informe de fiscalización de la contabilidad de los partidos políticos del ejercicio 2003. Informes del TDC*, 713.

Pluralism and Independence in the Media

1. Introduction

The degree of polarization of opinions, attitudes, and interpretations of the facts is noteworthy in the Spanish media. This has been especially notable in the last year and, overall, since the beginning of the current term, when the climate of unease and tension invading the political panorama has been reflected in the journalism of the two ideologies. Talking about the role of the media from a democratic theory point-of-view is not a clear task, though be it only because that theory of democracy has great variety in perspectives and critical approaches.

For many authors, the degree to which the media serves as a public sphere, representative of citizens and accessible to everyone, operates as a fundamental barometer of democracy. From that perspective, the nature of a democracy depends in large part on the flow of public information, which determines to what degree citizens can act on the base of informed decisions and hold the government accountable (Gillwald, 1993:65). In this way, three essential functions of the media are usually pointed out in a representative democracy: to serve as a civic forum that encourages pluralist debate on public issues; to act as a guardian against abuses of power; and to be an agent promoting public learning and participation in the political process (Norris, 2000). Based on these regulating premises, the shortcomings of the media in its “real” work have been emphasized, from basically radical positions (see discussion paths in Graber, 2003, and Fog, 2004). Thus, the media has often been accused of encouraging political apathy and cynicism, disinterest and demobilizations; of creating indifferent democracies, deficiencies usually named under “media unease” or “video unease”. And there is no lack of critics of the role of the media as reinforcement to the established capitalist system (see, specifically, the “propaganda model” of Herman and Chomsky, 1988). Other authors, on the other hand, assert that the process of political communication can be understood as a virtuous cycle, as in the long-term it strengthens activists’ activism (Norris, 2000)ⁱ.

2. The media and politics in Spain

Hallin and Mancini (2004), when comparing media systems and political systems, position the Spanish media system among those they term “Mediterranean” or “polarized pluralism”. In such a classification, societies of polarized pluralism are historically characterized by intense political conflicts, often with regime changes; therefore, the development of free press and of commercial media companies is delayed; those societies usually rely on a press with limited circulation and politically oriented to the elite; there is a high political parallelism (newspapers are identified with certain ideological tendencies); the exploitation of the media by the government, political parties, and employers with political links is common, and the professionalization of journalism is not yet as developed as in other models.

It is a system that, in addition, is distinguished from other European systems by its strong audiovisual orientation and by consumption related with leisure and entertainment

than with information and knowledge (Díaz Nosty, 2005:153). In fact, Spain sits among the top nations of the European Union in television consumption (Fernández Beaumont, 2006:222), but it comes in among the last in terms of press diffusionⁱⁱ. Keeping in mind that the most important political information for increasing aptitude among citizens is, apparently, that information that is disseminated through written media and, to a lesser degree, through the radio, the conclusion that the level of political knowledge in citizens in Spain is mid to low can't be surprising and, in addition, it is a political resource unevenly distributed (Fraile, 2006).

The relationships between the media and politics might be dealt with from different perspectives. One of the most obvious ways that we can talk about interaction between the two spheres is, logically, personal interaction. It is a phenomenon that's, up to a point, natural, which due to its characteristics usually follows barely visible channels. Continuing on this same line, Hallin and Manzini (2004) point to another of the characteristics of the "Mediterranean model": the relative frequency with which the same people shift from one professional field to another. These times have not been an exception. The most notorious case is the joining of former President José María Aznar to the board of directors of News Corporation, the media empire of Rupert Murdoch.

Another kind of observation has a bearing on power relationships of the most simple and primary appearance (the kind based on "who rules"), with quite forceful statements, usually loaded with political intentions. As opposed to the already traditional (from some sectors) expressions of the sort: "The PSOE belongs to PRISA (Spain's largest media company). It has been for a long time"ⁱⁱⁱ, lately it is common to find references to the control certain media sectors supposedly exert over the PP or, at least, to the collusion between some media and certain groups within that party^{iv}.

Meanwhile, if we focus on informative labor itself of the media, all analysts accept that a claim of absolute objectivity or impartiality is not realistic. A mild approach to the "bias" of the media would simply refer to the tendencies, possibly unconsciously, that are reflected in acts of communication of every person that has a certain vision of the world. But what usually is of concern when analyzing those biases is the risk of dishonest manipulation of reality, which in turn, assumes a certain ability in the media to influence, that is, that the media has noticeable effects. Among the myth of totalitarian power in the media, based on a simplistic model of minimal effects, by which statements to the media reinforces, but does not change, attitudes and values, more qualified opinions are situated about the media's contribution to persuading or learning, through "agenda setting" (the ability to determine what issues shall be discussed), the "primer" or "priming" (the ability of the media to affect criterion on which individuals judge issues) and the "framing" (the content or discourse is presented in a way that favors certain interpretations and discards others). This is a field where the traditional perception of "the pot calling the kettle black" is noticeable, in the clamor of the media war. The media doesn't have a problem in recognizing its influence or ideological lines when it concerns a healthy influence, from independence and (good) principles. On the other hand, when it concerns the manipulation or servitude to third-party forces or regarding illegitimate values, it is invariably an alien sin.

2.1. Public media: RTVE (Radio Televisión Española)

On the media belonging to the public the shadow has always hung of its politization by the government. The opposition, of whichever party, has invariably accused the government of manipulating information following partisan or sectarian orders. This observation applies both to national media and autonomous media where, additionally, different distributions occur of government-opposition roles. Quite a few analysts point out that in the last two years an improvement has taken place in the quality and independence in the treatment of content of news reports on the national public channel.

The opinion of PP representatives in the Control Commission of RTVE may be different. In effect, in 2006 nine sessions took place which Carmen Caffarel, then director of RTVE, appeared before. In those sessions, the PP posed a total of 86 questions, 10 of which (11.62%) were directly related to manipulation, partisanship, or the lack of objectivity in the information of public television. But, if interventions when that matter was incidentally alluded to are included, though the aim of the question was something else, the figure rises to 31 (36.04%). What can be verified, on the other hand, is that no other party besides the PP poses the problem of manipulation in public television^v. The PP's interventions on this matter are of three kinds. On the one hand, some are based on specific incidents that, in its opinion, constitute manipulation; on the other hand, they constantly associate the decrease in audience of TVE to a loss in the chain's credibility due to their partisanship; finally, generic condemnations abound without reference to specific cases, expressed in categorical terms, that illustrate how the strategy of party confrontation has also taken root in this control commission^{vi}. Caffarel invariably attributes the problems to technical failures or rejects their classification as cases of a lack of objectivity, at the same time that she recalls manipulations under Aznar's government and in the autonomous television that depends on the PP (Session on 10-25-2006, DSCD, 692, pp. 5 and 11). In her answers, in addition, the reflection of the general arguments around the strategy of confrontation is once again visible^{vii}, and she reproaches the PP for its complete lack of collaboration and its obstructionism (Session on 4-26-2006, DSCD, 555, p.36). The director general of RTVE constantly recalls that the decline in audience can not be directly related to a decline in quality, and she insists that "our reports are the most credible, the most neutral, and of course, the most plural" (Session on 11-22, DSCD, 705, p.25).

2.2 Government initiatives

In its electoral program for 2004 (pp. 37 and ss) the PSOE included calls for "democratic and independent media of any government guaranteeing pluralism and diversity of opinions", for which it advocated diverse measures. Regardless of the judgment that the proceedings advanced might deserve once the PSOE was in government, what's true is that, in and of itself, the whole set of reforms announced throughout 2005, specifically in the audiovisual sector, has been considered historic (UTECA, 2005:13). In June of that year, the government announced its reform plan for the audiovisual sector, which included measures aimed at driving once and for all the transition towards digital technology; the reform of the National Technical Plan for Private Television, to allow new operators to enter the television market; the reform of national public radio television; the reorganization of and modification to basic audiovisual legislation through

the passage of a General Audiovisual Law; and finally, the creation of an independent regulating authority.

With these measures a new scene was set that would be entirely digital beginning on April 10, 2010, the deadline for the “analogue shutoff”, with more than fifty national channels opening and more than a thousand autonomous and local channels. Nonetheless, the entrance of a new private operator into the television market (La Sexta) and the open broadcasting of Canal + (under the Cuatro name), as well as the reforms introduced in the broadcasting sector (in particular, the number of licenses that one owner may have at their disposal), aroused controversy in some media that believed themselves to be harmed by what they considered a display of government partisanship and favoritism^{viii}.

The national radiotelevision reform was one of the socialist government’s priorities at the start of its term, mainly due to the unsustainable debt accumulated by the public entity and the apparent lack of adaptation in its programming to public service objectives. The Royal Decree of April 23, 2004, created the Council for the Reform of State Owned Media (known as the “Committee of Wise Men”), which offered its report with its proposals in February of 2005. The reform process ended in Law 17/2006, on June 5th, of National Public Owned Radio and Television, whose aim, as expressed in its statement of motivation, is “to provide national radio and television with a legal regime guaranteeing its independence, neutrality, and objectivity, and that establishes organizational structures and a financing model that permits it to fulfill its task of public service with efficiency, quality, and public recognition”. Similarly, a reorganization plan was designed that envisaged a sensible reduction in staff. To this regard, on September 7, 2006, more than 75% of RTVE workers supported in referendum the agreement reached by SEPI and management of the public entity with the principal unions.

It’s still early to evaluate whether the aims of independence and the organizational solutions that the Law expresses are successful in practice or not. It’s positive that the appointment of the first president of the RTVE Corporation, Luis Fernández, taking the place of director general, Carmen Caffarel, was the result, for the first time, of an agreement between the government and the opposition.

But in 2006 neither the projected General Audiovisual Law nor the audiovisual authority have moved forward (despite Law 17/2006 making reference to that on numerous occasions). Finally, the PSOE’s electoral program included the commitment to take a text of the Statute of Journalistic Profession to Parliament for its passage, in order to “strengthen professional dignity and independence and news quality, in the face of the pressure of groups with media power”(p.39). However, the initiative that has been debated in this term is a Proposition of Law presented by the IU in April of 2004, with a very uncertain future, as its processing appears to be at a standstill, perhaps due to the great discrepancies between the principal associations of the sector and the strong opposition by notable media^{ix}.

2.3. Biases and affinities of the media

The idea is to make some observations on the way in which ideological biases of the media find their reflection in ideological differences and in voter preferences of its audiences.

From the CNEP 2004 studio averages are obtained of ideological self-identification of readers, radio-listeners, and TV watchers which are shown in Table 1 (on a scale from 1 to 10, with 1 being the extreme left and 10 the extreme right). Table 2 shows percentages of votes in relationship to the media most used.

<i>El País</i>	3.92	<i>SER</i>	4.23	<i>TVE 1</i>	5.59
<i>El Mundo</i>	5.89	<i>COPE</i>	5.91	<i>Telecinco</i>	4.35
<i>ABC</i>	5.53	<i>RNE</i>	5.47	<i>Antena 3</i>	5.09
<i>La Vanguardia</i>	4.63	<i>Onda Cero</i>	5.56	<i>Canal +</i>	4.05
<i>La Razón</i>	5.67				

Source: CNEP 2004

	<i>Press</i>				<i>Radio</i>				<i>TV</i>			
	<i>El País</i>	<i>ABC</i>	<i>El Mundo</i>	<i>La Vanguardia</i>	<i>SER</i>	<i>COPE</i>	<i>RNE</i>	<i>Onda Cero</i>	<i>TVE 1</i>	<i>T-5</i>	<i>A 3</i>	<i>C+</i>
PSOE	56.1	26.7	9.2	25	55.3	12.9	26.7	29.1	27.7	49	32.8	61.1
PP	14.8	66.7	63.2	15	19	69.7	49.3	47	48	21	32.8	11.1
IU	13	0	0	5	7	0	7.3	1.7	2.7	5.3	3.2	0
Otro	5.4	3.3	4.6	Ciu: 21.7 Erc: 16.7 Otros: 1.7	8.6	6.9	4	8.6	3.6	9.1	6.5	11.1
No-vote	10.3	3.3	23	15	10.2	10.6	12.7	13.7	18.1	15.5	24.6	16.7

Source: CNEP 2004

The most striking data is the apparent “swing to the right” by the readers of *El Mundo*. The figure of ideological self-identification of those surveyed who declare themselves to be readers of this daily newspaper is the highest in the sampling. The virtual disappearance of IU voters among habitual readers of *El Mundo* may have influenced this. Likewise, moderation is noted in the average ideology of readers of *ABC* and an increase in PSOE voters among its readership, though this data must be taken prudently, given the scarcity of some of the suppositions. The results corresponding to television seem to confirm that, among watchers of the public channel, the vote for the party in government predominates. This could be interpreted as sign that national television imparts a partisan bias in its news reports but it doesn’t necessarily imply that a direct influence on votes, as it’s possible to posit the hypothesis that spectators choose other channels than the public channel when a government that they don’t sympathize with takes power. Finally, and also in the context of the CNEP 2004 survey, Table 3

shows the perception of those surveyed of the partiality of the daily newspapers they most frequently read.

Table 3: Perception of those surveyed of the partiality of the daily newspapers they most frequently read (%)					
Newspaper they most frequently read	Bias?		If the answer is affirmative, what is the party you are on the side?		
	Yes	No	PSOE	PP	Others
<i>El País</i>	38.7	61.3	88.5	9.2	2.3 (IU)
<i>El Mundo</i>	26.3	73.7	16.7	83.3	0
<i>ABC</i>	48.2	51.8	3.8	96.2	0
<i>La Vanguardia</i>	20	80	9.1	45.5	45.5 (36.4 CiU)

Source: CNEP 2004

The majority of readers believe that their newspaper does not favor any political party. Now, there is a noticeable difference between the minimal majority that believe *ABC* to be impartial and the overwhelming majority that does the same with *La Vanguardia*. On the other hand, among those who state they perceive biases; their direction holds no surprises.

3. The opinion of the principal newspapers

A study will be done in this section of the editorial line and of the opinion of the four dailies of general information with the largest circulation in Spain (*El País*, *El Mundo*, *ABC*, and *La Vanguardia*) on three specific issues: the new Catalan Statute, ETA's cease-fire, and the investigation into March 11.

Tracking the press with detail, to the detriment of the better-established media like radio and, especially, television, might arouse objections. However, we should provide several reasons explaining why it is a valid option. From a merely technical point of view, analysis of the declarations by audiovisual media is less accessible, though not only due to the need for relying on transcriptions that are essentially systematic of what is expressed. In addition, and without the need to turn to elitist explanations (the press as the leader of opinion), the main arguments that are handled in public life are included in written media as much as or more than audiovisual media, due to the characteristics themselves of the media, which is open to a fuller and more elaborate development of ideas. It's common, additionally, that quite a few commentators express themselves in the different kinds of media, which guarantees a basic homogeneity in their messages. At a bare minimum, formulations included in press articles are representative of the state of political journalistic discourse.

However, the three issues subject to study have not been chosen at random. Besides receiving very different declarations and attitudes from among political forces and media akin to different sides, these three matters have carried out a fundamental role

in the climate of confrontation and they have been present throughout the entire term. The current political situation has also dominated at one time or another in 2006, and on numerous occasions they have been explicitly related to one another. In 2006 the Statute was passed once and for all, ETA declared a cease-fire that didn't last longer than the end of the year, and several judicial resolutions were announced regarding March 11th. In the conclusion additional assessments will be made on the importance of these issues.

Given the material impossibility of analyzing every media declaration, we have opted for examining all opinion articles appearing in newspapers around specific dates^x. For interpretational purposes, nonetheless, analysis from this sampling will be complemented with references to other relevant statements taking place outside that timeframe.

3.1. General considerations

In certain aspects some differences among those newspapers analyzed are immediately perceived. Dominant ideological tendencies are more a question of proportions than an "all or nothing". That is, the four newspapers offer a certain degree of pluralism when including in greater or lesser frequency contradicting voices to their "official" line.

In Table 4 some basic information appears on the number of articles considered in those mentioned periods of exhaustive examination, related to the three issues concerning us^{xi}.

The first thing that should stand out is that *La Vanguardia* seems to be a meager newspaper in everything not directly affecting its geographical sphere of interest, which together with its notable courtesy in appearances, makes it particularly resistant to disputes that the media of Madrid has gotten involved in. Thus, it has dealt very little with March 11th and ETA, as compared to the other newspapers. However, it has shown a very extensive opinion, logically, on the new Statute. *ABC* and *El Mundo* stand out in their production of opinions^{xii}, though March 11th is an issue especially associated with *El Mundo*, while references made by *ABC* and *El País* are rather "reactive" in the sense that they show their disapproval with declarations by other media or political groups on this issue, or they distance themselves from its use as an element of criticism.

Another aspect that we ought to point out is the apparent "preventative" or "anticipatory" nature of many of the opinion commentaries. For example, months after the start of ETA's cease-fire it was possible to find the exact same arguments that were used months before, in prediction of such an event. For some, this shows partisan apriorism. For others, it shows correct forecasting.

3.2. March 11th

3.2.1. *La Vanguardia*. The stance of *La Vanguardia* can be easily summed up, since among its opinion articles there are few references (five specifically) to March 11th and they are all incidental, except in the sole editorial of the sample (4-12), where it talks about the trial proceedings of judge Del Olma, stressing that "the judicial and police investigation discard the theory of a conspiracy", and warning of the need to confront islamist terrorism. A supplemental examination of editorial line followed throughout the last year, outside of the initial sample, immediately outlines a consistent, although not an

insistent, stance. Thus, the March 12th editorial believes “the clumsy management of information of the out-going government fostered an electoral change that no poll had forecasted”. The previous day’s editorial assumed the responsibility “of the islamist terrorism similar to the style and postulates of Al Queda” and made the newspaper’s position clear:

“[*La Vanguardia*] is obligated to put focus on the worrisome insistence by political and media sectors when going in-depth, still today, on supposed and horrifying conspiracy theories that deny Islamist terrorists’ responsibility for the attack and seek, at all cost, to cast doubts on the investigation followed by police and judicial spheres. What is most disquieting of these messages is that they come from those who, on those convulsive days, did not know how to or did not want to manage official information with the due prudence, caution, and accountability, thus creating uncertainty and anger among citizens.”

The rejection of the “theory of a conspiracy, that one day points to uncertain foreign secret services, and the next day returns to the heavy theorem of ETA” (editorial, 9-23; in the same sense, editorial, 6-11), joins support for the “meticulous work” of the examining magistrate (“the work of the rule of law: patient, moderate, and prudently distanced from the turmoil of politics”, editorial, 3-15), adding a call for moderation to the opposition on this matter (“Be careful Rajoy, upright and moderate man, of ‘politics with no responsibility’”, editorial, 9-23; Be careful Rajoy of conspirators and adventurers”, editorial, 10-6).

All of that, avoiding hand-to-hand and without lavishing partisan statements:

“We’re not going to enter into professional considerations. Let them worry about their own. [...] Regarding this subject, moralist crusades contribute little like the one embarked on this week by the Col·legi de Periodistes de Catalunya against those who are seduced by conspiracy theories. [...] That is not the fundamental problem. The problem is the strategic lack of definition of the leading opposition party in a really vital matter for the strength of the State.”

3.2.2. *El Mundo*. The formulations that *La Vanguardia* calls “conspiracy theories” or “conspirative” (other critics use the terms “conspiracy theorists” or even “conspiranoicos”), mainly emanate from certain journalists from *El Mundo*, *Libertad Digital*, and *COPE*, with other lesser support (like Telemadrid, which is a station receptive to this kind of news), who refer to themselves as searchers of “the truth” of March 11th and who accuse their adversaries of not wanting to know what really happened and holding up their legitimate investigations, which dismantle the “official version”.

Of the four newspapers examined here, *El Mundo* is the only one that maintains or directs the most skeptical hypotheses as opposed to the “official version”. Throughout 2006 numerous front pages have opened with new and spectacular “revelations” or “key elements” of March 11th, accompanied with editorial commentaries trying to present doubts on the commonly accepted explanations or propose new lines of investigation (the involvement of ETA, irregularities or even criminal conduct of some members of the State Security Forces and Corps, etc.). In the sample used here 11 editorials and 6 opinion articles referring to March 11th are included.

