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Interpretation of the Spanish Constitution

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Abstract

This entry investigates the limits of the law. The notion of border is artificial; the idea of a boundary line that must not be crossed acts as a powerful normative symbol. However, this traditional approach can no longer be considered exhaustive, because legal spatiality, which distinguishes an interior from an exterior, is an idea best captured not by looking at boundaries but by thinking in terms of limits. Limits are ineliminable mechanisms of inclusion and exclusion and are constitutive of legal orders.

Keywords Constitution - Right to life - Promotional function of law - Equality and application of the law - Judicial interpretation - Positive secularity - Matrimony - Nation - Objection of conscience - Judicial power - Interpretative decisions - Constitutional court

The interpretation of the law is not an exceptional measure aimed at rectifying deficient or confusing norms, but rather the healthy expression of the vitality of the legal activity. There would not be any hesitation in affirming that what every law contains is an argued interpretation (Ollero *1996*, *2006 passim*) of the dialogue between a normative proposition and social reality.

Interpretive Rulings

It cannot, therefore, be surprising that, when controlling the constitutionality of legal norms, the so-called *interpretive rulings* come into play. In them, the judging body has to calibrate various possible interpretations of a constitutional text, by distinguishing whichever it considers compatible with the Constitution from those that violate it. This game, often through the so-called *conforming interpretation*, is not infrequently problematic.

Therefore, the early Spanish Constitutional Court Sentence (hereinafter STC) 5/1981 of February 13, legal foundation (hereinafter LF) 6, in which Judge Tomás y Valiente acted as speaker, alludes to those interpretations with suspicious detachment, presenting them as “a means to which the constitutional jurisprudence of other countries has resorted to avoid producing unnecessary loopholes in the system.” He considers them, “in the hands of the Court, a legal means, although very delicate

and of difficult use," noting that "it cannot be object of a claim by the appellants" and recalling that the "Constitutional Court is the supreme interpreter of the Constitution, not the legislator."

In such judgments, there is a delicate line between the extensive interpretation and the actual *contra legem*. Two individual votes, dissenting from the majority position, serve as an example in this regard: first, that of Judge Delgado Barrio to STC 31/2010, of June 28, in which Judge Casas Baamonde acted as speaker, regarding the Statute of Catalonia; or that of Judge Rodríguez Arribas regarding the Declaration of the Constitutional Court 1/2004, of December 13, in which Judge Conde Martín de Hijas was the speaker, on the compatibility with the Spanish Constitution without the need for a reform process of the acceptance of the Treaty establishing a Constitution for Europe.

The Constitution as a Legal Standard

The Spanish Constitution of 1978 (hereinafter CE, from " *Constitución Española*") was favorably received as the culmination of the so-called democratic transition from the previous Franco regime. The first one apparently came out ahead, although with contents that were quite different from those desired by those who most vigorously defended it, aspiring, for example, to a democracy without a communist party. The audacity of President Adolfo Suárez, with the decisive support of King Juan Carlos I, overflowed a model that had been presented as a step *from law to law*, from Franco's legality to parliamentary democracy. Such a scheme can explain what would go down in history as the *harakiri of the predemocratic Courts*.

Decades before President Rodríguez Zapatero unearthed old disruptive political nostalgia, the brand-new Constitutional Court made the undoubtedly consummated legal rupture very clear. The STC 80/1982, of December 20, LF 1, which had Judge Tomás y Valiente as its speaker, assassinated – while he was President Emeritus of the Court – by terrorists from the ETA organization in his university office, confirmed that the Constitution was a directly applicable legal norm, unlike the mere ideological proposals of the Francoist fundamental laws. An Andalusian High Court gave rise to this by denying the condition of heir to a citizen considered an illegitimate daughter by the expired laws on the pretext that the mandatory reform of the Civil Code had not been formally consummated. To reject such an interpretation, it was enough to replace it with that which applied to the case, i.e., the repealing provision that closed the Constitution considered as directly binding without the need for *interpositio legislatoris*.

The Spanish Nation

Article 2 CE soon aroused controversial interpretations: "The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities and regions which comprise it, and the solidarity between all of them." Article 1.2 CE had already advanced: "National sovereignty resides in the Spanish people, from whom the powers of the State emanate." In this way, one of the three great problems that the Spanish democratic transition had to address was confronted, together with the submission of the armed forces to democratic institutions and religious nondenominationalism: peripheral nationalisms and their connection with the central institutions of the State.

The allusion to nationalities and regions euphemistically contained a reference to the Basque Country, subjected for years to the threats of the terrorist group ETA, and to Catalonia, where the old *Generalitat* was very soon reestablished as an autonomous institution. There was an occasional reference to Galicia – more than due to social pressure – due to historical precedent, since it had its own statute at the end of the republic, although it did not come into force.

Andalusia soon tried to join them, resurrecting the memory of Blas Infante, defender of a libertarian federalism. Without any success in sequential parliamentary calls, he ended up being executed by Franco. It would receive, during the democratic transition, the fleeting parallel impulse of Professor Manuel Clavero, minister who resigned from the *Unión del Centro Democrático* party for rejecting every privilege of the aforementioned autonomous communities that would lead to a comparative offense for the rest, giving way to an interpretation popularly coined as "coffee for everybody" (*café para todos*). This novel problem ended with the calling of a referendum in the eight Andalusian provinces, with paradoxical contrary propaganda by the party of the convening state government and the forced repechage of the province of Almería where the required majority was not reached.

Although the Constitution, in articles 143 and 151, contemplated a possible dual path of access to political autonomy, such a claim soon became general. The so-called *State of Autonomies* was born, with 17 governments and parliaments (plus another 2 in the cities of Ceuta and Melilla), as well as numerous institutions cloning the central were born. Very soon, however, protected by the electoral law, the Basque (PNV) and Catalan (CiU) nationalist parties achieved a minoritarian but continued presence for decades in the Congress of Deputies. Acting as a hinge in support of the ruling party, they were collecting privileged deals brandishing a debatable *differential fact*. The presence of other nationalist parties in Spain's statal parliamentary bodies has been scarce and discontinuous, such as the ephemeral Andalusian party that, headed by Alejandro Rojas-Marcos, came to have five deputies.

The reference in Article 2 CE to the existence of nationalities and regions raised various interpretations, reflected in various statutes of autonomy, even proposing a baroque definition of the Spanish State as a *nation of nations*. The preamble to the Statute of Catalonia, for example, attributes the character of a nation to it: "The Parliament of Catalonia, gathering the sentiment and will of the citizens of Catalonia, has defined Catalonia as a nation in a broad majority. The Spanish Constitution, in its second article, recognizes the national reality of Catalonia as a nationality." This did not cease to give rise to an additional controversy about whether the preambles of the regulations can be subject to control by the Constitutional Court or only its articles.

