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INTERMEDIATE LOCAL GOVERNMENTS AND THEIR METROPOLITAN PROJECTION*

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Abstract

This article analyses the evolution of intermediate local governments structured according to the Napoleonic model, and reveals the recent breakdown of their defining elements in some southern European countries. In the case of Spain and Catalonia, it shows the perverse effects that the attempts to drastically reformulate the system have had, as well as the possibilities of gradual reform through the municipal configuration of counties and of the simplification and re-founding of provincial, *veguerial* and metropolitan institutions.

Key words: Local government; province; *vegueria*; metropolitan area; regions.

ELS GOVERNS LOCALS INTERMEDIS I LA SEVA PROJECCIÓ METROPOLITANA

Resum

En aquest article s'analitza l'evolució dels governs locals intermedis estructurats segons el model napoleònic, i es posa de manifest la recent ruptura dels seus elements definidors en alguns països del sud d'Europa. En el cas d'Espanya i de Catalunya es posen de manifest els efectes perversos que han tingut els intents de reformulació profunda del sistema així com les possibilitats de reforma gradual per la via de la configuració municipalista de les comarques i de la simplificació i refosa de les institucions provincials, veguerials i metropolitanes.

Paraules clau: Govern local; província; vegueria; àrea metropolitana; comarca.

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Summary

1 Evolution of intermediate local governments in constitutional systems

"Intermediate or second-tier local authorities have a well-established, and often very varied, role in many member States of the Council of Europe, where they provide an important level of accountability of elected representatives and constitute an integral part of the national structure of political representation and territorial organisation".[1]

1.1 The Napoleonic model

All state territorial organisation models cast in the Napoleonic mould are characterised by an essentially bi-level structure: a basic municipal level and a supra-municipal level.[2] The entirety of Napoleonic-continental Europe, but also many countries with a different historical configuration,[3] present this sort of territorial organisation. At the supra-municipal level, it was first manifested in the creation of the *département* in revolutionary France, by a decree dated 4 August 1789. Spain followed suit as of the Cortes of Cádiz, with the incorporation of the tenets of the French Revolution superimposed on a pre-existing "Antiguo Régimen"[4] foundation. This incorporation was crystallised in the provincial division designed by Javier de Burgos and ratified by decree in 1833.

Throughout the nineteenth and twentieth centuries, the province was consolidated in Spain as the second-degree, or second-tier territorial local entity *par excellence*, with a necessary existence throughout the territory, its own status and representative character, as of the 1870 provincial law.

In time, the province, as it was conceived in the local system legislation of the 1950s, became the hope for reform of the local system: a "provincialisation" of the local system was put forth as the path to overcome historical shortcomings of the municipal world derived from infra-municipalism.[5] One trait of the situation up until that time was the marked uniformity in local and provincial organisation.[6] Additionally, the province was the state administration's peripheral demarcation, governed by a civil governor, in keeping with the aforementioned French revolutionary model.

The first innovations in the field of supra-municipal organisation of the local administration came about upon facing the phenomenon of large metropolitan areas, with the creation of the Corporació Municipal Metropolitana de Barcelona in 1974.

1.2 Addition of the new autonomous government level

By confirming the local structure in two levels—municipal and provincial—by that time within the new territorial organisation dynamic of the state of autonomous communities, the Constitution of 1978 opened a door to a possible flexiblisation of the uniformity in the way the supra-municipal level of local administration was structured. Provinces could be governed by representative corporations other than provincial governments (Spanish Constitution Art. 141.2); it was possible to create groupings of municipalities other than provinces

1 Council of Europe (2012). "Second-tier local authorities – intermediate governance in Europe. Recommendation 333". Strasbourg: Council of Europe.

2 Vandelli, Luciano (1990). *Poteri Locali. Le origini nella Francia rivoluzionaria. Le prospettive nell'Europa delle regioni*. Bologna: Il Mulino. [Spanish translation: *El poder local: su origen en la Francia revolucionaria y su futuro en la Europa de las regiones* (1992). Madrid: MAP-INAP].

3 Among many others, see Gracia Retortillo, Ricard (2010). El nivel supramunicipal de gobierno local en Alemania. *Revista d'Estudis Autonòmics i Federals*, (11), 83-141.

4 Among many others, see Nieto García, Alejandro; Orduña Rebollo, Enrique and Salvador Crespo, Mayte (2012). *El bicentenario de las diputaciones provinciales (Cádiz 1812)*. Madrid: Fundación Democracia y Gobierno Local. For a more in-depth perspective, with a complete compilation of texts, see Orduña Rebollo, Enrique and Cosculluela Montaner, Luis Manuel (2008). *Historia de la Legislación de Régimen Local*. Madrid: Iustel-Fundación Democracia y Gobierno Local.

5 García de Enterría, Eduardo (1957). La provincia en el régimen local español. In: Eduardo García de Enterría (Ed.), *Problemas actuales del régimen local*, reed. 1986, (p. 3-40). Seville: Instituto García Oviedo. One measure of the 1953 legislation (consolidated in 1955) highlighted by this author is the attribution to provinces of supervision over all municipalities with fewer than 20,000 inhabitants. It is interesting to observe how, 70 years later, Law 27/2013, on the rationalisation and sustainability of local administrations (LRSAL) has recovered this same "provincialising" dynamic over municipalities with fewer than 20,000 inhabitants. Only 400 of the over 8,000 municipalities, or 5%, would be excluded from this possible "provincialisation". This matter will be revisited later in the article.

6 Nieto, Alejandro (1973). La organización local vigente: uniformismo y variedad. In: Sebastián Martín-Retortillo *et al.* (Eds.), *Descentralización administrativa y organización política*, vol. II (p. 15-156). Madrid: Alfaguara.

(Spanish Constitution Art. 141.3); islands would have their own administrations in the form of *cabildos* [Canary Islands] or *consells* [Balearic Islands], (Spanish Constitution, Art. 141.4); and particularly, autonomous communities, then called *first tier* administrations. By grouping outlying municipalities, the statutes could establish their own territorial circumscriptions that would have legal status (Spanish Constitution, Art. 152.3). In short, the Constitution supported and respected the historical rights of *territorios forales* [provincial territories] (Spanish Constitution, first additional provision). On another note, the possibility of forming single-province autonomous communities completed the circle. For the first time in 150 years, there was a possibility that a province would disappear—due to reconversion—in part of the national territory.[7]

The very fact that provinces co-existed with the new territorial level that would extend rapidly around the territory, the autonomous communities, would inevitably make it necessary to reconsider a local territorial organisation system that was born, developed and consolidated from other parameters.[8]

That is how it happened in other countries, such as Italy, when it began a timid development of ordinary-statute regions in the early 1970s: the first matter subjected to scrutiny was the functionality of the provinces and their very survival,[9] the possibility of creating new infra-provincial bodies—the *comprensorio*—or the use of provincial structures as indirect administration, decentralised from the regions themselves.[10]

In Spain, the latter possibility was also explored following the report from the Committee of Experts on Autonomous Communities of 1981, and incorporated into the Organic Law on Harmonisation of the Autonomy Process and some statutes of autonomy. In time, this proposal would prove unsuccessful, as also occurred in Italy.

Actually, with the birth of a new political centre of a state nature—autonomous communities with legislative competencies—it was necessary to create a new territorial structure, their own "Nueva Planta", as an element to identify collectivity and control of the territory, just as the constitutional State had done in the early nineteenth century. In this regard, the most emblematic element was the introduction of yet another level, the county, first incorporated into the Statute of Autonomy of Catalonia in 1979, and later assimilated by some other statutes.[11]

The general implementation of this new supra-municipal institution, the *comarca* (county), later included in the Law on the Bases for Local Governments (LRBL), has only taken place in Catalonia and Aragon, and uniquely in Castile and León (El Bierzo County).

1.3 "Nueva Planta" of territorial organization in Catalonia: county-provincial government-metropolitan area discord

The elimination of the provinces and their substitution by other circumscriptions—specifically, counties—had been a tenet of political Catalanism since the "Bases de Manresa". However, their implementation during the Second Republic was incomplete. Provincial governments were done away with, but a county-based organisation was conceived as a division of the Generalitat's peripheral administration, and not as a local territorial entity. These events would mark the entire evolution of local government and territorial organisation policy as of the restitution of autonomy.[12]

7 Thus, in these communities are the so-called "province-exempt" municipalities. See Font i Llovet, Tomàs (2011). Uniformidad y diferenciación en las instituciones autonómicas y locales en España: Aquiles y la tortuga. In: Francisco López (Dir.), *Derechos y garantías del ciudadano: estudios en homenaje a Alfonso Pérez Moreno* (p. 1217-1236). Madrid: Iustel.

8 The Sentencia del Tribunal Constitucional (Constitutional Court ruling, STC) 32/1981, of 28 July, on the Catalan Provincial Governments Law, acknowledged that "it is true that if public authority is to be distributed among more entities than those previously existing, the spheres of power previously attributed to them must logically be restricted. In short, it is essential to conduct a redistribution of competencies based on the respective interests among the different entities so that the model of State configured by the Constitution has practical effectiveness".