The newspaper's basic line is that the trying carried out by judge Del Olmo has been terrible and it has adapted scheming of a government interested in closing the file on the investigation, to impose the "official version" which the journalistic labor advanced by *El Mundo*, in particular, has revealed as unsustainable. In fact, in nine of the editorials a direct reference is made to Mr. Del Olmo, alluding to his "limited professional ability" (5-31), to his "clear physical and personal limitations" (6-13), to his "botched job and willfulness" (6-21), to the fact that he is a "physically disabled judge besides being professionally incompetent" (6-21), turned into "public calamity" (5-11), and his "surrender" (7-8), etc. In its editorial on June 8th, *El Mundo* considered it to be necessary the substitution of the judge and expressed the opinion that not doing such meant "a resounding failure of the State". Also included in the sample were two negative assessments of the district attorney on the case, Olga Sánchez (editorials 6-21 and 7-7), whose "will to clarify all the circumstances and events surrounding the massacre have always been lesser than her desire to please those who work to maintain an official version that is weaker and weaker" (6-21). The editorials contain frequent references to the new item of the day, with positionings of the government or examining magistrate so that they follow in such and such a line or they respond without delay to presented information, in such a way that from the refusal to attend to those requirements appropriate consequences are extracted. Thus, what is revealed is "the lack of political will to clear up what occurred on March 11th" and the "lack of [government] interest in driving the police investigation", so that, added all the weaknesses of the judge, "all the conditions are present for the trial of March 11th to be a sham".

Among columnists, Jiménez Losantos stands out for his vehemence. In fact, the General Council of the Judiciary protected Del Olmo against one of his articles (from 5-26, not included in the original sample)^{xiii} which *El Mundo* considered "impeccable" (editorial, 6-8)^{xiv}. What's more, this commentator frequently mixes into his columns references to ETA or March 11th, insinuating or affirming the involvement of that terrorist group and the dark maneuvering of the socialist party.

In September, *El Mundo* vigorously re-launched its interest in March 11th. On the 1st, as the editorial indicated, it published "an outline of the principal mysteries" that, in its judgment, "shattered" the validity of the main links connecting Islamists with the massacre, adding that this news would be "avidly read by those who haven't allowed themselves to be defeated by intellectual laziness and ethical narrow-mindedness". On September 3, the front page of *El Mundo* opened with a statement by one of the accused, Suárez Trashorras, accused of supplying those responsible for the March 11th massacre with explosives: "I am a victim of a coup uncovered by a group of Muslims". The editorial on September 5 read "Investigating in-depth ETA's role on March 11th is now unavoidable". And this was the beginning of a fierce conflict between *El Mundo*, on one side, and *ABC* and *El País*, on the other. The tone of the accusations was raised. Jiménez Losantos believed (9-4):

"And what does March 11th appear to be today? Exactly as Trashorras says: a coup perpetrated by Spanish intelligence services, and in which drug and explosives traffickers from Asturias were used controlled by the police and drug and Koran traffickers from Lavapiés controlled by the Civil Guard as unqualified labor or as a

simple front. Just like the coup d'état of February 23rd, that is, by the Spanish intelligence service (CESID), Armada and Miláns used Tejero as the dynamite boy”^{xv}.

El País published (and *ABC* reproduced) an incepted conversation with Trashorras in prison that revealed, in its opinion, that *El Mundo* paid the interviewee for his statements. *El Mundo* and *El País* exchanged accusations of sensationalist journalism and a lack of professional ethic (editorial, *EP*, 9-13; editorial, *EM*, 9-14). *El Mundo* didn't hesitate in discounting “foolish following of some co-worker in pathetic decline” (editorial, 9-14), in reference to *ABC*, and accused the other two newspapers of Madrid of being “lazybones”, of not wanting to search for the truth, but rather wanting to falsely close the case “in line with their cowardliness, ineptness, laziness, and interests” (editorial, 9-18). Meanwhile, the exclusives continued: on the 21st, the front page of *El Mundo* stated: “the Ministry of the Interior falsified a document to hide from the judge ties between March 11th and ETA”. The government denied it. *ABC* and *El País* both pointed out that the documents that *El Mundo* offered did not indicate a falsification. So began the “boric acid” issue, with diametrically opposed interpretations by judge Garzón [who *El Mundo* blamed for possible corruption (editorials from 9-30 and 9-31), to the point of stating that he had “earned a severe sanction” (editorial, 10-12)] and judge Gallego, whose performance, on the other hand, quite satisfied *El Mundo* (editorials from 10-20, 11-7, and 11-11). Throughout this whole time judicial decisions that backed Mr. Del Olmo's performance (like the confirmation of his committal for trial, the document of accusation of the district attorney's office, the opening of the trial) were interpreted in a favorable way to the newspaper's theory (editorials from 10-23 and 11-8). The performance of district attorney Olga Sánchez continued to be reviled (editorials from 9-20, 11-8, 11-21, and 11-23). And the ETA line is highlighted: “It is obvious that there has been and there is political instructions to keep ETA at the margin of the investigation, either due to fear that something shows up that might mar the interpretation of the electoral triumph of the PSOE, or in order to protect the peace process of these massive blemishes” (editorial, 12-4).

3.2.3. *El País*. *El País* has two editorials and five articles on March 11th within our analyzed sample. The editorial on April 12th refers to the proceedings as “the first authorized version, though still provisional, on the attacks” and, in clear contrast to *El Mundo*'s attitude, it received it with satisfaction, given the need for “citizens to stop being defenseless against absurd versions presented by their creators as the only solid versions against the weakness of the investigative work by the judge handling the case”. The participation of ETA is discarded and criticism of the PP is included for discrediting the judge's work. In the July 8th editorial the difficulties that the judge has been subjected to are mentioned, in particular by political and media pressure, “that continues today and that will surely continue before and after the trial”. Among columnists there is reference to the terrible (when not mendacious) information management of Aznar's government after the attacks as leading to his electoral defeat. The conspiracy theories are discredited, manipulation of those theories is attributed to certain sectors of the right or public figures, and ETA's responsibility is discarded.

El País's general attitude could be summed up, then, by saying that the institutions should be allowed to do their work, without fueling conspiracy fantasies. This

was made clearer as of September, when the production of editorials and opinion articles on March 11th increased as a response to publications in *El Mundo*. And they increased with intensity, accusing *El Mundo* of sensational journalism, as previously mentioned. To the harsh recriminations against this newspaper the reproaches of the PP joined in for its echoing of the “shocking and delirious conspiracy theories” (editorial, 9-14) of this “toxic journalism, on paper and through the airwaves” (editorial, 9-30):

“The hypothesis of a conspiracy unites such diverse actors as the police, ETA, and foreign secret services after the shared objective of causing the electoral defeat of the PP in favor of the PSOE. [...] Imaginative interpretations of dramatic issues always find an audience. That there is media that takes advantage of the gullibility of many people to create intrigue on the true perpetrators of March 11th, despite material evidence and the similarities with other mass Islamist attacks, is sad; but not as much as seeing the PP demanding explanations from the government of Spain of those fantastic insinuations” (editorial, 9-20).

As a result, *El País* believes the attacks on Garzón to be unacceptable, for which it is requesting the protection of the CGPJ due to the boric acid issue (editorials from 10-6 – Mirador section – and 10-11) and it shows its surprise by the differences in his ruling and that of judge Gallego (editorial 11-18; Pradera, 11-19). Overall, it maintains at all times the line of denouncing what it considers to be cons and baseless hypotheses (Cebrián, 10-12), and it receives the successive judicial proceedings as a demonstration of the lack of solidity in the more skeptical stances on the official investigation.

3.2.4. ABC. In the sample two editorials and six signed articles are included that, like in the other cases, are completed with other references. Though *ABC* shows itself to be undoubtedly opposed to the conspiracy theories, its opinion on March 11th is not the same as that of *El País*. If in *El País* it’s possible to find to find an allusion to March 11th being associated to the invasion of Iraq, what *ABC* emphasizes is that “the terrorists’ motive was to immediately influence the elections of March 14, 2004, to force a change in government” (editorial, 4-12; stressed in the editorials on 7-9 and 7-24). And, although *ABC* incidentally mentions “the clumsiness of the government [of the PP]”, it especially refers to “the agitation practiced by the then opposition” (editorial, 4-12). In this respect, it indicates that “continuing to say that the PP government committed ‘a massive deception’ is out of proportion and manipulative. What was demanded of Aznar’s government within hours, Justice hasn’t been able provide in two years: an infallible version of the attacks” (editorial, 7-27). In fact, it alludes to the efficiency of the PP government in solving the attacks (editorial, 9-27). In this way, for the editorialists and columnists of *ABC*, the firm rejection of the “conspiracy” theories is compatible with an attitude of unmistakable reproach of the previous opposition (in particular, E. Uriarte, 10-3 and 10-7).

The April 12th editorial added that “the committal for trial demonstrates not being unaware of certain external controversies on the trial efficiency”, and it included some critical observations on the resolution, having little to do with assessments issued by *El Mundo* however, at the same time that it championed for the prevention of unnecessary delays in the case, as did *El País*.

Skepticism is not shown regarding the truthfulness of the version offered by the examining magistrate, and the responsibility of ETA is discarded (7-27). On several occasions it warns of the negative consequences for the PP of linking unlikely conspiracy versions, but it adds the relevant detail that it holds interest and, to a certain point, it is encouraged by Zapatero, who is looking for the radicalization of his adversary in order to push him out of the political center^{xvi}.

In July, between the 24th and 27th, *ABC* published four conscientious analyses of the March 11th indictment, disclosing that “for *ABC* respect for the State’s institutions is very distinctive of its editorial line, especially watched after in the assessment of judicial resolutions, that demonstrate the principles of a democracy”. But the fall campaign initiated with the news that *El Mundo* “promised”, according to *ABC*, “to position itself explicitly in the arena of defending the democratic State, the authentic interests of the nation, and the absolute autonomy of the PP with respect for all its leaders loyal to the political project that this organization embodies under the direction of Mariano Rajoy, and our editorial and informative independence” (editorial, 9-15). In turn, *El Mundo* put *El País* and *ABC* on equal footing, to whom he alluded as “those two Sisters” that the government “nourishes” daily “with symmetrical ammunition” (editorial, *EM*, 10-2). Several editorials and opinion articles in *ABC* reviled the informative activity of *El Mundo* and its associated media, with an intensity on par with that of *El País*, but with a particular insistence of its own of the negative things this attitude provokes in the right. Thus, after the publication of the Trashorras interview, *ABC* declared:

“We have attended a new episode of feedback of interests between the newspaper *El Mundo* and Federico Jiménez, program director of the Cope La Mañana channel, to gain market share around conspiracy theories, encouraged by very specific and extreme sectors of the PP which are causing serious damage to the general interests of the center right. [...] A right that uses March 11th as its opposition to the PSOE is doomed to electoral failure, but also to ideological failure, because democratic convictions are not compatible with extremist anti-establishment attitudes (editorial, 9-14). Nothing would be better for the interests of zapaterista socialism than, as it is well known, camouflaging its mistakes and its sectarianism in the noise provided by these celebrities of Spanish public life” (editorial, 9-15).

This newspaper also distinguishes between the management of the PP, personified by Rajoy, who is exonerated from participating in those practices, from other sectors with that political formation, that work to the detriment of Rajoy (editorial, 10-11; Camacho, 9-15).

3.3. ETA’s cease-fire

3.3.1. *El País*. In the sample 16 editorials and 48 articles are included on this matter. The editorial from March 23, 2006, is quite revealing in the general attitude adopted by this newspaper in the subject concerning us here. It begins affirming, “ETA’s permanent cease-fire means an unprecedented opportunity that would be irresponsible not to try and take advantage of”. Likewise, it includes two of the terms most repeated throughout the articles in *El País* in the beginning: “caution” and “hope”, with a memorial to the victims

and an invitation to understanding and collaboration among democratic forces, without holding back criticism of the opposition leader for his lukewarm response.

In effect, when speaking of “caution” or “prudence” it is not only to curb the optimism or hope due to ETA’s terrible record, as other media might have done. In a particular way, that “caution” and “prudence” often appear directed as demands of “responsibility” to all political and social forces in general, or more specifically, to the political and media opposition, of whom discretion is also requested. In this last instance, it is usually accompanied by retrospective reproaches and reprimands for the future. In fact, there are an abundant amount of calls to the opposition and the media to not slow down the process opening because of partisan considerations. For that, understanding between the two principal political forces is requested as well as support by everyone for a process that, only adhering to the reference sample, receives the acritical qualification of “peace process” in at least nine articles and one editorial. Also the importance of not making electoral use of the cease-fire is alluded to.

In general, during the first moments, except for negative observations about specific aspects (editorial, 6-1), the least enthusiastic opinions focus on highlighting certain government inconsistencies, its apparent will to negotiate at any cost or the possible risks of falling under payment of some “political price”, though it’s not said openly that this is what’s being done nor is it affirmed that there is a process of “surrender” or “renunciation”, as other media denounce (in fact, other feature writers expressly deny such a possibility)^{xvii}.

One of the aspects specifically dealt with in the first moments of the cease-fire is that of the causes that have led to that situation. Different factors are mentioned, internal factors (movements in the setting of radical Basque nationalism), and especially, external factors, by which one positively notices the contribution, to greater or lesser degree, by the whole of society, the democratic parties, the successive governments, the Political Party Law, etc. One can even appreciate France’s police contribution and the role it might play in the future (editorials from 3-25 and 6-15). In this context, there’s no shortage of congratulations for the socialist government, and above all for President Rodríguez Zapatero. In the same way, expressions occur of what we might call “realism” or “posibilitism”, in the sense that it’s not sensible to believe that we could take care of ETA solely through police channels nor cling on to maximalist principles on the demand for public contrition by the terrorists. This realism retrospectively extends to justify the normality of previous contacts (editorial, 3-24), and towards the future to adopt an overall understanding and flexible attitude in the new context (though not so flexible as to ignore that Batasuna must renounce violence in order to become a legal party: editorials from 4-11 and 6-1), that, as we can assume, won’t be without difficulties.

The positive assessments of the opposition leader, appreciating his good sense and knowing how to “rise to the occasion”, are especially focused on the first meeting held by Rajoy and Rodríguez Zapatero after the declaration of cease-fire (editorial, 3-29) and in his treatment of this matter in the debate on the State of the Nation (S. Gallego-Díaz, 5-31: “discretion and common sense prevailed”). But, when the climate returned to previous levels, the attitude of the main opposition party deserved above all a negative assessment. Thus, at the beginning of June when Mariano Rajoy, with the news of the meeting between the Euskadi Socialist Party and members of the banned Batasuna party,

announced “rupture of all relations” with the government, *El País* dedicated a harsh editorial to him (6-7):

“There are sectors in the PP, unfortunately very influential ones, which, independently of the government’s attitude, only seek reasons for the rupture, wanting Zapatero to crash. But that didn’t seem to be the Rajoy’s attitude on this issue, at least until now. [...] The announcement of there being contact with Batasuna has been internalized by the PP as a pretext for the rupture”.

And after the meeting was held, the editorialists added that “the right to disagree” on this matter should not “lead to the disgrace of doubting the intentions with which it was held, nor much less, turn into a kind of unbelievable surrender to ETA” (editorial, 7-7). For *El País* (editorial, 7-16), the PP is “a party that today has committed to the derailment of negotiation. Such a strategy is morally reprehensible and an enormous political mistake”.

Summarizing aspects for assessment, one editorial and eleven articles hold explicitly positive assessments regarding the PSOE, the government, or some of its members. One editorial and seven articles contain explicitly negative assessments. For the PP or its members, the figures are: positive, one editorial and five articles; negative, six editorials and twenty articles^{xviii}.

On the other hand, ETA communiqués and development of events on the matter reveal the different stances of the main newspapers in what might be called “the interpretive question”. It’s a question of, faced with the terrorists’ acts and expressions, granting credit to the government, to its denials or its silences, without assuming that there are “commitments” which are insinuated at, or playing down the “rhetoric” of the terrorists (for example, editorials from 6-15, 6-21, 6-22, and 9-25: “It’s a universal rule that terrorist groups exaggerate alarmist rhetoric when [...] they reduce their armed activities” (editorial, 11-5). And this offers a new argument to reproach the opposition’s stance. Thus, Batasuna’s emboldened attitude, that for other media is a reason for furious reproach of the government, is for *El País*’s editorialists at least partly attributable to the PP’s attitude (10-19).

While on occasions (in particular at the end of 2006) a certain disillusionment is spoken of or it is admitted that the process is going through difficulties (editorials from 11-12, and 11.22), these difficulties are not normally blamed on the government, but rather principally on ETA and Batasuna (editorial, 11-12). What is blamed on the government at times is a certain lack of clarity or communication with citizens to dispel the confusion that is sometimes felt. With the end to the process after the attack in the airport’s Terminal 4, editorialists closed the year adopting the argument already anticipated in previous assessments: the only guilty one is ETA and it’s important to support the government (in fact, the editorial on 12-31 headlines “ETA is guilty”):

“There is only one who’s guilty for what happened yesterday: ETA. Faced with the anachronism of a terrorist group [...], democracy must counter with the unity of all democratic forces, all of their support for the government at a time of greatest difficulty, the strength of the institutions and firmness of the State against the terrorists. [...] The worst thing that could happen now is for partisan quarreling and petty egoism to

make the terrorist group's objective of wearing down and weakening the government even easier. [...] It's not to be ruled out that some will use this circumstance as ammunition for political slashing, but, despite the fact that criticism of the labor of any government is necessary in democratic systems, this does not appear to be the most appropriate time for futile reproaches."

3.3.2. *La Vanguardia*. With a total of seven editorials and sixteen opinion articles in the reference sample, it can't be said that *La Vanguardia* has been very lavish on this matter, such that it isn't easy to make very extreme or generalized observations. The Catalan newspaper appears faithful to its professed inclination towards moderation and balance. Apart from the restrained tone, if direct assessments of the government and opposition are kept in mind, we discover four editorials and two articles with positive mention of the government and five articles with negative comments. For the PP, the results are identical regarding positive allusions (four editorials and two articles), and slightly higher regarding negative allusions (one editorial and six articles). The semantic question also doesn't seem to be too problematic overall^{xix}.

The cease-fire declaration was received by editorialists at *La Vanguardia* with expressions similar to those seen in the case of *El País*. Hope, prudence, the recognition of a margin of trust in the government, that has "the right and the duty to attempt it, and even fail if that were the case"; a call to unity and consensus; an assessment of the historical contributions that made the situation possible; remembrance of the victims; a statement that a political price shouldn't be paid (with particular diplomacy: "It's true, as the leader of the PP highlighted, that you can't pay a political price for peace, but it is also true, as Zapatero affirmed in his day, that 'the end to violence doesn't have a political price, but politics can contribute to the end of violence'"); and, as a differentiating element, an explicit statement that "we can't [...] form political interpretations on the fact that this truce is ordered the day following the passage of the new Statute in the Constitutional Committee" (editorial, 3-23). The editorial from 3-24 likewise contains a formulation of *La Vanguardia*'s main positions:

"The democratic front must make an effort in rebuilding its unity. On this crucial road toward a future of peace there is no room for the most minimum partisan strategy. [...] The government has the obligation to lead the process and it ought to rely on the support and collaboration of all the other political forces [...]. The conservative party must accept that it is the Executive that has to form the agenda. At the same time, we must turn deaf ears to those who seem determined to lay down obstacles, as if they preferred to make hope fail because of the simple fact that they don't think they are politically benefited. [...] Circumstances influence the application of law without needing to distort it."

In effect, since the government, in their opinion, is who directs the agenda, the editorialists do not try and impose on it this or that direction. Even in the most fragile moments the prudence with which they, in general, comment on the development of events stands out.

Regarding what was before termed the "interpretive question", the editorialists start by accepting, generally, that it's important to give the government credibility. Thus,

due to an ETA communication where the terrorist group announced the government had obtained commitments from it in February of 2005, the editorial on July 11 states:

“For the PP, that information, which it finds credible, demonstrates that it is not before a peace process, but before a process of trickery and negotiation with ETA at the margin of the law [...]. Until then [until it begins to dialogue with ETA], if we really want to reach the definitive end to the violence, the prudent thing to do is give a vote of faith to the government so that it may manage the process the best it can and with utmost discretion. All the political parties, including the PP, should work in that same direction.”

And, before the eventual setbacks, they tend to believe that the ball is in the Basque nationalists' court, before holding the Executive responsible (for example, editorial on 10-27, after the gun theft in France by ETA). References to the “political price” and to what was before called “posibilitism” are relatively scarce and they appear with contrasting details among the columnists (some show a slight distrust regarding the first point, and others assume as normal the possibility of a concession; the same divergence is seen regarding the possibility of taking care of ETA with the police). Regarding what can or cannot be demanded, October 25th's editorial, on the Strasbourg debate, points out that “now the European People's Party (PPE) argues that it will not support the resolution because ETA still has not asked for forgiveness from the victims, something that was never asked of the IRA”. But what most concerns the Catalan newspaper is the unity and consensus of political forces. On this point there is an appreciable disappointment due to the noise, lack of moderation, and conflict, by those who speak with sorrow, or those who blame one another, often in the same text (editorials on 5-24 and 6-7). However, in these assessments on the clear discrepancies, observations on the radical negative stance of the PP appear slightly more often among the editorialists, though not in a belligerent tone: for example, after Rajoy's announcement that his party was cutting off relations with the government (editorial, 6-7); after the meeting between the PSE and the banned party Batasuna (editorial, 7-7); after Tony Blair's visit (editorial, 10-4); regarding the debate in the European Parliament (editorial on 10-25)...Although, for *La Vanguardia* criticism is not necessarily applicable only to the PP. From what's published on this issue and others, the theory of a PP divided can be guessed at or, at least, a PP subject to the tension and influence of extremist media and different factions within the party itself, from whose influence a distancing from Rajoy is urged, who they considered to be moderate (editorial, 3-29).