The Court, in its ruling, did not hesitate to declare that "the references in the preamble of the Statute of Catalonia to 'Catalonia as a nation' and to 'the national reality of Catalonia' lack interpretive legal efficacy." Qualified by the attempt to interpretively achieve conformity between article 5 of the Statute and the Constitution, the Court continues to affirm that said article "would be manifestly unconstitutional if it claimed for the Statute of Autonomy a foundation other than the Constitution, even if it were added to whom it dispenses." Likewise, STC 31/2010, of July 16, would rule out the attempt to support it in some alleged "historical rights of the Catalan people," of which the magistrate Casas Baamonde was speaker. The sentence received five dissenting votes, to which a concurring vote from the president (and speaker herself) was added.

More than one of the dissenting magistrates show their dissatisfaction for not having addressed more sharply that, according to the Constitution, Spain is the only nation. For example, the magistrate Conde Martín de Hijas, in the seventh epigraph of his vote, states: "if, in the aforementioned article 2, nation, nationality and region are used as different conceptual categories (which are unquestionable), it is not acceptable to impute to the aforesaid article by referring to one of the entities that differ in it ("nationality"), as it is being recognized as a reality that corresponds to another ("nation")."

Four years later, in STC 42/2014, of March 25, LF 4, of which Judge Asua Batarrita was a speaker, it will be considered obliged to clarify the scope of the reference of the Catalonian Parliament Resolution 5 / X, of 23 of January 2013, to a so-called "right to decide of the citizens of Catalonia." The Court recalls that "only the Spanish people are sovereign, and this in an exclusive and indivisible manner." Regarding the right to decide, he considers that "there is a constitutional interpretation," because "it is not proclaimed as a manifestation of a right to self-determination not recognized in the Constitution, or as an attribution of sovereignty not recognized in the same, but rather as a political aspiration that can only be reached through a process adjusted to constitutional legality."

Two years later, the Catalan Parliament seems determined to proceed, after approving resolution 1/XI, of November 9, 2015, to a solemn unilateral declaration of independence, although later its protagonists will endeavor to devalue it in the context of an already criminal process. The Court logically pronounced itself in the same manner, in STC 259/2015 of December 2, LF 3, of which Judge Ollero Tassara was the speaker. It would later be referred to by STC 114/2017, of October 17, LF 5, with the same speaker, and 124/2017, of November 8, LF 5, with a presentation by Judge Enríquez Sancho. The Court recalls, in the first of them, how on a previous occasion it considered an "interpretation in accordance" with the Constitution to be viable, but now it is impossible because the Catalan Parliament "is ruling out the use of constitutional channels (art. 168 CE) to become an 'Independent State.'" It even announced that in the future "it would not submit to the decisions made by the institutions of the Spanish State, in particular those of the Constitutional Court," and lastly, "it is pressing the 'future government' of the regional community to exclusively obey or fulfill the rules or mandates emanated from [the Catalan Parliament]."

The Promotional Role of Law

Notable importance is reached by article 9.2 CE, according to which: "It is the responsibility of the public powers to promote the conditions so that the freedom and equality of the individual and of the groups in wich they belong are real an effective; remove obstacles that prevent or hinder its fullness and facilitate de participation of all citizens in political, economic, cultural, and social life". Therefore, it raises what was characterized (Bobbio *1984*, pp. 7–27) as a promotional function of the law, which has a positive and affirmative dimension quite different from its usual repressive characterization as a coercive sanction.

In principle, nothing foreshadowed such relief. On the one hand, the article is outside the first section of the second chapter of the Spanish Constitution, which deals with "fundamental rights and public freedoms," nor was it redrawn to assign it – as in articles 14 and 30 CE – to the protection reinforced through the appeal for *amparo* before the Constitutional Court. On the other hand, its doctrinal kinship with article 2 of the Italian Constitution initially generated some suspicion: "The republic recognizes and guarantees the inviolable rights of man, whether as an individual, whether within the social formations where he develops his personality, and it demands the fulfillment of the inexcusable duties of political, economic and social solidarity," due to the fact that it had served figures of the Italian magistrature as a channel to propose an *alternative use of the law,* with an ephemeral doctrinal echo in the Spain of the 1970s.

The interpretive task was decisive in this case, especially with regard to *discrimination based on sex* (Ollero *1999*). Discrimination was interpreted as any unequal treatment without objective and reasonable grounds, rejected by Article 14 CE: "Spaniards are equal before the law, without any

discrimination on the basis of birth, race, sex, religion, opinion or any other personal or social condition or circumstance that may prevail." However, the application of nondiscrimination under the aforementioned precept had led to a surprising counterfactual conclusion: The citizens discriminated against on the basis of sex were actually widowers. When a worker died, the widow was entitled to a pension; if the deceased was a woman, the widower had to demonstrate insufficient resources.

When projecting itself, interpretively, article 9.2 on article 14 CE nevertheless generated a bypass that was fruitful in consequences. Women appeared inserted in a historically discriminated group. This alleged privilege was precisely the consequence of her effective discrimination, given her difficult access to work. When a middle-class woman was a young widower, a pitiful comment was common: The poor thing had to go to work.

From an article such as 9.2 CE, without the protection to claim *amparo*, an extensive interpretation of Article 14 would be provoked. It should be remembered that its text does not imply the creation of a closed list of cases of discrimination. This was indicated by STC 75/1983 of August 3, LF 3, of which the magistrate Escudero del Corral was speaker, regarding possible discrimination based on age. By practicing the promotional role of law, one can find in said precept an, in his opinion, "explicit interdiction of the maintenance of certain historically deeply rooted differentiations that have placed, both through the action of public powers and through social practice, sectors of the population in positions not only disadvantageous, but openly contrary to the dignity of the person recognized by art. 10 CE." It will be specified in "discrimination based on sex," delving into "the same parliamentary antecedents of art. 14" and in the fact of being "unanimously admitted by scientific doctrine" a "will to end the historical situation of inferiority in which, in the social and legal life, the female population had been placed; a situation that, in the aspect that is of interest here, translates into specific difficulties for women to access work and their promotion within it." As a consequence, in STC 166/1988, of September 26, LFs 2 and 4, of which Judge De la Vega Benayas was the speaker, the interpretation supported by a literal sense of the law, which justified the dismissal of a female worker on probation, despite having alleged that the real motive was her being pregnant, was annulled as it was considered that "it is not the legality, but the constitutional relevance of the specific case that is being prosecuted here, which is decisive."

