



CONSTITUTIONAL SYSTEMS OF THE WORLD

# The Constitution of Spain

*A Contextual Analysis*

Victor Ferreres Comella

# Contents

<i>Table of Cases</i>	ix
<i>Table of Legislation</i>	xiii
<i>International Treaties and Conventions</i>	xxiv
<b>1 The Framing of the Spanish Constitution</b>	1
Introduction	1
A Tragic Precedent: The Second Republic (1931–36)	3
A Long Dictatorship	5
A Negotiated Transition to Democracy	8
The Constitutional Spirit: The Politics of <i>Consenso</i>	12
The Constitution as the Embodiment of Shared Values	16
The Constitution as the Product of a Bargaining Process	18
Conclusion	23
<b>2 An Overview of the Spanish Constitutional System:</b>	
<b>Basic Principles</b>	25
Spain as a ‘Social and Democratic State Under the Rule of Law’	26
A Parliamentary Monarchy with Limited Mechanisms of Direct Democracy	34
The Constitutional Relevance of Political Parties	40
Quasi-Federalism: The <i>Estado de las Autonomías</i>	47
Conclusion	48
<b>3 The Constitution and the Legal System</b>	51
The Nature of the Constitution as a Legal Norm	51
The Constitution and Time: Constitutional Amendments	55
The Constitution and Space: International and Supranational Sources of Law	62
Conclusion	69
<b>4 The Crown</b>	71
The Legitimacy of the Monarchy	72
The King’s Symbolic Function	75
The Countersignature Requirement	76
The Role of the King in Selecting the Government	78

The King's Authority to Sanction the Laws	80
The King's Political Neutrality	82
The King's Immunity	83
Regency, Guardianship, Marriage and Succession	85
Conclusion	88
<b>5 Parliament</b>	91
Introduction	91
The Electoral System	92
The Status of Members of Parliament	97
Parliament's Regulatory Autonomy: The Role of By-laws or Standing Orders	104
Parliament's Internal Organization	105
Parliament's Role in Selecting and Checking the Government	107
Parliament as a Legislative Body	113
The Future of the Senate	122
Conclusion	124
<b>6 The Government and Public Administration</b>	127
The Government	128
The Public Administration	144
Controlling the Government and the Administration	148
Conclusion	158
<b>7 Regional Decentralization: The <i>Estado de las Autonomías</i></b>	161
The Birth of the <i>Estado de las Autonomías</i> (State of Autonomies)	162
General Principles of the <i>Estado de las Autonomías</i> : Unity, Autonomy, Solidarity, Equality	166
The Constitutional Role of Statutes of Autonomy	169
The Distribution of Powers between the State and the Autonomous Communities	172
Cooperation and Conflicts between the State and the Regions	175
The Financial System of the Regional Governments	177
The Political System of the Autonomous Communities	179
The Relationships between State Law and Regional Law	181
The Debate about Asymmetry	185
The Secessionist Challenge	190
Local Government	192
Conclusion	197

<b>8 The Constitutional Role of Courts</b>	201
Jurisdictional Exclusivity and Unity	203
Impartiality, Independence, Legality and Responsibility	205
The Democratic Legitimacy of Judicial Decisions	209
The Government of Judges	210
Prosecutors and the Jury	213
Why a Constitutional Court?	215
Composition	217
Jurisdiction of the Court	219
The Court's Performance: Tensions with the Political Branches and the Ordinary Judiciary	227
Conclusion	232
<b>9 Fundamental Rights</b>	235
The Structure of the Bill of Rights	235
Legal Mechanisms for Protecting Rights	241
Restriction and Suspension of Fundamental Rights	245
Who is Entitled to Fundamental Rights?	251
Are Private Individuals Bound by Fundamental Rights?	255
Fundamental Rights in an Activist State	257
Conclusion	258
<i>Index</i>	261

# Index

## Abortion

- Constitutional Court, 228
- decriminalization, 258
- exceptional cases, 258
- legislative process, 80
- prohibition, 258

## Accessibility of law

- publicity principle, 28
- rule of law, 28

## Administrative Courts

- administrative control, 154–55
- caseload, 154
- constitutional principles, 155
- executive discretion, 155
- function, 154
- general principles of law, 155
- independence, 154
- judicial review, 29, 157
- jurisdiction, 154
- legality of government decisions
  - directive function, 156
  - executive function, 156–57
  - judicial activism, 156
  - judicial review, 157
  - regulatory function, 156
  - subject to administrative law, 155–56
- proportionality principle, 155
  - see also* **Proportionality principle**
- status, 154

## Administrative regulations

- constitutional compliance, 53
- validity, 53

## Amendment

- see* **Constitutional amendment**

## Amparo jurisdiction

- fundamental rights protection, 226, 229–32, 242–44, 256

## Andalucía

- elections, 179
- regional autonomy, 166

## Asymmetry

- competences
  - equalizing competences, 185
  - exercise of competences, 185, 187
- decentralization process, 162, 166, 185
- fiscal system, 186
- impossibility, 185–86

- language issues, 185
- legislative powers, 186
- levels of autonomy, 186–88
- limit of diversity, 187
- national/regional representation, 187–88
- non-national Communities, 186–87
- powers returned to the State, 18
- private law, 185–86
- regional autonomy, 162, 166
- self-government, 185–86
- Senate reform, 187–88

## Audencia Nacional

- function, 205–6, 208

## Authority

- see* **Constitutional authority**

## Autonomous Communities

- see also* **Estado de las Autonomías; Statutes of Autonomy**

- asymmetry, 162, 166, 185–90
  - see also* **Asymmetry**
- competences, 164–65, 171, 185, 189, 211
- constitutional principles, 166
- court system, 202
- creation, 161, 163–64, 167, 172, 197
- Declaration of Barcelona (1998), 166
- distribution of power, 169, 173–75
- elections, 188–90
- exercise of power, 171
- economic matters, 169
- financial system
  - annual budgets, 178
  - budgetary limits, 176
  - economic imbalances, 177
  - financial autonomy, 177
  - fiscal diversity, 178
  - health services, 178
  - public education, 178
  - public expenses, 178
  - resources, 177
  - taxation, 177–78, 184
- fiscal system, 186, 192
- levels of autonomy, 186–88
- nationalist parties, 162–63, 166, 189–90
- official languages, 185
- political system
  - democratic system, 179
  - electoral laws, 179

**Autonomous Communities (cont):**

- political system (*cont*):
  - motion of censure, 180
  - parliamentary mandate, 179
  - parliamentary privilege, 179
  - President of the Community, 179–80
  - question of confidence, 180
  - Regional Ombudsman, 180
  - regional parliaments, 179–80
  - similarities, 179
- private law, 185–86
- protection, 123
- provincial administration, 145
- public services, 168
- secession, 190
  - see also* **Secession**
- self-government, 164–66, 189
- State law/regional law, 181–84
  - see also* **State law/regional law**

**Bargaining process**

- Bill of Rights, 21
  - see also* **Bill of Rights**
- binding future parliaments, 18–19
- constitutional authority, 18
- constitutional constraints, 18, 23
- democracy, 19–20
- democratic virtues, 18
- devolution, 21
- divisive issues, 19
- form of government, 19
- majority rule, 19
- official language, 21
- private property, 21
- regional problem, 20–1
- religious neutrality, 22
- right to education, 22
- royal powers, 20

**Basque Country**

- see also* **ETA (Basque Homeland and Liberty)**
- Catholic Church's attitude, 7
- elections, 179, 189
- financial systems, 178
- fiscal system, 186, 192
- language, 166, 185
- nationalist governments, 180
- nationalist movements, 162–63, 166, 191
- opposition to dictatorship, 7
- police force, 187
- political autonomy, 197
- political developments, 190–91
- political parties, 41, 43
- referenda, 39

- regional and local organization, 197
- secession, 190–91
- self-government, 2, 4, 15, 20, 163, 165–67
- Statute of Autonomy, 20–1