Regarding the role of the Judicial branch, the Catalan newspaper expresses itself in its editorials with its customary caution, pointing out that there is a certain margin for flexibility without reaching a breakup in democracy (editorials on 6-3, 6-27 and 10-11), though some writers show themselves to be critical of what they consider to be attempts at government pressure. On the other hand, concerning the role of the victims, before the announcement of cease-fire, *La Vanguardia* expressed its position before the protest called by the AVT on February 25th (editorial, 2-26):

“The matter of the victims of terrorism is very sensitive and deserves to be approached with complete care and respect. [...] But respect for that feeling and the

memory of those killed compels society to reject any temptation to manipulate them. The unfortunate politicization of the fight against terrorism that society is living has brought with it the politicization and division of the victims, which is regrettable. [...] All democratic governments have tried to end terrorism with dialogue with ETA. [...] Why the effort to deny the government now, when three years have passed with no deaths, the mere possibility? [...] Society must be fair, supportive, and respectful of the victims, but it must also provide an option for peace”.

Finally, *La Vanguardia*'s reaction after the attack at Barajas airport pointed to the possibility of a failure by the government, but it entirely blamed ETA for the rupture in the process and reaffirmed its initial stance that the President could and should try, even if it didn't turn out.

3.3.3. *El Mundo*. In the reference sample 31 editorials and 55 articles are included on ETA's cease-fire. Two editorials and one article contain explicitly positive assessments of the government, but above all negative assessments abound (11 editorials and 35 articles). For the PP, the figures are the same concerning positive assessments (two editorials and one article). Where better treatment is seen is in the smaller number of explicitly negative assessments: three editorials and five articles (but two of those reproached it specifically for its excess of prudence). Regarding the terminological questions, 14 articles and 2 editorials use the expression “peace process”. But only one of the articles does so acritically. The rest include the term in a negative context, with distance, in quotation marks or the remark “poorly titled”.

El Mundo presents a greater contrast between the force of some of its columnists representing the majority line and those who express themselves in the opposite direction^{xx}. The following statement, therefore, applies to the predominant trend, that offers more deviations than the other newspapers.

El Mundo's first editorial (3-23) after the announcement of a cease-fire by ETA has the principal elements characteristic of that newspaper's attitude, starting with its title: “A text and a context that inspire more worry than hope”. *El Mundo* points out that ETA's announcement “deserves to be received with satisfaction and hope”, but immediately adds that “wondering what it is in exchange for is unavoidable”, such that “this concern neutralizes, or at least cuts down on those feelings of satisfaction and hope”. This matter of a “political price” is especially present in this newspaper, which wonders:

“Why does [what ETA demands] alarm us so much if we've heard similar demands on numerous occasions? The answer is simple: because for the first time in three decades there is the risk that the person representing the State is ready to make political concession to ETA. And that's not a simple hypothesis, but a fear that is sustained in this government's tradition.”

In fact, “it was Zapatero himself who has raised expectations of a negotiation with ETA”, it affirms, for which he has already made “many concessions”. To this regard, something is mentioned that is the trend in this newspaper: the relationship between the cease-fire and the Catalan Statute^{xxi}. Despite which, the editorialists continued: “we're

going to critically back this government's actions, with one condition, [...] that peace does not imply paying a political price". And they finish insisting on the need for the government to seek understanding with the PP, with the warning that, "if it weren't possible to reach that consensus in the next few weeks, there would be no other resource than a call for general elections [...]".^{xxii}

So it is that distrust, suspicion, and skepticism predominate in this newspaper.

Warnings on the unacceptability of paying a political price aren't different from those made by other media, and they match up with numerous statements by government representatives. Logically, a "political price" is understood very differently depending on who is interpreting it. In *El Mundo* assessments among columnists abound where the payment of political prices is taken for granted, past, present, and future. Thus, the internationalization of the process is a cession, compared to what was early warned of (editorial, 3-25; I. San Sebastián, 3-29), and especially in October due to the debate in Strasbourg (editorial, 10-26; I. San Sebastián, 10-25; F.J. Losantos, 10-26). But the principal sign of appeasement is the feared, or verified, depending on the case, overall deactivation of the State under a rule of law and of justice in particular (editorials on 3-23, 3-24, 3-31, 4-10, 4-12). The same editorial on 3-23 considers the Attorney General's apparent readiness to support an interpretation of the law according to the "new situation" a bad omen. As a result, numerous articles deplore this attitude (for example, editorial, 10-27), or they direct themselves disapprovingly at other figures like Pérez Rubalcaba (editorial, 4-10) or judge Garzón, after taking Grande-Marlaska's place (F.J. Losantos, 7-6). The latter commentator offers an unmistakable and very characteristic assessment of this dismantling of the rule of law:

"From the Pact for Freedom and Against Terrorism, better known as the Anti-Terrorist Pact, we've gone to the Pro-Terrorist Pact. [...] I feel, as an individual citizen, morally and legally dissociated from any initiative by this government, which has set in motion a pro-coup process, whose objective is the pulling apart of the Spanish nation, whose means are the denaturalization of the rule of law. [...] Zapatero will be the President of the government for ETA. For that reason, he no longer is president for me" (6-30).

Far from the discretion that other media and the government itself require, in *El Mundo* silences and incitements to silence are viewed negatively (editorials on 8-19 and 8-20) or they are interpreted as a sign that dark ploys are being devised (editorial, 6-23; editorial –Impressions– 7-3; L.M. Anson, 11-14). That's why, among other reasons, it seemed wrong to them that Rajoy agreed to not talk about ETA in the debate on the State of the Nation (editorials on 5-31 and 6-1; F.J. Losantos, 5-31). Though *El Mundo* commentators agree with those from the other newspapers on the need for understanding among the PSOE and the PP regarding anti-terrorism (editorial, 3-29), diagnosis of why that isn't so are diametrically opposed. Thus, *El Mundo* believes the rupture of relations between the PP and the government to be "understandable", accusing the government of making it impossible to reach that understanding or seeking it in a self-interested way, in order to "implicate" the opposition in the foreseeable and unacceptable cessions (editorial, 7-4; F.J. Losantos, 5-30 and 6-8). And it reproaches the government for moving forward in the process without depending on the "indispensable consensus"

(editorial, 6-20; similarly, editorial, 6-30). In keeping with this, the successive setbacks and mishaps of the process are not interpreted according to the rhetorical interests or internal self-justifying needs of ETA, but they are taken as worrisome signs that ETA has not given up in its same effort as always (editorial, 11-5), such that the President of the government's willfulness and the blindness facing the reality of events is not understood (editorials on 6-15 and 6-18). As a result, it pays no attention to or does not believe governmental interpretations (editorials on 6-21 and 6-22)^{xxiii}.

Finally, in accordance with the critical attitude of this newspaper, its editorial on 12-31 reacted against the Barajas attack notably emphasizing government mistakes and errors of a president it considered "irresponsible" and whose insufficient response it reproached:

"The failure of the government's strategy concerning ETA and the lack of means of support for Zapatero and Rubalcaba's optimism is demonstrated on a political level. We might aptly wonder in whose hands we're in when both the President and the Minister [...] have shown such complete ignorance regarding the plans of the terrorist group. [...] Zapatero [in his court appearance yesterday] didn't want to go beyond that "temporary" suspension. [...] Zapatero is not a traitor nor a wicked man, nor do we believe he has signed bills of exchange to ETA [...] but he has acted in a profoundly wrong way [...]. We are seeing a clear case of political irresponsibility that voters should punish. [...] Time has shown that [the May, 2005, congressional] resolution served to let the terrorist group do things their way [...]"

The editorialists finished by recalling what Zapatero should have said in his court appearance after the attack and didn't, and pointing out that, "though Zapatero disappointed many Spaniards yesterday", if he were to rectify himself, "the PP should help him change his policy and recover consensus".

3.3.4. ABC. The sample includes 19 editorials and 71 signed articles. Only three editorials and one article include some positive assessment of the government. On the other hand, eight editorials and 43 articles hold explicitly negative statements. For the PP, the figures are: five positive editorials and three positive articles, and four negative articles. So the *ABC*'s stance on the negotiation process with ETA is unmistakably critical towards the government. Almost all the ideas appearing in *El Mundo* to that regard also appear in one way or another in the opinion columns of *ABC*, but this newspaper stands out in two aspects at least. On the one hand, overall, the manner of criticizing is less aggressive (not necessarily the content) and, on the other hand, there are very few dissenting opinions on the fundamental issues^{xxiv}.

The first editorials after the cease-fire (3-23 and 3-24) mixed prudence with hope, granting the government a certain "margin of trust", though they already contained the seeds of the main ideas that, slowly but surely, moved the newspaper's institutional line towards the line expressed by Juaristi (3-23: "as in 1998, ETA offers a trap with an announced ending"). Thus, there is an early and constant insistence that "peace does not have a political price" (editorial, 3-23) and that the only possible ending for ETA "is dissolving, disarming, and justice" (editorial, 3-24). It was then already becoming evident that none of terrorist group's communiqués fulfilled the requirements established in 2005

by Congress in order to initiate contact with that group, but yet it was admitted that “while the government, institutions and national political parties have their ideas clear [...] what the terrorists say will have a relative value” (editorial, 3-24), with the warning that “the principle of law cannot be replaced by the principle of opportunity” (editorial, 3-24), negatively assessing the attitude of the Attorney General. That margin of trust, however, was quickly dashed.

With the considerable emphasis on the question of a political price, warning that it can't be paid, or (alarmingly) it has already been paid, it is being paid or is going to be paid, among the columnists two related concepts appear: the previous concessions and the hidden agenda. In effect, the declaration of a cease-fire is already an anticipated and foreseeable event, for which the government has been making concessions. In the words of Ignacio Camacho (3-23): “[The government] has asked for too much with this step, even beyond political decorum”. And there are many who believe the statute reform process in Catalonia to have been a kind of preview. Connected to that, it is suspected, and now more and more often affirmed, with pejorative implications, that there have been previous contacts (editorials on 3-29, 7-7, 10-24; J.A. Zarzalejos, 11-12), secret negotiations where a kind of “roadmap” has been produced (Camacho, 3-29), such that the President of the government and representatives of the terrorist group have everything, or at least what's essential, agreed on (Camacho, 7-7). That idea of hidden pacts or schemes carries the impression that the government is not telling everything it knows (Camacho, 3-24 and 3-29), and this secrecy (Zarzalejos, 7-2) is negatively assessed. This is revealed in particular, and in contrary, to what the government's job would be, leaving the main opposition party out of the “process” (Camacho, 3-29; editorials on 5-30 and 6-30). This is even more reprehensible when responsibility for inspiring the unity of democratic parties essentially falls on the government (editorials on 3-23 and 3-29). For *ABC*, the lack of understanding between the government and the opposition cannot be attributed to the PP. On the contrary, in its opinion this party has acted with a loyalty towards the government, which has not been returned to the PP (editorials on 6-1 and 6-21). The government has not sincerely sought collaboration with the PP, but as an excuse or pretext, and it has tried to use the logic and understandable opposition of the PP (editorial, 6-7), to hold it responsible, as a scapegoat, for the eventual failure of the process (editorials on 6-1 and 6-21). The government has (also) used this process in its overall consistent strategy of isolating and/or dividing the PP (both domestically and internationally, with the debate in the European Parliament: editorials on 6-12 and 10-26; Zarzalejos, 7-2). This newspaper's opinion on the stance of the main opposition party is clear, as “there is no doubt that the PP's assessment on the course that government action must take [...] is shared by the majority of Spaniards and, of course, the victims” (editorial, 3-29). The editorial on 7-7 illustrates a position in vivid contrast to the position reflected by editorialists from other newspapers:

“The People's Party's reaction when announcing its disassociation from the agreements the government reaches with ETA and Batasuna is consistent with its initial position and offers security to a large part of Spanish society. The government is warned that the PP is not faking. Its position is based on principles and not on opportunity, which should bring Zapatero to assume that his hasty and progressively

weak management of this negotiation process has made the consensus that Spanish society demanded impossible before the fact.”

Despite the fact that a priori or in abstract it might be admitted that more credit could be conceded to a government than a criminal organization (editorial, 3-24; Uriarte, 7-7), the course of events worrisomely verifies that the government doesn't have credibility (editorial, 7-7; Uriarte, 7-7), which makes ETA's statements worrisome, whose literalness demonstrates that it has not let up in its same intentions as always.

Also in play is the semantic question, because the expression itself “peace process” is misleading and inadvisable^{xxv}. And it is often affirmed that it is not a “peace process” or a “pacification process”, but a process of “self-determination”, which is the price that terrorists have always demanded (editorials on 3-24, 6-30, 11-5; Uriarte, 11-6; among many others). Because of that, on many occasions it is put forward that, if something pleases ETA, it's a bad sign, and it is highlighted that violent people are elated with the course of events (Camacho, 7-2; editorial, 10-5). In this context, for example, taking the debate on the process to the European Parliament is considered a serious mistake that satisfies old ETA aspirations of internationalizing the conflict and taking the internal division to Europe (editorials on 10-24, 10-25, and 10-26; Zarzalejos, 10-29).

ABC does not at all accept a supposed pragmatic or accommodating vision: ETA was on the brink of unconditional defeat that was and is feasible and desirable (editorial, 11-23: “The end to the terrorist group ETA has to be the ending of an unconditional victory –just as it sounds- of the State, of society, and of the victims”) and an opportunity is shown that that strengthens that defeat (editorials on 10-25 and 10-28) and creates fear that, by stopping the killing, ETA will obtain that which they couldn't get by killing (editorial, 10-5; I. Camacho, 10-18). In sum, if ETA doesn't give up, the State gives up (editorial, 11-11: “It is a ‘process’ against the State”).

After the attack at Terminal 4, the editorial on 12-31 restored some of the warnings that it had always made (“now it is demonstrated that ETA never speaks for ‘internal consumption’ when it affirms that the truce is a resource in the ‘armed struggle’. [...] ETA has only surprised the unwary and the fools”) and, though it pointed out that “only ETA is guilty for this attack, and those that might follow”, it reminded readers that “there is a political responsibility for the start and development of the negotiation process with ETA”, and it urged the government to rectify. The editorial reproached the President for his inadequate response after warning that “the inability for discernment that the government suffers from [...] is, in short, a problem of incapacity to govern”. To this regard, the article by the director of *ABC* on the same day (Zarzalejos, 12-31) also began by affirming that “it would be malicious to attribute an ounce of responsibility for the brutal attack on the government or its President”, but it emphasized, nonetheless, Zapatero's “bleak” response and concluded by suggesting that the PP formulate a motion of condemnation.

3.4. Statute

3.4.1. *El País*. In the sample five editorials and 14 signed articles were counted relating to the statute reform in Catalonia. After examining these texts, one can deduce that, throughout the last year, the new Statute has not caused a great deal of enthusiasm in *El*

País. On this point, explicitly negative assessments of the government surpass the explicitly positive evaluations (two editorials and three articles; and two articles, respectively). However, in line with what we've seen up till now, on this matter explicitly negative assessments on the attitude of the main opposition party predominate (four editorials and nine articles hold openly critical statements, as opposed to one single article with a positive evaluation). To complete the picture, reactions to the pact between Zapatero and Mas will be included, between January 21st and 22nd, as well as references to the appeals of unconstitutionality lodged by the PP and the Ombudsman, Enrique Múgica.

The idea of a slightly uncomfortable process that is hoped to be overcome with pragmatism is visible in the editorial on January 23rd, after the mentioned Zapatero-Mas pact. Its title, "New Statute at last":

"There will be time to discuss the small print of the agreement and other controversial matters, like State investments in Catalonia, in greater detail. For the time being, it's good to have an agreement, that the State has shown its strength in not ceding on matters that would place in doubt its labor as guarantor of equality and solidarity and that this be compatible with an attitude that is not unyielding on issues debatable in and of themselves. The words of Eduardo Zaplana reacting to the agreement [...] in the name of the PP are [...] excessive and inaccurate."

Among the signed articles some negative observations appear regarding the Statute. The editorialists, in contrast, are not very explicit in their assessments of the new Statute as such, whose text passed in Congress on March 30th "means [...] an important quantitative and qualitative broadening of self-government, though it suppresses or corrects quite a few articles of the bill that come out of Catalonia's Parliament" (editorial, 3-31). They include "criticism that the numerous ambiguities in the text, made worse by a tortured prose, foretell much litigiousness" (editorial, 3-31); but, as already indicated, they especially show an overall dissatisfaction in the whole of circumstances surrounding its creation, without missing the opportunity to disapprove of the opposition practiced by the PP. In fact, these are the main points that editorialists and columnists share. On the one hand, a certain unease is seen with the reform process as a whole, "a process poorly led, dreadfully explained, and full of misunderstandings and traps", which provokes "exhaustion in citizens", such that "Catalonia needs to turn the page on the Statute in order to face a new age without so many frights" (editorial, 6-12). A lack of consensus that "subjects autonomous policy to dangerous tensions" (editorial, 3-30) and a note of doubt on the advisability of such reforms (editorial, 5-31).

On the other hand, the PP's attitude in its opposition to the reform of the Catalan Statute provokes unmistakably negative assessments; this party is reproached for relating ETA with the Statute (editorials on 6-12 and 6-14), its doomsdayism, and its emphasis on the rupture of Spain's unity. It does not share the opinion that the new Statute means recognition of the Catalan nation (editorial, 3-31). In addition, Rajoy's initiative to start signature gathering to promote a referendum against the Statute is considered demagogic (editorials on 1-25 and 3-31) and unconstitutional (editorial, 1-25; Pradera, 1-25).

As far as the Catalan referendum of June 18th for the passage of the Statute, in the sample incitement to vote for one side or the other is not visible, setting aside Felipe

González (6-15), who declares that his position is “favorable to a ‘yes’”, and J. Pérez Royo (6-17), who warns of the disastrous consequences of a “no”. Once the referendum is held, the commentators verify the scarce enthusiasm awoken by the Statute within the Catalan electorate, but they stress as a positive aspect the conclusive nature of the voting, bringing a torturous process to a close (editorial, 6-19ñ A. Elorza, 6-20). The interpretation the opposition makes of the scarce participation in order to take away from the validity or legitimacy of the results is condemned (editorial, 6-19ñ Pradera, 6-21). And it is admitted that “José Luis Rodríguez Zapatero has gotten his way” (editorial, 6-19).

Finally, this conflicting opinion of the debate’s prolongation is projected on the appeal of unconstitutionality formulated by the PP at the end of July (editorial, 8-1):

“The appeal to the Constitutional Court is always legitimate. It happens, though, that the PP reaches that court after having failed in the parliamentary battle. PP partisans usually strive to transform their political defeats into judicial victories, which strains the system and has a bearing on the hyper politicization of justice.”

Although, with regard to the appeal lodged by the Ombudsman, Enrique Múgica, opinion is demonstrated in a much more prudent way (editorial –Mirador-, 9-21):

“Múgica presents seven causes of unconstitutionality. [...] He is authorized to do so [...]. The question is whether Múgica was prudent when mixing in his appeal doctrinal issues [...] with other more particular issues [...]”

3.4.2. *El Mundo*. For *El Mundo*, the sample includes 10 editorials and 24 articles. None of the texts contain explicitly positive observations on the government. Five editorials and 16 articles, on the other hand, include openly negative evaluations. There are also no explicitly positive assessments of the PP in the sample (beyond the sample there are), but the negative evaluations are reduced to one editorial and one article (the latter, due to excess of prudence: Losantos, 5-31).

El Mundo’s position on the new Catalan Statute leaves no room for doubt. It is, according to much repeated formulation, “the worst law in Spanish democracy” (editorials on 3-30; 4-2; 6-17 and 8-9; P.J. Ramírez, Director’s letters on 4-16 and 7-30), “product of a combination of Zapatero’s political weakness and the nationalists’ excessive ambitions” (editorial, 10-17). The Statute is bad in all regards: because of its content, its production process, its consequences...The editorial on August 9th, the day it took effect, offers a brief presentation:

“The Statute is a disaster for Spain because it invalidates or contradicts dozens of constitutional precepts and because it weakens the State to the point of leaving it anemic. Passed in a referendum where less than half of Catalans participated, the new Statute not only hasn’t ended nationalist demands, but as we warned before, it will mean a drive to go much further.”

