

The Normative Technique In A Constitutional State (The Principle Of Legal Certainty)

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The “normative technique”, is a social science which provides a method of elaborating legal rules, in particular general laws and administrative provisions. It is profoundly intertwined with Legal Certainty, one of the most important General Legal Principles. The principle of legal certainty is fundamental in a state where the rule of law is upheld and respected, as a submission to legal rules known beforehand by everybody that enables people acting in good faith to seek remedy and in turn strengthens social harmony.

The normative technique, as well as governing the means of elaborating legal rules, must remain inextricably linked with the fundamental law making process. Form and substance go hand in hand. If one concentrates only on procedural aspects or only on the substance, we would run the risk of arriving at legal solutions lacking in logic or consistency. Aristotle’s ancient teaching on the importance of balancing form and substance still therefore has great relevance today.

The principle of legality, coupled with the separation of powers and the acknowledgement of individual rights constitutes the fundamentals of a constitutional state. Indeed, the principle of legality is an expression of the will of the people, qualified by reason in accordance with the principles of justice. It is for this very reason that section 9 of the Spanish Constitution of 1978 states that public powers and citizens are bound by the Constitution and law. Section 103.1 provides that Public Administrations are subject to the Law. This should always be borne in mind otherwise we may end up falling into a situation where we enshrine the general will of the people at the expense of the fundamental human rights of individuals.

In a state where the constitution is upheld, laws are made to be applied. Each law must be clear as to its heading, its purpose, its impact and those whom it affects. They must be as complete, precise and concise as possible. Each law must be

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worded consistently according to the fundamental tenets of the law. That is to say, they must observe, insofar as possible the patterns, the rules characteristic of the best normative technique. And the best normative technique is that in which the principle of legal certainty and its corollary, good faith and legitimate trust among others flourishes.

The application of the normative technique is an art that requires great skill. The result must be fully consistent with the principle of a constitutional state, including legal certainty as enshrined by Section 9.3 of the Spanish Constitution.

I was recently asked whether a regulation of an Autonomous State adhered to the general principles of the Spanish legal system. Having looked over its sections, I proceeded to the Rule's final part, where the legal certainty principle is often contravened. When reading the transitory provisions, I realised that the rule had indeed left out a group of institutions that had assumed important legal roles and this had seriously undermined the whole principle of legal certainty. This serves to illustrate how the principle of legal certainty can be undermined simply by such things as the incorrect wording of the transitory provisions of a rule, that so many times gives in to defencelessness situations.

Most experts would say that the practise of the normative technique is substantially different from parliamentary and administrative law. It differs from parliamentary law because the normative technique deals exclusively with elaborating rules with legal force, and from administrative law because it only deals with the procedure for elaboration of general administrative rules. If I am right in all that I have said, the normative technique must be studied within the framework of the Constitution and its guiding principles. That being so, it is clear that the constitutional framework and the general principle of legal certainty, laid down by Section 9.3 of the Constitution form an essential part of the normative technique.

The normative technique has, as its prime objective, the establishment of the best possible procedures for the elaboration of the law in its various forms in accordance with the precepts of the social and democratic rights enshrined in our Constitution. Therefore, the criteria for the best preservation of social harmony is contingent on a systematic and rigorous procedure in the making of rules including codification, structure, language and the clear division of sections.

It is true that in many countries, among them Spain, the so-called guidelines of normative technique lack legal force; they do not in themselves have legal force. They are rather recommendations and suggestions that the executive settle for—a complete and precisely drafted set of laws. Fernando Santaolalla, an expert in this field, reminds us that the current guidelines dating back to 2005, follow the

structure of the earliest examples of such rules: the guidelines of the Austrian Chancellery of 1979, in which such matters as title and promulgation clauses, the division of clauses, use of quotations, remit, amendments, suspension, the repeal of clauses, and additional or transitory provisions of the rules, are covered. All of the above are crucial to the preservation of the doctrine of legal certainty. Laws, for example, where the derogation provision is not clear, clearly undermine the principle of legal certainty principle.

When it is a question of defining the purpose of the normative technique, a distinction should be made between the technique and the concept of normative evaluation. Certainly, there are those who do distinguish between the two whilst there are others who believe, quite reasonably, that normative evaluation is a part of a whole (the normative technique). After all, are matters regarding efficacy, legitimacy, social projection and economic efficiency not intimately linked to the normative technique?