Good proof of the peculiar situation of women in predemocratic Spain was that in the National Telephone Company of Spain (*Telefonica)*. On the one hand, customer service was reserved for young women, but – at the same time – those who got married were imposed the "attribution of a 'voluntary' character to a leave of absence that in reality was, in their case, 'compulsory', thus receiving a dowry and the power to return to active service if they became the head of the family" although – as the appellants indicate – with "return of the dowry granted when the leave of absence took place and the passing of the corresponding aptitude tests." Such a picturesque situation was soon declared unconstitutional, by STC 67/1982, of November 15, LFs 4 and 5, of which Judge Truyol Serra was a speaker. It does not stop referring to the "change experienced in the area of the supreme principles of the legal system as a result of the promulgation of the Constitution."

Not long after, in STC 7/1983, of February 14, LF 2, of which Judge Tomás y Valiente was speaker, it will be interpreted as "evident that the suspension of the employment contract 'for female personnel' by the fact of marrying constitutes discrimination on grounds of sex, since the same consequence is not derived in relation to the male personnel of the same company who contracted marriage."

Equality in the Application of the Law

This was not the only interpretive scope generated by Article 14 CE. The scope of equality of citizens *before the law* received an unexpected increase, to the point of forcing a distinction in principle between two aspects, depending on whether one contemplates the problem *in the law* or in the *application of the law*. With this, there is evidence of an overcoming of normativism of all unequal legal treatment, which presents us with the law as a system of norms. It would be of little use for the norm to have prevented unequal treatment without objective and reasonable grounds, if then each judge interprets it in their own way. The issue raised some controversy as judicial independence was considered by some at risk. This led to the interpretation that the obligatory equality of judicial decisions was reserved for the possibility of challenging them, especially by resorting to appeals for unification of doctrine. What happens, however, when the same judicial organ fails in different ways on identical matters without justifying its change of criteria?

The defenders of judicial independence achieved a new advance by getting it to be interpreted that, in the collegiate bodies, each section is considered in its case as a different judicial body. In any case, the novel principle of equality in the application of the law gave rise to an interpretive game. Among other things, the lazy idea of understanding the link to the precedent as a peculiar characteristic of Anglo-Saxon legal systems was thus questioned (Ollero, *1989*, 2005), rather than a clear demand for justice. Paradoxically, such abundant doctrine is now scarcely current, considering that the appellant in amparo should not be limited to arguing the existence of a violation of a fundamental right, but must sufficiently justify the *special constitutional relevance* of said injury.

As a background, the problem became topical when, as a result of the admission of amparo appeals, tensions between the Supreme Court and the Constitutional Court occurred, fueled by those who suggested that in Spain there was only one Supreme Court and it was not called that. This issue is now happily overcome thanks to a more sensible attitude of the protagonists and the timely help of the legislator.

The early riser STC 8/1981, of March 30, LF 6, of which Judge Tomás y Valiente was the speaker, was eventually considered a precursor, although, given the characteristics of the case, it was limited to pointing out that "the simple inequality in the rulings of various apparently equal cases in their assumptions in fact does not give nor is the right to understand the principle of equality in the application of the Law being violated, since such differences between the judgments may have their just reason for being either in the nonidentity of the proven facts or in a margin of appreciation of the judge , inseparable from its function and in which this Court could not enter."

A year later, the Court, in the STC 19/1982 of May 5, LFs 3, 4 and 6, of which the magistrate Truyol Serra was speaker, will cite four previous resolutions and will vaguely allude to the European Court of Human Rights. Given the succession of legal norms, the court observes an inevitable "tension between the temporality factor and inequality" and notes that "the different treatment is not that of events (before and after a new regulation entry into force) but of current situations, by virtue of the temporal difference of the events that produced them," alluding significantly to the "principle of the social and democratic state of law of art. 1.1, which informs a series of provisions such as the mandate of art. 9.2."

Two months later, at the STC 49/1982 of July 14, LFs 1 and 2, of which Judge Díez Picazo was the speaker, the doctrine can be considered mature, although with a negative result. It would be mentioned that "the debated problem was 'lavish in interpretations and contradictory positions' on the part of the different contentious-administrative Chambers of the Territorial Courts," before establishing that "when the organ in question considers that it should depart from its precedents must offer a sufficient and reasonable basis for this. The problem of equality in the application of the Law is different when it does not refer to a single body, but to plural bodies. For such cases, the institution that realizes the

principle of equality and through which uniformity is sought, is jurisprudence, entrusted to higher courts, because the principle of equality in the application of the law must necessarily be reconciled with the principle of independence of the bodies responsible for applying the law when they are courts."

Right to Life: An Interpretive Constitution

The interpretive debate around the right to life has focused in Spain on the criminal treatment of abortion, with a controversial charge already present in the draft Constitution; not in vain was it judged that such an aspect would have considerable relevance when its text was submitted to a referendum.

Today, article 15 CE begins by stating that "everyone has the right to life." The constituents who wanted to rule out any attempt to endorse a decriminalization of abortion feared that the allusion to the person would be interpreted as the Civil Code does, which placed the condition of such at birth. Hence, they understood, with unfounded optimism, that such risk would be avoided by substituting such a start with the German formula: "everyone has the right to life" (Ollero *2006*).

In the debate, the spokesperson for the Mixed Group (Tierno Galván *1978*, pp. 3919 and 3960) defended the term person as an expression "less committed," referring to "the inevitable jurisprudence" to later clarify its meaning, "in a Constitution that is interpretive." Shortly after, the socialist spokesman (Peces Barba *1978*, p. 3966), perhaps tired, went down in history with an unthinkable statement coming from an academic champion of human rights: "Do not fool yourselves Gentlemen. Everyone knows that the problem of law is the problem of the force behind political power and interpretation. And if there is a Constitutional Court and a pro-abortion majority, ´all` will allow an abortion law; and if there is a Constitutional Court and an anti-abortion majority, the 'person' prevents an abortion law."

With the first socialist government, the General Parliament approved an Organic Law draft to reform art. 417 bis of the Penal Code on November 30, 1983, which declared abortion not punishable in certain cases; it did not come into force [,] as it was the subject of a then existing prior appeal of unconstitutionality. The Constitutional Court therefore had to analyze whether the so-called *indications*, therapeutic (life or health of the mother), ethics (rape), and eugenic (congenital malformations of the fetus), were compatible with the protection of the life of the unborn.