With slight variations, *El Mundo* displayed these ideas in a constant way throughout the entire production process of the new Statute. Logically, the pact between

Zapatero and Mas at the start of the year was not free of the usual reproaches (editorials on 1-23 and 1-24; Losantos, 1-23, 1-24, and 1-25), though Rajoy's initiative to promote a referendum on the reform did not receive a unanimous assessment by the columnists. The Statute, which the columnists often relate to government policy towards ETA, "makes Spain smaller, without making Catalonia bigger" (editorial, 6-17). The new Catalan Statute and the other statutes in progress reveal that we are before a reform of the State model (editorials on 6-17 and 6-18). It is frequently assumed as well that the Statute means recognition of the Catalan nation (editorials on 3-30, 6-17, and 6-19). Among the writers, the person taking these considerations the furthest, within the sample, is Jiménez Losantos, when speaking of a "Zapatero-Polanco design" (3-29), a "Polanco-Zapateroesque regime" (3-31), a "Zapo-Polanesque regime" (6-20) guilty of betraying (6-21, 3-31) and destroying Spain^{xxvi}.

In the context of the Catalan referendum campaign, which "will go down in history as the worst campaign in Spanish history as a democracy" (editorial, 6-17), there is a tendency to associate or even blame the PSC or the PSOE in general for the harassment of the PP, in the campaign of "demonizing Rajoy" (editorial, 6-13), or of "a deliberate strategy of exclusion of the PP" (editorial, 6-14). Thus, attacks on the main opposition party, "before a passive gaze, when not conspiratorial" by those who must protect everyone, constitute a "reversal of democracy in Catalonia" (editorial, 6-14; in the same way, editorial, 6-17), an idea that is expressed on numerous occasions, to a greater or lesser degree, among the usual columnists.

The referendum's results are explained in terms of failure (editorials on 6-19 and 6-20) and/or emphasizing the low participation.

From *El Mundo*, therefore, the "exhaustive and rigorous" appeal of unconstitutionality presented by the PP was supported (editorial, 8-1; in the same way, editorial, 9-29) and the "more than justified appeal" formulated by the Ombudsman (editorial, 9-22), which they defended, in addition, against the IU initiative requesting its disapproval and dismissal (editorial –Impressions–, 10-18; J. de Esteban, 10-20).

3.4.3. *La Vanguardia*. The sample contains eight editorials and 35 signed articles. One article and one editorial include positive assessments of the government. Six articles and one editorial contain openly negative evaluations. For the PP, there are no explicitly positive assessments; in contrast, two editorials and 11 articles contain directly negative statements.

La Vanguardia from the beginning showed itself to be favorable to the reform of the Catalan Statute and this attitude was maintained throughout 2006 in the principal milestones of the process. Its January 23rd editorial, after the agreement between Zapatero and Mas is illuminating:

"There are reasons to be celebrating. [...] Catalonia is improving its self-government in the constitutional framework and Spain is gaining internal flexibility [...] Let us repeat it again: neither Spain is breaking up, nor is Catalonia advancing towards the turbulent waters of secession. [...] And the PP must think this over. [...] For as many negative passions as the Statute has let loose in Spain –and God knows it has unleashed them–, the PP cannot fall into the temptation of wanting to recover power based on an

anti-Catalan mobilization. What an enormous mistake. Because now is the time to reach agreements. Reasonable agreements. On that we must congratulate ourselves.”

In keeping with that, Rajoy’s proposal to hold a referendum in all of Spain on the Statute is considered unwise, by which the newspaper appeals, additionally, on the centrism of the PP for him to reconsider (editorial, 1-25). What’s more, *La Vanguardia* celebrates the passage of the Statute in the House of Representatives (editorial, 3-31), without forgetting its characteristic call for calmness. On this same line, due to the referendum on the passage of the Statute, the Catalan newspaper again recalled its stance favorable to a rule that “implies the first explicit recognition of the national nature of Catalonia within the Spanish State” and that increases and consolidates self-governing powers (editorials on 6-18 and 6-19)^{xxvii}. Among the eleven texts of the sample (nine signed articles and two editorials) that comment on the referendum results of June 18th only one of them (Schwartz, 6-21) highlights the high abstention in a pejorative sense for the rule itself. The rest, despite verifying the limited participation, do not deduct validity from the result or they even refute with more or less vehemence attempts to de-legitimize it (editorial, 6-19).

In contrast to the editorials, among the limited number of signed articles in the sample that comment on the content itself of the Statute (four in total), only one is expressed in a positive sense (on the linguistic regime). However, the negative assessments on the statute reform point in the other direction. Thus, on August 9, with the Statute in full effect, the editorial of *La Vanguardia* saluted the start of “a new era to construct a future of progress and well-being”. But it pointed out that: “The ambitious bill has been reached, not without leaving along the way shreds that now must be put back together”. This reflection is characteristic and is formulated in different ways. In its March 31st editorial, for example, the newspaper alluded to “serious emotional damage that should have been avoided”. The June 19th editorial believed that the abstention was in compliance with a critical attitude, “not so much due to the content itself of the new Statute so much as precisely due to the way in which the political leaders have handled things. [...] The production process of the Statute has been long and marked by misunderstandings between political leaders, which has caused exhaustion, if not separation, of the citizenry”. It is, then, the reform process that receives worse assessments, mainly in two aspects. First, the mentioned separation of citizens, due to the partisan opportunism oblivious to the consideration of general interest. Secondly, references to the noise, confrontation, and the uneasiness that have characterized the reform abound (editorials on 6-19, 6-20, 6-23, 8-9). Though not all the articles adopt the same focus, attacks on non-nationalist politicians receive general condemnation. To this regard, there is also no shortage of allusions to the inappropriateness of the PSC slogan in the campaign for the Statute’s passage (editorial, 6-14). But references to the anti-Catalan enjambment are more frequent which, though at times is mentioned in a generic way (editorial, 6-15), are usually associated with the “doomster” strategy of the PP and the media akin to the PP (editorial, 6-14). The PP is also held responsible for inconsistency when supporting other similar statute reforms, like the Balearic reform (editorial, 9-13). In addition, as mentioned, *La Vanguardia* does not accept that the dialogue process with ETA is related to the statute reform (editorial, 3-23), and it denies that the new Statute might “break Spain up” (editorials on 6-19 and 8-9). On the contrary, at times its

inspirational nature for other statute reforms is highlighted (editorial, 6-15: “Catalonia [...] continues to establish guidelines in Spain”). Because of all that, a call for the recovery of serenity, turning the page, and looking ahead is visible (editorial, 6-19: “Once the electorate has made its declaration, it is time to look to the future; similarly, editorial, 6-23). And the appeal of unconstitutionality made by the PP does not help matters:

“The transparent attempt to use the statute reform as a projectile weapon against the socialist government could produce certain yields in polls at the time of greatest clamor in the debate, but to continue betting on that route represents, at a bare minimum, a debatable strategy” (editorial, 8-1).

Likewise, Enrique Múgica’s appeal is considered an “unacceptable overstepping of the Ombudsman [...]. A positioning [...] that does not agree with the post he occupies nor with the parliamentary majority of the country” (editorial, 9-21).

3.4.4. ABC. The *ABC*’s assessment concerning the statute reform process that emerges from the 43 articles and 12 editorials from the sample is, without a doubt, terrible. The fundamental core of *ABC*’s criticism is characterized by its reference to the Constitution and the unity of the nation. In short, the statute reform driven by the current government means the opening of a new constituent period that, through the privatization of the State, is leading to a confederate model (editorials on 3-31, 5-30, 5-31; Zarzalejos, 6-18, etc.). The multiple expressions used (“constitutional mutation”, “constitutional rupture” or “rupture with constitutional consensus”, “constitutional dismantling”, “rupture with the State model”...) are summarized, therefore, in the alteration of the current constitutional regime (editorial, 1-23: “a new State model, if not a new political regime”), that is, the end of the Constitution of 1978 (J.A. Zarzalejos, 6-18; editorial, 6-20), and the rupture of national unity, when recognizing a nation that is not the Spanish nation (editorial, 3-31: “Spain is one Nation [...]. It is a plural Nation, but it is one nation upon which a unitary State is organized”). Thus, recognition of the Catalan nation is taken for granted in the Constitution (editorials on 3-31, 6-16, and 6-22, among others)^{xxviii}.

There are few articles that focus on a specific aspect of the content of the new Statute, like the finance system, its relationship with the judicial branch, the linguistic regime, or several of them at once (only five in the sample). No one has anything positive to say. From these and other more generic formulations contained in the diverse texts, it can be deduced that, in essence, the new Catalan Statute, besides breaking the unity of the Spanish nation, determines the budgetary viability of the State and, especially, its policies of cohesion and solidarity (editorial, 1-23); it establishes bilateral exchange (by raising the level of conversation of the Generalitat until positioning it at the height of the central government); it cuts the Judicial branch into pieces, impairing the democratic principle of the citizenry and the principle of equality (I. Camacho, 6-18). It is interventionist, anti-liberal, and anachronistic (editorials on 3-31 and 6-18). In addition, it is “produced with very inadequate legal technique, [it is] long, and dense, reiterative and overabundant, protracted and forceful” (editorial, 3-31). The new rule is an attempt to consolidate and impose in Catalonia its two fundamental components: nationalism and socialism (editorials on 6-14 and 6-16). On many occasions the imitation effect is alluded to as well that the new Catalan statute framework might cause or already is causing in other

communities (Camacho, 6-18 and 6-19; editorial, 12-1). Some of these ideas are already clearly included in the editorial on January 23rd, after the Zapatero-Mas pact:

“The script for the second transition is being followed as ordered. Devised by the socialism and nationalism consortium, it directs Spain towards a confederate State, it *a posteriori* legitimizes the demands of other sovereign-nationalisms against the existence of the Spanish Nation and the strength of the constitutional order, and it makes independence unnecessary, because it is the State that withdraws and facilitates the constitutional implosion when creating at its core pockets of territorial sovereignty. In effect, it is less Nation and more State. This is the Moncloa plan.”

It is not odd, therefore, that the government on this matter receives negative evaluations in at least nine editorials and 19 articles, and not a single positive assessment. The PP, on the other hand, receives explicitly positive evaluations in three editorials and two articles, and only one negative evaluation (specifically for not being incisive enough in the debate on the State of the Nation).

ABC also includes the idea of the distance between politicians and citizens, but giving a strongly unfavorable sense to the Statute, since, as it recalls, society did not demand it at all, but rather the Statute was the product of partisan, electoral, and opportunist considerations of the political class, removed from general interest (editorials on 5-31, 6-18, 6-22, 7-3, etc.). In what concerns the Catalan referendum for the passage of the Statute, explicit call to sway the vote one way or another do not appear (perhaps because it is taken for granted that everyone rejects it in this newspaper), though a limited participation is foreseen and the arguments are anticipated that will be profusely used once the results are known. In effect, a dozen articles comment on the referendum’s results emphasizing the high level of abstention. Thus:

“The data is indisputable and it’s force leaves no room for interpretation: the new Statute of Catalonia has only received the explicit backing from one in every three Catalans called to the voting polls on an election day marked by the small amount of participation [...]. This information [...] implies a complete failure by José Luis Rodríguez Zapatero and by the PSOE [...]. The government cannot keep offering the Catalan route as a precedent of consensus and integration for other statute reforms, because its defect is from its birth as a Statute when not relying on the approval of the society that it is aimed at. [...] [This] deprives the head of state of political backing –legitimacy, in short [...]– to continue with the agenda of the constitutional dismantling of Spain [...]. [The government] has broken indispensable ties with the People’s Party, considerably strengthened after yesterday’s referendum, stripping Spanish society of the power of constitutional consensus. [...] The new Statute is born imposed on a Catalonia that doesn’t support it [...]” (editorial, 6-19; similarly, editorial, 6-20).

Likewise, in *ABC* one can read opinions regretting the confrontation and frights that have accompanied the statute reform (editorial, 6-16). This is especially notable relating to the violent episodes during the campaign for the referendum. But reflections on the retreat of public liberties and the straining of coexistence are focused on

harassment of non-nationalist forces and, especially, on “the repeated violence against PP leaders and the antidemocratic campaign against the Catalan people” (editorial, 6-19, among others). The PSC’s campaign is condemned, therefore, and overall expresses or implies that responsibility for the rough process belongs to socialists and nationalists. To this regard, the deliberate government strategy aimed at isolating, destroying, or politically excluding the PP is mentioned often (editorials on 6-12 and 6-16; Zarzalejos, 6-18; etc.).

Therefore, the appeal of unconstitutionality placed by the PP is considered “consistent” with the political criteria of that party and “opportune” (editorial, 8-1). The appeal formulated by the Ombudsman is also seen as “opportune” (editorial, 9-21), whom they support when faced with “personal ridicule” and the “charge against the institutional system” which, in the editorialists’ opinion, means the IU’s proposal to reject and dismiss him (editorial, 10-18).

Conclusions

1. The partisan affinities of the newspapers examined here (*El País*, *El Mundo*, *ABC*, and *La Vanguardia*) are expressed, overall, not so much by a flattering adherence to their preferred political formations (thus the small number of explicitly positive evaluations), as by sharing in the message of those political formations and, especially, by the negative identification of the opponent (thus the greater relative abundance of condemnations directed at those actors with whom they disagree).
2. From the statement offered until now it clearly emerges that, throughout the last year, the media has been the mouthpiece and sounding board for the confrontational relationship between the government and the opposition, validating the characterization of our system as a model of “polarized pluralism”.
3. The dominant ideological tendency in the four newspapers is more a question of proportions and “all or nothing”. The four newspapers offer a certain degree of pluralism, some more than others, when including with greater or lesser frequency dissenting voices from their official line.
4. The fact that the discussion has intensified essentially relating to the treatment of the terrorist attack on March 11, 2004, the process of drawing up the Statute of Catalonia, and anti-terrorist policy against ETA, in a certain way one could consider the introduction of transversal issues (anti-terrorist policy, territorial integrity) by certain media and/or political opposition a success. These issues displace from the agenda other points where government results could be read as less hostile.
5. March 11th serves as a constant reminder to some media of a supposed “original sin” by the current government. The most extreme formulations, associated with certain journalists (and editorials) of *El Mundo*, the Cope channel, and *Libertad Digital*, project a shadow of doubt over the “original legitimacy” itself of the socialist government, with the scarcely veiled attribution with pro-coup connotations. In addition, the eventual “legitimacy by exercise” (and here is where the policy towards ETA and the statute reforms fit in) is put in doubt when accusing the government of radical action subverting the order that arose from the era of Transition, to lead a “second transition” whose basic characteristics are “Balkanization” and “regime

change”. In other words: the destruction of Spain and the destruction of freedom and democracy. Which is made worse, according to this media, because relationships of connivance, collusion, or control between the government and akin media create a demobilizing and manipulative effect that is expressed with terms like “narcotization”, “anesthesia”, “infantilization”, and “lethargy”...Thus, it is suggested that the manipulating role of some media was notable in the electoral victory of the PSOE and continues to be in the advancement of its program, for which a “demobilized and narcotized” society is necessary. But this is not necessarily the speech (at least not in its entirety) that the editorialists from *ABC* subscribe to nor (though with greater reservation) those from *El Mundo*, newspapers that noticeably disagree among themselves, especially on the treatment of March 11th. There are, however, some aspects where there is greater agreement and that involve assessments of the convulsed interaction between the main political parties, removed from those assessments that are apparently sustained by *El País* and (to a lesser degree, given their usual equanimity) *La Vanguardia*.

6. In a context of political polarization is it not odd to find situations of a certain “isolation” from political actors around essentially extreme positions, which are also the object of diverse evaluations. It is frequent that, for example, some sectors (in particular, *El País*) accuse the People’s Party (and by extension the media sympathetic to that party) of radicalizing and moving away from the political center. On the other hand, predominant opinion at *ABC* and *El Mundo* (in agreement with, as it happens, numerous political statements) accuses the government and its supporters of organizing the cornering and elimination of the PP. For this media, the “solitude” is nothing but the product of the strength of its principles facing alien sectarianism. A supposed solitude, valiant in any case.
7. The holding of responsibility in this climate of political agitation couldn’t be more disparate. Opposed to those who hold that confrontation is egged on (*El País*) by certain sectors of the main party of opposition and akin media, as a resource to reap future electoral yields in a tumultuous year, the newspapers most critical of the government accuse it of having chosen and advanced an agenda that breaks basic consensus and, in a certain way, causes or forces the inevitable response from the party representing ten million voters.
8. In short, 2006 has been intense in journalistic controversies. Not always in appropriate ways and much less with even rigor in the handling of information, the media -some more than others- do not seem to easily be resigning themselves to a role as mere observers in the political battles.
9. According to many analysts, an improvement in the quality and independence of reports by Televisión Española has taken place.

ⁱ To this regard, in our country, Fraile (2006), after reminding that one of the main sources from where citizens gather information on politics is the mass media, he recently affirmed that the more time a citizen dedicates to informing him or herself through the media, the greater their political competence will be.

ⁱⁱ The diffusion rate of the press in Spain fell to 94.6 points in 2005 (APM 2006:211). In 2004 it was at 98.3, very far off from the European average of the same year (193.1) and ahead only of Slovakia, Portugal, Greece, and Cyprus (Tendencias ’06:82). Hardly encouraging figures, keeping in mind that UNESCO

positions under 100 copies per 1000 inhabitants the index of cultural underdevelopment in the reading of press.

ⁱⁱⁱ Dialogue with Jiménez Losantos in *Libertad Digital*, 5-10-2006.

^{iv} To this regard, editorial, *EP*, 6'10; *LV*, editorials on 9'14 and 6'11. Even *ABC* at times recommends to the PP "the liberation from media servitude" (editorial, 9-14). In the control session to the government on 9-13-2006, the Secretary of the Interior, Alfredo Pérez Rubalcaba, responded to Eduardo Zaplana: "I believe there has to be more, gentlemen of the People's Party, something having to do with your loss of political autonomy. You, by bringing this debate here [on the supposed revelations by *El Mundo* about March 11th], do so not as a service to the truth [...]. You do so and you come by the order of he who commands in your party, who does not sit on Genoa street" (DSCD, 198, p. 9984).

^v In fact, at times, representatives of the IU refer to manipulation in the autonomous stations of communities governed by the PP (for example, session on 2-22-2006, DSCD, 485, p.8; and session on 12-20-2006, DSCD, 736, p.9). On this point, minority groups usually complain about matters related to an excess of bipartisanship or, with the case of the nationalists, they are interested in issues pertaining to their respective communities and/or languages.

^{vi} Thus, in the session on 4-26-2006: "You, with Spanish public radio television, are doing the same thing that your boss, Mr. Zapatero, is doing with Spain, doing away with it little by little. Two more years and you will have completed, you and Mr. Zapatero, your historic mission" (Juan José Matarí Sáez, of Grupo Popular, DSCD, 555, p.37).

^{vii} "You have decided to strain political life in this country and, to do so, Televisión Española is a priority objective" (Session on 4-27-2005, DSCD, 262, p.7).

^{viii} See, for example, editorial, *EM*, 6-25-2005 ("The government gets even with *EL MUNDO*"). Pousa (APM 2006: 258 and ss) offers a brief account of the protests raised in the radio arena.

^{ix} To this regard, see the editorials from *El País* (10-23-2005), *El Mundo* (10-6-2005), *ABC* (10-10-2005), and *La Vanguardia* (10-31-2005), among others.

^x Dealing with March 23rd and 25th (immediately following the cease-fire announcement of ETA); March 29th and 31st (on March 30th, the House of Representatives passed the new Catalan Statute); April 10th and 13th (on the 11th, judge Del Olmo announced the trial for the March 11th attacks); May 29th and June 1st (the debates on the State of the Nation took place on May 30th and 31st). Longer periods have been added as well: from June 13th to the 23rd (on the 18th the referendum on the Statute was held) and from June 30th to July 9th (on June 29th Zapatero announced the beginning of contacts with ETA; July 7th the indictment ruling of March 11th was published).

^{xi} The total number coming out of this table does not exactly match up with the sum of articles that will be offered in the respective sections, because some texts referred to various issues at once.

^{xii} We must remember that it doesn't concern all opinion articles of the respective newspapers, but the opinion articles that allude to one or more of the three issues analyzed. At first glance, it seems that the media we might characterize as most critical of the government (*ABC* and *El Mundo*) make statements more often on these matters than the other newspapers. This could be a reflection of the fact that the referenced issues prominently figure in the opposition's strategy. It could also mean that *ABC* and *El Mundo* simply publish more opinion articles than the others and, therefore, in absolute numbers its production is also greater on these issues. To this regard, León Gross (2006: 121) points out that the average number of opinion pages of *El País*, *La Vanguardia*, *ABC*, and *El Mundo*, is respectively: 3, 4.6, 6, and 6.3.

^{xiii} "[...] More than trying he is being tried by Zapatero's police, which have filled the legal proceedings with false proof. [...] The physical and psychological inability of judge Del Olmo is ideal for a case which, if it were up to the government, wouldn't make it to trial."