**Bill of Rights**

- see also* **Fundamental rights**
- bargaining process, 21
  - see also* **Bargaining process**
- interpretation, 64
- nationality, 235
- rights and liberties, 235–36
- social and economic principles, 235–38, 241, 259
- structure, 235–36, 258–59
- support, 16
- suspension of rights, 236

**Canary Islands**

- special fiscal treatment, 178

**Catalonia**

- Catholic Church's attitude, 7
- competences, 171
- elections, 179, 189, 192
- fiscal system, 192
- independence, 192
- language, 166, 185
- local government, 192
- nationalist governments, 180
- nationalist movements, 162–63, 166, 192
- opposition to dictatorship, 7
- police force, 187
- political autonomy, 197
- political developments, 192
- political parties, 41
- referenda, 39
- secession, 190, 192
- self-government, 2, 20, 163–67
- Statute of Autonomy, 4, 20–1, 166–67, 171, 192

**Catholic Church**

- human rights, 7
- reconciliation, 7
- religious neutrality, 22
- State cooperation, 22
- support for dictatorship, 5, 7

**Censure**

- see* **Motion of censure**

**Charter of Fundamental Rights of the European Union, 68****Citizens**

- citizenship, 251, 253
- different legal treatment, 252
- discrimination provisions, 252
- EU citizens, 253

- nationality, 253
- political participation, 251
- public office, 251–53
- status, 253
- Competences**
  - Autonomous Communities, 164–65, 171, 185, 189, 211
  - conflicts over competences, 181–82, 224
  - Council of State, 149
  - distribution of competences, 47–48, 120, 164–65, 174
  - equalization, 185
  - exercise of competences, 185, 187
  - principle of competence, 28
  - State law/regional law
    - conflicts, 181–82
    - enlargement of powers, 183
    - financial matters, 184
    - framework legislation, 183
    - increased regional authority, 184
    - law of harmonization, 184
    - organic statutes, 184
    - transfer of competences, 184
    - transfer of executive powers, 184
    - transfer of legislative powers, 183–84
    - unilateral alteration, 183–84
  - Statutes of Autonomy, 181
  - transfer of competences, 169–70, 184, 211
- Conflicts between institutions**
  - asymmetrical government, 225
  - competences, 224
  - national institutions, 225
  - negative conflicts, 224–25
  - positive conflicts, 224
  - regional regulations, 225
  - regionalism, 224
  - suspension of regulations, 225
  - violations of local autonomy, 225
- Congress**
  - Deputies, 93–94
  - D'Hondt formula, 94
  - distribution of seats, 94–96
  - minimal representation, 94
  - proportional representation, 94–95
- Consenso**
  - see* **Constitutional spirit**
- Constitutional amendment**
  - absolute majority, 56
  - constitutional rigidity, 15, 55–59, 69, 87
  - death penalty, 58
  - difficulties, 55
  - electoral law, 56, 60
  - fundamental rights, 57–58
    - see also* **Fundamental rights**
  - interpretative practices, 58
  - political concerns, 23, 58–59, 69
  - Parliament, 56
  - partial revision, 57, 60
  - passage of time, 51
  - political pacts, 56
  - procedural dualism
    - different procedures, 56–59
    - partial revision, 57, 60
    - problems, 59–60
    - super majority, 56
    - total revision, 57, 59–61
  - procedures, 53, 56–58
  - public debt, 56–58
  - referenda, 39, 48
  - reforms, 57, 59, 69
  - regional governments, 47–48
  - requirements, 55–56, 58
  - right to marry, 59, 241
  - royal succession, 86–88
  - same-sex marriages, 59
  - special procedure, 93
  - super-majority, 56
  - total revision, 57, 59–61
  - unamendable clauses
    - basic principles, 61
    - core values, 61
    - democracy, 61
    - rules of amendment, 61–62
- Constitution as legal norm**
  - see* **Legal norm**
- Constitutional authority**
  - bargaining process, 16, 18–23
    - see also* **Bargaining process**
  - distribution of authority, 25
  - fundamental issues, 16
  - interpretation, 23
  - shared values, 15–17
    - see also* **Shared values**
- Constitutional challenges**
  - administrative decisions, 222
  - Constitutional Court's decision, 221
  - initiation, 220
  - interim measures, 220–21
  - notification, 221
  - regional governments, 220
  - res judicata*, 222
  - retroactive effects, 221–22
- Constitutional Court**
  - access, 154
  - affirmative action, 31, 42
  - appointments, 78
  - composition, 217

**Constitutional Court (cont):**

- conflicts between institutions
  - asymmetrical government, 225
  - competences, 224
  - national institutions, 225
  - negative conflicts, 224–25
  - positive conflicts, 224
  - regional regulations, 225
  - regionalism, 224
  - suspension of regulations, 225
  - violations of local autonomy, 225
- constitutional challenges
  - administrative decisions, 222
  - Court's decision, 221
  - initiation, 220
  - interim measures, 220–21
  - notification, 221
  - regional governments, 220
  - res judicata*, 222
  - retroactive effects, 221–22
- constitutional provisions, 215
- constitutional questions
  - adjudicative function, 222–23
  - certification, 222–23
  - judicial doubts, 222
  - statutory interpretation, 223
  - suspension of proceedings, 222
  - unconstitutional legislative provisions, 222–23
- constitutional review, 29, 53, 81–82, 87, 201, 219–23
- controversial decisions, 218
- creation, 53, 201–2, 215, 233
- decretos-ley, 139–40
  - see also* **Decretos-ley**
- direct effect doctrine, 52
- discrimination law, 31, 66, 229
- electoral law, 34
- equality, 66
- EU treaties, 67
- function, 53
- fundamental rights, 101–102, 107, 119–20, 219, 226–27
  - see also* **Fundamental rights**
- gender parity, 42
- human rights protection, 43, 64–65
- individual rights, 28
- influence, 229–30, 233
- institutional respect, 219
- judges
  - appointment, 217–19
  - judicial independence, 218
  - President of the Court, 218
  - retirement, 217
  - tenure, 217–19
  - Vice-President, 218
- jurisdiction
  - amparo* jurisdiction, 226, 229–32, 256, 259
  - conflicts between public institutions, 219, 224–25
  - fundamental rights, 219, 226–27
  - legislative review, 29, 216, 219–24
  - justification, 215–16
  - legal certainty, 216
  - legal clarity, 28
  - legislative review
    - centralization, 216
    - constitutional challenges, 220–22
    - constitutional questions, 220, 222–23
    - constitutionality, 219
    - judicial monopoly, 219–20
    - jurisdiction, 29
    - preventive control, 220, 223–24
- LOTC (*Ley Organica 2/1979 del Tribunal Constitucional*), 215, 219, 222
- parliamentary oath of allegiance, 98–99
- parliamentary practices, 101–102
- parliamentary privileges, 102–104
- partial renewal, 217–18
- preliminary reference procedure, 68
- preventive review
  - a priori review, 224
  - complementary review, 224
  - international treaties, 223–24
  - justification, 224
  - Maastricht Treaty, 224
  - Treaty Establishing a Constitution for Europe, 224
- professional diversity, 216
- proportionality principle, 259
  - see also* **Proportionality principle**
- requests for information, 112
- State budget, 122
- status, 48
- statutory reserves, 137
  - see also* **Statutory reserves**
- tensions with other courts
  - amparo* jurisdiction, 226, 229–32
  - criminal charges, 231
  - damages claims, 231–32
  - emergence, 202, 215
  - inevitability, 232
  - limits of jurisdiction, 231
  - statute of limitations, 231
  - Supreme Court, 231–33
- tensions with political branches
  - abortion law, 228