The debate was the most eventful of the Tribunal's first decades, splitting in two. Hence, both the text of the speaker magistrate Arozamena Sierra and an alternative one were discussed, with the unusual double patronage of the magistrate Begué Cantón and the magistrate Gómez-Ferrer, perhaps expressive of a double approach within the magistrates who would end up forming the majority, thanks to the tiebreaking vote of President García Pelayo against six dissenting individual votes.

The text of the approved STC 53/1885, of April 11, LF 5, assumes that "it is not possible to solve" the constitutional problem addressed "without starting from a notion of life." It will be presented as "a becoming, a process that begins with gestation," rather than from conception. In its course, "a biological reality is taking corporeal and sensitively human configuration," and "ends in death." It is therefore "a continuum subjected by the effects of time to qualitative changes of a somatic and psychic nature that are reflected in the public and private legal status of the vital subject." It is noted that "gestation has generated an existentially different *tertium* from the mother, although lodged within the mother." Within these "qualitative changes in the development of the vital process," although "life is a reality from the beginning of gestation, birth has particular relevance, since it means the passage

from life housed in the womb to life housed in society." Prior to him, "the moment from which the unborn is already susceptible to independent life from the mother, that is, to acquire full human individuality, is of special significance," without it being very clear whether the latter refers to nesting or to a developing fetus that makes it capable of surviving.

Although it is doubtful that there was unanimity in this, both texts ended up accepting as good that "the objective meaning of the parliamentary debate corroborates that the *nasciturus* is protected by art. 15 of the Constitution even though it does not allow it to affirm that he is the holder of the fundamental right," which was equivalent to admitting that there are human beings who are not *people*… It would be a *legal asset*, so the protection that the Constitution provides to the *nasciturus* implies for the State, in general, two obligations: that of "refraining from interrupting or obstructing the natural process of gestation, and that of establishing a legal system for the defense of life that entails an effective protection of it and that, given the nature of fundamental of life, also include, as a last guarantee, the penal norms." In STC 53/1985, LFs 7 and 11, it would end up reaching relative agreement, at the time of the vote, on admitting decriminalization when any of the above-mentioned *indications* were given.

The statement that "constitutional requirements would not be unfulfilled if the legislator decided to exclude the pregnant woman from among the criminally responsible subjects" did not generate discrepancies. In the same sentence – LFs 11 and 14 – it also seems to find an echo, in some dissenting vote, the possible objection –[]or "clause" [] – of conscience of the health personnel, although not as clearly as in the sentence: "to the right to conscientious objection, which exists and can be exercised regardless of whether or not such regulation has been issued. Conscientious objection is part of the content of the fundamental right to ideological and religious freedom recognized in art. 16.1 of the Constitution and, as this Court has indicated on various occasions, the Constitution is directly applicable, specially when regarding matters of fundamental rights."

The total rupture occurs at the height of the 12th foundation of the sentence, since the criminal treatment of therapeutic and eugenic abortions is considered unconstitutional, because the law does not contemplate certain guarantees: medical specialty of whoever determines its need, conditions of the place where it will be executed, etc. The response of the dissident sextet was coincidental: The function entrusted to the Court would have been altered, which would be to establish whether or not the precept examined is unconstitutional – []in terms of *negative legislator* (Kelsen *1945*) [] – to become positive legislator or "third chamber," by declaring a presumed unconstitutionality by omission.

The socialist government of Felipe González assumed the suggested modifications in a new bill, and soon, with Organic Law 9/1985, approved on July 5, the first decriminalization of abortion came into force in Spain. Twenty-five years later, the socialist government of Rodríguez Zapatero, by Organic Law 2/2010 on sexual and reproductive health and the voluntary interruption of pregnancy, of March 30, decisively changes the situation by opting for a *deadline law*, in which it ignored a central aspect of STC 53/1985, LF 9: The dilemma raised could not "be seen only from the perspective of women's rights or from the protection of the life of the *nasciturus*. Neither the latter can prevail unconditionally over the former, nor can the rights of women have absolute primacy over the life of the unborn, given that such prevalence supposes the disappearance, in any case, of a good that is not only constitutionally protected, but embodies a value central of the constitutional order."

In effect, the law still in force today prevails; during the legally established period, a right to dispose of the life of the unborn is unconfessedly recognized, without the need for any justification. The Popular Party, always cautious when provoking debate on the matter, included in its electoral program the suppression of this system of *deadlines*, who had appealed to the Constitutional Court, to return to

the *indications*. Despite President Rajoy having an absolute majority, he ruled out in September 2014 addressing the promised reform, when it had already been defended by the Minister of Justice, Ruiz Gallardón, who did not hesitate to resign. The appeal presented to the Court is still pending, 10 years later, of sentence.

Interpretive Creativity: Positive Laicity

The main problem addressed in Article 16 CE is deciding whether Spain is a *secular state* (Ollero *2009*, *2010*). Although the terms laicity and secularism do not appear in the constitutional text, the third section of the said article resolves it laterally, starting by stating that "no confession will have a state character"; with this, at least, nondenominationalism is beyond all doubt. With the abandonment of this feature, present in most of the Spanish constitutional texts since 1812, one of the complicated legacies of Francoism seems to be resolved. It is still significant that the first sentence of the Constitutional Court, 1/1981, of January 26, of which the magistrate Arozamena Sierra was speaker, rejects all automatism in the recognition of civil effects to the canonical sentences of marital separation.

This has not turned the issue into a peaceful one, by retaining secular attempts, which – converted into another confession – seek, in the interests of presumed neutrality, to establish themselves as the only one compatible with the Constitution. One of these attempts proposes that the article, instead of turning around ideological and religious freedom, do so around freedom of conscience; the result would diminish the prominence of religious freedom, turned into its mere by-product, easily reducible to the privacy of the home. More than one seem to detect some progress in moving from religion as the opium of the people, patented by Marxism, to a religion as the tobacco of the people: You decide if you want to smoke, but only at your own home. The first epigraph of the article discussed goes clearly for other courses: "Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law."

Religious freedom is thus initially equated with ideological freedom, easily identifiable with freedom of conscience. For the rest, any attempt at a merely individual approach is discarded as the relevance of the *communities* is also recognized. The secular nature of the State does not oblige the pluralistic society to be secular, in which all the confessions that citizens – most of the laity – consider convenient will coexist. This is bad news then for secularism. The only limit would be public order, which refers to the fundamental core of human rights. Everyone can pray to whom and where they want, but a religious club that celebrates human sacrifices on Wednesdays would be unconstitutional.

Undoubtedly, all of this will require some learning, which should not be considered superfluous, as the most prestigious current philosopher of politics (Habermas *2005*) has pointed out, to the dismay of a few. Part of that learning would consist, to begin with, in assuming the second heading – "No one may be forced to testify about their ideology, religion or beliefs" – thus renouncing any inquisitorial attempt, which leads to disqualify the arguments of a subject based, not on their objective content, but on their ideological or religious convictions.