^{xiv} Beforehand (editorial, 5-31), *El Mundo* considered the attack on free expression of Jiménez Losantos inappropriate: "The column doesn't hurt anyone's honor. It is the limited professional ability of the judge which hurts the rights of citizens [...] to know the truth of the massacre."

^{xv} In its article on 9-29 it affirmed "the government and its allies are busy with the task of erasing ETA and socialist prints from March 11th."

^{xvi} Editorial, 6-12: "[For Zapatero] it is convenient that part of the right is still trapped in that cycle of feverish arguments, that delegitimize the State as well as delegitimizing the PSOE between March 11th and 13th" (similarly, Zarzalejos, 7-2).

^{xvii} Fernando Savater expresses skepticism on diverse occasions (3-23; 6-10; 11-6), though he clarifies that “several of those of us who don’t see this issue completely clearly do not share the most horrifying approaches of the opposition” (9-8). In effect, those who show more sympathy for the attitude of the PP are in a clear minority. Among the signed opinions, outside of the sample included here, possible the most explicitly critical article of the “peace process” is by Ignacio Wert (7-14), where the author emphatically expresses: “I am against this process [...]. This process is not only a mistaken initiative, but an initiative of potentially serious consequences for the future of our coexistence.”

^{xviii} In theory, it’s not hard to perceive the general positive or negative tone that opinion articles adopt relating to the different political actors. But that is not what is captured here. When talking about explicitly positive or negative evaluations, from here on out, reference is made to statements of this kind: “the government is wrong when doing X”; “the PP has taken to the hills”; “Rajoy has known how to rise to the occasion”, etc.

^{xix} Three articles from the sample talk about “peace process” in an acritical way. The editorial on 3-24 talks about a “pacification process” (outside of the sample, one can find the same name in a few other editorials, like on 5-24), but it is not inconvenient for editorialists to call it a “peace process” at other times (outside of the sample: editorials on 9-25 and 10-4, for example), or preceded by a “so-called” (editorial on 9-6), while the editorial on 11-13 alludes to a “process that never would have been called a peace process”. In a few columns the writers speak of the “designated” or “so-called” “peace process”, but in a neutral tone. Others simply speak of a “process” with nothing more. Outside of the sample, some article writers have echoed the semantic question to contest the correction in terminology generally used by the government (in particular, Francesc de Carreras, 7-13 and 10-26).

^{xx} Likewise, *El Mundo* lends its platform at times to PSOE “dissidents” (Gotzone Mora, 10-28; Rosa Díez, 3-24, 10-10, 10-26), those that are also defenders (editorial, 6-16: “The PSE has changed, Rosa Díez is still where she was”). Antonio Gala (3-23, 6-13) is a case of minority stance, but the most prominent writer, at least on this matter, is without a doubt Javier Ortiz, who, in almost all aspects of the process towards a dialogued end to the terrorism has expressed himself in quite dissenting terms regarding the majority of columnists (see, as example, his articles on 3-23, 3-30, 5-29, 7-3). His article on 10-26 (outside of the sample) is resounding: “We [all] know that the leaders of the Spanish political right and their media spokesmen (to correct my lack of rigor: the media leaders of the Spanish right and their political spokesmen) under no circumstance want ETA terrorism to disappear. [...] We had before us a magnificent opportunity and you are ruining it. I say ‘you’ because I don’t include myself”.

^{xxi} This relationship is mentioned in at least three other editorials and six articles in the sample.

^{xxii} This admonition is characteristic of a certain tone of exhortation, accompanied by the corresponding consequences, that *El Mundo* uses with relative frequency on this and other issues (editorials on 3-24, 3-29, 6-21, 6-22, and 7-2).

^{xxiii} L.M. Anson, 11-14: “A few days ago [ETA] spoke of the ‘commitments’ made by the President with the terrorists. Zapatero right away will say that this isn’t true, and who do we believe, him or ETA. It’s quite clear. The terrorists, in this case.”

^{xxiv} Thus, no article in the sample speaks of “betrayal” or labels the government as a “traitor” or its President, as opposed to what happens in *El Mundo*. It doesn’t seem that the usual columnists for *ABC* use these expressions. Outside of the sample, it’s possible to find references of this kind in a few articles by the president of the PP in Biscay, Antonio Basagoiti (7-12), or by the president of the Ermua forum, Mikel Buesa (titled, “The Traitor”, 1-19).

^{xxv} In fact, sticking only to the articles of the sample in reference, one sees that an allusion is made to the “peace process” at least in 6 articles and 22 articles, but never in a neutral or acritical way. In most cases, the phrase is in quotation marks, preceded by the terms “so-called” (or even “poorly named”), “designated”, “supposed”, etc., or within a clearly negative phrase or context.

^{xxvi} “Well, it’s over. [...] Because since yesterday, thanks to the yoke of some liberty-cide nationalists and some socialists that are traitors to the people they supposedly represent, Spain is only a cadaver. [...] Yesterday, Vellido Zapatero merely voted for the betrayal of the Spanish people and the liquidation of Spain like what he is: a common trendy-lefty, a run-of-the-mill socialist. Yesterday, the PSOE united to stab in the back the constitutional regime of 1978 and it signed the death of the Nation [...]” (3-31).

^{xxvii} Outside of the editorials, whose position is clear, eight articles from the sample comment on the direction of the vote. Four defending the “yes”, two upholding the legitimacy of whichever option, in the

face of incitations by both sides, or recalling the duty of public powers to remain neutral, and two more supporting the “no”.

^{xxviii} In the sample, two writers even talk about the “destruction” of Spain. Three more believe that Spain is not breaking up with the new Statute, but that it is certainly weakening.

Bibliography

- APM. (2006) *Informe Anual de la Profesión Periodística*.
- Bastenier, Miguel Ángel. (2005). “Periodismo de Papel”, en APM, *Informe Anual de la Profesión Periodística 2005*, pp. 185-190.
- Castelló, Fernando. (2005). “Libertad de prensa: España ¿va bien?”. En APM, *Informe Anual de la Profesión Periodística 2005*, pp. 335-340.
- Díaz Nosty, Bernardo. (2005). “La credibilidad está en el medio”. En APM, *Informe Anual de la Profesión Periodística 2005*, pp. 153-155.
- Díaz Nosty, Bernardo. (2006). “La huella es el mensaje”, en *Medios de Comunicación: Tendencias’ 06*, pp. 15-43. Telefónica, Madrid.
- Fernández Beaumont, José. (2006). “La refundación del sector audiovisual”, en *Medios de Comunicación: Tendencias’ 06*, pp. 221-242. Telefónica, Madrid
- Fog, Agner. (2004). “The supposed and the real role of mass media in modern democracy”. Working Paper (www.agner.org).
- Fraile, Marta. (2006). “¿Cuánto saben los ciudadanos de política?”, Fundación alternativas.
- Gillwald, Allison. (1993). “The public sphere, the media and democracy”, *Transformation*, 21: 65-77.
- Graber, Doris. (2003). "The media and democracy: beyond myths and stereotypes", *Annual Review of Political Science* 6: 139-160.
- Gunther, Richard, Montero, José Ramón, y Wert, José Ignacio. (2000). “The Media and Politics in Spain: From Dictatorship to Democracy”, en Gunther y Mughan, eds., “Democracy and the Media”, pp. 28-84. Cambridge, Cambridge University Press.
- Hallin, Daniel C., y Mancini, Paulo. (2004). *Comparing Media Systems: Three Models of Media and Politics*. Cambridge, Cambridge University Press.
- Herman, Edward S., y Chomsky, Noam. (1988). *Manufacturing consent: the political economy of the mass media*. New York, Pantheon Books.
- León Gross, Teodoro. (2006). “Radiografía de los grandes diarios”, en *Medios de Comunicación: Tendencias’ 06*, pp. 119-127.

Montano, Alicia G. (2006). *La manipulación en televisión*. Madrid, Espejo de Tinta.

Norris, Pippa. (2000). *A virtuous circle: political communications in post-industrial societies*. Cambridge, Cambridge University Press.

Pousa, Xosé Ramón. (2006). “Renovación de estrellas, contenidos y lenguajes. La radio inicia la transición hacia la sociedad de la información”, en *APM Informe Anual de la Profesión Periodística 2006*, pp. 257-268.

UTECA. (2005). *Informe UTECA sobre la regulación de la Televisión en España*.

The Impact of Corruption on Democracy

1. How much political corruption is there currently in Spain?

In the last ten years a crucial advance has taken place in international cooperation in the fight against political corruption which has allowed a broader and broader consensus to spread on the definition of this concept. Overall, right now corruption is defined in an apparently simple way: the abuse of a power that has been conferred on a specific agent in order to obtain private profits. This understandable definition entails, however, the great difficulty of determining two crucial extremes: first, what private benefits are compatible with the proper use of that position of power and which benefits are not; and, secondly, what rules distinguish between appropriate and inappropriate use of such a position of power. Our definition of corruption –and, therefore, the larger or smaller sphere of reference for this phenomenon– will vary depending on the rules we opt for: crimes of the Penal Code, sanctions of administrative Law, the rules of a specific ethical theory, etc.

To this regard, a definition of corruption like that mentioned before attracts our attention on those uses of power where that use is for the service of private interests instead of seeking the general interest. This kind of conduct gives rise to private appropriation of the State. That is, the existence of corruption ensures that there are privileged channels to the access of public power (and the resources created by that power) for a few private interests. We are, therefore, facing the violation of one of the fundamental pillars of democratic regimes: the right of all citizens to equal treatment by public powers.

The difficulty involved in defining corrupt conduct is closely related to the arduous problem of determining when the actions of an individual or a political or governmental group sacrifice general interest to benefit one's private interests or the interests of close groups. Daily political action is replete with initiatives that benefit some social sectors over others that hold their justification in the general interest. For example, through policies that try to compensate for social inequalities to achieve a greater social unity, or through economic or fiscal policies that grant favorable treatment to those sectors that are crucial to reaching objectives of economic and employment growth.

When are those exchanges between the public and private sector justified? Or, in other words, when is general interest sacrificed in those exchanges? Beyond the dark area of criminal conduct, judgments on the corrupt nature of certain political actions are going to inevitably be guided by political conceptions of the general interest of the society in question.

There is a second reason for the difficulty in answering the question about the degree of existing corruption in Spain today, which has to do with the nature of the phenomenon. As happens with the majority of criminal activities, corruption is also a hidden social practice and, as such, it is difficult to perceive, measure, and quantify. It happens that, in addition, as the Council of Europe has warned in its evaluations of the corruption problem in Spain, in our country we lack official statistics on the incidence of this phenomenon (even just the most clearly criminal aspect) and research on the matter is very limited¹. We can only, therefore, approach this phenomenon by indirect routes. In

this chapter we will do so in two ways: paying attention to the existing indicators on the degree of perception of corruption in Spain and analyzing the scandals that have arisen in the last few years.

2. How is Spanish political corruption perceived?

There are two possible ways to measure perception on the degree of the corruption in a country: directly ask the citizens or trust the opinions of some individuals who for reasons of profession and experience are especially equipped to make a judgment such as this one. We will pay attention to both kinds. The most reliable indicator constructed with opinions of experts and analysts is the Corruption Perceptions Index (CPI), of Transparency International (TI), a non-governmental organization (NGO) dedicated to the fight against corruption in the world, founded in 1993.

The CPIs of Transparency International are published annually and they combine diverse surveys given to especially valuable informants (like domestic and foreign business men –residents and non-residents of the country in question and from domestic and foreign companies– and diplomats from foreign embassies) with expert reports (like the analyst team from *The Economist*, for example). The index varies from 0 to 10, 0 being completely corrupt countries and 10 being fully clean countries.

Table 1. Spain in the CPIs of Transparency International 1995-2006.

Year	Score	Change*	Place in Ranking	Number of Countries	Place in relation to UE 15	Place in relation to UE 25	Number of surveys
2006	6,8	6,3-7,2	23°	163	13°	13°	7
2005	7,0	6,6-7,4	23°	159	12°	12°	10
2004	7,1	6,7-7,4	22°	146	11°	11°	11
2003	6,9	5,2-7,8	23°	133	11°	11°	11
2002	7,1	5,2-8,9	20°	102	9°	9°	10
2001	7,0	5,8-8,1	22°	91	10°	10°	8
2000	7,0	5,9-8,0	20°	90	10°	10°	8
1999	6,6	d.t. 0,7	22°	99	11°	11°	10
1998	6,1	d.t. 1,3	23°	85	12°	12°	10
1997	5,9	d.t. 1,82	24°	52	12°	12°	6
1996	4,31	d.t. 2,48	32°	54	14°	17°	6
1995	4,35	d.t. 2,57	26°	41	13°	13°	4

* Until 1999 the change in scores of the different surveys were measured with standar desviations. Since 2000 with span.

Source: Index of Corruption Perception (CPI) of International Transparency 1995-2006.

As we can see in Table 1, except in the first two years of the index, the score received by Spain and its place in the ranking of countries has been quite stable. Throughout those years, the perception that these studies offered of the degree of corruption in Spain has moved in a stripe very closely to that of countries like France, Portugal, Belgium, and even Ireland in some years. Other countries of the European

Union (EU) like Finland, Denmark, Sweden, Austria, the Netherlands, the United Kingdom, Luxembourg, or Germany in these last years have shown a level of limited corruption, however, that has always been far out of reach of Spain.

When we compare this information with data offered by public opinion polls given to the Spanish population, we find some agreement (especially in the evolution of public concern for corruption with regard to other social problems) and also differences. Specifically, referring to the latter, the polls offer a much more worrisome picture than what is suggested by the CPIs of Transparency International. We will look at that next. It's important to note that in Spain we lack a consistent series of indicators on the problem of political corruption, despite the very serious consequences this phenomenon might have on the legitimacy of the democratic system and on the quality of its operation in practice. What is possible to rely on is a collection of loose data that is powerful enough itself to draw our attention.

2.1. The social perception of corruption

Available data shows proof of the deep suspicions among the Spanish population of the seriousness and extension of the corruption problem. These suspicions clearly extend beyond the first half of the nineties, when the avalanche of scandals placed corruption in a prominent spot on the public agenda. Tables 2 and 3 summarized the information referencing the nineties. Though it is loose information from different opinion institutes and it's important to consider it with a certain amount of caution, it all shows the worrisome perception of corruption for Spanish citizens throughout that decade, even after the formation of the first government of the People's Party in March 1996.

Table 2. Indicators about the seriousness of corruption problem in the nineties.

April 1992:
85% of the asked persons were thinking that there was a lot (39%) or quite (46%) corruption in Spain
November 1992: 75% of asked persons were agree or very agreeed with the sentence: 'Level of corruption in Spain is intolerable'
May 1993: 88% of persons were thinking that was a lot (44.7%) or quite (43.4%) corruption in Spain.
December 1997: 92,3% of persons were thinking that corruption was a quite serious(40.9%) or really serious (51.4%) problem.
December 1998: 50.1% of asked persons were thinking that corruption has increased very much (24%) or a lot (26.1%) last year.

Sources: Demoscopia, barómetro Primavera 92; CIRES, Centro de Investigaciones sobre la Realidad Española, estudio 21; Data, estudio CNEP, *Comparativa Nacional Election Project*; CIS, Centro de Investigaciones Sociológicas, estudios 2270 y 2312.

Table 3. Indicators about extension of corruption among public servants in the nineties.

Date	Perception of public servants average who were involved in corruption					
	Almost no one	Some	Most of them	Almost everybody	NR	Sample size
June 94	1.8%	38.2%	38.0%	19.3%	2.7%	1,200

June 95	2.8%	37.1%	34.0%	22.3%	3.8%	1,200
June 96	2.3%	43.3%	32.9%	15.8%	5.7%	1,200

Source: CIRES, Research Center about Spanish Reality, surveys: 37, 46 y 52.

The limited, scattered, and partial data of the last few years continue to reflect an equally worrisome panorama. Tables 4 and 5 and Graph 1 summarize that information.

Table 4. Indicators about the seriousness of corruption in 2000's decade.

July 2003: 74,4% of Spanish citizen were declaring that corruption was significantly affecting the political sphere. *
December 2005: 48% of responders in Spain were thinking that corruption has increased very much (29%) or a bit (19%) in the last three years.
December 2006: 76% of responders think corruption has increased.

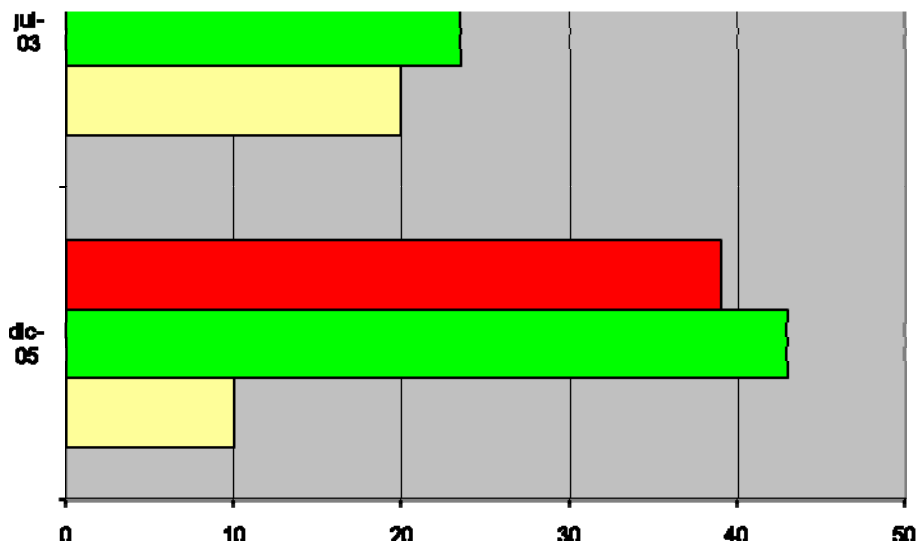
Sources: Internacional Transparency, Global Barometer of Corruption, 2003 y 2005; Sigma Dos, *El Mundo*, 11th January of 2007).

Table 5: Indicators about the extension of corruption in Public Organisms

October 2004: 52,8% were detecting a higher impact of corruption in public organism (3,2% were declaring; "almost everybody is involved in corruption"; 17,7% were declaring that involved persons were "a huge amount of people"; and 31,9% were declaring "the corrupted persons are not as few people").
October 2005: in relation to the question about how many public servants the responder think were corrupted, the percentage rise 32,74% .
December 2006: 53,3% were thinking town council where they are living is corrupted.

Source: CIS, Sociologic Research Center, surveys 2575 y 2620; Sigma Dos, *El Mundo*, 11th January of 2007.

Graph 1. Expectation about future effect of Corruption in 2003 and 2005.



- * Effect of corruption is going to increase
- * Effect of corruption is going to keep the same level.
- * Effect of corruption is going to decrease
- * NR

Source: Barómetro Global de la Corrupción 2003 y 2005.

Nonetheless, some other information from the barometers of Transparency International leave it clear that the direct experience of Spanish citizens with some of the more irrefutable manifestations of corruption, like the payment of bribes, is, as it might be expected in a country like ours, virtually nil, at the same level as other western countries and in no edition surpassing 2%, the figure of those surveyed who claim to have had such an experience.

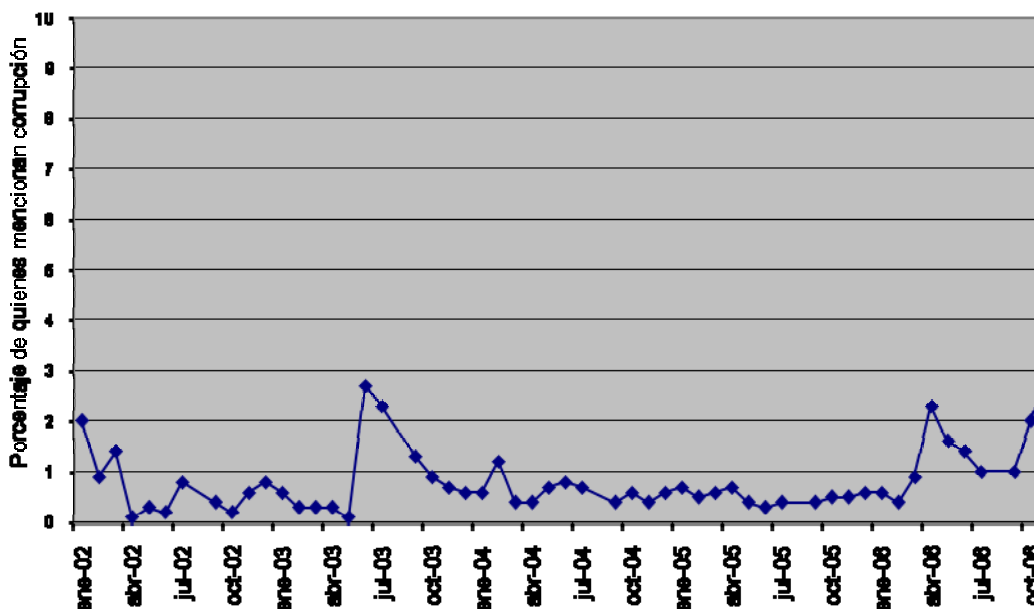
Therefore, all this information seems to clearly suggest that Spaniards have a considerably negative perception of the incidence of corruption in the political system.