- boundaries between sources of law, 227
- delayed decisions, 229
- discrimination law, 229
- domestic violence cases, 229
- emergence, 202
- fundamental rights, 227
- influence of the Court, 229–30
- moral issues, 228
- political consequences, 227–28
- politicized cases, 228–29
- State/Autonomous Communities
  - conflicts, 227–28
  - striking down laws, 227–28
  - technical questions, 227–28
- validity of legislation, 64
- Constitutional development**
  - approval, 12
  - authority
    - see* **Constitutional authority**
  - bargaining process, 16, 18–23
    - see also* **Bargaining process**
  - drafting, 12–13
  - internationalist conception, 17
  - Parliamentary Commission on Constitutional Matters, 12
  - political agreement, 13–15
  - ratification, 12, 15
  - regional abstentions, 15
  - rights and liberties, 17
- Constitutional duties**
  - civilian service, 238
  - common good, 238
  - compliance, 238
  - compulsory education, 240
  - contribution to public expenses, 239
  - duty to defend Spain, 238–39
  - duty to work, 238, 240
  - general welfare, 239
  - justification, 238
  - military service, 238–39, 242–43
  - payment of taxes, 21, 239–40
- Constitutional features**
  - see also* **Constitutional system**
  - decentralization, 47
  - internationalist conception, 17
  - interpretation, 23
  - legislative initiatives, 35–37
  - non-partisan nature, 16
  - retroactive law prohibited, 28–29
  - rights and liberties, 17
  - rigid nature, 15, 55–59, 69, 87
  - supra-nationalist commitment, 17–18
- Constitutional spirit**
  - agreement of political parties, 12–13
  - conciliation, 12
  - economic pressures, 14
  - importance, 23
  - legislative process, 119–20
    - see also* **Legislative process**
  - lessons of history, 13, 23
  - moderation, 13
  - negotiations, 14–15
  - political agreement, 13–15
  - political plurality, 13
  - tensions, 14
  - terrorist threat, 14
  - transparency, 14
- Constitutional supremacy**
  - administrative regulations, 53
  - EU law, 67–68
  - implicit nature, 53
  - regulatory powers, 53
  - supreme norm, 53, 69
  - validity of legislation, 53
- Constitutional system**
  - autonomic State, 26
  - concentration of political power, 25
  - direct democracy, 26
  - distribution of authority, 25
  - election of the President of the Government, 25
  - executive/legislature relationship, 25, 107–109, 124
  - federalism, 26
  - parliamentary monarchy, 25, 34–35, 48, 78, 80–1
  - rule of law, 25–28
  - separation of powers, 25, 48, 127
  - social and democratic State, 25–34
    - see also* **Social and democratic State**
- Cortes Generales**
  - see also* **Parliament**
  - elections, 10, 92–93
  - legislation, 33
  - legislative power, 10
  - political plurality, 13
  - representation, 13
  - structure, 10, 33
  - transition to democracy, 9–10
    - see also* **Transition to democracy**
- Council of State**
  - competences, 149
  - consejeros natos*, 150
  - Elective Councillors, 150
  - expert opinions, 151
  - function, 150
  - individual interests, 151
  - Permanent Councillors, 149–50

**Council of State** (*cont.*):

- President of the Council, 149
- regional government interests, 151
- reports; 150–51
- structure, 149
- supreme advisory body, 149, 151

**Court of Audit**

- appeals, 158
- compensation claims, 158
- composition, 158
- function, 157–58
- independence, 157–58
- jurisdiction, 158
- management of public resources, 158
- State budget, 158
- term of office, 158

**Court system**

*see also* **Constitutional Court; Judiciary**

Autonomous Communities, 202

juries

*see* **Juries**

LOPJ (*Ley Orgánica 6/1985 de Poder Judicial*), 202, 205–6

municipalities, 202

prosecutors

*see* **Prosecutors**

protection of rights, 232

rule of law, 201, 232

structure and function, 202

Supreme Court, 203–4, 212

territorial organization, 202

**Crown**

constitutional allegiance, 74, 76

countersignature requirement

counter-signatories, 76–77, 88

exceptions, 77

formalizing decisions, 78

government appointments, 78–79

judicial appointments, 78

King's acts, 76–78, 84

King's household, 77

refusal to sign, 80–81

regional assemblies, 77

significance, 88

validity of acts, 78

democratic dimension

democratic compatibility, 71, 73, 88

democratic powers, 32–33

direct democracy, 35

distribution of power, 34–35

downfall of the monarchy, 3

government appointments

appointment of the President of the Government, 78–80

authority of the King, 79

countersignature requirement, 78–79

political crises, 79

guardianship, 85

household expenses, 77–78

immunity

civil liability, 85

criminal liability, 83

incapacitated, 84–85

inviolability, 83–84

political level, 83

legislative process

abortion laws, 80

promulgating legislation, 71, 80

refusal to sign, 80–81

royal sanction, 80–81

same-sex marriages, 80

unconstitutional laws, 81

veto powers, 80–82

legitimacy

constitutional basis, 73–74

constitutional spirit, 72

democratic sources, 74–75

pre-existing reality, 72–73

moral authority, 73

moral capital, 71–72, 83

parliamentary monarchy, 25, 34–35, 48, 78, 80–1

political neutrality

foreign affairs, 82–83, 88

messages to the nation, 82

military matters, 83

ministerial meetings,

political office, 82

right to vote, 82

popular support, 71, 74–75, 88

prestige, 72

regency, 85

responsibilities, 71

royal expenses, 77

royal palaces, 77

royal powers, 20

royal scandals, 72, 75

sovereignty, 73

stability, 71

succession

constitutional amendment, 86–88

discrimination, 85–88

exclusion, 85

legal doubt, 87

marriage arrangements, 85

national interests, 85

procedure, 85

sex equality, 86

- symbolic role, 71, 75–76, 80  
 transition to democracy, 8–9, 71–73  
*see also* **Transition to democracy**  
 unity of the State, 76; 82, 88
- Death penalty**  
 constitutional amendment, 58
- Decentralization**  
*see also* **Autonomous Communities;**  
*Estado de las Autonomías*  
 distribution of competences, 47–48, 120,  
 164–65, 174  
 quasi-federalism, 47–49  
 Statutes of Autonomy  
*see* **Statutes of Autonomy**
- Decretos-legislativos**  
 civil and criminal procedures, 141  
 Civil Code, 141  
 constitutional provision, 141  
 constitutionality, 142  
 delegating legislative authority, 140–41  
 effective use, 141  
 enabling statutes, 141  
 substantial delegation, 141  
 ultra vires, 142
- Decretos-ley**  
 Constitutional Court decision, 139–40  
 constitutional provision, 138–39  
 constitutional validity, 140  
 economic changes, 140  
 extraordinary and urgent necessity, 139  
 operation, 139  
 ratification, 139  
 relative necessity, 139  
 repeal, 139  
 rights, duties and liberties, 140  
 social changes, 140  
 statutory project, 139  
 substantive limits, 139–40  
 validation, 139
- Democracy**  
*see also* **Transition to democracy**  
 bargaining process, 19–20  
*see also* **Bargaining process**  
 democratic State, 32–34  
*see also* **Democratic State**  
 direct democracy, 26, 35, 37, 48  
 shared values, 16–18
- Democratic State**  
 democracy, 32, 35, 37  
 elections, 32–33  
 legislative process, 32  
*see also* **Legislative process**  
 monarchy, 32–33
- right to vote, 32–33  
 sovereignty, 32
- Detainees**  
 held incommunicado, 250–1
- Dictatorship**  
 brutality, 5  
 Catholic Church support, 5, 7  
 censorship, 6  
 conservative support, 5  
 decline, 6  
 EC Membership application, 6, 17  
 economic autarky, 6  
 economic progress, 6–7  
 executions, 6  
 exile, 6  
 fascist support, 5  
 first period, 5  
 gross domestic product, 6  
 industrial production, 6  
 international relationships, 6  
 lack of legitimacy, 8  
 limited freedoms, 6  
 moral attitudes, 7  
 opposition, 7–8  
 regional issues, 5, 7  
 regressive effect, 6  
 second period, 6  
 terrorist activities, 7
- Discrimination**  
 protection, 31, 66, 229, 252  
 royal succession, 85–88
- Domestic violence**  
 protection, 229, 257
- Economic system**  
 economic plans, 32  
 free enterprise, 21–22, 31  
 market economy, 21, 31  
 State intervention, 32  
 State monopolies, 32
- Education**  
 compulsory education, 240  
 free education, 238  
 private schools, 22  
 religious schools, 22  
 right to education, 22, 238  
 secular education, 22
- Electoral system**  
 candidates' lists, 93  
 complete renewal, 93  
 constitutional provisions, 92  
 electoral rules, 91, 93  
 political parties, 92–93  
*see also* **Political parties**