The third section and its consequences aroused the greatest reluctance, as it led the Court to give way to a *positive laicity*, in STC 46/2001, of February 15, LF 4, of which the magistrate García Manzano was speaker. It cites STC 177/1996, page 6, of November 11, of which the judge Viver Pi-Sunyer was speaker. It specifies that with this, "a mandate of cooperation is imposed on the public powers in

relation to those that, being already registered in the Registry, due to their scope and number of believers, have achieved notorious roots in Spain."

The use of the term positive laicity was somewhat surprising, as it protected the so-called Unification Church, more popularly known as the Moon sect, which had been denied its registration in the register of religious entities after the unfavorable treatment received in the European Parliament. For the Court, "the content of the right to religious freedom is not limited to the protection against external interference of a sphere of individual or collective freedom that allows citizens to act in accordance with the creed they profess." It is also worth "appreciating an external dimension of religious freedom that translates into the possibility of exercising, immune to any coercion from the public powers, of those activities that constitute manifestations or expressions of the religious phenomenon." Regarding them, "A positive attitude is required from the public powers, from a perspective that could be called welfare or benefit." Consequently "art. 16.3 of the Constitution, after formulating a declaration of neutrality (...) considers the religious component perceptible in Spanish society and orders the public powers to maintain the consequent relations of cooperation with the Catholic Church and other confessions, thus introducing an idea of non-denominational or positive laicity that prohibits any type of confusion between religious and state purposes."

The eagerness to *separation*, which characterizes secularism, is thus displaced in the Spanish constitutional text by a mandate of *cooperation* and an express allusion to the Catholic Church, included in full parliamentary debate with the unexpected support of the communist spokesman. This bias toward a promotional function and the double citation of article 9.2 CE has been misunderstood as if it were called to favor a growth of minority creeds, claiming more *religious equality*. This, which would be incompatible with required state neutrality, would be as out of place in a pluralistic society as any attempt to force *ideological equality*. This positive performance task is not marked by the term equality, which does not exist in the text, but rather by another one present: "consequently."

Indeed, in the third section, Article 16 CE is completed with the statement that "The public powers will take into account the religious beliefs of Spanish society and will maintain the consequent cooperative relations with the Catholic Church and other confessions." This makes the intensity of cooperation depend on the free choice of citizens. This is how the public powers also act in other cases, and when it comes to allocating public funds to political parties, in accordance with the number of seats won electorally, or supporting cultural or union initiatives.

The casuistry of problems raised is remarkable; only the most significant ones will be referenced. Among them, the early attempt by the socialist parliamentary group to challenge the regime of access to certain military corps of the Army stands out, among them some as peculiar as the brass bands or the Catholic military chaplains. The Court decides negatively in the brief ruling STC 24/1982, of May 13, LFs 2 to 4, of which the magistrate Díez Picazo was speaker. It is recalled that "the contested law is limited to regulating the promotions and the time of effectiveness required in each job in order to be promoted," without questioning the existence of said bodies. Nor does it seem "easy to admit the figure of unconstitutionality by omission," raised by the appellant deputies because they understood that "the legislator should have taken advantage of the opportunity provided by Law 48/1981 to restructure the provision of religious assistance to the Armed Forces." Such unconstitutionality would only exist "when the Constitution imposes on the legislator the need to dictate constitutional development norms" and does not develop them, but this is not the case.

This does not harm freedom but rather offers "the possibility of making effective the right to worship of individuals and communities." Equality is not damaged either, "because by the mere fact of the provision in favor of Catholics, religious assistance to members of other confessions, in the appropriate measure and proportion, is not excluded."

Without leaving the military, the parade held in Valencian landed on the occasion of the fifth centenary of the dedication of the Virgen de los Desamparados also raised problems. A sergeant refused to participate for ideological reasons, leading to him being sanctioned. The Court considers – in the STC 177/1996, of November 11, LF 10, of which the magistrate Viver Pi-Sunyer was a speaker – that these were not "acts of a religious nature with military participation, but military acts destined for the celebration, by military personnel, of a religious holiday," a matter on which he made no reproach. It points out, however, that "even when it is considered that the actor's participation in the military parade was due to reasons of institutional representation of the Armed Forces in a religious act, the principle of voluntary attendance should have been respected."

The forced neutrality of public institutions led to similar resolutions, although not always easily predictable. This had also happened in Valencian lands when the Cloister of the University of Valencia decided to remove the image of the *Sedes Sapientiae,* which had identified it for centuries, from the seal of the institution, a decision subsequently rejected by contentious-administrative chambers of the former Territorial Court and the Supreme Court. The procedural objections regarding the content of the record were considered by the Court insufficient. STC 130/1991, of June 6, of which the magistrate Tomás y Valiente was the speaker, makes it clear that "the University of Valencia in the legitimate exercise of its fundamental right of autonomy can validly agree by the established legal procedure what is appropriate concerning the name and characteristics of its representative symbols."

Similarly, but more complicated, seemed the appeal filed against the Statutes of the Illustrious Bar Association of Seville *(Ilustre Colegio de Abogados de Sevilla)*, whose article 2 claimed to be "non-denominational," adding: "although by secular tradition it has the Holly Virgin Mary as Patron, in the Mystery of her Immaculate Conception." One of its members considered her religious freedom violated. The Court, in STC 34/2011, of March 28, LFs 4 to 6, of which Judge Hernando Santiago was speaker, does not hide the decisive influence of the judgment of the European Court of Human Rights *Lautsi v. Italy*, of March 18, 2011, which he repeatedly cites, referring also to the already commented sentence on the Valencian university, which begins by stating that the Bar Association, as a public institution, "is constitutionally bound to religious neutrality."

It then expands on the meaning and scope of identity symbols, stating that "when a religion is the majority in a society, its symbols share its political and cultural history, which means that not a few representative elements of territorial entities, corporations and public institutions have a religious connotation," but he also considers it necessary to "no to take so much into consideration the origin of the sign or symbol as its perception in the present time, since in a society in which an evident process of secularization has taken place it is unquestionable that many religious symbols have become (…) predominantly cultural, although this does not exclude that its religious meaning continues to operate for believers." It recognizes that the lawyer's religious freedom "would be impaired if, by virtue of the collegiate norm, he was compelled to participate in eventual acts honouring the Patron," but there is no indication whatsoever about it. In any case, the decisive fact will end up being that the "possibility for the corporation to assume signs of identity devoid of religious meaning is incompatible with art. 16 CE, whether originally belonging to one or another confession or none, is something that only the corporation is responsible for deciding democratically."