2.2. Social assessment of its importance

If we now pay attention not so much to the perception of the phenomenon, but the degree of worry of Spaniards about the corruption problem as compared to other issues, a tendency appears that reminds us of Spain's evolution in the CPI of Transparency International. Spaniards' worry about corruption in comparison to other problems has continued to be relatively low in the last few years.

Graph 2 reflects the monthly data of those who mentioned corruption as one of the three main problems in the country from January 2002, until October 2006. As we can see, the level of worry about corruption is very low through time and only modestly increases at certain moments that coincide with an especially talked about scandal like the Tamayo and Sáez case of Madrid's Parliament in the spring of 2003, the imprisonment of a large portion of the municipal council of Marbella as a result of the Malaya Operation in April of 2006, or the increase in scandals linked to urban development speculation in the fall of 2006.

Graph 2. Percentage of people who perceive Corruption as a problem in Spain.



Source: CIS, Sociologic Research Center , Barometers since January 2002 to November 2006

From here we will analyze what the reality of the corruption problem is in Spain, starting from the information provided to us by those revealed corruption incidents that are political scandals. It is a very problematic source of information on corruption for two kinds of reasons. In the first place, because the scandals are never removed from partisan disputes among the different political forces (within the parties as well), which use these incidents to open battle for power. And secondly, because of the logic itself of the working of the media, which is the normal vehicle by which the events in question become public knowledge; the slants of the reports and the ideological positions, and the commercial interests of the communication companies leave their mark on the information that citizens receive on these matters. In addition, keep in mind as well the changes in the receptiveness of citizens to this kind of information.

3. Practices of political corruption revealed by scandals

3.1. Background

Most of the scandals emerged throughout the democratic period have revolved around a problem shared with countries around us: the irregular funding of political parties. The GRECO evaluation (Group of States Against Corruption, Council of Europe) for 2001 indicated that funding of political parties was the principal source of political corruption in our country. The well-known scandals have affected practically all political powers and especially the majority ones, and within them we can distinguish three different ways of funding: obtaining donations directly or indirectly (through intermediaries) from large companies (Spanish and foreign companies); credit debt write-offs from banks and savings and loan; and the use of public administrations under their control to channel funds to the party.

Beginning with the use of public administration, a large portion of the known cases reveal that all the parties that have had governmental responsibilities in different levels of the Civil Service have turned to the, irregular at least, removal of public funds, to greater or lesser degrees, to finance themselves. They have done so three ways: charging commissions from businesses for the awarding of a wide range of public contracts or in exchange for certain urban development decisions (re-zoning, construction licenses, etc.) and through the direct diversion of funds from public subsidies or the undercapitalization of public or private companies controlled by personnel close to the party.

As Xabier Arzalluz recognizes in his autobiography, when your party reaches power, “it becomes possible that people will give you money”. In this situation “two possibilities open up for you: the first is to demand that they pay you a percentage of the total price of the job or order: I’ll give you this job, or I’ll re-zone this land, or I’ll order the manufacturing of these uniforms from you, or I’ll award you this or that contract, if you pay my party 4%, 5%, 8%, or 10%. The second possibility is: you confer those jobs in compliance with the law, through the established channels for awarding them, but you don’t hide from the employers the fact that your party has needs that it is covering with great difficulty”ⁱⁱ.

Judging from the information appearing in the annual reports of the National Audit Office on party financing, some parties, like the PNV, the PP, and the CiU probably turn more often to this second possibility that Arzalluz was talking about, given the notable volume of anonymous donations that they declare as compared to those from other parties like the PSOE or the IU. However, the way of extracting funds that has had the biggest presence in the scandals of the last few years is the charging of commissions in exchange for public contracts.

Throughout the democratic era we’ve been aware of a large number of cases like this. The majority concerned the awarding of contracts from local and autonomous administrations controlled by the parties, although there have also been a few cases concerning large public companies. Among the most notable cases we can highlight those of Filesa, Naseiro, AVE (Spain’s high-speed train), the Sóller tunnel, or the Zamora council.

With the public contract commissions, in the last few years there were also some known cases of funding through urban planning, a source of corruption that has had an extraordinary effect in the last few months, as we will mention later. Among the precedents for the current urban development corruption cases we should highlight the construction case in Burgos, the Puerto Zahara case in Barbate, or the El Tagle farm in Tegueste (Tenerife).

Finally, a third way of irregular extraction of public funds by the political parties has consisted in the channeling of money (at times coming from public subsidies) from companies controlled by executives close to the parties. The most prominent cases were those of Banca Catalana, Casinos de Catalunya, and Pallerols related to the CiU, and the possible case of Gescartera linked to the PP. One way –theoretically different from the direct exploitation of the Civil Service– that parties have had to face their organizational and electoral expenses has been the receiving of donations from large companies. Arzalluz's autobiography also refers to this: "I'm convinced that all the important parties have received money from big companies. Especially from construction companies". In some books about the beginning of the democratic regime the role that certain companies, especially the big electric companies, such as the large employers' organization CEOE (Confederation of Employers and Industries of Spain), play in sustaining these groups is noted.

Though, as we just saw, the irregular funding of the parties has been the most prominent source of the corruption scandals in the last few years, it has not been, however, the only source. In many of the mentioned cases it's hard to determine how much partisan corruption there is and how much personal corruption. Besides the common problem of inequality in access to State resources, the creation of networks to obtain irregular funds by the parties entails two more problems. The first is the limited or nil control that the party can have over the final destination of the money and, therefore, over the percentage of collected money that ends up in the hands of the intermediaries. The second problem has to do with the appearance of networks working for themselves.

With the mafia networks, in the last few years there have also been cases of simple personal corruption by certain individuals in the carrying out of their public posts or using political connections that those posts have allowed them to form. The most talked-about cases of personal corruption, the spoils system, and the use of privileged information have been Roldán, Estevill, Planasdemunt, or the flaxseed affair.

Finally, a last source of corruption shown by the corruption scandals in the last few years has had to do with the turncoat phenomenon. Though here as well it is very difficult to establish a limit between appropriate and inappropriate behavior, some of these turncoats have gotten a personal economic return from the strategic position they occupied or, at least, there is suspicion about the relationships of these people with certain groups of economic interest. Thus, for example, the cases of the former socialist councilwomen of Benidorm and Ceuta, who in 1991 and 1999, respectively, allowed the formation of government by other political powers, and had a clear economic reward through their posts for themselves and their husbands. Somewhat murkier is the case of the socialist congressmen Tamayo and Sáez in Madrid's Parliament, whose defection in June of 2003 prevented the PSOE candidate from reaching the presidency of the autonomous government. No one has been able to prove any economic compensation for that behavior, but it has been discovered that various builders in Madrid related with then

Secretary General of Madrid's PP, Ricardo Romero de Tejada, foot part of the bill that the former socialist congressmen incurred at that time, like the hotel rooms where they were shut away or the private security protecting them.

What similarities and differences do these scandals have, and others that could be added, with those that have emerged in the last year? The following section quickly reviews these scandals.

3.2. Scandals in the last term

Most of the known cases in the last few months also seem to be related, to a greater or lesser degree, to the irregular financing plots of the political parties, though it is still soon to know what the exact final destination is of the hoarded moneyⁱⁱⁱ. In this field we've had cases related with the irregular or suspicious awarding of public contracts (the Parques Eólicos and Telde cases, among others) as well as with the diversion of funds of a private company that had public capital^{iv}.

Likewise, there has been some talked-about controversy related with the bank write-offs of party debts^v, though the true new feature of the cases of this last era is the enormous impact that the matters of alleged or proven urban development corruption have had –and continue to have–^{vi}. Of all of them, the Marbella case has stood out, which the next section is dedicated to. The problem of urban development corruption is analyzed in the last part of the chapter, but we can say now that the prominent increase in these kind of cases is probably due to the convergence through time of three different factors: an extraordinary boom in construction in our country^{vii}, the constant financing problems of the local treasury departments and the growing recourse of these administrations to income from urban development^{viii}; and, finally, the changes that seem to be taking place in the finance structure of some partisan organizations which seem to depend more and more on the funds that local corporations allocate for the sustainment of municipal groups^{ix}.

With the scandals already described, we have also had some pretty clear cases of a possible spoils system^x and corruption of officials. Among the latter it's important to highlight some employee plots of police and lawyers who were paid by illegal immigrants in exchange for their legalization and, especially, the case of the president of the provincial court of Las Palmas, who is accused by an investigation headed by the inspection service of the General Council of the Judiciary (CGPJ) of pressuring judges and district attorneys to get parole for a prisoner accused of drug-trafficking and hiding his private advising company.

It's important to add to all of this a consideration that all these cases share. It has to do with the way in which people have reacted to the discovery of corruption and how they have faced the fight against that corruption. Though there has been times when the critical situation provoked by the scandals gave rise to some interesting institutional innovations which have meant progress for anti-corruption policy (like the creation of the Anti-Corruption Department of the District Attorney's Office in 1995), in general the uncovering of corrupt practices has been accompanied by the immediate attempt to exploit it in a Manichaeian and partisan fashion. As the first evaluation report on corruption in Spain by the GRECO in 2001 said, a comprehensive enough anti-corruption policy –that is not merely the creation of new penal penalties– is missing in our country,

that would tackle the reduction of this problem with true political will and enough consensus.

The Marbella case is a great example of how extreme the degradation of our public institutions can become when opportunities are taken advantage of that are created by the impunity that has surrounded –and, in large part, continues to surround– the basically tolerated practices of corruption by the traditional political agents and, therefore, the absence of a truly effective and decisive policy to put an end to it.

3.3. The Marbella case

3.3.1. The facts. This is without a doubt the most talked-about scandal of this term. It exploded on March 29, 2006, when a police macro-operation known as Operation Malaya headed by the incumbent of the Court of First Instance number 5 of Marbella, Miguel Ángel Torres, and by the Anti-Corruption Department of the D.A.'s Office took twenty people to prison, among them Marisol Yagüe, Mayor of the Andalusian city Marbella; two councilmen on her government team; Juan Antonio Roca, City Planning Advisor; Leopoldo Barrantes, Council Secretary; and another fifteen people from lawyers to figureheads considered by the judge to be responsible for a network of companies that served to cover up Roca's assets. The detainees were accused of alleged crimes of misappropriation of public funds, bribery, influence peddling, plotting to change prices, and money laundering.

A few days later Isabel García Marcos, first Deputy Mayor of Marbella's city hall, would also be taken to prison, who was out of the country when the first arrests took place. Operation Melaya would still have a second phase three months later, on June 27, when the examining magistrate decided to imprison thirteen more former councilmen of Marbella, as well as several executives of the biggest construction companies in Andalusia. Just a few weeks later, on July 19, the judge also sent to prison the former mayor of the city, Julián Muñoz, along with other people.

These different judicial decisions gave rise to the accusation of dozens of people, of which twenty were politicians; two former mayors and eighteen former councilmen of various parties like the Independent Liberal Group (GIL), the Andalusian Party (PA), and various turncoats from several parties like the PSOE and the GIL. Among them were the fourteen who had signed the vote of no confidence which in August of 2003 would prevent Julián Muñoz –the candidate at the head of GIL's electoral list in elections three months earlier– from winning the post of mayor of Marbella, giving rise to his substitution by Marisol Yagüe at the front of the consistory. In an unprecedented decision in the history of Spanish democracy, on April 7 of 2006 the cabinet approved the dissolution of Marbella's city council and put a management commission in charge of its administration until the next municipal elections were held in May of 2007.

Although the judicial trying remains open and the examining magistrate holds in confidence a large part of the legal proceeding, the press has been revealing quite a few details on this case. The police operation has exposed a criminal plot entrenched in Marbella's city council that obtained important commissions from businessmen in exchange for certain administrative decisions (re-zoning, licenses, awarding of contracts) favoring them. This network had the shape of a three-pointed star, connected together by one sole central nodule. The network's nucleus was occupied by the head-plotter of

negotiations with businessmen, on the one hand, and with councilmen, on the other. The three extremities of the network were: businessmen who paid commissions to be favored in their business, councilmen who officially adopted the administrative decisions favorable to businessmen, and the network of figureheads and lawyers through which the illegal benefits obtained by the head of the plot were hidden.

According to the various well-known judicial proceedings, the head of this plot was the city council's urban development advisor, Juan Antonio Roca. Roca had started working in 1992 under the orders of Mayor Jesús Gil as manager of urban development at the front of the municipal company Planeamiento 2000. After the vote of no confidence against Julián Muñoz in August of 2003, Roca became the advisor of urban development to the new Mayor, Marisol Yagüe. The examining magistrate considered Roca to be "the person completely directing and controlling municipal decisions", in such a way that the government team only has a secondary role, to the point that the Mayor was, according to the judge, "a simple puppet in Roca's hands".

Roca negotiated with the businessmen and managed to get the agreements reached with them officially approved later in plenary city council by the councilmen on the government team. Most of these operations were related to urban development affairs. Throughout those fifteen years close to 900 urban development agreements were signed and 10,000 licenses were granted. The agreements with the developers dealt with re-zoning, building and occupancy permits, property and land exchange, and awarding of public contracts for compensation of certain services. There was no kind of legal limit to what could be obtained. Only paying the right price was necessary: land use and development potential were altered on the whim of the agreements reached. Many of these actions were not only irregular in light of the General Urban Development Plan (PGOU) in force (dating from 1986), but they didn't even find protection in the advancement of the PGOU produced by the GIL and which was rejected by the Autonomous Community of Andalusia in 1998.

In the majority of the urban development agreements that the city council signed with developers, economic payments or payments in kind (of property of land exchange) were established that were clearly below market prices. These were the apparently legal contracts that the plenary city council approved. However, under these official contracts the true agreements appeared which set much higher quantities that were paid in undeclared income. This was the money Roca paid the councilmen with and it was the true source of his political power. Of that money, Roca kept 35%, and the rest he distributed among the councilmen (*El País*, July 2, 2006). The compensation received by businessmen was the guarantee that the agreements reached would be complied with without exception even if there were a challenge by the Autonomous Community of Andalusia or even a judicial order to halt it. For that reason businessmen made their payments in three installments: when the agreement was signed, after obtaining the license and, finally, when construction was finished.

Roca never signed any document, but his commitments were met to the letter, which promised him the respect of developers and consolidated his control over the plot. According to one of the sources cited in the same article, Roca even said "I am the city council", and added that he had all the power, by which "if one day another party gets here, they will have to depend on me because I have all the information". What's true is when, after heading the GIL's candidacy in the 2003 elections, Julián Muñoz was elected

Mayor, just a few short weeks after dismissing Roca as the urban development manager, Muñoz was defeated by a vote of no confidence devised by Roca himself which moved ahead with the votes of 8 of the 15 councilmen of the GIL, 3 of the 5 councilmen of the PSOE (who were expelled by the party) and the 3 from the Andalusian Party.

Several of the accused councilmen have recognized in their statements before the judge that Roca distributed among them the money from the commissions received, repaying each one a quantity depending on their respective status. Thus, the larger quantities were for the Mayor, then for Deputy Mayors, until reaching the least important councilmen on the government team. As the judge says in one of his decisions, “Roca believes all of his accounts to be one sole fund, the city council being just another one of his businesses allowing him to have political power to obtain income in his business with employers, and which carries with it the expense of paying off councilmen and others”. The political analysis of Roca’s accounts since 2004 has found multiple signs revealing, according to the judge, “a multitude of connections” between payments of developers and the “administrative resolutions favorable to those developers” which were approved the day following the payment.

The third pillar of the plot was made up of the network of figureheads and lawyers that Roca made use of to hide the product of his illegal negotiations. A law firm in Madrid created an intricate network of more than 120 shell companies run by Roca’s figureheads and that served to launder the money obtained illicitly through investment in real estate. According to police calculations based on confiscated goods in Operation Melaya, throughout those fifteen years at the front of Marbella’s urban development, Roca may have amassed a fortune higher than 2.4 billion euros.

Though Operation Melaya has surprised public opinion with the magnitude of the irregularities revealed and by the volume of goods seized that were the product of these irregularities, nonetheless suspicions (and certainties) about the corrupt working of Marbella’s city council have a long history and have on some occasions –like what happened after the vote of no confidence in 2003– made some political groups like the IU request the dissolution of this council. In four years, the law has taken to prison the three mayors of this location since 1991 for crimes related to corruption and urban development. The last case has been that of Marisol Yagüe in the course of Operation Melaya, but her two predecessors have received several judicial sentences besides. The first mayor of the GIL, Jesús Gil, was sentenced in October 2000, to twenty-eight years disqualification and six months arrest by the Provincial Court of Málaga for the Camisetas case^{xi}. The Supreme Court confirmed this sentence in April of 2002, which would cause Gil’s exit from the mayorship. Later he was sentenced again by the National Court for crimes of embezzlement and fraud to three years and six months prison^{xii}. His replacement, Julián Muñoz. Was sentenced in March of 2005 by Penal Court No. 5 in Málaga to six months prison and eight years special disqualification for the crime of urban development corruption^{xiii}. The same court sentenced Muñoz again in October 2005, to one year of prison and eight years disqualification for the same crime. In total, eight councilmen of Marbella since 1991 had already been criminally sentenced.

In addition, prior to Operation Melaya, there were already more than thirty criminal proceedings initiated as a result of a range of actions (lawsuit of the National Audit Office, court-appointed proceedings from the district attorney’s office, suits presented by political parties, environmentalist associations, or individuals) for crimes

relating to regulation of territory, the environment, Social Security fraud, corruption, and bribery. In these proceedings twenty-seven former councilmen of Marbella appear as accused. Added to these proceedings are the multiple previous procedures in the hearing phase in the courts of Marbella for crimes against territory regulation and disobedience of orders to halt construction which go higher than fifty.

All these years of corruption have given rise to a very worrisome economic and urban development situation in this municipality. As far as the economic situation is concerned, Marbella's city council is in complete bankruptcy. The city council's debt amounts to, according to provisional calculations by the auditor commission, 500 million euros. Despite the more than eight hundred urban development agreements undersigned by the city council with private individuals during these years, there is no municipal inventory where property goods that developers paid part of the agreements with are documented. In fact, the auditor commission has received news that some of these properties were not even registered in name of the city council, by which many of them have transferred over to private hands without any control.

As far as the urban development situation goes, it is out of control. A few sketches suffice to outline it: since 1991 sixty thousand new homes have been built, half of which are illegal and only three hundred were under official protection; additionally, there is an enormous amount of businesses and commercial buildings –more than five hundred– that don't have the necessary licenses to carry out their activity; developed land has grown from 38% in 1991 to 65% of the 114 square kilometers of the current city limits; there are only 2 square meters of park for every inhabitant; finally, despite the fact that the actual population of Marbella has grown to 250,000 inhabitants on annual average, in all these years no new hospital and only a single school have been built, and the public transportation system is completely rickety.

3.3.2. Explanatory factors. What factors have led to this situation? Why has Marbella's city council been able to operate as a true "organized looting center" for so many years? To answer these questions we have to bear in mind three points: one, what allowed for a criminal structure such as this one to take control over the city council in 1991; two, what institutional machinery did those corrupt individuals need to commit these crimes and deactivate mechanisms for controlling city hall's actions; and, three, what external conditions favored for the looters the survival of this criminal structure.

Jesús Gil, an already popular figure in all of Spain as a dramatic president of the football club Atlético de Madrid, decided to create his own party. As one can see in Table 6, Gil swept in the municipal elections of 1991, and he did so condemning corruption and the inefficiency of the socialist team of the out-going government and promising a "modern business management" of the city council with the aim of creating wealth and employment. This construction businessman, who had business in the area for some years, also did not hide the fact he had private interests he would serve from city hall^{xiv}.

Table 6. Electoral results of GIL in Marbella 1991-2003.

Year	Votes	% Valid votes	Town Councillors	Participación in the elections	Census
1991	20.531	65,68%	19 (of 25)	64,64%	49.241

1995	24.718	65,58%	19 (of 25)	68,52%	55.275
1999	21.971	52,30%	15 (of 25)	60,08%	70.262
2003*	21.978	47,09%	15 (of 27)	58,21%	80.497

* Gil is disqualified, the party candidate was Julián Muñoz.

Source: Home Office.

The attitude of the businessmen in the real estate sector is also a decisive factor in understanding the origins of the GIL and its subsequent path. Table 7 shows the importance of construction in the province of Málaga. With a population considerably smaller than Barcelona's or Madrid's, Málaga has had, however, in the last few years a higher rate of construction of homes. Most of this construction frenzy has been focused on the Costa del Sol.