**Electoral system** (*cont*):

- popular participation, 93
- regional senators, 93

**Emergencies**

- see* States of emergency

**Employment rights**

- collective bargaining, 31, 238, 243
- right to strike, 31, 238, 243
- right to work, 238
- trade union activity, 238, 243, 253

**Equality**

- constitutional Court decision, 66
- equality before the law, 103
- general principle, 168–69
- liberty and equality, 48
- right to equality, 244, 254, 256
- sex equality, 86

**Estado de las Autonomías**

- see also* Autonomous Communities;

**Statutes of Autonomy**

- asymmetry, 162, 166, 185–90

*see also* Asymmetry

- constitutional amendment, 47–48
- cooperation and conflicts
  - CARCE, 175
  - Commissions, 175
  - cooperation mechanisms, 175–76
  - coordinated policies, 175
  - dispute settlement, 176
  - enforcement of measures, 176–77
  - Joint Commission for the European Union, 175–76
  - provision of services, 175
- devolution process, 163–65
- dispositive principle, 164
- distribution of competences, 47–48, 120, 164–65, 174
- distribution of powers
  - administrative enforcement, 173
  - basic legislative framework, 173–75
  - decentralization, 47, 172, 197–98
  - exclusive competence, 174
  - executive/legislative powers, 172–173
  - judicial power, 172
  - labour law, 173
  - penitentiary law, 173
  - shared powers, 174–75
  - taxation, 174
- equalization process, 166
- financial system
  - annual budgets, 178
  - budgetary limits, 176
  - economic imbalances, 177
  - financial autonomy, 177

fiscal diversity, 178

health services, 178

public education, 178

public expenses, 178

resources, 177

taxation, 177–78, 184

**general principles**

autonomy, 166, 168

economic unity, 168–69

equality, 168–69

free movement provisions, 168

regional/nationality distinctions, 167

solidarity, 166, 168

territorial integrity, 166

unity, 166, 168

historical background, 162–63

nature, 47

political autonomy, 164, 197

political process, 48

**political system**

democratic system, 179

electoral laws, 179

motion of censure, 180

parliamentary mandate, 179

parliamentary privilege, 179

President of the Community, 179–80

question of confidence, 180

Regional Ombudsman, 180

regional parliaments, 179–80

similarities, 179

regional autonomy, 163–65, 198

restrictions, 47

secession, 190

*see also* Secession

self-government, 164–66

State law/regional law, 181–84

*see also* State law/regional law

**ETA (Basque Homeland and Liberty)**

*see also* Basque Country

criminal activity, 7, 14, 43, 249

ending of violence, 191

founding, 7

**EU law**

direct effect, 66

EU citizens, 253

EU Treaties, 67

impact on domestic law, 66

preliminary reference procedure, 66, 68

primacy, 67–68

supremacy, 66–68

**European Arrest Warrants**

constitutional conflict, 68–69

- fundamental rights, 68
- European Community**
  - Spanish membership, 6, 17–18, 32
- European Convention on Human Rights (ECHR)**
  - see also* **Human rights**
  - access to lawyer, 250
  - compliance, 245
  - ECtHR jurisprudence, 245, 258–59
  - national security, 247
  - prohibition on torture, inhuman or degrading treatment, 245
  - public morals, 247
  - public order, 247
- European integration**
  - EU treaties, 67
  - EC Membership, 65–66
  - impact on domestic law, 66
- Executive**
  - see also* **Government**
  - executive/legislature relationship, 25, 107–109, 124
  - opposition scrutiny, 159
  - parliamentary scrutiny, 158
  - public administration
    - see* **Public administration**
  - separation of powers, 127
- Fascism**
  - rise of fascism, 3–5
- Foreigners**
  - different legal treatment, 252
  - EU citizens, 253
  - free movement, 252
  - public freedoms, 251
  - reciprocity principle, 252
  - right of assembly, 252–53
  - right of association, 253
  - right to education, 253
  - right to trade union activity, 253
  - right to vote, 252
  - rights and liberties, 252
- Free enterprise**
  - economic system, 31
  - market economy, 21, 31
  - public interest, 21–22
  - right to free enterprise, 21
- Fundamental freedoms**
  - freedom of association, 253, 256
  - freedom of contract, 256
  - freedom of information, 255
  - freedom of movement, 252
  - freedom of speech, 247, 254–55
  - public freedoms, 251
- Fundamental rights**
  - activist State
    - abortion law, 258
    - affirmative action, 257
    - criminal laws, 257–59
    - domestic violence, 257
    - duty to protect, 257, 259
    - gender parity, 257
    - minimum wage, 257
    - public policies, 257
    - role of the State, 257
  - Charter of Fundamental Rights of the European Union, 68
  - citizens, 251–3
    - see also* **Citizens**
  - constitutional amendment, 56–58
    - see also* **Constitutional amendment**
  - constitutional duties, 238–40
    - see also* **Constitutional duties**
  - employment rights
    - collective bargaining, 31, 238, 243
    - minimum wage, 257
    - right to strike, 31, 238, 243
    - right to work, 238
    - trade union activity, 238, 243
  - entitlement
    - citizens, 235, 251–53
    - foreigners, 251–53
    - legal persons, 254
    - public institutions, 254
  - equality, 244
  - essential content of rights, 237, 247–48, 250–1
  - foreigners, 235, 251–53
    - see also* **Foreigners**
  - freedom of speech, 247, 254
  - horizontal effect, 255, 257
  - institutional guarantees, 240–1
    - see also* **Institutional guarantees**
  - international treaties, 62
  - legal persons, 254
    - see also* **Legal persons**
  - level of protection, 237
  - liberty of conscience, 243
  - nationality, 235
  - positive/negative rights, 238
  - prisoners' rights, 238
  - private individuals, 255–56
    - see also* **Private individuals**
  - protection
    - amparo* jurisdiction, 226, 229–32, 242–44, 256
    - complex system, 241, 243
    - connections between rights, 243

**Fundamental rights** (*cont.*):protection (*cont.*):

- constitutional amendment, 242, 244
- constitutional protection, 28, 119–20, 236–37, 241