In the first 5 years of the Court's activity, there was also no lack of judgments related to the educational field, such as SSTC 5/1981, of February 13, of which the magistrate Rubio Llorente or the STC 47/1985 of March 27 was a speaker, of which the magistrate Tomás y Valiente was speaker. Schools with their own ideology and supported with public funds also deserve particular attention. Other more numerous related to religious teachers were also later followed, from STC 47/1990, of March 20, of which the magistrate Leguina Villa was a speaker, until a dozen in 2007.

Little Consciousness of Conscientious Objection

In the parliamentary debate in the Senate on this Article 16 EC, amendments were presented that proposed a fourth paragraph to address the right to conscientious objection. For example, amendment no. 17, presented by the Grupo Progresistas y Socialistas Independientes, proposed as content: "The right to conscientious objection is guaranteed, which will be exercised in each case, in accordance with the provisions of the law." The justification aims to "systematically occupy its rightful place," avoiding reducing it to a mere exemption from military service. The amendment was withdrawn before the vote. Another independent senator (Xirinacs *1978* pp. 2964–2965) was more concise in amendment no. 452: "the right to conscientious objection is recognized," and in the debate he insists that it is "plain conscientious objection" and not only to military service, complaining that "there is little conscience of conscientious"; the amendment only got eight votes...

The attempt would be more successful later, the approval of the European Charter of Fundamental Rights, whose article 10, on "Freedom of thought, conscience and religion," stated in its paragraph 1: "Everyone has the right to freedom of thought, of conscience and religion. This right implies the freedom to change one's religion or belief, as well as the freedom to express one's religion or beliefs individually or collectively, in public or in private, through worship, teaching, practices and observance of rites." Paragraph 2 would complete: "The right to conscientious objection is recognized in accordance with the national laws that regulate its exercise."

The Spanish constitutional text only contains the objection raised regarding military service, perhaps more to give constitutional status to the eventual duty of the objector to comply with a substitute social service, than to recognize it as a right, since what is seen as such is rather the right to defend Spain. Indeed, Article 30 EC establishes: "1. Citizens have the right and the duty to defend Spain. 2. The law shall determine the military obligations of Spaniards and shall regulate, with the proper safeguards, conscientious objection as well as other grounds for exemption from compulsory military service; it may also, when appropriate, impose a form of social service in lieu thereof."

This explains its forced connection with the constitutional text: It remains outside the first section of the fourth chapter, although it is recovered in article 53.2 EC as a possible object of appeal. The limited success of the aforementioned amendments as they passed through the Senate can be explained because, after the breakdown of consensus in the debate in Congress on Article 27 on education, which was difficult to rectify, the two major parties agreed not to reopen debate in the Senate on the aforementioned chapter on rights and freedoms.

With these precedents, the treatment of the objection has been complicated and contradictory. The aforementioned sentence made it clear that it could be argued in relation to abortion, but it has hardly been expanded, except when it has been partially recognized by a pharmacist regarding the obligation to have the so-called morning-after pill in his office, although not to his refusal to do the same with condoms. All this was in such problematic terms that the speaker of this STC145/2015, of June 25 – Judge Ollero Tassara – ended up presenting at the same time a concurring vote illustrating some personal discrepancy. Previously, STC 154/2002, of July 18, had been striking, of which the magistrate Cachón Villar was the rapporteur, who acquitted some Jehovah's Witness parents, convicted of homicide in the form of commission by omission, by refusing to authorize a blood transfusion to a young son, resulting in death. The interpretation of this case revolved around respect for religious freedom, without presenting it as an exceptional recognition of a right to object.

Marriage: A Forest Interpretation

Article 32.1 EC recognizes that "Men and women have the right to marry with full legal equality," deferring to article 39.1 their consideration of the family, with respect to which the "public powers ensure social, economic and legal protection." This separate framing has helped to interpret the former in a novel key. One has already alluded to the risk that the so-called *interpretive* judgments, or those *conforming* to the Constitution, pose of going beyond their possible extensive nature to endorse a resolution clearly contrary to the norm.

It was already highlighted regarding article 32.1 CE in the Appointments Commission of the Congress of Deputies, when one of the proposed candidates for magistrate of the Constitutional Court (Ollero *2012*, pp. 10 and 14) was asked if he would sign a petition to reform the aforementioned article so that the allusion to "man and woman" was replaced by "everyone" has the right to marry. The answer was that the problem was not specified as to whether there would be an interpretation that would allow homosexual marriages, but whether to make it possible a reform of the constitutional text would be necessary or not.

When the matter was addressed by the plenary session of the Court, a few months later, it garnered three particular dissenting votes and another concurrent but quiet dissenting. The majority, rather than opting for an extensive interpretation, chose to launch a new interpretation concept. By this, one does not mean their metaphorical expressions, in which they depart from the usual desire of legal dogmatics, to circulate through hydrological routes (sources, loopholes, etc.), but STC 198/2012 of November 6, LF 9, and some subsequent references in LFs 7 and 8, of which the magistrate Pérez Tremps opts, with a confessed Canadian influence, for the forestry: The Constitution becomes a "living tree."

Metaphors aside, a very new art of presumed interpretation is subscribed, to which the nickname of *evolutionary* is assigned and which raises a first problem: At the foot of the living tree, an ecological burial has been given to a typical character of the Constitution: its *rigidity*. This, which does not ignore the *historicity* of the law at all, but – aware of it – apparently wastes time in dedicating all its title X CE to its possible *reforms*, which would avoid any gap with respect to social evolution. This denies any presence of *originalism*, repeatedly used by the sentence as a defensive argument.

Ignoring part of the Constitution is not a bold way to interpret it; it supposes proceeding to a mutation for which no constitutional magistrate is legitimized. As if that were not enough, the text of the sentence inevitably ends up disjointed as it is frequently forced to defend one thing and its opposite. Marriage as a *constitutional guarantee* demands respect because of nature, so that, if it is manipulated, it would end up being unintelligible to the average citizen; but, apparently, for marriage to expand from heterosexual to homosexual, in a country as avant-garde as Spain, far from distorting it, it would be a mere perfectly predictable trifle. This is an affirmation that has greater merit after the insisting sentence, with good reason, that citizens who subscribed to a homosexual orientation have been enduring cruel discrimination for centuries. Perhaps what has been intended is then to give way to a deserved amend – but what more eloquent than a constitutional reform! It was perhaps feared that the regulated *referendum* would not be positive, an unthinkable forecast, given the polls that the sentence carefully made its own. Perhaps it must be concluded that, once again, the protagonists of case deserved better treatment.