Next, I shall try to link the normative technique with the doctrine of legal certainty in a way that places the constitution at the heart of this matter. We could then question, for example, to what extent an act could be repealed on the grounds of its contravention of the principle of legal certainty through a flawed normative technique. In other words, would it be possible for a provision with legal force, which violates legal certainty, to be declared unconstitutional by the Court on account of its flawed drafting?

Evidently, the answer to this question can only be affirmative. Indeed, in the same way that acts which contravene the remedy of injunctions against arbitrary acts can be declared unconstitutional, so too can acts which contravene the principle of legal certainty, because both legal principles are specifically recognised by our Constitution. The latter could happen, for example, should an Act fail to contain precise and clear transitory provisions. The problem, however, is that the legal fraternity seems reluctant to accept such an approach at present. This may be because they see the normative technique as no more than a set of commendable guidelines on the best way of elaborating laws, and see any failure to apply the guidelines as falling short of constituting a constitutional breach although, as I have said, violation of the principle of legal certainty reveals a very obvious constitutional defect.

Therefore, a first consideration must be this: that the rules that govern the normative technique must be given a higher status than simple or mere technical guidelines and become legally binding rules, with sanctions for non-compliance. Starting from this premise then, the nature of the normative technique will surely

acquire new dimensions facilitating the link between the technique to the demands of legal certainty and protection.

A judgement of the Constitutional Court of March 15 1990 has provided case law precedent to the effect that "the legislative draftsman must aim for clarity and not confusion. It is important that both the courts and the general population know exactly what is expected of them by any given act. It must provide certainty as to what the law in question is, and must not lead to confusion or ambiguity among legal rules."

The judgement of the Spanish Constitutional Court already referred to extracts the constitutional content of the legal certainty principle: that the courts and the general population must be able to determine what is expected of them from the law itself. In the field of Administrative Law, for example, one would say a necessary part of legal certainty is the so-called principle of legitimate expectations. It is a European Union principle by which a Public Administration cannot modify its decisions unilaterally without displaying a clear and precise justification for it. Only exceptionally, therefore, can a Public Administration change its *modus operandi*. It will normally follow precedent and public policy and act objectively, impartially and in a manner consistent with the public interest.

The legal certainty principle demands that legal rules must be clear so that citizens know what to abide by. When there is deliberate ambiguity, vagueness or when the final part of an act includes provisions which should have been included in the preliminary title or preamble, the legal certainty principle is weakened, when it is precisely that which gives strength to the Rule of Law in each country and in each legal system.

In Spain we also have to consider a further complicating factor, namely the plurality of law making bodies borne of the 1978 Constitution's decentralization of government. Now we have numerous Parliaments and Governments and Administrations which legislate and make administrative regulations. Therefore, the centres of normative production and their legal rules have multiplied. There are also different grades and levels of regulation coexisting and governing the same matter and depending on the powers that each one has, regulations and authorities can often have a shared or concurrent jurisdiction.

In this context, we should also bear in mind that political rationality dominates legal and normative rationality and that often Law is reduced to a meagre form, a mere set of procedural steps and little more. And in this way, we arrive at a phenomenon surprisingly frequent today: the alternative use of Law, that, for the purposes of our discussion, we could call the alternative use of the normative

technique. That is to say, rationality and good legal sense dictate that the rules for the elaboration of laws should serve the authorities. This explains why the approach to the use of the normative technique, its guidelines, has no legal effect. Should they have legal effect, those guidelines governing the final section of the law in question should clarify the ambiguity and confusion that so often are to be found in the final, additional and transitory provisions of so many laws.

The world in which the normative technique operated is also deeply influenced by the increasing number of ideologies that today influence the way in which this country is governed; indeed hardly any sector of society escapes this. Therefore, I cannot understand the systematic refusal to endow with legal effect the normative technique's guidelines. Furthermore, were the Spanish guidelines of 2005 to be thoroughly analysed as they relate to the final section of the rules, then what I have argued becomes obvious. There is neither order imposed in the stormy world of final provisions nor are there precise indications laid down to avoid what is extremely alien to the concept of normative reality: namely that new matters pertaining to the rules are often to be found in the final section of those rules.