9 For all, see Giannini, Massimo Severo (1971). Il riassetto dei poteri locali. *Rivista trimestrale di diritto pubblico*, (2), 451-461.

10 Roversi-Monaco, Fabio Alberto (1970). *La delegazione amministrativa nel quadro dell'ordinamento regionale*. Milan: Giuffrè; and Roversi-Monaco, Fabio Alberto (1970). *Profili giuridici del decentramento nell'organizzazione amministrativa*. Padua: CEDAM.

11 Various authors (1984). *La comarca com a ens territorial*. Barcelona: EAPC.

12 There is a study on the entire evolution by Forcadell i Esteller, Xavier (2016). *L'organització territorial i el règim jurídic dels governs locals de Catalunya*. Barcelona: Tirant lo Blanch.

When the statutory system was implemented in Catalonia in 1979, the first action taken was the attempt to strip provincial governments of competencies through Law 6/1980, of 17 December, on the complete and urgent transfer of Catalan provincial governments to the Generalitat, a law that was overturned by Sentencia del Tribunal Constitucional (Constitutional Court Ruling, STC) 32/1981. This was a strategic failure with consequences that were (it must be believed) unforeseen: for one, the provincial reality was "fortified" for years; and that provincial reality has survived to the present day.[13] On another note, the nature and intensity of legislative efforts led the Constitutional Court to establish doctrine on local autonomy on the basis of its institutional guarantee, which has merely defensive effects, and has conditioned and limited to a great degree any possibility of positive innovation in all fields of local government.[14]

Consequently, the 1985 LBRL kept up the basic bi-level structure of local government: municipal and provincial. Spanish provinces kept up their configuration as entities especially devoted to assistance for and cooperation with municipalities; this is their "essence", as opposed to the intermediate tier in other European countries, where they do more to exercise planning, organisation and service provision duties. It is precisely the latter factor that could describe the different forms of democratic legitimisation in the Spanish and other cases (indirect elections in Spain as opposed to direct elections in other countries). Along these lines, the STC 107/2017 makes the position clear, underscoring that "provincial governments and local councils make up a single (local) level of Government". The fact that municipalities—and not the citizens—are represented in provincial governments is explained because municipalities are the foremost, direct recipients of provincial competencies of assistance, cooperation and coordination.

In fact, certain basic rules on counties are established. But Article 42.4 of the LBRL introduces the limitation that the creation of the county cannot block municipalities from providing mandatory minimum services, nor take on all municipal competencies. This way, the possibility that the county as a figure could have a relevant role in an eventual process of reconfiguration of the map and the municipal plan, as an instrument to overcome infra-municipalism in the rural world, is done away with.[15]

STC 214/1989, of December 21, states that Article 42.4 of the LBRL "guarantees the municipal institution which, even in an extreme hypothesis, cannot be diluted and come to be identified as a county institution. The constitutional configuration of the county as a grouping of municipalities (Art. 1523 of the Constitution) effectively blocks the materialisation of the latter "municipality-county" scenario, so that however far-reaching those municipal alterations may be imagined to be, they cannot ever reach such a situation. That is why Art. 42.4 of the LBRL marks an impassable limit to the redistribution of competencies that, as a consequence of the creation of counties, Autonomous Communities may perform. This limitation is not unjustified, nor lacking in legitimacy, but rather is a manifestation, once again, of the minimum content that corresponds to the municipal institution in any event, as a requirement of the guarantee of its autonomy".

Consequently, the constitutionally-allowed conception of the county according to the foregoing STC is, in fact, that of a second-tier entity within the local government structure. This should have significantly limited the possibility of having useful instruments with which to articulate a realistic, pragmatic reorganisation of the municipal map.

The constitutional doctrine on provinces, first, and on counties, thereafter, has led to a dynamic marked by the superimposition of increasing levels of local administration instead of facilitating an active rationalisation of the municipal map and simplification of local structures. Ironically, such rationalisation could only occur

13 Among other effects, a significant doctrinal corpus was amassed in defence of the province. For example, the collective work of Gómez-Ferrer Morant, Rafael (1991). *La provincia en el sistema constitucional*. Madrid: Civitas; later, Salvador Crespo, Mayte (2007). *La autonomía provincial en el sistema constitucional español*. Barcelona: Fundación Democracia y Gobierno Local-INAP.

14 There is abundant criticism of the distortion that has come from the way in which the Constitutional Court has applied institutional guarantee to local autonomy. For an overall analysis see Velasco Caballero, Francisco (2007). Autonomía municipal. In: Several authors, *La autonomía municipal. Administración y regulación económica. Títulos académicos y profesionales*. *Actas del II Congreso de la Asociación de Profesores de Derecho Administrativo* (p. 41-78). Pamplona: Aranzadi. For an in-depth reconstruction of the doctrine of the Constitutional Court, with proposals for a constitutional guarantee based on the weighting theory, see Cidoncha Martín, Antonio (2017). La garantía constitucional de la autonomía local y las competencias locales: un balance de la jurisprudencia del Tribunal Constitucional. *Cuadernos de derecho* local, (45), 12-100.

15 This was one of the virtualities that had already been explored in prior years. See Martín Mateo, Ramón (1964). *La comarcalización de los pequeños municipios*. Madrid: Ministerio de la Gobernación (collection Estudios, no. 7).

through massive suppression of municipalities by altering municipal territories, as the constitutionally guaranteed autonomy is not of a certain *status quo*, as the STC itself stated.[16]

The introduction of the county level, with its organisational ambiguity, coincided with another factor. In fact, throughout the 1980s, the debate on the local supra-municipal organisation in Europe was enriched with the appraisal of a new element: inter-municipal cooperation through associative or functional methods.

French and Italian legislation from that time put forth a number of associative models for inter-municipal cooperation, which are basically voluntarily, but entail the progressive incorporation of promotion and accompaniment mechanisms designed to encourage their implementation. The spread of inter-municipal cooperation instruments, tendentially of a multi-functional nature, resulted in reduced interest (in those countries) in the figure of a possible intermediate infra-provincial government body.

In the Spanish case, the figure of the county is ambiguous enough in the LBRL to allow proposals for convergence between the pooling of services and the configuration of more flexible counties.[17]

Additionally, the reality was that, in Catalonia, the 1987 laws of territorial organisation determined the general implementation of county-based organisation, together with the planned future conversion of Catalonia into a single province, and the dismantling of the metropolitan municipal corporation.[18]

It has been indicated that "politically, the preparation and approval of these laws stood for a time of internal institutional fracture, one of the most significant confrontations during the years in which the Statute of 1979 was in force, along with the approval of the Linguistic Policy Law of 1998 as concerned the introduction of coercive and penalisation elements. The regulation of the elements of identity—language and territory—could only be conflictive if not carried out with a very broad consensus. The basic self-organisational determination of a community, its territorial organisation, was addressed and resolved without the necessary degree of agreement for this type of capital decisions. This circumstance has irremediably marked the territorial organisation situation ever since".[19]

In truth, of the entire territorial reorganisation dynamic of 1980s, the only part that has remained is the county-based organisation. From a political representation standpoint, this county-based organisation caused a disproportionate prevalence of smaller, rural municipalities, which led to a significant modification in 2003. Further, from a competency standpoint, reference has been made to "counties without conviction" given the meagre competency and financial content that lawmakers have attributed to them.[20]

The elimination of the Barcelona Metropolitan Corporation, and its reconversion into functional entities, followed the logic encapsulated in the model espoused by Margaret Thatcher's government, which affected

16 On another note, both the LBRL and this STC 214/1989 commit a historical-institutional misinterpretation by validating special treatment for the procedure of county creation in Catalonia taking their historical past into account: "The fourth additional Provision of the LRBRL is, in principle, based on a justification of a historical nature so that the Generalitat of Catalonia not be completely and absolutely conditioned by the provisions of Art. 42.2 of the LRBRL, and so a hypothetical municipal or provincial opposition in the terms outlined by the aforementioned article, may be overcome by virtue of Law approved by an absolute majority of the Parliament of Catalonia.

That said, regardless of that justification supported by the fact that Catalonia would have had a county-based organisation for its entire territory approved in the past, it is true that when discussing competencies, the positions of Catalonia and Galicia in this particular aspect are not completely comparable, since Galicia, as previously shown, and as opposed to Catalonia, has not established in its Statute a 'generalised county-based organisation'".

Although the Constitutional Court's reasoning is *obiter dicta*, it cannot be overlooked that the justification provided by the fourth additional provision of the LBRL is extravagant, as the historical county-based organisation it refers to was not so in terms of local government. The need lawmakers felt to justify a special system for Catalan counties sounds more like an *excusatio non petita* that in no way serves as grounds for the constitutionality of the rule.