equality, 244

homogenous treatment, 244

human dignity, 244

levels of protection, 243–44

organic statutes, 241–43

personality development, 244

privacy rights, 247, 254

private property excluded, 244–45

privileged list, 244

rights in different subgroups, 243

technical legal problems, 243

public authorities, 236

## restriction

absolute rights, 245–46

access to information, 247

detainees held incommunicado, 250–1

essential content guarantee, 237, 247–48, 250–1

freedom of speech, 247

individual liberty, 247

interests other than rights, 247

legitimate aim, 246

national security, 247

privacy, 247, 254

proportionality principle, 246–48, 259

public interests, 247

public order, 247

restriction of rights, 247

rules and principles, 235

scope of right, 245, 247

right to education, 238

rights and liberties, 235–36

rule of law, 28

shared values, 16–17

social and economic principles, 235–8, 241

State responsibility, 255, 257–58

*see also* **State responsibility**

statutory regulation, 236

statutory reserves, 138

## suspension

collective suspension, 249

constitutional provision, 248

criminal responsibility, 249

detainees held incommunicado, 250–1

governmental abuses, 249

individual suspension, 249

inviolability of one's home, 249–50, 254

judicial intervention, 249

limitations and constraints, 249

organic statutes, 249

parliamentary control, 249

police investigations, 249–50

privacy rights, 249–50

private communications, 249

proportionality principle, 250

right to appear before judge, 249

rules and principles, 235–36

terrorist activity, 249–50

## violations

*amparo* jurisdiction, 226, 229–32, 242–44, 256

complaints procedure, 226

electoral complaints, 226

exhaustion of remedies, 226

faulty statutory provisions, 226–27

incorrect legal interpretations, 226

special procedural guarantees, 226

standing, 226

**Galicia**

autonomy, 163

elections, 179, 189

language, 185

nationalist movements, 166

self-government, 4–5, 165, 167

**Gender issues**

gender parity, 42–43, 257

impact of legislation, 114

same-sex marriage, 59, 80, 241

**General Council of the Judiciary**

budget, 211

distribution of responsibility, 212

function, 206, 209

institutional autonomy, 211

institutional memory, 210

judicial promotions, 211

members, 210

politicization, 212

President of the Council, 212

public opinion, 212

reports, 211

scandals, 212

structure, 210

**General Franco**

death, 1, 8

dictatorship, 3

*see also* **Dictatorship****Government***see also* **Executive**

administrative regulation, 127

autonomy, 128

- caretaker governments, 130
- change of government, 109
- coalition government, 130-1, 133, 136
- control of government
  - abuse of powers, 149
  - Administrative Courts, 149, 154-57
  - constitutional provisions, 128
  - control mechanisms, 128, 148-49
  - Council of State, 149-51
  - Court of Audit, 149, 157-58
  - excesses, 128
  - Law on Government (*Ley del Gobierno*), 128, 131-32, 136
  - non-judicial bodies, 149
  - Ombudsman, 149, 152-54
  - political controls, 149
  - public opinion, 149
  - rights of access, 149
- decision-making procedure, 128
- decretos-legislativos, 140-42
  - see also* *Decretos-legislativos*
- decretos-ley, 138-40
  - see also* *Decretos-ley*
- democratic legitimacy, 130
- directive function
  - civil and military administration, 134
  - constitutional provisions, 134-35
  - defence of the State, 134
  - domestic and foreign policy, 134-35
  - executive function, 134
  - exercise, 127
  - national policy, 134
  - parliamentary context, 134
  - public administration, 144
- executive/legislature relationship, 25, 107-109, 124
- function, 127
- government appointments
  - appointment of the President of the Government, 78-80, 108-110
  - authority of the King, 79
  - countersignature requirement, 78-79
  - political crises, 79
- government ministers, 129, 132-33
  - see also* **Government ministers**
- legality of government decisions
  - directive function, 156
  - executive function, 156-57
  - judicial activism, 156
  - judicial review, 157
  - regulatory function, 156
  - subject to administrative law, 155-56
- loss of office, 130
- members of the government
  - constitutional provisions, 133
  - criminal charges, 133
  - immunity, 133
  - jurisdictional privilege, 133
  - status, 133
- parliamentary majority, 127
- policy implementation, 127
- political programme, 127
- public administration, 127, 135-36, 144
  - see also* **Public administration**
- public policy, 127
- regulatory authority
  - amending previous statutory provisions, 138
  - approval of regulations, 136
  - authorized character, 137
  - coalition government, 136
  - Council of Ministers, 133, 136
  - executive character, 137
  - ministerial authority, 136
  - norms with same ranking as statutes, 138-42
  - pre-existing statutes, 136
  - regulatory procedure, 136
  - statutes ranking over regulations, 136-37
  - statutory reserves, 137-38
  - submission of reports, 136
- scrutiny
  - opposition scrutiny, 159
  - parliamentary scrutiny, 158
- selection and control, 107-109, 124
- stability, 109-110
- states of emergency, 142-44
  - see also* **States of emergency**
- structure
  - auxiliary bodies, 129
  - composition, 129
  - constitutional provisions, 128-29
  - government ministers, 129
  - President's office, 129
  - Vice-Presidents, 129
- Government ministers**
  - administrative authority, 132
  - appointment, 129
  - censure, 129
  - confidentiality, 133
  - consensus, 133
  - Council of Ministers, 133, 136
  - decision-making process, 132
  - dual function, 132
  - ministerial authority, 136

**Government ministers (cont):**

- ministerial departments, 132–33
- removal, 129

**Historical context**

- authoritarian regimes, 2
- Civil War, 3
- death of General Franco, 1, 8
- dictatorship, 3
  - see also* **Dictatorship**
- liberal democracy, 2
- past constitutions, 2
- rise of fascism, 3–5
- Second Republic (1931–6), 2–3
  - see also* **Second Republic (1931–6)**
- transition to democracy, 1, 8–13
  - see also* **Transition to democracy**

**Human rights**

- see also* **Fundamental rights**
- detainees, 250–1
- employment rights
  - collective bargaining, 31, 238, 243
  - right to strike, 31, 238, 243
  - right to work, 238
  - trade union activity, 238, 243, 253
- European Convention on Human Rights (ECHR), 245, 247, 250
- equality, 244, 254
- fundamental freedoms
  - freedom of association, 253, 256
  - freedom of contract, 256
  - freedom of information, 255
  - freedom of movement, 252
  - freedom of speech, 247, 254, 255
  - public freedoms, 251
- gender parity, 42–43, 257
- human dignity, 244
- international treaties, 64–65
- prohibition of torture, inhuman or degrading treatment, 245
- restriction of rights, 247
- right of assembly, 252–53
- right of association, 253
- right to education, 238, 253
- right to marry, 59, 240–1
- right to vote, 252

**Independent administrative authorities**

- see also* **Public administration**
- administrative legality, 147–48
- advantages, 148
- appointment, 147
- autonomy, 148
- common features, 147

- constitutional issues, 147–48
- constitutionality, 148
- establishment, 145–46
- examples, 146–47
- job security, 147
- judicial supervision, 147
- technical expertise, 148

**Institutional guarantees**

- degree of protection, 240–1
- professional organizations, 240
- right to marry, 59, 240–1
- social security, 240
- university autonomy, 240–1

**International dimension**

- international relations, 6, 51

**International treaties**

- a posteriori scrutiny, 63
- authorization, 62–63
- constitutional consistency, 63, 67
- declarations, 62
- fundamental rights, 62
  - see also* **Fundamental rights**
- human rights, 64–65
- incorporation, 62
- international organizations, 65–66
- judicial review, 62, 64, 223–24
- modification, 63–64
- non-enforceable, 63
- political or military nature, 62
- protection against national laws, 63–64
- ratification, 62–64, 67
- repeal, 63–64
- status, 62
- substantive limits, 63
- suspension, 63–64
- territorial integrity, 62
- unilateral reservations, 62

**Judicial review**

- Administrative Courts, 29
- Constitutional Court, 29, 223–24
  - see also* **Constitutional Court**
- executive decisions, 29
- international treaties, 62, 64, 223–24
- legality of government decisions, 157
- legislative decisions, 29
- ordinary courts, 29
- parliament, 107
- preventive review
  - a priori review, 224
  - complementary review, 224
  - international treaties, 223–24
  - justification, 224
  - Maastricht Treaty, 224