It may serve as a mitigating factor that the European landscape was not very encouraging to take risks. Although the sentence considers a common *legal culture*, the Charter of Fundamental Rights of the

European Union itself recognizes the lack of ability to propose a model of marriage and common family within its scope. Its article 9 serves as a symptom: “Right to marry and right to found a family. The right to marry and the right to found a family are guaranteed according to the national laws that regulate their exercise.”

Of course, marriage and family may have nothing to do with legal culture; perhaps that affinity is an exclusive feature of Islam. The European Court of Human Rights itself also opted for sincerity. When the Rome Convention is signed, any allusion to marriage refers to heterosexual. Later, European multiculture is so rich that it cannot be prevented from having States that prefer not to identify homosexual orientation with marriage, nor is it reasonable to impose them to do so. In its judgment on the *Schalk and Kopf v. Austria* case, dated June 24, 2010, § 55, it certifies that in “the 1950s, marriage was obviously understood in the traditional sense of union between two persons of different sex.” Everything said is faithfully documented in the evolving sentence.

Factical Unconstitutionality

The design of the government of the Judiciary became a key element in the legal breakdown implicit in the Spanish political transition. It is specified in the Title VI of the Constitution, which deals with “The Judicial Power,” made up of 13 articles. In its article 122.3, the General Council of the Judicial Power, inspired by the Italian model, separated from the Executive Power everything related to the selection and promotion of judges: “The General Council of the Judiciary shall consist of the President of the Supreme Court, who shall preside it, and of twenty members appointed by the King for a five-year term, amongst whom shall be twelve judges and magistrates of all judicial categories, under the terms established by the organic law; four nominated by the Congress of Deputies and four by the Senate, elected in both cases by three-fifths of their members from amongst lawyers and other jurists of acknowledged competence and over fifteen years of professional experience.”

It was made up of prestigious jurists, 4 elected with a large quorum by Congress, [as] many others by the Senate, and the remaining 12 – the main novelty – “between judges and magistrates.” It was thus interpreted in the constituent debate that the majority of its members would be elected among themselves by the same judges, as an expression of self-government.

Its independence was marked, in article 127 CE, thanks to its distance from political parties and unions and the existence of professional judicial associations: “1. Judges and Magistrates, as well as Public Prosecutors, whilst actively in office, may not hold other public office nor belong to political parties or trade unions. The law shall lay down the system and methods of professional association for Judges, Magistrates and Prosecutors. 2. The law shall establish the system of incompatibilities for members of the Judiciary, which must ensure their total independence.”

The subsequent attempt to include all of them in a single association was unsuccessful; foreshadowing a predominance of what would end up being called the Professional Association of the Judiciary, considered conservative, was diagnosed. The critical judicial wing had already been active during the Franco regime as “Democratic Justice,” in the vein of the Italian Democratic Magistracy and, applying in more than one case, of the consequent *alternative use of the law* (Ollero *1982*).

Three years after the electoral change carried out in 1982 by the socialist party, a profound reform of the Organic Law of the Judicial Power is addressed, to develop the provisions set out in the constitutional text. The passage of the project through the Congress of Deputies was relatively peaceful, accepting the predominant judicial self-government. The Socialist Group even designed the

electoral ballots, showing the only concern that the Council was not monopolized by senior and veteran magistrates. Unexpectedly, however, they went on to support in the Senate an amendment by a minority party, eliminating self-government: The Congress went on to elect 10 members and the Senate another 10, although 12 of them were chosen *among* the judges, but not *by* them. The foreseeable result led to the overvaluing of the presence of the now so-called "Judges for Democracy" given their more limited members.

Another aspect of notable incidence, similar to that later experienced in Poland, but without causing any European rejection, was to include judges in an anticipation of the retirement of civil servants, which went from 70 years to 65, thus eliminating those most linked to the Franco regime. Later, the ceiling would be placed at 68 years and from 2015 again at 70, even with the possibility, [ ] if they wish, to continue sentencing until 72.

The suppression of the election by the judges themselves of the members who were to govern them was much discussed, and it was appealed to the Constitutional Court. It was argued that putting the rule of the judges in the hands of the partitocracy would generate its immediate politicization. In fact, since then, hand in hand with mental laziness, every member of the Council is seen by public opinion, with the help of the media, as if he were wearing a cockade with the logo of the party that proposed him on his lapel, regardless of the tenor of his vows.

Since immemorial time, the Civil Code requires the judge to apply the rules in accordance with social reality. It does not seem excessive that the constitutional magistrates also do the same, but they ran into a problem. The Court's doctrine, especially in appeals for *amparo*, indicates that its function is to correct the violations of rights already consummated and not to foresee possible negative consequences a priori. Nevertheless, in the case of an unconstitutionality appeal against a law, on which nothing less than the objective independence of all members of the Judiciary depended, it had more than enough scope to diagnose its now-called *special constitutional relevance*.

The Court, in STC 108/1986, of July 29, LF 12, of which the magistrate Latorre Segura was speaker, opted for a blind formalism in the face of a well-known social reality. The Court recognizes as convenient "to ensure that the composition of the Council reflects the pluralism that exists within society and, especially, within the Judicial Power. That this goal is more easily achieved by attributing to the Judges and Magistrates themselves the power to elect twelve of the members of the General Council of Judiciary is something that offers little doubt." Additionally, it is taken for granted that "there is a risk of frustrating the stated purpose of the constitutional norm if the Chambers, when making their proposals, forget the objective pursued and, acting with admissible criteria in other areas, but not in this. They only attend to the division of forces existing within their own bosom and distribute the positions to be filled among the different parties in proportion to their parliamentary strength. The logic of the Party State encourages actions of this kind, but that same logic forces certain spheres of power to be kept aside from the struggle of parties and among them, and notably, the Judiciary. The existence and even the probability of this risk, created by a precept that makes possible, although not necessary, an action contrary to the spirit of the constitutional norm, seems to advise its replacement, but it is not a sufficient basis to declare its invalidity."

In other words, if *in fact* this ends up happening, of which it is difficult to doubt, one would be facing a *factual unconstitutionality*; however, as this is possible but not necessary, it will be necessary to support a system that, as has been empirically proven, irrevocably damages the objective independence of the board members.