Legal certainty and protection are two basic principles of the Rule of Law. Moreover, the extent of a constitutional state has much to do with the degree of importance given to legal certainty and protection in the normative landscape. However, one is struck by the fact that the accuracy and the quality of legal rules are conspicuous by their absence, despite the fact that studies, reflections and commentary on normative technique have fortunately increased, and that Parliaments, Governments and Administrations all now have personnel who are very well trained in this area. The problem remains in endowing with substance and material what for many people is nothing more than mere form or procedure to assist the authorities.

Another paradox presented to us by the normative reality relates to the fact that there are many matters where there are still many gaps. Despite normative reality having increased the number of legal rules, the necessary regulations that secure legal certainty and protection are still often lacking.

In a federal type of system, such that Spain is, it is very important to identify accurately the basis of jurisdiction upon which the State (central government) and the Autonomous Communities (regions) establish their legislative power. It is also worth pointing out that the State will have, in matters specifically reserved to its jurisdiction by the Constitution, the power to regulate certain sectors of the legal system with regard to what is today called the science of public and political administration, of fairness and solidarity, of general economy, international

relationships, general security or defence. On the other hand, the territorial Autonomies, Autonomous Communities and local government entities, have jurisdiction mainly over matters connected with the day to day lives of their citizens.

When it comes to the development of regulatory powers, the centres of normative production must bear in mind that there is a constitutional framework that governs the actions of the State. I refer, besides legal certainty, to the so-called most highly valued principles of the legal system and, of course, to the centrality of fundamental rights, to the principles which rule economic and social policy and, above all, to the so-called promotional function of public powers, as provided for in Section 9.2 of the Constitution: the public powers shall promote conditions so that the freedom and equality of private individuals, and of the groups in which they are integrated, are real and effective; to remove the obstacles that impede or hinder their fullness and to contribute to all citizens' participation in political, economic, cultural and social life. This must be the spirit that inspires the substance of the legal rules created in accordance with the constitutional state in which we live. This is something that contrasts with the constant process adopted by the present government of weakening of the principal legal rules by paying more attention to hindering and limiting civil rights than of thinking of society as a whole.

At this juncture, we must also mention the current deterioration in the law by which I mean that nowadays Parliament no longer reflects the general will of the people. Instead, it concerns itself with the particulars and detail of regulations that should be the work of other administrative bodies, but they are dealt with by Parliament simply because by doing so such regulations are more robust than if they were simply instruments of a regulatory authority.

Parliament, as we know it, is no longer the centre of political life. The centre is in the headquarters of the main political parties, from where appointments to government, the legislature and certain senior positions within the judiciary are named. Frequently Bills before parliament are imposed by the Executive. Needless to say, such Bills reflect the dictates of the government of the day. The role of the members of parliament as legislators has been subsumed by their party interests or by the leader who places them in the Congress.

Apart from the aforementioned process of developing the law along administrative lines, we face a growing tendency towards independent regulation, which is the result of the centralisation of government; this once exceptional phenomenon has become an ordinary occurrence as Parliament has in turn become an instrument of the Executive. This is sadly true of Spain in recent years.

In this general context, the rules or guidelines of the normative technique could help alleviate this deterioration that we have been talking about by implementing a system for creating norms based on the fundamental principles that form the basis of a state upheld by the Rule of Law. However, it is the Executive that is responsible for creating those rules and what it has done so far is to continue giving legal effect to various practices that ignore legal certainty and other central principles of the normative system as has happened in Spain since 1995.

Nevertheless, using the normative technique one can and should work towards the quality of expressing and creating rules, as well assisting the integration into the legal system. In this sense, we can find decisions from the Spanish Constitutional Court that highlight this thought: "The legal rules are not isolated and incommunicable elements, they are integrated in a group –the legal system– in the heart of which one must solve problems pursuant to certain principles" (decision 150/1990). And one of those principles is the legal security and certainty principle, which postulates, as we have already pointed out previously, that the courts must know beforehand the *rules of the game* to which to abide.

The normative technique is a social science that cannot operate without a proper basis. The Constitution is the pillar for this basis. The Constitution, in turn, is usually the expression of a certain legal tradition and culture. In our country, we cannot ignore the influences of Roman, German and French Law, coupled of course with general principles of Spanish Law, that are so important in the scope of the public law. Well then, the legal security and certainty principles are logically within this wealth of legal rules and principles that express the Spanish legal tradition and culture, as expressions of the legal System's need to be the manifestation of the principle of the proper order of things and persons within in society which is the essence of Law. If in this process of elaboration of legal rules the concept of Law was deemed to be influenced by rational technique, the State or the pure will of power, then the normative technique would be no more than another instrument for the alternative use of Law, as our normative system has become of late.