- Treaty Establishing a Constitution for Europe, 224
- public administration, 136, 147
- rule-of law, 29
- Judiciary**
  - access rights, 205
  - administration of justice, 203–4, 211
  - administrative status, 206
  - constitutional provisions, 203–4, 206–7, 209
  - constitutional review, 201
  - constraints, 201
  - dualist structure, 201
  - electoral administration, 204
  - General Council of the Judiciary, 206, 209–12
    - see also* General Council of the Judiciary
  - judges
    - appointment, 209
    - criminal charges, 207–8
    - impartiality, 205–6
    - interpretative rulings, 206–7, 209–10
    - number of judges, 203
    - prevarication, 207–8
    - promotion, 211
    - specialization, 204–5
    - women judges, 203
  - judicial decisions
    - democratic legitimacy, 209
    - dissenting opinions, 209
    - justification, 209
    - legal doctrines, 209–10
  - judicial independence
    - importance, 201
    - requirement, 201, 206–7, 232
  - judicial responsibility, 207
  - jurisdictional function, 203–4
  - jurisdictional orders, 204
  - jurisdictional unity, 204–5
  - non-jurisdictional tasks
    - Civil Register, 204, 222
    - electoral administration, 204
  - protection of rights, 204
  - separation of powers, 127
  - terrorist cases, 206
  - transfer of competences, 211
- Juries**
  - composition, 214
  - constitutional provisions, 214
  - deliberations, 214
  - judicial supervision, 214
  - reasoned verdicts, 214–15
  - regulation, 52
- Law for Political Reform (*Ley para la Reforma Política*)**
  - approval, 10
  - fundamental laws, 9–10, 12
  - fundamental rights, 10
  - legislative power, 10
  - referendum, 10
  - repeal, 12
  - sovereignty, 10
- Legal norm**
  - see also* Legal system
  - direct effect
    - constitutional clauses, 52
    - economic and social principles, 52
    - judicial application, 52
    - normative force, 52
    - regulation of juries, 52
    - significance, 52, 69
  - distinctive features, 51
  - enforcement, 51–52
  - legal capacity, 51
  - structuring the legal system, 53–55
  - supreme norm, 53, 69
- Legal persons**
  - inviolability of one's home, 249–50, 254
  - judicial protection, 254
  - privacy, 254
  - right to equality, 244, 254
  - right to honour, 254
- Legal system**
  - Civil Code, 55
  - complexity, 54
  - devolved powers, 54
  - executive provisions, 54
  - international developments, 54
  - local regulations, 54
  - sources, 55
  - special statutes, 54
  - standing orders, 54, 104
  - structure, 53–55
- Legislation**
  - see also* Legislative process
  - executive/legislature relationship, 25, 107–109, 124
  - legislative initiatives
    - direct democracy, 35, 37, 48
    - number of signatures required, 36
    - prohibited areas, 36
    - public participation, 35–36
    - regional politics, 36–37
    - rejection, 36
  - ordinary statutes
    - distribution of competences, 120

**Legislation (cont):**

- simple majority, 118, 120
- taxation, 121
- organic statutes
  - absolute majority, 118–20
  - constitutional spirit, 119–20
  - distribution of competences, 120
  - electoral system, 119
  - extending consensus over time, 119
  - fundamental rights, 119–20
  - institutional design, 119
- statutes ranking over regulations, 136–37
- statutory reserves, 137

**Legislative process**

constitutional provisions, 114, 118

**Crown's involvement**

- abortion laws, 80
- promulgating legislation, 71, 80
- refusal to sign, 80–81
- royal sanction, 80–81
- same-sex marriages, 80
- unconstitutional laws, 81
- veto powers, 80–82

distribution of competences, 120

fundamental rights, 119–20

*see also* **Fundamental rights**

**government**

- majority government, 117
- minority government, 117
- opposition support, 118
- pre-eminence, 113–14, 118

initiation, 113–14

**legal regulation**

- economic cost, 114
- gender impact, 114
- necessity of new law, 114

Legislative Commissions, 115

ordinary statutes, 1189, 120–21

organic statutes, 118–20

**Parliament**

- absolute majority, 118–20
- bi-partisan consensus, 118
- influence, 113, 116–18
- parliamentary groups, 114, 116, 118
- responsibility, 113
- Senate's role, 115
- simple majority, 118, 120
- single reading, 115–16
- urgent procedure, 116
- political parties, 114, 116–17

*see also* **Political parties**

project of statute, 113–15

proposition of statute, 114

regional parliaments, 114–15, 117

separation of powers, 127

State budget, 121–22

statements of purpose, 114

statutes ranking over regulations, 136–37

statutory reserves, 137

taxation, 121

withdrawal of proposals, 114

**Local government**

autonomy, 192–93

constitutional provisions, 192

constitutional review, 193

constraints, 192

democratic self-government, 193

legislative powers, 192–93

municipalities, 193–96

*see also* **Municipalities**

ordinances, 193

provinces, 193, 196–97

*see also* **Provinces**

public policies, 192–93

**LOPJ (*Ley Orgánica 6/1985 de Poder Judicial*)**

court structure and function, 202

*see also* **Court system**

interpretative rulings, 206

judicial authority, 202

judicial independence, 206

regime of incompatibilities, 205

territorial organization, 202

**LOTJ (*Ley Organica 2/1979 del Tribunal Constitucional*)**

judicial function, 219

past judicial decisions, 222

regulatory function, 215

**Marriage**

right to marry, 59, 240–1

same-sex marriages, 59, 80, 241

**Members of Parliament**

constitutional requirements, 97

lack of resources, 100

mandate, 101

oath of allegiance, 97–99

*see also* **Oath of allegiance**

parliamentary groups

discipline, 100

expulsion, 101–102

immunity from party decisions, 101

justification, 100

legislative process, 114, 116, 118

membership, 99–100

mixed groups, 100

requests for information, 100–101

resources, 100

- significance, 101
- parliamentary privileges, 102–104
  - see also* **Parliamentary privileges**
- political parties
  - expulsion, 101–2
  - legislative process, 114, 116–17
  - powers, 99
  - requests for information, 100–101
  - rotation, 100
- Military tribunals**
  - status, 204
  - Supreme Court review, 204
- Monarchy**
  - see* **Crown**
- Motion of censure**
  - absolute majority, 110
  - approval, 110
  - Autonomous Communities, 180
  - constructive motion, 110
  - dissolution prohibited, 111
  - local councils, 194–95
  - procedure, 109–110
  - removal of President of the Government, 129
- Municipalities**
  - access to office, 195–96
  - constitutional obligations, 196
  - constraints, 195
  - court system, 202
  - dissolution, 196
  - electoral system, 194–95
  - local councils (*ayuntamientos*)
    - assembly, 194–95
    - elections, 194
    - mayor, 194–95
    - motion of censure, 194–95
    - political system, 194–95
    - question of confidence, 195
    - representation, 194
    - structure, 194
  - government run by citizens, 195
  - resources, 193
  - smaller municipalities, 195
- National security**
  - restriction of rights, 247
- Navarra**
  - financial systems, 178
  - fiscal system, 186, 192, 197
  - police force, 187
  - regional autonomy, 165
- North Atlantic Treaty Organization (NATO)**
  - Spanish membership, 18, 37–38
- Oath of allegiance**
  - Constitutional Court decision, 98–99
  - extent of commitment, 98–99
  - interpretation, 98–99
    - legal imperative, 99
  - procedural reading, 98–99
  - requirement, 97–98
- Ombudsman**
  - access to Constitutional Court, 154
  - appointment, 152
  - authority, 152
  - Autonomous Communities, 152
  - complaints procedure, 152–153
  - Congress-Senate joint Commission, 153
  - function 149, 152
  - fundamental rights protection, 152, 154
    - see also* **Fundamental rights**
  - proposals, 153
  - public authority cooperation, 153
  - recommendations, 153
  - Regional Ombudsman, 180
  - subjects of inquiries, 152
  - torture investigations, 153
- Parliament**
  - see also* **Cortes Generales**; **Members of Parliament**
  - absolute majority, 107
  - checks and balances, 124
  - Commissions
    - conclusions, 112
    - creation, 112–113
    - function, 105–106, 112
    - Investigative Commissions, 112
    - non-legislative matters, 106
    - organization, 106
  - Congress
    - Deputies, 93–94
    - D'Hondt formula, 94
    - distribution of seats, 94–96
    - minimal representation, 94
    - proportional representation, 94–95
    - constitutional amendment, 56, 93
      - see also* **Constitutional amendment**
    - decision-making process, 107
    - Diputacion Permanente*, 106–107, 144
    - dissolution, 92–93, 111
    - electoral system
      - candidates' lists, 93
      - complete renewal, 93
      - constitutional provisions, 92
      - electoral rules, 91, 93
      - political parties, 92–93
      - popular participation, 93