17 See, among others Font i Llovet, Tomàs (1985). Perspectives d'organització supramunicipal. *Autonomies. Revista Catalana de Dret Públic*, (1), 49-70. [Also in Spanish: Font i Llovet, Tomàs (1985). Perspectivas de organización supramunicipal, *REALA*, (226), 315-344].

18 The package of territorial organisation legislative projects, after many efforts, were analysed in a monographic edition of *Autonomies. Revista Catalana de Dret Públic*, specifically, edition number 5 of 1986.

19 Stated thusly in Font i Llovet, Tomàs (2010). L'ordenació metropolitana en la Catalunya autònoma. Evolució i perspectives. In: Joan Fuster (Ed.), *L'agenda Cerdà. Construint la Barcelona metropolitana* (p. 433-456). Barcelona: Lunwerg.

20 Font i Llovet, Tomàs, L'ordenació metropolitana..., *op. cit.*, p. 439.

the Greater London Council and also translated into the disappearance of the Gran Bilbao and L'Horta Metropolitan Council in Valencia. Clearly, the consolidation of the new autonomous political powers required open space, and the LBRL had delivered the competency over metropolitan areas to their most direct competitor, the autonomous communities.

The result was a major institutional fragmentation in the metropolitan territory—a territory that Law 7/1987 termed "conurbation of Barcelona and counties included within its area of influence" to avoid mentioning the metropolitan reality—where two functional entities co-existed, for transportation and environmental affairs, respectively, with different territorial areas, four counties and maintenance of the provincial government.

Additionally, metropolitan municipalities created a *mancomunitat* (association of municipalities) to maintain common services and design common development projects. The *mancomunitat* would go on to finance the two functional entities,[21] and establish cooperation agreements—which were appealed by the Generalitat, but that the Sentencia del Tribunal Supremo (Supreme Court Ruling, STS) of 4 July 2003 considered supported by the European Charter of Local Autonomy—[22]and which would prefigure the resurrection of the metropolitan area "from the bottom up".[23]

1.4 Advancing toward the reconstruction of the territorial organisation system

The *Informe sobre la revisió del model d'organització territorial* de *Catalunya*—the so-called *Roca Report*—written by the committee of experts created by agreement of the Government of the Generalitat on 3 April 2000 at the behest of the different groups in the Parliament of Catalonia, included a number of proposals on the intermediate tier of local government, based on certain general criteria: "a) simplification of administrative structures; b) consideration of diversity of territorial situations; c) coordinated implementation and execution; d) respect for local autonomy; and e) minimum impact on the general electoral system".

Thus, the criterion for simplification of administrative structures would lead to a combination of the provincial realm, and the regional, or *vegueria* realm, as the two coincided in their functionality. This consolidation—and combination—of the province with the regional realm was meant to bring about a single category of territorial entity, made up of six "*vegueries*", with special treatment for the Alt Pirineu and Aran territories, without ruling out the possibility of combining or also integrating into the region or *vegueria* duties of other entities of the supra-county realm, such as those established for metropolitan phenomena, or for urban planning purposes.

The county was kept, but in a more flexible, accessible way. Specifically, it was proposed that "the regulation of metropolitan counties must take into account the rationalisation of its duties in the *vegueria* framework to avoid redundancy of instances in the case of the metropolitan area".

Some of the ideas put forth in the report would be reflected at some level in the 2006 Statute of Autonomy. In a context of consolidation of autonomous community competencies regarding the local government and territorial organisation system,[24] the idea pursued was that the Statute could play the role of a "local territorial constitution" and incorporate a guarantee inherent to local autonomy, as well as a denser substantive regulation on territorial organisation and the local government system.[25] As concerned the intermediate tier of local government, the 2006 Statute established "lighter" counties (introduced at the last minute during the parliamentary processing), almost limited to municipal cooperation, and, on another note more powerful *vegueries*, meant to replace

21 Tomàs Fornés, Mariona (2017). *Governar la Barcelona real. Pasqual Maragall i el dret a la ciutat metropolitana*. Barcelona: Fundació Catalunya Europa, p. 55.

22 For more detail, see Font i Llovet, Tomàs (2003). La diversificación de la potestad normativa: la autonomía municipal y la autoadministración corporativa. *Derecho Privado y Constitución*, (17) (monographic edition in tribute to Javier Salas), 253-268.

23 Tornos Mas, Joaquín (1993). Las ciudades metropolitanas. El caso de Barcelona: nacimiento, desarrollo, muerte y resurrección del área metropolitana de Barcelona. *Revista Aragonesa de Administración Pública*, (3), 11-27.

24 The Council of Europe Recommendation 121 on local and regional democracy in Spain foretold a greater regionalisation of the local government system, and stronger guarantees of the principle of subsidiarity in the statutes of autonomy. See the text in the *Anuario del Gobierno Local 2003* (year 2003, no. 1, p. 357 and following), with an introduction by Marc Marsal.

25 See, among others Font i Llovet, Tomàs; Velasco Caballero, Francisco and Ortega Álvarez, Luis (2006). *El régimen local en la reforma de los estatutos de autonomía*. Madrid: CEPC; and for more overall detail, see Font i Llovet, Tomàs (2007). *Gobierno local y Estado autonómico*. Barcelona: Fundación Democracia y Gobierno Local, p. 207 and following.

provinces. In other words, to preserve, and assume, their essential duties, while the other supra-municipal entities were based on the spirit of cooperation and association of the municipalities and in the recognition of the metropolitan areas.[26] On another note, a special system was designed for the Aran territory.

The most debatable point was that of the *vegueria's* institutional configuration and its relationship with the provincial institution.[27] The interpretation most in keeping with the statutory spirit, and the constitutional framework, was to understand that *vegueria* was the name given to provinces in Catalonia,[28] and that the *consell de vegueria* replaced the provincial government, as allowed by Article 141.2 of the Constitution, through it was also possible to interpret that the *vegueria* would be added to the territorial structure as an entity that was different from the province.

It was so considered by STC 31/2010, of 28 June, on the Statute of Autonomy,[29] though it also admitted the constitutionality of the two possibilities, despite the complexity that would be derived from the co-existence of the two entities in a single territorial realm. There would be an easier fit for the thesis of identification between province and *vegueria*, as the constitutional guarantee of the province did not include protection of its appellation or form of government solely through provincial councils. Furthermore, it was acknowledged that the Statute of Autonomy could effect modifications on such points.[30] In this case, from the competency standpoint, the consequence would be that in the *vegueria* implementation process, the State would be responsible for determining their territorial limits, composition and means of electing their members.

In short, after nearly thirty years of Catalan autonomy, the issue of the intermediate tier of local government was poised to return to its initial situation—maintenance of the province, open-ended provisions for the metropolitan area and a county level defined by a supra-municipal spirit—while the substantial definition of the "constitutionally-necessary intermediate tier" remained in hands of the State.

2 Impact of the financial crisis and territorial reforms

As the first decade of the twenty-first century came to a close, the financial crisis triggered a far-reaching reconsideration of all public organisation, and with it, of local government structure.[31] The impact on southern European countries has been significant, with drastic reforms of local systems in Greece and Portugal, driven directly by the *troika* as a condition for the financing of public debt.[32]

26 See Tornos Mas, Joaquín and Gracia Retortillo, Ricard (2008). La organización territorial en los nuevos estatutos de autonomía. En especial, el nivel local supramunicipal en Cataluña. In: Tomàs Font and Alfredo Galán (Dirs.), *Anuario del Gobierno Local 2008* (p. 75-116). Barcelona: Fundación Democracia y Gobierno Local-Institut de Dret Públic.

27 For all, see the complete study by Gracia Retortillo, Ricard (2008). *La vegueria com a govern local intermedi a Catalunya. Encaix constitucional de la seva regulació estatutària*. Barcelona: IEA. [Spanish edition: *La veguería como gobierno local intermedio. Encaje constitucional de su regulación estatutaria*. Barcelona: Huygens, p. 234]; see also Mir Bagó, Josep (2006). La regulación de las veguerías en el nuevo Estatuto de Catalunya. In: Tomàs Font (Dir.), *Anuario del Gobierno Local 2006* (p. 79-104). Barcelona: Fundación Democracia y Gobierno Local-Institut de Dret Públic.

28 Gracia Retortillo, R., *La veguería como...*, *op. cit.*, p. 234.

29 On *vegueries* in STC 31/2010, see Galán Galán, Alfredo and Gracia Retortillo, Ricard (2010). Estatuto de autonomía de Cataluña, gobiernos locales y Tribunal Constitucional. *Revista d'Estudis Autonòmics i Federals*, (12), 237-301; by the same authors, see Incidència de la Sentència 31/2010 del Tribunal Constitucional en la regulació de l'Estatut d'Autonomia de Catalunya sobre els governs locals. *Revista Catalana de Dret Públic*, 225-244 (special edition on STC 31/2010). In this edition, see also commentary by Antoni Bayona, Règim local; Josep Ramon Fuentes, El règim local de Catalunya i la viabilitat d'articulació d'una planta política i administrativa pròpia després de la Sentència del Tribunal Constitucional de 28 de juny de 2010; and Josep Mir, Règim local. In the same vein, see Velasco Caballero, Francisco (2011). Régimen local en el estatuto catalán, tras la STC 31/2010. *Revista General de Derecho Constitucional*, (13), 1-36.