Table 7. Number of free houses started in the period 2000-2005.

Provence/Year	2000	2001	2002	2003	2004	2005	Average
Málaga	62.329	66.754	60.288	83.274	42.214	38.146	58.834
Barcelona	47.154	38.445	48.134	45.032	48.544	46.226	45.589
Madrid	34.888	39.969	48.267	40.226	60.113	48.936	45.400
Alicante	34.320	30.132	41.602	32.808	44.224	41.079	37.361
Valencia	18.801	17.148	11.065	20.758	25.521	29.173	20.411
Sevilla	15.869	15.910	12.489	14.962	19.708	20.884	16.637
España	487.810	475.059	499.046	550.465	621.257	635.608	544.874

Source: Housing Ministry.

It is, therefore, an economic sector that has created spectacular benefits in the last few years. Existing data on the valuation of wealth created by this sector in Marbella is not coincidental. Some sources calculate –surely with exaggeration– that urban development business has moved in Marbella in these last years around 14 billion euros annually^{xv}. Other sources considerably lower this figure and indicate that the sector created a wealth of almost twelve billion euros, but over a period of fifteen years^{xvi}. This second figure is probably closer to reality and it is illustrative enough of the dimensions of this business. The extraordinary profit margins obtained by employers –between 60% and 70% according to Rafael Duarte, the head of urban development in the auditor commission– explains the limited willingness of these businessmen to condemn practices of corruption and their interest in the survival of this criminal racket^{xvii}. Though there isn't yet reliable information about this, it wouldn't be strange to expect that, with these profit margins, investors have taken part in this with money from illicit activities with the intention of laundering it. The entrance of these sectors into this business would not only have contributed economic resources, but also coercion with which to remove possible obstacles that would make these exchanges difficult. But it would also make failure to comply with the acquired commitments more dangerous for the heads of the network.

The second factor to keep in mind to understand the Marbella corruption plot has to do with the creation of the necessary organizational structure. Once at the front of the municipal council, Jesús Gil set in motion the organizational network that would allow him to convert the city council into another of his businesses. With the excuse of improving the efficiency of the municipality's workings, the first thing the GIL did was to create an entire parallel structure within the city council itself. This structure was

sustained through a network of municipal companies that left the traditional organs and engineers and civil servants out of the important decisions, at the same time that it made the political control exercised by the opposition difficult. According to the latest report by the National Audit Office in December of 2004, at that time this structure was made up of two autonomous organisms and thirty-two trading companies. All of these entities according to the National Audit Office, “lacked organic regulation”, had “insufficient economic-financial control” and “were not controlled by the plenary”.

The dimensions this parallel machinery comes to have are considerable. The GIL’s Marbella became the third largest city council of Andalusia by volume of personnel, only barely surpassed by Seville and Málaga. Adding up the workers of the city council itself and the personnel of the public companies and foundations, the municipal staff in 2006 reached 3,532 employees, which meant monthly wages of 10,500,000 euros. Of those workers, 1,587 were municipal personnel strictly speaking, and 1,945 belonged to the companies and foundations. The most important company was Gerencia de Obras S.L., where Juan Antonio Roca lent his services as a consultant. This company had personnel in all the offices of the consistory and it operated like a true city council within the city council.

This administrative asset stripping of the city council was completed with, according to suit lodged by the Anti-Corruption Department of the District Attorney’s Office in 2001 in the case known as the *Saqueo* (“plundering”), the creation of a network of shell companies –in name of the eighty-year-old mother of Juan Antonio Roca- which appeared as fictitious suppliers of goods and services to the municipal companies and that served, in reality, to divert funds from these companies (and, therefore, from the public assets of the municipality) to the vicinity of Jesús Gil.

From the beginning the GIL’s objective to remove itself from any kind of administrative control was clear. Just one month after taking over the new team, Gil signed a decree obligating the Secretary of the city council to take mandatory vacation after refusing to dispatch the city council’s affairs to a different office as the Mayor wanted. This clash would end with the transfer of the Secretary to another city council by the Department of Civil Service. This same line of action, of marginalizing the “disobedient” civil workers, was maintained throughout the period. The role of civil employees was assumed by a collection of contracted consultants that sent the technical reports that the heads of the city council wanted to hear.

The strategy of deactivating mechanisms for controlling the actions of the city council was completed in two fronts directed more at the judicial sphere and the public opinion sphere. As far as the latter is concerned, the GIL hoped to control sources of information for citizens of Marbella or, at least, it tried to counteract negative information with its own propaganda machine. To do so, it set in motion a series of municipal media (like *La Tribuna*) and developed different mechanisms to “seduce” journalists covering information on the consistory.

As for the judges, obsession for control of them was so clear that in Juan Antonio Roca’s planners seized by police a very detailed notation was found of the shift system of Marbella’s courts. In these courts some interesting events occurred during these years. The chief justice of Marbella would be suspended in 1999 for four years by the Supreme Court for two very serious offenses: not stepping aside in an issue affecting the city council and her family and practicing as a judge in a town with less than 100,000

inhabitants where her father –a well-known and influential court official– had important business. Just like with the journalists, the strategy of harassing the judges was supplemented with a tactic of kind approach to those judges.

From the beginning the priority aim of this complicated structure was to control urban development in the municipality. As quickly as in the first plenary meeting held after the 1991 elections, it was agreed that the new government team would draft a new General Urban Development Plan. Though there was already an advance of the Plan in 1993 (which established 65% of municipal land as urban ground), Marbella's city council did not submit it for approval, once and for all, by the autonomous government until 1997. The frenetic rate at which new urban development agreements were signed left the Plan obsolete even before it was presented to autonomous authorities. Finally, the government denied the PGOU in 1998 because it was based then on 600 urban development agreements and intended to re-categorize 11,000 square meters of forest ground as urban land.

All of this machinery for the organized looting worked perfectly until when as of in 1999 Jesús Gil's judicial problems got worse. In January of that year, Judge Santiago Torres ordered that he be remanded in custody because of the case that would end up disqualifying him, and in the June elections –though he irrefutable won again the absolute majority nearly maintaining his total number of votes– he lost four councilmen. In aggregate terms, 1999 was the best electoral year for the GIL, which received .41% of the national total (almost 90,000 votes) and 93 councilmen. His results were significant in Melilla (25.93% of the vote and seven of twenty-five councilmen) and extraordinary in some places like La Línea (56.8% and seventeen of twenty-five councilmen) or Ceuta (38.15% and twelve of twenty-five councilmen). This success in such significant bordering cities for national interest like these latter two where he set up government, surely pushed many State institutions to take more seriously the scrutiny of this party's method of governing, which probably hastened the worsening of Gil's judicial problems. From here, and especially since the disqualification of the Mayor in April of 2002, the criminal machinery set in motion by Jesús Gil began to lose the internal stability it had kept throughout all those years.

Gil's disqualification caused the first tensions. His replacement in the mayorship, Julián Muñoz, sought to direct the city council (or business) his own way and, after keeping the absolute majority in the 2003 elections, he made two decisions that would have him break with Gil: he let go of Juan Antonio Roca as manager of urban development and began negotiations with the autonomous government of Andalusia to agree on a new PGOU. The reaction from the Jesús Gil and Juan Antonio Roca camp was resounding: they got range of employers with real estate interests in the area to finance the purchase of the goodwill necessary to defeat Muñoz through a vote of no confidence the ended in the narrow margin of fourteen councilmen in favor and thirteen against. The GIL broke up into several groups and there was nothing left to do but allow other councilmen to enter into the business who until then had been at the periphery. Three came from the PSOE (who were expelled from that party) and three from the Andalusian Party. Though the business was maintained and the extraction ability of those in charge became even more fierce, the Operation Melaya investigation demonstrates that the network was in marked break down and tension about the distribution of booty was stronger and stronger.

Not in vain 2003 is also the year when –as told further ahead– two kinds of judicial decisions come together (the first precautionary suspensions and final cancellations of urban development licenses) which would start to put in doubt the climate of impunity that until then the criminal network moved within and it would show its greatest difficulty in meeting the commitments attained with businessmen.

This was, therefore, the machinery that allowed the operation of the network of corruption and its evolution over time. However, this machinery has only been allowed to operate for fifteen years because of a series of favorable conditions outside of the network itself. We will highlight two of those conditions. The first that we must call your attention to is the broad and continuous support by Marbella's voters for Jesús Gil's party. Gil's populist and anti-party message, combined with the employment and wealth created by the construction ferment, as well as his controversial but forceful policy of citizen security that made minor street crime invisible, got the majority backing of voters. It's important to add to this, in addition, the fact that the impressive union structure parallel to the city council served as an extraordinary clientele machine, given that it directly employed almost two thousand people. If we take the electoral register of 2003, it turns out that one in every forty voters in Marbella earned wages from one of these companies. Finally, like in the case of journalists and judges, one can't disregard the intimidation ability from Jesús Gil's camp to silence critical voices of his management at a citizen level.

A second condition contributing to the survival of this criminal network was the excessively passive role for too long of the majority parties and some of the State institutions. As for the majority parties, whether for electoral strategy reasons or something else, the fact is that they let this phenomenon play freely for a long time. The two big parties also strategically played with the GIL for awhile; it could be good for PSOE having a formation of right-wingers that might take votes away from their main opponent; the PP also supported the GIL at times, like when in 1995 it agreed with them to exchange support so that the presidency of the provincial council of Málaga would fall to the PP candidate and the presidency of the Municipal Community of western Costa del Sol would go to Gil himself. And in 1998 it would vote in favor of the PGOU's passage presented by the Marbella consistory in the Urban Development Commission of the autonomous government.

Surely this passiveness of the majority parties has had its impact on the passiveness of the State institutions. Three examples of this institutional passivity might serve to illustrate. First off, the role carried out by the autonomous government of Andalusia; though the government has been very active in the last few years, they waited until 1995 to contest an urban development license of the Marbella city council. Only after the disqualification of Gil, the government's disciplinary policy has become forceful, and only in November of 2005 did it begin proceedings to withdraw jurisdiction over planning and urban development discipline from the city council.

A second example is related to the problems of coordination and the limited means of an institution which is key to getting to the bottom of this kind of crime: Treasury Department inspection. Despite various inspections by Treasury auditors in Málaga and Murcia between 2001 and 2005 discovering Roca's relationships with a complex plot of companies and recommending to the Madrid head office of the Tax Administration that they initiate joint and coordinated action, nothing was done. Even

when the Anti-Corruption Department of the District Attorney's Office requested from the Tax Administration in 2003 an asset report on Roca as a result of a series of journalist reports condemning his extraordinary acquisition of wealth, the Treasury Department found nothing odd. According to the press note published by the professional organization of auditors from the Treasury Department after Roca's arrest, there is only one investigation unit "made up by one auditor and four sub-auditors in charge of uncovering organized and criminal fraud in all of Costa del Sol".

Finally, we can't forget to mention the role the Judicial branch has held and, in particular, *contencioso-administrativa* jurisdiction (over cases against the State by individuals or organizations). When in 1995 the autonomous government of Andalusia began to contest building permits granted by the city council in Marbella for not adapting to the PGOU in force (from 1986), it also requested the precautionary suspension of construction. However, for eight years (until 2003) the *Contencioso* Division of the Superior Court of Justice in Andalusia (TSJA) refused to order the precautionary halt to construction, which decisively contributed to the current urban development chaos and propagation of a climate of impunity among heads of Marbella's city council. Starting in 2003 the *Contencioso* Division changed its stance and began to rule in favor of precautionary suspension of construction. It was also in that year when this organ started to pronounce its first sentences (on the 1995 contesting) ruling in favor of the government as opposed to the city council and canceling licenses not in agreement with the PGOU of 1986.

To add to the role played by the *contencioso* jurisdiction during those years and its slowness, there were also the inhibitions of some actors, like the property registrar, notaries or the banking institutions themselves. All of them have an important job in real estate transactions and, despite the government requesting their collaboration to hinder the sale of homes without legal licenses, their contribution to this end was nil.

In sum, the Marbella scandal reveals some worrisome problems about the operation of our political system that contribute to the expansion of corrupt practices.

4. Areas especially prone to corrupt practices

The public discussion about the problem of political corruption in our country throughout these years of democracy has often been futile. The discussion has almost always had a merely electioneering inclination (or fighting for power within a party) that was focused on the assessment of which party (or party faction) has been the most –or the least– involved in corruption. This kind of debate (pointing a finger at others to make one's own corruption appear insignificant) is a fruitless debate that only increases distance between citizens and political activity in general. Therefore, its electoral yield is highly questionable.

However, there is another way to approach this problem that is worth our while in terms of an improvement in the quality of the democratic system. It has to do with analyzing what the structural conditions are that create incentives for corrupt behavior. This last section of the chapter seeks to –without an attempt at exhaustiveness– offer some keys to the problems of institutional design which explain that some areas of political activity have made up privileged sources of corruption. We will focus on the

analysis of just three of them, that, in turn, appear closely related in many of the cases described: party funding, urban development, and public contracting.

4.1. Party financing

Since the beginning of the democratic regime, political parties agreed to a system of public subsidy of electoral expenses for the formations that achieved representation in Congress that would be proportional to the results obtained, at the same time that it allowed the receiving of non-finalist (with no conditions on its use) private contributions with strong limitations^{xviii}. This system was definitively institutionalized with the Organic Law of the General Electoral Regime (LOREG) on 1985. In addition, after the so-called Flick case, in 1987 the Organic Law on the Financing of Political Parties (LOFPP) was passed, which completed the final design of the party finance system in our country. The mechanism for subsidizing electoral expenses of the LOREG was kept in force and a system for financing the ordinary activity of parties was added based on three sources of income: a non-conditional national subsidy included annually in the State Budgetary Law and which is proportionally distributed to the representation of each party in Congress; a second line of public financing in the hands of the different parliamentary chambers (the House, Senate, and autonomous legislative assemblies) for the sustainment of party groups that have representation in Parliament; and, finally, a source of private financing based on dues of those politically active, nominal donations and anonymous donations with a limit of sixty thousand euros per donor and maximum limit for this line and for every party of 5% of the total of State subsidies in the State Budget.

It is, therefore, a mixed finance system, though, judging by official data of the parties' incomes, clearly inclined towards public financing, as it means 95% of that income. The organ in charge of overseeing finance of the parties is the National Audit Office. This body, which is an instrument of Congress for controlling the accounts of the various public organisms, for years has been calling attention to the serious defects of design and control that the current party finance system has in our country and to the inadequacy of its current status to carry out the supervision of political parties that have a very different nature from public organisms that the National Audit Office audits^{xix}. As the parties are concerned, they are private entities subject to a special legal regime and that receive non-conditional public subsidies. Given this peculiarity of the parties, the National Audit Office for a while now has been fighting for the need for a change in the regulation of party financing and their supervision.

The main faults of current regulation can be summarized in the following five points:

1. Insufficient control of electoral expense: legislation sets a very strict limit to electoral expense that parties can incur, which in practice is often surpassed. But what's most worrisome is that the National Audit Office cannot carry out true effective control of the real expense that parties incur in their campaigns for three reasons. First, because credit entities and supplier companies (whose turnover surpasses six thousand euros), that are obligated to report with detail to the National Audit Office those services rendered to the parties, they often don't comply with this obligation and the Office has no means to force their compliance and, therefore, the only information that the Office can use is what the parties provide it with. Secondly, because the

differentiation between electoral expense and pre-campaign expense (which is unlimited) is very subtle and one can see that the former expense type has been very significant on certain occasions. Finally, though the regulation of private donations is different in the cases of ordinary activity and electoral activity (where donation limits are 10 times lower and anonymous donations are prohibited), these formal specifications are, as the Office says, “easily escapable”.

2. Little control of economic-finance activity of the parties: there is no legal restriction as to what parties can do to obtain income from their assets and the economic activity they can perform with their funds. In fact, though it seems to be a practice they have stopped using in the last few years, at times the National Audit Office verified the participation of parties in “speculative transactions in highly sensitive markets”. This kind of activity causes one to think a party could take advantage of the privileged information it has access to by virtue of its public activity for speculative investment in very profitable stock market transactions. At any rate, the Office has complained that compliance with the obligation to include economic-financial activity in their annual accounts is extremely uneven among the different parties and the majority of them do not include in their accounts the economic activity of their municipal organizations or their electoral posts in local corporations. In addition, the financial states of the parties do not include the state of the foundations or the trading companies they control. In this way, the information received by the National Audit Office is very inadequate on this subject.
3. Insufficient control of private funding: Spanish legislation is one of the few in Europe that still allows the receiving of anonymous donations for the finance of ordinary activity (non-electoral) of the parties. Though there is a legal limit set of sixty thousand euros per donor, this limit is worthless, given the impossibility of identifying the different donors. This source of funding is very important for some formations like the PNV and the CiU and it has become more important for the PP and the PSOE. Though, obviously, the law bans finalist donations (with conditions on their use), the opacity of this route can protect illegitimate forms of influencing administrations controlled by the receiving party. What’s more, current regulation says nothing about the possibility of a party financing itself indirectly through funds that the foundations they are linked to can receive, nor does it say anything about a practice all the parties have turned to quite often: write-offs (or advantageous re-negotiations) of the debts they have with credit institutions or supplier companies which, in addition, don’t even have the obligation of informing the National Audit Office, in this case since it is ordinary activity and not electoral activity.
4. Defective design of public financing: the scarcely realistic differentiation between electoral activity and ordinary activity previously mentioned, as well as the disparity in financing sources of the latter show important problems. The LOPFF only anticipates two sources of public funding of ordinary activity: State subsidy by the budgetary law and the support of parliamentary groups in Congress and the autonomous assemblies. For the former, this law does not establish any criteria to set the corresponding budgetary sum, nor its annual increase^{xx}. Regarding support of congressional groups, each of these parliamentary chambers sets the candidates to be received by the groups without abiding by a basic general rule, which creates uneven treatment according to the geographical establishment of each party and control

dysfunction. In some cases, like in the case of the autonomous communities of the Basque Country and Catalonia, there are other special routes of financing the parties under the respective autonomous governments' responsibility that are not included under the LOFPP and that the National Audit Office condemns in its annual reports. Additionally, parties without representation in Congress are not obligated to submit to the external supervision of the National Audit Office. Lastly, a new finance route not appearing in the LOFPP is what local corporations use to sustain the different municipal or provincial groups of parties represented in their bodies. The reform of the law based on local regulation in 1999 introduced the possibility of this route that was excluded –after being debated– from the LOFPP. It has become a very important source of funding, but also a very problematic one: the different corporations use different criteria to set the amount to be destined to the groups, external mechanisms of financing are not anticipated (especially in the case of parties not represented in Congress) and the parties don't usually include this income in the account statements they send to the National Audit Office.

5. Very inadequate sanctioning regime: sanction for not complying with regulations are usually light or undetermined; for example, the crime of illegal financing outside of electoral campaigns doesn't exist; the sanction of unauthorized private funding outside the electoral period is limited to a fine of twice the amount of what has been unduly received; there is no foreseen sanction, except that of non payment of subsidies, for those parties that do not comply with the accounting obligation; also there is no foreseen sanction for those who haven't complied with electoral regulation but that don't have the right to subsidies for not having reached the necessary results; the National Audit Office can't propose sanctions on those third parties (credit institutions or supplier companies) that fail to comply with the obligation of reporting on their financial or commercial relationship with the parties; etc.

With a system as inadequate as this one it is hard to have reliable enough knowledge of how parties finance their activity and of the circuit of influence that certain private interests establish around them. This opacity feeds the setting up of financing networks that create illegitimate channels of influence over public administration. As we've seen in some of the scandals of the last few years, some of these networks take on a certain autonomy in some circumstances and no longer work for the party, working for themselves instead or, at least, combining both aims.

4.2. City Planning

Almost all the specialists indicate since several years ago that political corruption in our country is concentrated in local government and, specifically, in the fields of construction contracting and service contracting and, more intensely in the last few years, in urban development policy. Of course the cases appearing in the press have shown some features of municipal policy that invite worry and that have revealed that one of the most problematic areas is precisely that formed by urban development management and planning.

It isn't that our local authorities are worse from a moral point of view than those in countries around us. The problem lies in the institutional framework where urban development policy is carried out in Spain and that it creates tremendous incentives for

corruption. These incentives for corruption come from a double source. On the one hand, there is the enormous economic repercussion that public decisions have –basically in the hands of local authorities– over urban planning uses of land; a repercussion which, unlike the countries around us, fundamentally falls on the assets of the owners of re-zoned land^{xxi}. In times of home construction sector booms like the one we are living in since ten years ago in our country, and given the enormous differential between the value of rustic land and land for development, the temptation to “buy” a public decision changing the stated use of a specific piece of land is hard to resist. The case of the GIL’s Marbella perfectly illustrates, as we’ve seen, the inadequacy of our control mechanisms. Both in this case and, in general, almost all the numerous cases covered by the press in the last few months^{xxii} we see a poor operation of the various levels of control for the activity of political institutions involved. Serious problems have been warned of in at least four different large levels: regulatory, bureaucratic, political, and judicial. Let’s briefly review them.