**Parliament (cont):**

electoral system (cont):  
 regional senators, 93

executive/legislature relationship, 25,  
 107–109, 124

extraordinary sessions, 106

fragmentation, 92, 95

function, 91, 105–106

government

change of government, 109

opposition censure, 111

requests for information, 112

selection and control, 107–109,  
 111–112, 124

stability, 109–110

state of the nation debate, 112

importance, 91

internal organization, 91, 105

judicial review, 107

*Junta de Portavoces'* role, 105

legislative process, 113–22

*see also* **Legislative process**

*Mesa's* role, 105

motion of censure

absolute majority, 110

approval, 110

constructive motion, 110

dissolution prohibited, 111

procedure, 109–110

removal of President of the  
 Government, 129

oath of allegiance, 97–99

*see also* **Oath of allegiance**

parliamentary confidence, 108–109

parliamentary groups

discipline, 100

expulsion, 101–102

immunity from party decisions, 101

justification, 100

legislative process, 114, 116, 118

membership, 99–100

mixed groups, 100

requests for information, 100–101

resources, 100

significance, 101

parliamentary monarchy, 25, 34–35, 48,  
 78, 80–1

parliamentary privileges, 102–104

*see also* **Parliamentary privileges**

parliamentary terms, 92

*Pleno* (whole assembly)

'blue bench', 105

function, 105–106

policy endorsements, 107–108

President's role, 105, 108–110

qualified majority, 107

question of confidence

purpose, 110

removal of President of the Govern-  
 ment, 129

simple majority, 110

submission, 110, 131

threat of elections, 111

question time, 112

regulatory autonomy

by-laws, 104

constitutional provisions, 104

standing orders, 54, 104

Senate

constitutional reform, 123–24, 187–88

distribution of seats, 96–97

electoral districts, 96

future developments, 122–24

influence, 187–88

legislative process, 115, 122–23

powers of appointment, 122

proportionality, 96

regional parliaments, 96–97

selection, 188

senators, 96–97, 188

territorial representation, 97, 123

simple majority, 107

super majority, 107

**Parliamentary By-laws**

amendment, 104

enactment, 104

procedural rules, 104

unconstitutionality, 104–105

**Parliamentary Commission on  
 Constitutional Matters, 12****Parliamentary Commissions**

conclusions, 112

creation, 112–113

function, 105–106, 112

Investigative Commissions, 112

Legislative Commissions, 115

non-legislative matters, 106

organization, 106

**Parliamentary privileges**

civil liability, 103

Constitutional Court decision, 102–104

criminal charges, 103–104

criminal liability, 103

entitlement, 102

equality before the law, 103

freedom from arrest, 103

immunity, 103

instrumental nature, 102

- inviolability, 102–103
- justification, 102–103
- waiver, 102
- Political parties**
  - banned parties, 44–45
  - decision-making procedures, 42
  - elections, 40, 42, 45
  - expulsion, 101–102
  - financing
    - debts, 46
    - elections, 45
    - expenses, 45
    - judicial supervision, 46
    - legality, 46
    - members' contributions, 45–46
    - private donations, 46
    - public funds, 45
    - reforms, 46
  - functioning, 40
  - gender parity, 42–43
  - internal structure, 40–42
  - legislative process, 114, 116–17
  - media access, 45
  - national parties, 41
  - participation in public life, 44
  - political activities, 43–45
  - political participation, 40
  - political pluralism, 13, 40
  - power, 99
  - primaries, 42
  - restrictions, 41–43
  - role, 40
- Political system**
  - see* Constitutional system
- Politics of *consenso***
  - see* Constitutional spirit
- Preliminary reference procedure**
  - EU law, 66, 68
- President of the Government**
  - appointment, 78–80, 108–110, 130
  - death, 108
  - dissolution prerogative, 111
  - election, 25
  - function, 131
  - investiture, 108–109, 129, 134
  - loss of office, 130
  - parliamentary support, 108
  - political decisions, 131
  - powers, 129–30
  - pre-eminence, 129–31
  - removal from office, 109–110, 122, 129
  - resignation, 108
  - staff, 132
  - support, 131
- Privacy**
  - legal persons, 254
  - protection, 247, 249–50, 254, 256
- Private individuals**
  - academic freedom, 256
  - amparo* jurisdiction, 256
  - different operation of rights, 256
  - freedom of association, 256
  - freedom of contract, 256
  - freedom of information, 255
  - freedom of speech, 255
  - fundamental rights, 255–56
    - see also* Fundamental rights
  - indirect effect theory, 255–56
  - labour law, 256
  - privacy, 256
  - private law, 256
  - proportionality principle, 256
    - see also* Proportionality principle
  - respect for other's lives, 255
  - right to equality, 254, 256
  - right to strike, 255
- Private property**
  - protection, 244–45
  - right to private property, 21,
  - social function, 21
- Proportionality principle**
  - administrative decisions, 155
  - Constitutional Court, 259
  - private individuals' rights, 256
  - restriction of rights, 246–48, 259
  - suspension of rights, 250
- Prosecutors**
  - citizens' prosecutions (*actio popularis*), 214
  - civil cases involving minors, 213
  - constitutional provisions, 213
  - criminal cases, 213–14
  - dissenting prosecutors, 213
  - Fiscal General, 213
  - function, 213
  - impartiality, 213–14
  - Office of the Public Prosecutor, 213
  - organization, 213
- Provinces**
  - assembly, 197
  - civil governors, 196
  - combined municipalities, 196
  - delegates of the government, 196
  - democratic legitimacy, 197
  - Diputación Provincial*, 197
  - double nature, 196
  - exercise of powers, 196
  - historical rights, 197
  - resources, 193

**Provinces (cont):**

structure of government, 196–97  
 taxation, 197

**Public administration**

administrative-legality, 147  
 appointments, 135  
 Autonomous Communities, 145  
 autonomy, 145  
 bureaucratic objectivity, 135  
 central organs, 145  
 civil servants, 145–46  
 classification, 145  
 constitutional principles, 145, 147  
 controls

abuse of powers, 149  
 control mechanisms, 148–49  
 non-judicial bodies, 149  
 political controls, 149  
 public opinion, 149