30 Galán Galán, Alfredo and Gracia Retortillo, Ricard. Incidència de la Sentència 31/2010 del Tribunal Constitucional en la regulació de l'Estatut d'Autonomia de Catalunya sobre els governs locals. *Revista Catalana de Dret Públic*, *op. cit.*, p. 235.

31 For all, see Cosculluela Montaner, Luis Manuel and Medina Alcoz, Luis (Dirs.) and Hernando Rydings, María (Coord.) (2012). *Crisis económica y reforma del régimen local*. Pamplona: Civitas-Thomson Reuters.

32 Almeida Cerreda, Marcos (2012). Portugal: el debate sobre la reforma de la Administración local. In: Luis Manuel Cosculluela *et al.*, *Crisis económica y reforma...*, *op. cit.*, p. 415-446.

2.1 "Revenge" of the provinces

In Catalonia, the previously-described statutory provisions had only been partially implemented, with approval of Law 30/2010 on *vegueries*, which predicated its entire effectiveness on state legislation,[33] and a number of "*vegueria*-provinces" to which substantive competencies to render supra-municipal services (waste management, waste water treatment) were assigned for the first time. The same could be said of Law 31/2010, on the Barcelona Metropolitan Area, which culminated the reconstruction process begun "from the bottom up" at the consortium level, with strong competencies not only for planning and service provision,[34] but also for formulation of economic and social policies that could eventually be configured as a true local government entity.[35] This was also the case of Law 1/2015, on the special system for the Aran Territory, which "due to its unique character, cannot be included within any territorial or administrative division of Catalonia other than itself" (Art. 5). Its Conselh Generau is elected by direct universal suffrage.

In the meantime, in 2013 the government of the Generalitat approved a draft bill on local governments of Catalonia,[36] under the specific title of sustainability and efficiency driven by the express constitutional reform of Article 135 of the Constitution and by the budgetary stability and financial sustainability legislation. The most innovative aspect of this project was that the county was oriented toward shared management of municipal services, an entity of non-obligatory character that could be substituted, in its realm, by metropolitan areas. At the same time, the county council disappeared as a representative body, and was replaced by a council of mayors.

Although the draft bill was not ratified, the general tendency shown by the aforementioned laws and this same draft bill of the Local Government Law reveals a few key characteristics: maintenance of a "multi-tier" system of local government, within which the "regional", in other words provincial and metropolitan levels, are reinforced, while the county level, of a more "municipalist" nature, was weakened.

This trend in Catalan legislation partially coincided with that which, in general, was manifested in Law 27/2013, on rationalisation and sustainability of the local administration (LRSAL).[37] In fact, this law expressly states in its preamble, that one of its aims is to strengthen the role of provincial governments, *cabildos*, *consells insulars* and equivalent entities, not within a logic of local government structural reform, but as another manifestation of "financial crisis law".[38]

The province, which had been severely questioned in the previous 2011 elections,[39] was now made stronger. This confirmed the old "revenge of the province" wisdom, according to which "whenever the very survival of provincial organisation has been questioned, it has not only been confirmed but come out reinforced".[40] This time, lawmakers did not take the opportunity to perform major surgery on the municipal government structure. Instead, they chose to increase the substantive competencies of provincial governments (Art. 36 LBRL) and open the door for them to coordinate and render municipal services in the case of inefficient service provision in municipalities of less than 20,000 inhabitants (only 400 of the 8,000 Spanish municipalities would be

33 See Law 4/2011, of 8 June, which modified Law 30/2010.

34 For in-depth discussion on this, see, Galán Galán, Alfredo (Coord.) (2016). *Nous governs locals: regeneració política i estabilitat pressupostària*. Barcelona: IEA, p. 20-44.

35 Font i Llovet, Tomàs. Cap a un govern local metropolità: el potencial de la Llei de l'Àrea Metropolitana de Barcelona. *Papers*, (61) (special edition on "Governança metropolitana") [forthcoming].

36 Catalonia. BOPC 141, of 9 September 2013.

37 In general, on the negative impact of the LRSAL on local autonomy and its recentralising character, see Galán Galán, A., *Nous governs locals...*, *op. cit*.

38 Rivero Ysern, José Luis (2014). La provincia en la Ley de racionalización y sostenibilidad de la Administración Local de 27 de diciembre de 2013. *Revista General de Derecho Administrativo*, (36), p. 8.

39 Galán Galán, Alfredo and Bernadí Gil, Xavier (2012). *El debate actual sobre las diputaciones provinciales: un análisis de las* últimas *propuestas electorales*. Madrid: Fundación Democracia y Gobierno Local. See also Sánchez Navarro, Ángel José (2012). Las propuestas de reforma del régimen local en los programas electorales de los partidos políticos. In: Luis Manuel Cosculluela *et al.*, *Crisis económica y reforma...*, *op. cit.*, p. 75-97.

40 Martín-Retortillo, Sebastián (1983). Presente y futuro de las Diputaciones Provinciales. *REDA*, (39), p. 494. This is echoed by Gracia Retortillo, Ricard (2015). Las provincias. In: Marcos Almeida, Claudia Tubertini and Pedro Costa (Dirs.), *La racionalización de la organización administrativa local: las experiencias española, italiana y portuguesa* (p. 175-228). Pamplona: Civitas-Thomson Reuters, p. 179, aside from this, a comprehensive article on provinces in the LRSAL. See also: Galán Galán, Alfredo, *Nous governs locals...*, *op. cit.*, p. 267 and following.

excluded from this possibility) [Art. 26.2 LBRL]. This brought to bear doubts about possible damages to municipal autonomy. Further, all of this occurred in a context in which there was graduation of the intensity in their intervention and greater doses of diversity and differentiation.[41]

However, in general terms and as concerns the matters having to do with the strengthening of provinces, the constitutionality of the LRSAL was confirmed by the Constitutional Court: "The indirect democratic legitimacy that provincial governments possess may be politically debated. However, as it is a constitutionally possible option, this cannot be made into an obstacle to interventions by basic lawmakers that would promote expansion of provincial competencies" (STC 111/2016, Legal Base 10 *in fine*).[42] This is a position similar to that found in the Italian Constitutional Court as regards the reform of provinces in that country—as will be seen later—but that leaves many unanswered questions on the true articulation of the province-municipality relationship in new competency realms.[43] In any case, the Constitutional Court confirmed their doctrinal position, which downplayed the role of statutes of autonomy as guarantors of greater local autonomy in relation with the minimum common state denominator.

2.2 Supra-municipal associative organisation and optimum level of service provision

Legislation stemming from the crisis has promoted a dynamic of effectiveness and efficiency in the organisation and provision of local public services. Among many other aspects, the key is to determine the optimum level of provision for each of the different public services, specifically local—now municipal—services. The answer, fraught with complexity, hinges on first determining the subject competent to decide the optimum service provision level, and the procedure to do so.

In the topic of intermediate territorial entities—for example, a county or metropolitan area—the standard for creation is that which determines its territorial realm, and consequently, the dimension of the service provision of its competency. But the voluntary association of municipalities, by leaving the decision in their hands, offers a much greater level of flexibility. This may make it advisable to consider territorial planning and organisation procedures that previously zone the optimum levels for the aggregation of municipal services.[44]

In fact, in Spain autonomous community legislation establishes the design by the autonomous community of the territorial areas in which the sharing of municipal services is to be applied.[45] Therefore, the formation of municipal associations could be a more flexible tool for *ad hoc* delimitation of the optimum level of supra-municipal service provision, thereby constituting a *de facto* intermediate tier.[46]

To this the possibility of attributing to *mancomunitats* the entirety of municipal competencies established in Article 4 of the LBRL could be added, as this is allowed by the reform derived from the Law on Measures for Local Government Modernisation, of 2003. This provision was considered constitutional by STC 103/2013 of 25 April, to the degree in which, in the final instance, it reinforces the autonomy of associated municipalities:[47] "However, it bears considering that although associations of municipalities are not

41 Gracia Retortillo, Ricard. Las provincias, *op. cit.*, p. 201.

42 STC 93/2017, which resolved the appeal lodged by the Autonomous Catalan Government against the LRSAL, refers to the aforementioned STC 111/2016 and 41/2016 as regards the alleged unconstitutionality due to damages to statutorily-defined local autonomy, as well as the autonomous competencies in the local political system. In the end, the appeal was refused. Previously, the Consell de Garanties Estatutàries (the Council Statutory Guarantees, CGE) Ruling 8/2014 had already indicated the unconstitutionality of a number of precepts in the LRSAL, which were also included in the Catalan government's appeal, which was refused.