What Else Can Happen? Unconstitutionality of the Appointment of the Magistrates of the Constitutional Court

A formalistic interpretation of a constitutional precept leaves in the hands of the partitocracy, closely linked – positively or negatively – to the executive by an electoral law with closed lists in Congress. The matter is not trivial, but to this – as also the result of stubborn experience – it must be added that that same partitocracy has acted repeatedly in such a way that it turns duties emanating from the Constitution into their own rights to exercise – naming members of the Council or magistrates of the Constitutional Court – when it is politically more favorable and not within the deadlines clearly established by the Constitution itself. Every 5 years, as has been seen, regarding the Council, one can see the desire of the constituents that does not coincide with the 4 years of foreseeable duration in each legislature. As for the Constitutional Court, the text of article 159.3 is clear: "The members of the Constitutional Court shall be appointed for a period of nine years and shall be renewed by thirds every three years," again outside the 4 years of each legislature. As a consequence, the appointments end up being delayed, as they require an agreement between the two major parties.

As the Spanish Saying goes, "to great evils great remedies," the two great parties finally reached an agreement, but not to carry out the amendment and meet the constitutional deadlines, but rather to bypass the Constitution when it comes to appointing magistrates of the Constitutional Court. The sleight of hand is great; instead of committing to fulfill their constitutional duties avoiding delays, they take for granted that there will be delays and impose a legal reform on May 24, 2017, which will not be appealed. As a result, the Article 16.5 of the Organic Law of the Constitutional Court goes on to establish that "if there is a delay in the renewal by thirds of the Magistrates, the newly appointed will have deducted from their term the delayed time in the naming."

The "interpretation" adapted by legislative means is not innocent. As it was promoted by the two major parties, no appeal of unconstitutionality was raised, with which a new factual unconstitutionality arose that also persists. The last magistrates elected by the Senate, with 3 years of delay, had their constitutional term [ ] reduced from 9 to 6 years; their predecessors reached 12 years. Obviously, this ends up influencing who becomes president of the institution, which, given the equal composition of the members of the Court, carries with it a tiebreaking vote in the event of a tie. The degradation produced is more evident in terms of independence if one recalls that in the first composition of the Court it was taken for granted that the ruling party (then UCD) had decided that the presidency would be held by the magistrate Aurelio Menéndez, but the first magistrates of the institution exercised their independence by voting as president for magistrate García Pelayo. There is no evidence that anything similar has happened again.

Cross-References

Constitution, Conscientious Objection, Constitutional Court, Equality and Law Application, Interpretive Judgments, Judiciary, Legal Interpretation, Marriage, Nation, Positive Laicity, Promotional Role of Law, Right to Life

References

Bobbio, Norberto. 1984. La funzione promozionale del diritto rivisitata. *Sociología del diritto* 1984 (3).

Habermas, Jürgen. 2005. *Zwischen Naturalismus und Religion*. Suhrkamp: Philosophische Aufsätze Frankfurt am Main.

Kelsen, Hans. 1945. *General Theory of Law and State*. Cambridge MA: Harvard University Press.

Ollero, Andrés 1982. Poder Judicial y transición democrática en España "Sociología y Psicología Jurídicas" (Colegio Abogados Barcelona) 1982 (9) pp. 7–42.

—— 1989 y 2005. Igualdad en la aplicación de la ley y precedente judicial Madrid, Centro de Estudios Constitucionales (Cuadernos y Debates n° 19 y Cuadernos y debates n° 163.

—— 1996 y 2006. ¿Tiene razón el derecho? Entre método científico y voluntad política. Madrid, Congreso de los Diputados.

—— 1999. Discriminación por razón de sexo. Valores, principios y normas en la jurisprudencia constitucional española Madrid, Centro de Estudios Políticos y Constitucionales.

——— 2006. Bioderecho. Entre la vida y la muerte Cizur Menor Thomson-Aranzadi.

——— 2009. Un Estado laico. La libertad religiosa en perspectiva constitucional Cizur Menor, Arazandi-Thomson-Reuters.

——— 2010. Laicidad y laicismo México: Universidad Nacional Autónoma de México.

——— 2012. Cortes. Diario de sesiones del Congreso de los Diputados. X Legislatura. Comisiones, núm. 144, Consultiva de Nombramientos. Sesión núm. 4 (extraordinaria), lunes 9 de julio.

Peces Barba, Gregorio 1978. Cortes. Congreso de los Diputados. Diario de Sesiones. Sesión Plenaria núm. 34, celebrada el jueves 6 de julio.

Tierno Galván, Enrique 1978. Cortes. Congreso de los Diputados. Diario de Sesiones. Sesión Plenaria núm. 34, celebrada el jueves 6 de julio.

Xirinacs i Damians, Lluís Maria 1978. Cortes. Diario de sesiones del Senado, Sesión Plenaria núm. 33, martes 26 de septiembre.

Essential Reading

La Constitución española. 1980. *Trabajos Parlamentarios* Madrid: Cortes Generales, 4 volúmenes.

Dworkin, Ronald. 1978. *Taking Rights Seriously*. Cambridge MA: Harvard University Press.

Revorio, Díaz, and Francisco Javier. 2001. *Las sentencias interpretativas del Tribunal Constitucional: significado, tipología, efectos y legitimidad: análisis especial de las sentencias aditivas*. Valladolid: Lex Nova.

García de Enterría, Eduardo 2006. *La Constitución como norma jurídica y el Tribunal Constitucional* Madrid: Civitas, (4ª edición).

Guastini, Riccardo 2009. *La interpretación de la Constitución en Interpretación y razonamiento jurídico*, Lima: Ara Editores, vol. II, pp. 21–67.

Holoubek, Michael, Andrea Martin, and Stephan Schwarzer. 2010. *Die Zukunft der Verfassung- Der Verfassung der Zukunft?* Wien: Springer.

Julios-Campuzano, Alfonso 2019. *Constitucionalismo. Un modelo jurídico para la sociedad global* Cizur Menor: Thomson-Reuters-Aranzadi.

Kaufmann, Arthur 2002. *Was heißt "Wesensgehalt" der Grundrechte? Überlegungen zu Artikel 19 Absatz 2 Grundgesetz*, in: Schünemann/Müller/Philipps (Hrsg.), *Das Menschenbild im Wandel der Grundrechte*, Berlin: Duncker & Humblot.

Martinico, Giuseppe 2008. *L'integrazione silente: la funzione interpretativa della Corte di giustizia e il Diritto costituzionale europeo* Napoli, Jovene.

Navarro Valls 1997. Rafael y Martínez Torrón, Javier *Las objeciones de conciencia en el derecho español y comparado* Madrid: McGraw Hill.

Rawls, John. 1993. *Political liberalism*. New York: Columbia University Press.

Troncoso Reigada, Antonio. 2012. *Interpretazione costituzionale. Una riflessione*. Padova: CEDAM.