As far as the regulatory framework is concerned, urban development activity is subject to complex hyper regulation that, paradoxically, leaves certain doors open for the great arbitrariness of decision-making. Uses of administrative silence for the approval of urban development licenses that are clearly illegal, as well as the creation of agreements with individuals granting them a decisive role, not in the execution of city plans, but in the planning itself, make up clear examples of this problem. To this general problem we have to add the evil effects of the Ground Law of 1998, which allowed the possibility of declaring any ground open for development which was not expressly stated as protected.

Secondly, bureaucratic proceedings of internal control that have traditionally been dealt with to guarantee the legality and economic rationality of decisions by municipal authorities show so many inadequacies today that, in reality, they don’t mean efficient control in the vast majority of our local entities. The National Audit Office has recently warned of this serious problem of our political system in a devastating motion describing the main causes of this situation.

In terms of political control, here we have to distinguish between several sublevels: the role of the opposition parties with respect to the government team, the role of citizen associations, of local media, and the role of the citizens themselves as voters. Though in many cases the role of the opposition is key for revealing corrupt practices in this sector of activity, often it is unable to sound the alarms to scrutinize the labor of leaders. This is fundamentally due to three alternative reasons: the lack of information on these issues given the opacity of many urban planning proceedings like the agreements in many cases, the social inconvenience it might mean for people to advance the role of inquisitor of a leader held in high esteem and popularly supported, or, like in Targentopolis’s Italy, that these other councilmen receive their share of the loot.

Citizen associations also share these three possible reasons, with the peculiarity that, in their case, with a public administration so scarcely transparent like ours, access to relevant information is even more complicated. As far as the local media, apart from the exceptions, it also usually has a very complicated role of sounding the alarms. Businesses that sustain the media are often in the hands of interests linked to promotion and construction activity and/or they depend substantially on public financial support from those they control. Finally, the use of the vote as a mechanism of control is often a complicated task for three kinds of reasons: the scarce information circulating on the

possible irregularities committed by authorities, the frequent organization of solid networks of clientele exchange by those same authorities, or the limited confidence available alternative policies might deserve.

Finally, as far as judicial control is concerned, dispute jurisdiction, with suits that last on average eight years, presents a serious problem of efficiency that becomes highly inefficient in its role of control in-practice. If we add to this its traditional aversion to issuing precautionary measures to halt construction of works suspect for illegality and the limited rate of real compliance of demolition rulings, what we get is administrative justice that creates a widespread sense of impunity that becomes a decisive stimulus for corruption.

Penal jurisdiction also has some problematic aspects in this regard. Some of those problems are technical. So it is, for example, that, given that the criminal nature of this kind of situation depends on the previous existence of administrative illegality, many times examining magistrates pose prejudicial administrative questions that, they can resolve them themselves, they are left in the hands of dispute jurisdiction with all the implications of prolonging the processes that go along with them. In addition, crimes associated with urban development present complexity such that the shortage of personnel means and materials of the trial courts isn't able to confront it. The Anti-Corruption Department of the District Attorney's Office has shown itself as a very efficient institution in confronting these crimes, but, despite the creation of regional delegations in the last few years of the same in certain Superior Courts of Justice, it continues to rely on too modest of an infrastructure to guarantee an efficient result in the penal pursuit of urban development corruption. Finally, an added problem that this jurisdiction presents comes from the crash in legitimacies that pursuing leaders' crimes gives rise to. In effect, although one of the bases of liberal democracy lies in the legal limitation to what democratically elected leaders can do, in practice it is usually very uncomfortable for examining magistrates to fulfill their task of pursuing criminal conduct of those leaders who have democratic legitimacy and popular support.

4.3. Public contracting

It has also been observed how a large part of recent scandals have been linked to the payment of illegal commissions for the awarding of public contracts which, on certain occasions a certain percentage were intended for the funding of parties controlling the granting public administration. Some of the irregularities seen by the National Audit Office arise from the inadequate regulation of certain aspects of contracting. Specifically, this National Audit Office indicates three main aspects: the under-determination of what characteristics projects should have that are available for contracting; the not at all demanding regulation of the competitions; and, lastly, the poor definition of modifications, extensions, and additional construction.

Concerning modifications, the defects that usually crop up in projects carried out by public administrations give rise either to the practice of substantial changes during the execution of those projects (thus distorting the sense of competitively granting the work or service), or halts and delays that are as damaging to public interest.

As far as extensions go, there is a growing tendency in all the administrations to rely more and more on the invitation to tender the work instead of the traditional

awarding instrument, the bid. On Table 8 information appears from the last available year in the Public Contracts Register of the Treasury Department which corroborates this extreme. While in bidding, the criteria for awarding the contract is clearer –the price– in putting contracts out to tender, a greater complexity is witnessed. This forces the establishment with the greatest objectivity and clarity of, in order to avoid arbitrariness, what the criteria is in the assessment of the offers in the submissions of contract terms. However, what the National Audit Office sees in its examination of local entities is “a heterogeneity of the chosen criteria in contracts with identical aims and characteristics, even signed by the same entity and in the same period of time”.

Table 8. Total of contracts in relation to administration which has contracted and the way of awarding. 2003 (euros).

Administration. Contracting	Tender	Negotiated	Auction	Total
Estate	8.611.950.408	2.940.863.059	886.540.384	12.439.353.851
Autonomous Community	10.391.533.160	2.759.237.818	272.187.313	13.422.958.291
Local	2.366.369.054	863.166.314	824.069.819	4.053.605.187
Total	21.369.852.622	6.563.267.191	1.982.797.516	29.915.917.329

Source: Public Registry of Contracts. Treasury.

Regarding modifications, extensions, and additional construction, the rules regulate them in a scattered, ambiguous, and unspecific way. The result is the widespread practice of this kind of alteration of the initial project trying to formally seek protection in the foreseen legal prescriptions (new needs, unforeseen causes, greater convenience for the completion of the project), but which in reality obey unrelated reasons: to mitigate the inadequate projection of a work or service, changes in the criteria of management, inadequacies in the control and tracking of the execution, or the incorrect subdivision of the object of the contract in virtue of circumstances not backed by regulation.

Even considering these defects in regulation, in general lines, the better equipped in personnel and material means a public administration is, the harder it is for the administrative contracting to create corruption^{xxiii}. The problems are more serious as the scale of personnel and material means in the hands of administration declines.

If we add to all this the problems of internal control mentioned in the previous section, one can conclude that public contracting, especially in lower administrations, is carried out in an inadequate institutional framework and according to very widespread irregular practices that make effective control of performances of leaders of these administrations very difficult. In sum, it is a breeding ground for the emergence of corrupt practices.

Given that it's always hard to precisely define the measure of corruption, political and partisan debate on these matters is unavoidable. However, this difficulty shouldn't become an excuse to not confront the problems revealed by analysis of the incidence of this phenomenon in our political system. Academic literature on corruption suggests that corruption might be the result of the coexistence of three kinds of factors: structural, with

poorly defined borders between the State and the market (that affords opportunities for corrupt exchanges, when economic profits may depend on political decisions); cultural, with a level of tolerance for these practices among citizens (which serves as an incentive to take advantage of such opportunities); and institutional, through defective operation of political, administrative, or judicial mechanisms of control that limit discretionary power of political decision-makers.

Assuming that there are always opportunities for corrupt exchanges in societies like ours, this chapter has revealed information about the perception of corruption by Spaniards and it has called attention to some institutional problems in certain areas of public policy that are especially prone to corruption.

The fight against corruption, to be truly effective, demands the adoption of a comprehensive strategy to combat this phenomenon on many fronts simultaneously, even in political culture of citizens as well. But its success will be conditioned decisively by the exercising of a political leadership that confronts the main institutional problems where corruption comfortably lives.

Conclusions

1. There are deep suspicions among the Spanish population of the seriousness and extension of the corruption problem. However, very few citizens have direct experience of a case of corruption.
2. Spaniards' concern about corruption, as compared with other problems, is still relatively low. It increases (modestly) when an important scandal is made known (like Operation Melaya in Marbella).
3. As opposed to most of the corruption scandals in the last few years taking place in the arena of irregular funding of the political parties, in 2006 they have taken place in the terrain of urban development corruption. The problem with this kind of corruption isn't that local Spanish authorities are worse than those from other countries around us from a moral standpoint. The problem lies in that the institutional framework where urban development policy is carried out in Spain creates tremendous incentives for corruption, among others the huge economic repercussion of public decisions (in general, in the hands of local authorities) on the uses of urban development.
4. There are three objectives related to the cases of urban development corruption that have appeared in 2006: 1) the extraordinary construction boom in Spain (800,000 homes, more than all those built in the United Kingdom, Germany, and France); 2) the constant problems of funding of local treasury offices; and 3) changes in the finance structure of some partisan organizations that seem to depend more and more on funds that local corporations direct to the sustainment of municipal groups.
5. The most important case of urban development corruption in 2006 has taken place in Marbella. There have been alleged crimes of misappropriation of public funds, bribery, influence peddling, schemes to alter prices, and money laundering. The criminal structure in Marbella worked as a three-pointed star, connected together by a central nodule. The network's nucleus was occupied by the central-plotter of negotiations with businessmen, on the one hand, and with councilmen, on the other hand. The three extremities of the network were: 1) businessmen that paid

commissions to be favored in business; 2) councilmen that officially adopted administrative decisions favorable to businessmen; and 3) the closely-woven spider web of figureheads and lawyers, through which illegal profits obtained by the head of the plot were hidden.

6. In an unprecedented decision in the history of Spanish democracy, on April 7, 2006, an extraordinary cabinet meeting approved the dissolution of the Marbella city council and placed its administration in the charge of an administrative committee until the next municipal elections were held in May of 2007.

ⁱ See, for example, The Council of Europe (1999 a&b), the Organization for Economic Cooperation and Development (1997), the UN (2003). The work of Transparency International and, later, the World Bank, have been key to this greater international cooperation in the struggle against corruption.

ⁱⁱ In Arzalluz (2005).

ⁱⁱⁱ Normally, takings for the party and personal acquisition of wealth of intermediaries usually appears linked to varied percentages of each of the ingredients.

^{iv} It is the company Terra Mítica, an amusement park near Benidorm whose majority stockholders are the *Generalitat* of Valencia (20%) and the two main savings banks of the community (the Caja de Ahorros del Mediterráneo and Bancaja, each one with another 20%). In May of 2006 it was revealed that an investigation by the Tax Administration had discovered a plot of 18 companies that had distributed in the first few years of the park's operation 10 million euros through the false invoicing of works and reports that were never done and materials that were never delivered.

^v In November of 2005 it was revealed that La Caixa had reached an agreement with the PSC a year before by which it wrote off 6.57 million euros. This amount was 45% of the debt due that this party carried since 1994. The rest of the money (7.81 million) was renegotiated at a rate of 3%, 3 times lower than 1994's rate. This news coincided, in addition, with the takeover bid by Gas Natural –where La Caixa has a very important presence– for the acquisition of Endesa that was well-received by the government and the Minister of Industry, José Montilla, First Secretary of the PSC, who had reached this agreement with the Catalan bank.

^{vi} The Greenpeace report, *Destruction at all Cost* (June 2006), counted 102 cases of urban development corruption or convictions against the development of the coast in our autonomous communities. Given the numerous cases that the press has called attention to in the last few months, we would send the interested readers to the electronic versions of *El País* and *El Mundo*, where they can find both special reporting geographically oriented and the summaries of the main scandals.

^{vii} It's enough to remember that in 2005 the construction of almost 800,000 homes was initiated in our country, a number higher than all the homes begun in the same year in three nearby countries of the EU with higher populations: the United Kingdom, Germany, and France.

^{viii} Some prudent estimates calculate that this kind of income is in many city councils 30% of the total. In an investigation in-progress by the Valencian Institute of Local Development at the University of Valencia, it has been found that in the Valencian municipalities analyzed income from urban development is greater than 40%.

^{ix} According to the latest report of June 2006 by the National Audit Office on party financing, for the year 2003, more than 25% of all the public subsidies (not electoral) received by the supervised parties comes from local corporations. It's important to note, as well, that the information the auditing organism deals with is that which those local corporations have sent from towns with more than 20 thousand inhabitants responding to the National Audit Office's requirements.

^x The most prominent ones have been the Fabra case, the Chaves case, and the case of the Mayor of Torrevieja. The president of the Provincial Council of Castellón (PP), Carlos Fabra, is accused of the crimes of bribery, influence peddling, banned negotiating with civil employees and tax evasion, after a company suit with a businessman that he had shared a trading company with sues him saying he gave thousands of euros to Fabra so that he would get authorization from various ministries (then in the hands of the PP) to be able to commercialize the health products the his company produced. The Chaves case refers to contracts that the Climo-Cubierta company has obtained from the Andalusian government, a company

where a brother of the president of the autonomous government of Andalusia works as a consultant. One of those contracts was granted by the Department of Tourism, Commerce, and Recreation, where another brother of Chaves is the General Director. Finally, the Mayor of Torrevieja, Pedro Hernandez Mateo, is accused for a crime of influence peddling capital gain worth millions obtained after the buying and selling of a building in a nearby town.

^{xi} Convicted for the crimes of corruption and influence peddling for the diversion of more than 2.7 million euros from the city council to the soccer club Atlético de Madrid for publicity of Marbella on the jerseys “without having authorization from city council or consulting with its governing bodies”.

^{xii} In the case known as the Atlético case, referring to irregularities committed in the changing of Atlético de Madrid into a public corporation, when taking over the majority of the stock without paying out the cost.

^{xiii} Muñoz and six former councilmen were found responsible for the illegal concession of a building permit for the construction of 238 homes, parking lots, and commercial sites on ground not approved for development (the Banana Beach case).

^{xiv} In the electoral campaign he affirmed that rivals said he was only in politics to do business and he recognized that this was true.

^{xv} Eduardo Navas in *Andalucía Única* (July 1, 2006) citing “experts in media finance specialized in economics”, unidentified.

^{xvi} Luis Gómez and J.A. Hernández in *El País* (July 2, 2006), citing “calculations by engineers that have developed the plan for land organization of the Costa del Sol”.

^{xvii} In fact, when the autonomous government of Andalusia announced in November of 2005 that it was starting procedures to withdraw jurisdiction of urban development from the city council of Marbella, the Association of Construction Developers of Málaga showed its surprise and indignation considering that “things were working” (EFE Agency, November 20 of 2005).

^{xviii} Donors have to be identified and they are not allowed to make contributions higher than six thousand euros.

^{xix} The key document where the National Audit Office includes its general reflection on inadequacies of the oversight system is the “Plenary Motion of the National Audit Office relating to the modification of finance and oversight regulation of political parties”, passed on October 30, 2001. (In the supplement to the official Gazette no. 200, August 21, 2002).

^{xx} The parliamentary majority that supported the government of José María Aznar froze this sum for five years, which surely explains the increase in private anonymous donations during that period (Irujo, 2005).

^{xxi} On the Spanish urban development model being exceptional in comparative terms, consult the works of Javier García-Bellido (2004, 2005a, 2005b). From these studies one can deduce that, in reality, the legal framework of urban development in Spain fosters legalized speculation (and, why not, corruption): a completely legal administrative decision creates spectacular profits for an individual with laughable compensation for the community (the reduced costs of urbanization and a paltry percentage of urban development exploitation). This openly clashed with article 47 of the Constitution.

^{xxii} For example, the case of the tourist site of Andratx, with ten thousand inhabitants. Its Mayor (PP) and the General Director of Land Organization of the Balearic government were arrested and accused of the crimes of bribery, corruption, false documentation, capital laundering, and banned negotiations with civil employees. The Mayor has controlled Andratx’s urban development for twenty years, politically active in various parties and part of a variety of government coalitions. The Director General was the civil employee in charge of urban development in that city council, throughout those same twenty years. The judge is accusing them of accepting handouts in exchange for authorization of various constructions in protected areas and with no legal support.

^{xxiii} A very interesting case in the opposite sense is the case of the famous AVE commissions, despite RENFE not being subject to the State Contract Law. The ruling by the provincial court of Madrid that tried the case in first instance revealed the level of sophistication that the receiving of illegal commissions for awarding public works can reach. The trying court emphatically praised the process and the system by which the awarding of different contracts for this work was decided and which, in the court’s opinion, permitted the substantial reduction of costs of the first offers by the aspiring companies. But, at the same time, the court believed it to be proven that the awarding companies paid commissions equivalent to a percentage of the costs of the received contracts to companies linked to the PSOE, at that time in the central government.

Bibliography

- Alonso-Castrillo, S. (1996), *La apuesta del centro*. Madrid, Alianza.
- Arzalluz, X. (2005), *Así fue*. Madrid, Foca.
- BOE, (2002), Moción del pleno del Tribunal de Cuentas relativa a la modificación de la normativa sobre financiación y fiscalización de los partidos políticos. Suplemento del BOE del 25 de agosto de 2002.
- Consejo de Europa (1999a), *Convención Penal sobre la Corrupción*. (STC 173).
- Consejo de Europa (1999b), *Convención Civil sobre la Corrupción*. (STC 174).
- Dávila, C. y Herrero, L. (1989), *De Fraga a Fraga*. Barcelona, Plaza y Janés.
- Díaz Herrera, J. y Tijeras, R. (1991), *El dinero del poder*. Madrid, Plaza y Janés.
- Díez Ripollés, J.L. *et al.* (2004), *Prácticas ilícitas en la actividad urbanística. Un estudio de la Costa del Sol*. Valencia, Tirant lo Blanc.
- García-Bellido, J. (2004), Por una liberalización del paradigma urbanístico español, *Ciudad y Territorio. Estudios Territoriales*, vol. 36, núm. 140 (pp. 289-294).
- García-Bellido, J. (2005a), Por una liberalización del paradigma urbanístico español (II): la jurisprudencia de obras públicas en el límite del paroxismo. *Ciudad y Territorio. Estudios Territoriales*, vol. 37, núm. 143 (pp. 5-15).
- García-Bellido, J. (2005b), Por una liberalización del paradigma urbanístico español (III): el tsunami urbanístico que arrasará el territorio. *Ciudad y Territorio. Estudios Territoriales*, vol. 37, núm. 144 (pp. 273-284).
- Gómez, L. y Hernández, J.A. (2006), La tarifa del 35%. *El País*, 2 de julio de 2006.
- GRECO (2001), *Greco Eval I Rep (2001) 1E Final*. En [http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1\(2001\)1_Spain_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1(2001)1_Spain_EN.pdf)
- GRECO (2005), *Greco Eval II Rep (2004) 7E*. En [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval2\(2004\)7_Spain_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval2(2004)7_Spain_EN.pdf)
- Greenpeace, (2006), *Destrucción a toda costa*. En <http://www.greenpeace.org/raw/content/espana/reports/destrucci-n-a-toda-costa-2005-12.pdf>

- Irujo, J. M. (2005), La caja negra de los partidos. *El País*, 18 de abril de 2005.
- Jiménez, F. y Caínzos, M. (2003), Political Corruption in Spain, en Bull, M. y Newell, J. (eds.), *Corruption in Contemporary Politics* (pp. 9-23). Londres, Palgrave.
- Klitgaard, R. (1999), La corrupción y la promoción de la ética en el servicio público. IRC-Centro de Información y Referencia de la Embajada de EE UU en Bolivia.
- Lamo, E. (1996), Corrupción política y ética económica en Tusell, J. *et al.* (eds.), *Entre dos siglos. Reflexiones sobre la democracia española*. Madrid, Alianza.
- Navas, E. (2006), *Andalucía Única*. 1 de julio de 2006.
- Nieto, A. (1997), *Corrupción en la España Democrática*. Barcelona, Ariel.
- OCDE (1997) *Convenio de Lucha contra la Corrupción de Agentes Públicos Extranjeros en las Transacciones Comerciales Internacionales*.
- ONU (2003), *Convención de las Naciones Unidas contra la Corrupción*. Mérida, México, diciembre 2003.
- Sánchez Morón, M. (1997), La corrupción y los problemas del control de las administraciones públicas, en Laporta, F. y Alvarez, S. (eds.), *La corrupción política*. Madrid, Alianza.
- Sánchez Soler, M. (2003), *Negocios privados con dinero público*. Madrid, Foca.
- Villoria, M. (2004), *Corrupción en España*, en Eigen P., *Las redes de la corrupción*. Barcelona, Planeta.
- Villoria, M. (2006a), Spain, en *Transparency International, Global Corruption Report 2006*. Londres, Pluto Press.
- Villoria, M. (2006b), *La corrupción política*. Madrid, Síntesis.