43 Gracia Retortillo, Ricard (2016). Racionalización y sostenibilidad de la administración local en España: una reforma frustrada. Las competencias provinciales como paradigma. *Istituzioni del federalismo: rivista di studi giuridici e politici*, (4), 941-973.

44 Along these lines, see Barrero Rodríguez, Concepción (2017). Organización territorial y servicios locales: el nivel óptimo de prestación. In: Tomàs Font and Juan José Díez (Coords.), *Los servicios públicos locales. Remunicipalización y nivel* óptimo *de gestión* (p. 261-302). Madrid: Iustel-Fundación Democracia y Gobierno Local, p. 299.

45 One example is Law 7/2013 of Castile and León, on territorial organisation of services and government, which establishes a number of functional areas. See Fernández de Gatta Sánchez, Dionisio (2014). Los municipios y las mancomunidades en la Ley de Racionalización y Sostenibilidad de la Administración Local. In: Tomás Quintana (Dir.) and Anabelén Casares (Coord.), *La reforma del régimen local* (p. 303-369). Valencia: Tirant lo Blanch, p. 365 and following.

46 For an analysis of the territorial projection of association phenomenon, see Vilalta Reixach, Marc and Gracia Retortillo, Ricard (Dirs.) (2016). *La gestió mancomunada de serveis públics en l'àmbit supramunicipal a Catalunya*. Barcelona: EAPC.

47 Hernando Rydings, Maria (2015). Las mancomunidades y los consorcios. In: Marcos Almeida *et al.*, *La racionalización...*, *op. cit.*, p. 139-174.

constitutionally consecrated local government entities, they have not been configured by basic lawmakers as entities whose existence depends on the will of Autonomous Community. Art. 44.1 of the LBRL recognises municipalities' right to associate among themselves, with their two-fold liberty to create associations and freedom to not be obliged to join or remain in one, along the lines established in Art. 19 of the European Charter for Local Self-Government, ratified by Spain on 20 January 1988, which acknowledges the right of local government entities to cooperate and associate with other local government entities".

From this point forward, the STC concluded that, "having recognised in basic legislation the right of municipalities to associate among themselves, and with this legislation establishing the purposes of the association, the determination of the minimum competencies required to render the specific service, or the execution of the works which are the competency of the constituent municipalities, this is a necessary instrument for the association of municipalities, and indirectly, the Municipal Governments making them up, to accomplish their purposes, in the same way that the competencies attributed to municipalities in paragraph one of Art. 4 LBRL constitute a guarantee for their autonomy".

Despite the possibilities to strengthen municipal association formation opened through the 2003 law on modernisation, which paved the way to favourable autonomous legislation, ten years after the project the LRSAL sought to halt the associations of municipalities. The objections that it contrasted with the right acknowledged in Article 10 of the European Charter for Local Self-Government (CEAL) reduced the scope of the limitations.[48]

In any case, whether through the legal determination path or the associative path, this type of requirements to determine the optimum level of management can lead to a major "mutability of the territorial parameters of reference" as is occurring in countries such as Italy.[49] Because of this, depending on the organisational solution, a dynamic of "demunicipalisation" of public services[50] can come about, seen in these services being provided at a level other than—and sometimes distant from—the municipal one.

The intermediate tier of local government would be debated thusly; between the perspectives of supra-municipality or inter-municipality, and the perspective of a wide-ranging government of the territory known as *àrea vasta*.

3 Tension in Europe: provinces and metropolitan areas

Debate on the delimitation of the optimum level of public service provision is a singular result of a more general phenomenon; the dynamics of restructuring the entire multilevel local government system. It has already been stated that in the realm of the economic crisis of the early twenty-first century, and at times, using the justification of this crisis itself, significant legislative movements have taken place that are chiefly projected over the configuration of the intermediate tier of local government, either in its more stable territorial structures or in the more fluid channels of inter-municipal cooperation.

The excuse of saving in public spending and its impact on the intermediate tier of local government was formalised in the much-publicised letter from the governors of the European Central Bank, Trichet and Draghi, to the Italian president of the Council of Ministers, Berlusconi, on 5 August 2011, in which they urged him to adjust administrative structures to the needs of companies and "abolish or consolidate some intermediary administrative layers (such as the provinces)". A few days later, Decree law 138/2011, and,

48 Hernando Rydings, Maria, Las mancomunidades..., *op. cit.*, p. 149 and following.

49 It is expressed in such terms by Giani, Loredana (2017). Organización territorial y servicios locales: el nivel óptimo de prestación. In: Tomàs Font and Juan José Díez, *Los servicios públicos locales...*, *op. cit.*, p. 315.

50 Piperata, Giuseppe (2017). Tendencias recientes en las reformas de la normativa italiana sobre los servicios públicos locales: de la remunicipalización a la desmunicipalización. In: Tomàs Font and Juan José Díez, *Los servicios públicos locales...*, *op. cit.*, p. 221 and following.

still later Decree law 201/2011 were approved. They had a major impact on the configuration of Italian provinces.[51] The same impact was felt in Greece with the Kallikrates Plan, as well as in Portugal and Ireland.[52]

In fact, after many years of debates, suggestions and proposals, the panorama began to truly shift by the will of European institutions, and at a more general level, the *troika*. It was postulated that reform would finally "come from Europe".[53]

The latest European trends in the reform of local intermediate governments have overcome their initial moments of indecision, and are now setting out clear lines of implementation.[54] As will be shown, a fundamental part of this change has been the tension between provinces—specifically, whether to keep them—and metropolitan organization.[55]

3.1 Territorial reforms in France

In France, as opposed to the Spanish LRSAL, Law 2014-58, of 27 January, on *modernisation de l'action publique territoriale et d'affirmation des métropoles,* did not invoke as drivers for reform the financial crisis, sustainability, or rationalisation, but rather the need to strengthen values such as trust, clarity, consistency and democracy. It takes an entirely different perspective: political values in the face of strictly economic efficientism. Additionally, this occurred in a context of furthering associative techniques and public entities of inter-municipal cooperation (the Établissement Public de Coopération Intercommunale or EPCI), so typical of the French system, leading to a model increasingly defined by variable geometry.

In fact, the law establishes different systems for the metropolitan areas of Paris, Lyon and Aix-Marseille-Provence, as well as a common one for cooperation establishments (EPCIs) with over 400,000 inhabitants, or 650,000 inhabitants (depending on the case), with the possibility of mandatory or voluntary implementation. Especially noteworthy, for its solidity, is that of the Lyon metropolitan area, configured as a territorial entity with direct election that, furthermore, would replace the Department of Rhone.

The main problem is the metropolitan area's relationship with the department and with the region. At first there was talk of the departments disappearing. Hollande put paid to this possibility, and later proposals along the same lines, made in the 2017 elections, have been unsuccessful. Meanwhile, an amendment to Law 2015-29, on the "New territorial organisation of the Republic", known as the *NOTRe* Law, halted the "merger" between the Lyon metropolitan area and the Department of Rhone, despite already having taken over all of its competencies.[56]

The metropolitan area may petition the department for the transfer of competencies for services and transportation (the rest are competencies of municipal origin already rendered by the EPCIs). This may lead to greater differentiation among departments, and even a voiding of "metropolitanised" departments, which are absorbed by the metropolis itself.

As concerns the government system, in most cases the *conseil de la métropole* is elected simultaneously with the municipal elections, in which "citizens are informed that the candidates in the first places of the list will be those designated to serve on the *conseil de la métropole* and of the territory" (*fléchage*). The council elects the president. In the case of Lyon, as already stated, the *conseil de la métropole* is elected by direct universal suffrage, and the president is elected by the council. This office is incompatible with that of mayor,

51 Ragone, Sabrina (2011). El régimen local italiano: ¿un sistema "en peligro de extinción"? Reflexiones a raíz del actual proceso de reforma. In: Tomàs Font and Alfredo Galán (Dirs.), *Anuario del Gobierno Local 2011* (p. 69-96). Barcelona: Fundación Democracia y Gobierno Local-Institut de Dret Públic.

52 See the various studies featured in Luis Manuel Cosculluela *et al.*, *Crisis económica y reforma...*, *op. cit.*

53 Font i Llovet, Tomàs and Galán Galán, Alfredo (2011). Gobierno local y organización territorial: ¿la reforma vendrá de Europa? In: Tomàs Font and Alfredo Galán, *Anuario del Gobierno Local 2011*, *op. cit.*, p. 11-39.

54 An overview is provided in Beltrán de Felipe, Miguel (2017). Tendencias en Europa sobre los gobiernos locales intermedios. In: Luciano José Parejo (Dir.) and Antonio Arroyo (Coord.), *El futuro de la Administración local y el papel de los gobiernos locales intermedios* (p. 217-246). Madrid: Fundación Democracia y Gobierno Local. See also numerous studies featured in the cited work of Marcos Almeida *et al.*, *La racionalización...*, *op. cit.*

55 An initial approach is updated in Galán Galán, Alfredo *et al.*, *Nous governs locals...*, *op. cit.*, p. 23 and following.