*delegado del gobierno*, 145

government

directive function, 144  
 government authority, 127, 135

guidelines, 135

independent administrative authorities,  
 145–48

*see also Independent administrative  
 authorities*

judicial review, 136, 147

mediating function of law, 135–36

peripheral organs, 145

political appointees, 146

political direction, 135

provincial administration, 145

public corporations, 145

public organisms, 145

public services and goods, 145

scrutiny

opposition scrutiny, 159

parliamentary scrutiny, 158

*subdelegado del gobierno*, 145

territorial administrations, 145

**Public morals**

restriction of rights, 247

**Public order**

restriction of rights, 247

**Publicity principle**

accessibility of law, 28

rule of law, 28

**Quasi-federalism**

*see also Estado de las Autonomías*

Autonomous Communities, 47–48

*see also Autonomous Communities*

decentralization, 47

devolution, 47

distribution of power, 48–49

judicial function, 48

Statutes of Autonomy, 47

*see also Statutes of Autonomy*

territorial structure, 47

**Question of confidence**

Autonomous Communities, 180

*see also Autonomous Communities*

local councils, 195

purpose, 110

removal of President of the  
 Government, 129

simple majority, 110

submission, 110, 131

threat of elections, 111

**Referenda**

authorization, 37, 39

constitutional amendment, 39, 48

Constitutional Court decision, 39

direct democracy, 37, 48

local level, 39

NATO Membership, 37–38

not legally binding, 37

political decisions, 37

regional sphere, 39

role of political parties, 37

Treaty Establishing a Constitution for  
 Europe, 37–39

**Regional decentralization**

*see also Autonomous Communities;*

*Estado de las Autonomías*

asymmetry, 162, 166, 185–90

*see also Asymmetry*

decentralization, 47

devolution, 47, 161, 164–65, 169

political negotiation, 162

political power, 161–62, 169

regional autonomy, 162

territorial structure, 161

**Retroactive law**

constitutional prohibition, 28–29

**Rule of law**

accessibility of law, 28

arbitrariness prohibited, 29

basic rights, 27

clarity of law, 28

compensation rights, 29

constitutional provision, 26–27

fundamental rights, 28

*see also Fundamental rights*

hierarchy of rules, 27–28

- judicial enforcement, 27
  - judicial review, 29
    - see also* **Judicial review**
  - legal conflict, 27–28
  - legal standards, 27
  - lex posterior*, 27
  - lex specialis*, 27
  - lex superior*, 27
  - political institutions, 27
  - principle of competence, 28
  - public accountability, 29
  - publicity principle, 28
  - realization, 27
  - retroactive laws prohibited, 28–29
  - social and democratic State, 25–29, 48
  - State law/regional law, 28
    - see also* **State law/regional law**
  - temporal effects of law, 28
- Secession**
- Basque Country, 190–91
  - Catalonia, 190, 192
  - legislative proposals, 190–91
  - nationalist parties, 191
  - organizational framework, 190
  - political developments, 190–92
  - referenda, 191
  - secessionist movement, 190
  - social and political forces, 198
- Second Republic (1931–6)**
- anarchists, 4
  - anti-clericalism, 5
  - constitutional system, 3–4
  - devolution of political power, 4–5
  - electoral system, 5
  - failure, 3
  - fascism, 4
  - instability, 5
  - international context, 3
  - parliamentary fragmentation, 92, 109
  - polarization, 4
  - political bias, 16
  - proclamation, 3
  - regional problem, 4–5
  - regional self-government, 4, 7
  - revolutionary activities, 4
  - sectarianism, 4
  - support, 3, 5
- Senate**
- constitutional reform, 123–24, 187–88
  - distribution of seats, 96–97
  - electoral districts, 96
  - future developments, 122–24
  - influence, 187–88
  - legislative process, 115, 122–23
  - powers of appointment, 122
  - proportionality, 96
  - regional parliaments, 96–97
  - selection, 188
  - senators, 96–97, 188
  - territorial representation, 97, 123
- Separation of powers**
- judiciary, 127
  - social and democratic State, 25, 48, 127
- Shared values**
- culture of rights, 16
  - democracy, 16–18
  - fundamental rights, 16–17
    - see also* **Fundamental rights**
- Social and democratic State**
- democratic State, 32–34
    - see also* **Democratic State**
  - distribution of powers, 48–49
  - liberty and equality, 48
  - parliamentary monarchy, 25, 34–35, 48, 78, 80–1
  - political morality, 25
  - rule of law, 25–29, 48
  - separation of powers, 25, 48, 127
  - social State, 29–32
    - see also* **Social State**
- Social and economic principles**
- direct effect, 52
  - protection, 235–38, 241
- Social security**
- institutional guarantees, 30, 240
- Social State**
- basic liberties, 31
  - economic rights, 31
  - economic system, 31–32
  - employment rights, 31
  - historical context, 29–30
  - public education, 30
  - social failures, 31
  - social principle, 29, 31
  - social rights, 31
  - social security, 30
  - social services, 30–1
  - State responsibility, 30–1
  - tax system, 30
- State budget**
- amendment, 121
  - approval, 121–22
  - Constitutional Court decision, 122
  - Court of Audit, 158
  - government expenditure, 121
  - parallel law, 122
  - political dimension, 122

- State budget (cont):**  
 public debt, 121  
 public expenses, 121  
 taxation, 121–22
- State law/regional law**  
 competences  
 conflicts, 181–82  
 enlargement of powers, 183  
 financial matters, 184  
 framework legislation, 183  
 increased regional authority, 184  
 law of harmonization, 184  
 organic statutes, 184  
 transfer of competences, 184  
 transfer of executive powers, 184  
 transfer of legislative powers, 183–84  
 unilateral alteration, 183–84  
 constitutional review, 182  
 contradictions, 182  
 distribution of authority, 181–82  
 equal rank, 181  
 harmonizing measures, 184  
 prevailing law, 181  
 relationship, 181  
 supplementarity principle, 182–83
- State liability**  
 compensation, 29, 156–57  
 damage by public authorities, 29  
 damages, 156
- State responsibility**  
 abortion law, 258  
 affirmative action, 257  
 criminal laws, 257–59  
 domestic violence, 257  
 duty to protect, 257, 259  
 fundamental rights, 255  
*see also* **Fundamental rights**  
 gender parity, 257  
 minimum wage, 257  
 public policies, 25
- States of emergency**  
*Diputación Permanente*, 144  
 protection of individuals, 144  
 restriction of rights, 142, 144  
 special legal regime, 142  
 State liability, 144  
 state of alarm, 142–43  
 state of exception, 142–43  
 state of siege, 142–44  
 suspension of institutions, 144  
 temporally limited regimes, 142
- Statutes of Autonomy**  
 amendment, 39, 170–71, 187  
 basic institutional norm, 169–70  
 Catalonia, 166–67, 171  
 common will, 170  
 competences, 181  
 constitutional function, 170  
 constitutional nature, 170  
 constitutional review, 170–72  
 definition of territory, 169  
 devolved powers, 47, 54  
 enactment, 170–71  
 geographical reach, 172  
 individual rights, 171  
 institutional structures, 171–72  
 legislative authority, 181  
 national legal system, 169  
 ratification, 165  
 regional freedom, 171  
 regional institutions, 172  
 scope, 171  
 transfer of competences, 169–70  
 violations, 181  
 water distribution, 172
- Statutory reserves**  
*see also* **Legislative process**  
 civil service regulation, 138  
 constitutional provisions, 137–38  
 fundamental rights, 138  
*see also* **Fundamental rights**  
 liberty of individuals, 138  
 meaning, 137  
 organization of the State, 138  
 scope, 137
- Supplementarity principle**  
 constitutional provision, 182  
 effect, 183  
 limitation, 183  
 State law applied, 182–83
- Supremacy**  
*see* **Constitutional supremacy**
- Supreme Court**  
 judges, 203  
 President of the Court, 212  
 review function, 204  
 structure, 204
- Taxation**  
 payment of taxes, 21
- Territorial problem**  
*see also* **Autonomous Communities;**  
**Regional decentralization**  
 distribution of power, 1–2  
 self-government, 2
- Terrorist activity**  
 suspension of rights, 249–50  
 terrorist cases, 206



- threat of terrorism, 14
- Torture**
  - prohibition of torture, inhuman or degrading treatment, 245
  - torture investigations, 153
- Transition to democracy**
  - see also* Law for Political Reform (*Ley para la Reforma Política*)
  - Communist Party, 44
  - consent of the *Cortes*, 9–10
  - elections (June 1977)
    - electoral system, 11
    - nationalist parties, 11–12
    - participation, 11
    - political parties, 11
  - negotiated transition, 8
  - Parliamentary Commission on Constitutional Matters, 12
  - political apathy, 8
  - political negotiation, 12
  - President Arias Navarro, 8
  - President Suárez, 8–9, 10–11, 20
  - reforms, 9–10
  - regional problem, 20, 198
  - role of the monarchy, 8–9, 71–73
- Treaty Establishing a Constitution for Europe**
  - Constitutional Court decision, 67, 224
  - referenda, 37–39
- Vice-Presidents of the Government**
  - appointment, 129
  - censure, 129
  - function, 132
  - removal from office, 129