56 Beltrán de Felipe, M. Tendencias en Europa..., *op. cit.*, p. 234.

by decision of the *conseil constitutionnel* (in application of the general rule that prohibits the accumulation of offices). Additionally, there is a stipulation that a metropolitan conference be held with all of the mayors, for coordination with municipalities.

3.2 Territorial reforms in Italy

As for Italy, its Law 56/2014, of 5 April, on *disposizioni sulle Città metropolitane, sulle Provincie, sulle unioni e fusioni di Comuni* (*Delrio Law*), undertook a more generalised reform, as can be deduced from the title of the law itself. The most relevant development was the definitive institutionalisation of the metropolitan areas. The law confirmed the 10 metropolitan cities identified since 2012, to which those located in special regions would be added.[57]

In this context, there exists the possibility that the conference of mayors of the affected municipalities choose between two alternative forms of government: a) direct election by the citizens of the metropolitan council and the metropolitan mayor, when it is so established by the statute of the local government entity, following the Greater London Authority model, and b) indirect election of the council, which would be elected by the mayors and councillors of the municipalities that belong to the metropolitan city, while the metropolitan mayor would be, by law, that of the capital.

Cities were given broad statutory competencies. As a result of exercising this competency, there appeared a significant differentiation in the fundamental options adopted, because metropolitan, indirect-election cities will co-exist with metropolitan cities that have directly-elected mayors and councils. This option can raise certain concern about checks and balances, and the functionality of the system if not accompanied by an effective disaggregation or dissolution of the capital municipality in several municipalities.[58]

Furthermore, the direct election of the metropolitan mayor and council requires a proper distribution of duties among the political bodies that guarantee accountability.[59] The formulas established in the statutes of a number of metropolitan cities vary widely—for example, Article 20 of the Statute of Milan provides for the election of the metropolitan mayor "by universal suffrage"—and, in the long term, all are conditioned to a state electoral law.

In any event, it is important to note that the *città metropolitana* replaced the province in its territorial realm, an entity that was no longer of necessary implementation throughout the territory, while in France the metropolis did not presuppose a generalised disappearance of the department. Simultaneously, in Italy, as has been stated, direct election of the province had been done away with, turning it into a second-degree election entity in which the provincial council and its president were chosen by the mayors and councillors of the municipalities of the province. There were stipulations for an assembly of mayors, with proposal and consultation duties, that was also to approve the entity's statute.

In reality, following a debate that has lasted for years on the possibility to eliminate provinces in Italy, it was decided to carry out a far-reaching reform that also affected one of the inherent traits of intermediate entities in the vast majority of European legislations; its direct election by citizens, with the well-known exception of the ordinary-regime provinces in Spain. Added to this is the fact that the direct election of the provincial president had been instituted in Italy in 1993.

The constitutional legitimacy of this broad modification via ordinary law, as well as its compatibility with the European Charter of Local Self-Government (CEAL) generated intense debate in the doctrine.[60] Judgement 50/2015 of the Italian Constitutional Court stated that the "constitutionally necessary nature of the entities

57 Follow the update of Galán Galán, Alfredo *et al.*, *Nous governs locals...*, *op. cit.*, p. 24.

58 Vandelli, Luciano (2014). L'innovazione del governo locale alla prova: uno sguardo comparato agli Statuti delle Città metropolitane. *Istituzioni del federalismo: rivista di studi giuridici e politici*, (1) (special edition devoted to "Gli statuti delle città metropolitane. Modelli a confronto"), 213-238.

59 Di Lascio, Francesca (2015). Le città metropolitane. A Marcos Almeida *et al.*, *La racionalización...*, *op. cit.*, p. 403.

60 See the discussion in Tubertini, Claudia (2015). Le provincie. In: Marcos Almeida *et al.*, *La racionalización...*, *op. cit.*, p. 429 and following.; and specifically, Boggero, Giovanni (2014). Il diritto all'elezione diretta negli Enti locali tra Carta Europea dell'autonomia locale e convenzione europea dei diritti dell'uomo dopo la c.d. legge Delrio. *Istituzioni del federalismo: rivista di studi giuridici e politici*, (3), 573-598.

established in Article 114 of the Constitution 'as constitutive of the Republic' and the autonomist nature given to them by Article 5 of the Constitution does not imply that it is automatically essential that the government bodies of these entities are directly elected".[61] The sentence also ruled out any violation of the CEAL, to which it attributes the nature of a "merely indicative document", and interprets the requirement that members of local assemblies "must be elected through free, secret, equal, direct and universal suffrage" of Article 3.2 of the CEAL, in the substantial sense of the requirement for effective representativeness with respect to the community involved, which will be fulfilled as long as provincial offices are occupied by elected members of the municipalities.

The two statements of the Italian Constitutional Court are broadly debatable, both in terms of the legal value of the CEAL,[62] which in Spain is also the object of jurisprudential interpretation,[63] as well as on the relationship between autonomy and representativeness.[64] It is true that Spain put on record in the CEAL ratification instrument, of 20 January 1988, a statement on the non-application of the direct election described in Article 3.2 of the CEAL itself ("to all entities taken up in Arts. 140 and 141 of the Constitution") in clear reference to the second-degree election of provincial governments.

In any case, Law 56 of 2014—*Delrio*—clearly showed the difficulties and contradictions in the definition and institutional delimitation of the so-called vast-area entities as alternatives to established provinces;[65] constitutional reform would be necessary for their ultimate transformation. But the constitutional reform failed in the referendum of 2016, with the consequent fall of the Renzi government. Later, the constitutional case law confirmed the essential nature of the rules that establish indirect election of local intermediate governments, blocking even regions with special autonomy from establishing their own rules in this regard.[66]

In short, the two local organisation systems closest to Spain's, the French and Italian models, have carried out profound reform of the structural elements and particularly, the institutional projection of the second level of local government, with the insertion of the metropolitan phenomenon inside the previous provincialist context. The system based on the two blocs of local power has been undone, in that the Napoleonic model (state-province-municipality) has lost a fundamental ring,[67] or, in any event it has undergone radical transformation.

4 Current perspectives of the intermediate tier of local government

There are many similarities and differences between one reformist model and the other, but in both cases certain coinciding elements should be underscored. They will define the perspectives of the intermediate

61 Tubertini, Claudia. Le provincie, *op. cit.*, p. 446.

62 The literature is extensive and features a diversity of vantage points. Among many others, see Merloni, Francesco (2011). La Carta Europea de la Autonomía Local y su recepción en Italia y España. In: Tomàs Font and Alfredo Galán (Dirs.), *Anuario del Gobierno Local 2010. Tribunal Constitucional, desarrollos estatutarios y gobiernos locales* (p. 489-519). Barcelona: Fundación Democracia y Gobierno Local-Institut de Dret Públic; Almeida, Marcos (Coord.) (2016). *Dereito: Revista xurídica da Universidade de Santiago de Compostela*, (1) (special edition devoted to the 30th *Anniversary of the European Charter of Local Autonomy*); Lasagabaster Herrarte, Iñaki (2007). *La Carta europea de la autonomía local*. Madrid: Iustel; Ortega Álvarez, Luis Ignacio (1993). La Carta europea de la autonomía local y el ordenamiento local español. *REAL*, (259), 475-498; Fernández Farreres, Germán (2003). La Carta Europea de la Autonomía Local en el sistema de fuentes del Derecho español: una reflexión crítica. In: Francisco Caamaño (Coord.), *La autonomía de los entes locales en positivo. La Carta Europea de la autonomía local como fundamento de la suficiencia financiera* (p. 39-51). Barcelona: Fundación Democracia y Gobierno Local; Velasco Caballero, Francisco (2009). *Derecho local. Sistema de fuentes*. Madrid: Marcial Pons, p. 73 and following.

63 See Fernández Montalvo, Rafael (2004). La presencia de la Carta Europea de la Autonomía Local en los pronunciamientos jurisprudenciales sobre autonomía local de 2004. In: Tomàs Font (Dir.), *Anuario del Gobierno Local 2004* (p. 307-334). Barcelona: Fundación Democracia y Gobierno Local-Institut de Dret Públic; Bandrés Sánchez-Cruzat, José Manuel (2009). La Carta Europea de la Autonomía Local en la jurisprudencia del Tribunal Supremo. *Cuadernos de Derecho Local*, (20), 7-22.

64 Costa, Paolo (2018). La Carta europea dell'autonomia locale tra postdemocrazia e iperdemocrazia. Appunti per una rilettura giuridica, alla luce della giurisprudenza costituzionale. *Rivista italiana di diritto pubblico comunitario*, (1), 63-84. For example, in Spain, STC 132/2012, of 19 June on *consells insulars* of the Balearic Islands, interpreted that the existence of non-elected members of the executive commission does not violate the representative character of the council as a constitutive element of local autonomy.

65 Merloni, Francesco (2014). Sul destino delle funzioni di area vasta nella prospettiva di una riforma costituzionale del Titolo V. *Istituzioni del federalismo: rivista di studi giuridici e politici*, (2), 215-249.

66 The Constitutional Court ruled along these lines in its Judgement 168/2018, regarding a law of the Region of Sicily that established direct election of the metropolitan mayor.

67 De Donno, Marzia (2014). Verso un nuovo ordine territoriale in Europa: Francia e Italia a confronto. In: Tomàs Font and Alfredo Galán (Dirs.), *Anuario del Gobierno Local 2014* (p. 105-150). Barcelona: Fundación Democracia y Gobierno Local-Institut de Dret Públic.

body in the near future.[68] The weight of the most innovative element—the consolidation of the metropolitan areas—in these processes supports the orientation taken.[69]

4.1 Autonomous interiorisation of the intermediate tier of local government

The first matter is to determine who should be the advocate of intermediate-level reform. In the two cases studied there has been an initial intervention of the state legislator to give the process the necessary institutional drive. This has been obvious in the case of France, without overlooking the fact that in Italy the regions with special statutes can intervene, as Sicily and Sardinia have, despite the limitations introduced by constitutional case law, already outlined.

A noteworthy difference with the case of Spain is evident here. In Spain, the political decision for metropolitan advocacy is entirely in the hands of the autonomous communities which, as has been stated, are competent, but also the main competitors of the metropolitan areas themselves. This is the explanation for the meagre effective implementation of the regulations, except for the metropolitan area of Barcelona, "reconstituted" in 2010, long after the 1987 break-up. The later creation of the area of Vigo in 2012 was paralysed by political dispute with the Xunta de Galicia, and even a judicial temporary suspension in 2017.

The coincidence between autonomous communities and metropolitan areas in general territorial, economic development and major supra-municipal service policies is one of the reasons why autonomous initiatives have been mostly unenthusiastic and, as already shown, conflictive. Therefore, the matter now brought to debate was whether it would be necessary to have a state intervention to simply launch an institutionalisation process of metropolitan areas throughout the territory, that the autonomous communities and involved local governments would manage, with an indication of time frames and general models of possible adoption based on major principles and basic criteria. A way to overcome the autonomous inertia in this field had to be found.

In the case of Catalonia, it must be taken into account that any possible reform of the provincial-veguerial limits at this time would require the intervention of state lawmakers. With those legislators it would be possible to agree, given the circumstances, on the territorial delimitation of a metropolitan *vegueria* that would allow a simplification of structures and the incorporation of the metropolitan area into the provincial organisation system. This is the idea of "institutional consolidation" already put forth in the *Informe sobre la revisió del model d'organització territorial de Catalunya*, written by a committee of experts in 2000.

Nonetheless, this possibility does not fit easily into the scenario that proposes greater interiorisation of local government into the decision-making realm of the autonomous communities,[70] so typical of federal systems, especially as regards the intermediate tier, as in the case of the German *kraise*.[71] Therefore, it is clear that the infra-regional—in this case, county—level is now at the autonomous lawmaker's disposal.

But the truth is that, if decisive action is not taken in Spain and Catalonia, they face the risk of being left behind in the competition among European—and even global—territories, due to a lack of greater institutionalisation of the metropolitan level of local government and clarification of its articulation within the intermediate tier of local government.[72]

68 See, for in-depth discussion, Various authors (2011). *Libro Verde. Los gobiernos locales intermedios en España*. Madrid: Fundación Democracia y Gobierno Local; Parejo, Luciano José and Arroyo, Antonio. *El futuro de la Administración...*, *op. cit.* See also the monographic edition of *Documentación administrativa*, (3), 2016, on "La organización territorial interna de las CCAA".

69 Based on the orientation of Galán Galán, Alfredo. *Nous governs locals..., op. cit.*

70 For all, see Font i Llovet, Tomàs. Gobierno local y..., *op. cit*. More recently, see Font i Llovet, Tomàs (2018). El municipio constitucional: balance y perspectivas de reforma. In: Benigno Pendás (Dir.), *España constitucional (1978-2018). Trayectorias y perspectivas* (p. 4337 and following). Madrid: CEPC; Parejo Alfonso, Luciano José (2017). Algunas reflexiones sobre posibles líneas maestras del arreglo de la provincia y la diputación peninsulares de régimen común. In: Parejo, Luciano José and Arroyo, Antonio, *El futuro de la Administración...*, *op. cit.*, p. 31.

71 Pielow, Johann-Christian (2001). Las estructuras del gobierno local en un marco federal: la asimetría y las singularidades. In: Tomàs Font (Dir.), *Anuario del Gobierno Local 1999/2000* (p. 95-120). Madrid: Marcial Pons; Gracia Retortillo, Ricard (2010). El nivel supramunicipal de gobierno local en Alemania. *Revista d'Estudis Autonòmics i Federals*, (11), 83-141; Rodríguez de Santiago, José María *et al.* (Coords.). Alemania. In: Francisco Velasco (Dir.) and Silvia Díez *et al.* (Coords.), *Gobiernos locales en Estados federales y descentralizados: Alemania, Italia y Reino Unido* (p. 37-191). Barcelona: Institut d'Estudis Autonòmics; Ortega Bernardo, Julia (2012). Reformas en la legislación de régimen local en Alemania en el contexto de la crisis económica. In: Luis Manuel Cosculluela *et al.*, *Crisis económica y reforma...*, *op. cit.*, p. 447 and following.

72 For a summary of the various institutional formulas, see Tomàs Fornés, Mariona (2016). *Tendencias metropolitanas en el mundo*.

One possible way to overcome autonomous communities' lack of enthusiasm toward strengthening the institutionalisation of metropolitan areas could be the elevation of its merely eventual statutory provision to a constitutionally necessary provision, as occurs in Italy.

4.2 Asymmetry and differentiation

The uniform quality of the Napoleonic model can no longer be sustained in the context of federal systems or those of legislative regionalism. But, regardless of this condition, what the French and Italian reforms prove is that they facilitate organisational solutions that are differentiated ad hoc for each case or de facto situation in which a specific reality is made present in the second level of local government, and particularly when it is a metropolitan reality.

In France the options are established by lawmakers, and Italy they are offered to the statutory competencies of the metropolitan cities themselves by metropolitan municipalities grouped in conferences. These differences even reach the fundamental level of the system for election of the metropolitan council, and the election of the metropolitan mayor, and therefore the political configuration of the metropolitan government.

Without a doubt, a rupture from uniformism, and the introduction of greater diversity is one of the major challenges facing the local Spanish system, both in organisational as well as competency aspects, but especially in the former category, as they make it possible to better adjust democratic responses to social, population and even predominant ideological characteristics in each metropolitan reality.

The legislative weight attributed to lawmakers must be to guarantee the autonomy of affected entities, especially as regards the competency and financial content. This way, internal organisational affairs could be left in hands of each entity's self-organising competency, as long as the minimum requirements of government bodies' representative character were respected.

4.3 Institutional simplification and consolidation

As has been discussed, in the case of Lyon, France—despite the difficulties—and especially in Italy, creation of the metropolitan area meant the elimination of departments or provinces. This is also a fundamental fact. This marks the first effective application of the principle or criterion of simplification of levels, and consolidation of institutions advocated by the doctrine in all countries, including Spain, and by a wide range of interlocutors, but never carried out with all its consequences, beyond the consolidation of uni-provincial autonomous communities with the relevant local provincial body. As previously indicated, something similar was proposed in the *Informe sobre la revisió del model d'organització territorial de Catalunya* with the idea of "combination" of the province through its "consolidation" with other supra-municipal levels

Logically, such solutions depend to a large degree on the geographic dimensions of the affected provinces, and the territorial scope of the metropolitan realities. It is worth remembering that Italy has half the territorial area of Spain, and double the provinces. Another alternative is to explore solutions that enable adjustments to this organisational reality of provincial councils or *consells insulars* that contain a metropolitan area, so that they "step back" from the duties of supra-municipal body in that territory, with the necessary asymmetrical articulation of their own structures of government.[73]

The relevant fact is that with the Italian and French reforms, what has begun to be questioned is the character of the province or department as necessary bodies of mandatory existence throughout the territory. The incorporation of a healthy dose of flexibility, far from essentialist adhesions, enables the offering of pragmatic solutions that at the same time coincide with the needs of budgetary restraint. As already stated, in Spain the second level of local government is already more constitutionally adaptable. In its STC 240/2006 the Constitutional Court itself stated, even if *ober dicta*, that constitutional provisions configure the municipality

Metropolis Observatorio (Issue paper, 1).

73 Reference to the fact that a *vegueria* could assume the role of "metropolitan *vegueria*" can be read in Forcadell Esteller, Xavier (2017). Los gobiernos locales supramunicipales en Cataluña: evolución normativa y jurisprudencial, y perspectivas de futuro. In: Tomàs Font and Alfredo Galán (Dirs.), *Anuario del Gobierno Local 2015/2016* (p. 151-186). Barcelona: Fundación Democracia y Gobierno Local, p. 182.

"as a basic territorial unit in the entire territory of the State, with regard to which, as opposed to the province, there is no constitutional provision that makes it possible to exert its existence or its organisational base".

Earlier in this article, it was stated that "organisational articulation of the metropolitan institution must be based on the principles of simplification at administrative levels, and consolidation of institutions that are redundant in the territory. Keeping municipalities, counties, metropolitan areas, *vegueries* and autonomous communities territorially and organisationally unaltered is inefficient and unsustainable. More simply put, it is impossible. On the other hand, institutional asymmetry must allow flexible solutions Specifically, municipalities without counties and metropolitan *vegueries* may be goals that are worth gradually pursuing".[74]

Further still, with regard to non-metropolitan realms, the logic of combination and simplification would bring forth a final simplification of the territorial *millefeuille* as regards the county level and its inter-municipal operation. This is another discourse, more associated with general reform of the municipal structure,[75] that the LRSAL did not decisively tackle, and that may require a "constitutional mutation" based on a change in constitutional case law to allow the division into counties of smaller municipalities.[76].

4.4 Democratic quality and transparency

At the current time, in which several western countries are witnessing an incipient questioning of certain basic mechanisms for the democratic articulation of public authority, it is essential to include in the discussion on intermediate local governments the need to preserve and improve the democratic quality of institutions.[77]

One of the most oft-questioned aspects of the Spanish system is the nature of the second-degree election in provincial governments, for what it represents insofar as adding distance from the social base, and a breeding ground for the lack of transparency. In reality, provincial governments and other supra-municipal government institutions are an essential instrument for political agreements when forming municipal governments in the wake of local elections. Their economic strength, and distance from the public eye facilitate negotiations to assign exclusive dedications to deputies, which can result in savings for their respective local councils, or the appointment of individuals to temporary positions of trust. Therefore, it is at the second level of local government where the entirety of negotiations can be balanced, with a greater territorial realm that also enhances the possibilities for reaching agreements.

Therefore, the direct election of the representative body of the intermediate government, which has been claimed in Spain for some time, would be validated by the CEAL and the comparative situation in practically all other European countries. But the dynamic espoused by the *troika*, of "less politics and more economy" has begun to invert the trend, and significantly so with the conversion of the Italian province into an entity of second-degree election, when even its president was directly elected. Simplification and public savings imply the "reduction" of the political class.

On the other hand, one specific element of the Italian reform that has been underscored is the possible direct election of the metropolitan council and mayor, as per the Greater London model. The political strength derived from direct legitimation in this realm is something to be taken into account, that implies reconsideration of the role of the municipalities in the metropolitan area, and especially, of the capital. Cohabitation will not be simple.

Logically, options of political legitimation of intermediate tiers of local government are tied to the competencies assigned to them. As provincial governments, or *vegueries*, and metropolitan areas exercise functional competencies with direct impact on public welfare policies and the provision of public services to citizens, there will be greater democratic justification to support direct election systems. As has been discussed, this is the trend, at least nominally, in Spanish and Catalan legislative dynamics.

74 Font i Llovet, Tomàs. L'ordenació metropolitana..., *op. cit.*, p. 455.

75 For all, see Díez Sánchez, Juan José (Coord.) (2013). *La planta del gobierno local*. Barcelona: AEPDA-FDyGL.

76 For more along these lines, see Cosculluela Montaner, Luis Manuel (2012). Problemática de la provincia como entidad local. In: Luis Manuel Cosculluela *et al.*, *Crisis económica y reforma...*, *op. cit.*, p. 122.

77 This is underscored in, among other sources, *Libro Verde: Los gobiernos locales intermedios en España*, *op. cit.*, p. 197.

In the Italian case, as previously shown, the adoption of the system as it pertains to metropolitan areas is left in the hands of the municipalities themselves. These elements should also be considered in the possible reform dynamics in Spain, and not only in the realm of metropolitan government bodies, but also, as previously stated, in the electoral system of the municipalities themselves.

It is also true that the options for direct election mechanisms have been thoroughly examined throughout Europe as regards the basic municipal level, with a clearly greater political significance, and as a general response to the demands for democratic improvements of the late twentieth century. In truth, the solutions adopted have varied widely, tending toward mechanisms that are hybrids of "presidential" and "parliamentary" systems with results modulated by the effective use of the electors and the parties of each country.[78]

In any event, there can be simultaneous consideration of the possible functional separation between the bodies of government and those of administration, and separation of the functions of political orientation and planning from execution, and asset and resource allocation roles, as was agreed in Italy starting in the 1990s.

In short, in France as well as Italy there are plans for a future internal territorial deconcentration or decentralisation of metropolitan areas toward smaller circumscriptions, whether they be municipal or based on inter-municipal cooperation. In fact, it is fundamental to balance the emergence of a new "strong" local government institution with the access to mechanisms that facilitate municipal participation in decision-making, the management of public services and the control of the institution itself.

5 Conclusions

The evolution of the Napoleonic model of local administration, in force for over two centuries in much of Europe, now shows significant signs of change. While still generally maintaining the two-level—municipal and supra-municipal—structure, this second level of intermediate local government is the site of rupture from the uniformity characteristic of the model, until even reaching its unique elimination in some cases. Diversification at this level has been triggered by the consolidation of political structures of a state nature with legislative power in the federal, autonomous or regional systems.

In the Spanish case, the initial intervention of Catalan lawmakers in 1980, aimed at eliminating the provinces, caused, due to its nature and intensity, perverse effects throughout the local system, to the degree that it led the Constitutional Court to espouse the theory of institutional guarantee of local autonomy, on a merely defensive basis, which has proven to be ineffective for positively protecting the constitutionally-guaranteed local autonomy.

On another note, application of this doctrine to the basic regulation of the county in its relationship with municipalities has hindered the reorganisation of the municipal map and multiplied supra-municipal levels.

In any event, over time constitutional case law has allowed a certain flexiblisation of the constituent elements of the province as a second-tier entity, something that opens the possibility to greater intervention by lawmakers to modulate the configuration of the intermediate local government.

In this context, a future dynamic of necessary institutional reforms, that could reach a constitutional revision of the territorial organisation of power, would have to include in its program certain reforms of the local government system that take into account a number of matters.

In general terms, articulation of a more effective protection of local autonomy, at the municipal as well as intermediate tier of local government, with the constitutional and statutory determination of their basic competencies and financing mechanisms. In the case of the intermediate tier, however, its autonomy must be in consonance with the functional configuration of this level, depending on whether it is a structure of support

78 Bertrana Horta, Xavier and Magre Ferran, Jaume (2017). Elección directa del alcalde y cambio institucional: una aproximación comparada. In: Tomàs Font and Alfredo Galán (Dirs.), *Anuario del Gobierno Local 2017* (p. 131-154). Madrid: Fundación Democracia y Gobierno Local, p. 154. See also: Arenilla Sáez, Manuel (2015). Sistemas electorales y elección directa del alcalde. Una perspectiva comparada. In: Manuel Arenilla (Coord.), *La elección directa del alcalde. Reflexiones, efectos y alternativas* (p. 19-62). Barcelona-Madrid: Fundación Democracia y Gobierno Local.

and assistance at the municipal level, or a truly local government, with capacity to formulate its own public policies on the economic and social life of its territory that have a direct impact on the rights of citizens.

On another note, a greater interiorisation of the local government in the area of autonomous communities, or at least those that express a differential reality in their territorial organisation, as regards their configuration, the attribution of competencies and in relational and organisational aspects with the effects of differentiation and adaptation that this must bring about, especially in the territorial structuring of the entire local government around the intermediate tier.

The possibility of incorporating the metropolitan level into the same constitutional definition of the elements of State territorial organisation, as has already occurred in other European countries, should be weighed, with the capacity for guarantee and promotion of the institution that this represents. The international and worldwide competition of the major metropolises, and the emergence of the city as a new reference of political construction, require constitutional determination.

It is also urgent to improve local democratic quality, both with regard to the electoral system at the municipal level and in the intermediate tier of local government, and also the necessary separation between the structures and duties of government and those of administration. Furthermore, an eventual reinforcement of the intermediate local government in the metropolitan realm must at the same time include the proper mechanisms of decentralisation and citizen participation within the municipal level.

In short, consideration must be given to a more balanced combination of the principles of autonomy and local democracy, at all levels, with those of effectiveness and efficiency in the organisation and provision of local public services. This requires proper determination of the optimum levels of management for each service, which can also generate territorial asymmetrical solutions. This, along with the necessary simplification of structures in the intermediate tier of local government, may create a dynamic in which to configure, for one, a county level where there is promotion of the municipal associative matrix, and second, a stable intermediate government structure generated through the path of institutional consolidation among provincial governments, *vegueries* and metropolitan areas.