The legal security and certainty lead us to postulate some necessary conditions for the intelligibility, knowledge and understanding of the legal rules that, in turn, imply that the legal rules must have a clear semantics and writing style, besides being transparent. Normative language cannot be contrary to the common language. Common language turned into legal language has a lot to do with the general understanding of the legal rules, which is something that the normative technique cannot forget because if the legal rules are not understood by those it concerns, then they are useless.

The normative technique, as we have previously stated, is also about the integration of the legal rules in a unitary, open and continuous Legal System. It is unitary because the Legal System is a sole system, with subsystems; one system with rules and principles, which has different parts and components that are inserted harmoniously pursuant to the most elementary demands of logic and rationality. It is open because some legal rules are continuously repealed, introduced or amended. Finally it is continuous because there is a principle of conservation of the Legal System that postulates the continuous existence of rules and principles, which are in fact the expression of the law, as a way towards justice.

Let us next analyze the so-called conditions of intelligibility of the legal rules pursuant to the normative technique theory. That is to say, if public powers and the citizens are bound by the Constitution and the rest of the Legal System as it is laid down by Section 9.1 of the Constitution, it is logical and reasonable that the legal rules shall be worded in a language understandable by their recipients; and also because there is a basic principle of the Constitutional Law that legal rules are binding even on those unaware of them. However, although the normative technique invites the legal rules to be worded in a normative, but understandable language, the reality is that most of the population fails to understand the meaning and the content of the legal rules because these are still worded in a language which is intelligible for the lay person.

At this point, it is necessary to combine a precise, clear and accurate normative language with a general understanding, which is no easy accomplishment. Maybe if the language of the legal rules were at least intelligible for their recipients, we would already have taken a great step. Furthermore, if people are not able to understand the contents and the meaning of the rules, even those that directly applicable to them, the legal security and certainty will not be more than formal principles without a general content.

A question that should be approached in this matter refers to the semantic and normative clarity. Indeed, when it is about semantic clarity- normative language and common or ordinary language, shall be distinguished; they are expressions of one sole language and are more inter-related than they appear to be. Moreover, the normative technique promotes that both forms of language shall be complementary when it comes to choosing the terms that help compose the contents of the rules. In this sense we could state that the normative language is essentially the legal version of common or ordinary language. Why? Because the Law is cultural and not technical. Furthermore, regarding the common language, we find therein countless aphorisms, sayings and proverbs which are accurate interpretations of the legal sense of lay people.

It has been rightly affirmed that the intelligibility of legal rules requires the use of terms characteristic of normative language which are understood by lay people, and where possible provided that they are researched from valuable popular expressions that have deep legal roots, proves that there are elements with legal nature in everyday language, the use of which in the wording of legal rules will help it to be understood by the average citizen.

With regard to normative clarity, the legal certainty principle claims that legal rules should be worded and published clearly, so to make certain, as provided by the sentence made by Spanish Constitutional Court on July 16th 1987. Santaolalla has rightly pointed out that the general principle of legal certainty, demands that legal rules' normative value, legal nature, and position within the system of legal sources, its effects, validity, structure and publicity shall clearly arise from its own wording.

With regard to administrative provisions, it must be clear whether we are confronted by an administrative rule or an administrative decision. The appreciation of the difference between the sources of Administrative Law is controversial. From a title heading we must be able to decipher whether we are facing a decree passed by the Council of Ministers, which is a legal rule, or before a Ministerial Order, which some consider to also be a legal rule while others deem it to be an administrative decision. Anyway, from the wording of the rule we must deduce its position within the system of legal sources, either to solve the problems of validity or application, or due to the requirements of the principle of irrevocability relating to statutes. Likewise, from the wording of the rules, one must be able to know the effective date, who it is applicable to, the content and applicable territory and above all, its legal effect.

A question that the doctrine frequently outlines when dealing with normative status refers to the trend of reproducing terms already available in a different stratum of law without tendering an explanation on its validity or repeal, that in turn causes serious problems of legal certainty. Even when fragments of a rule are reproduced in another, save when it happens for obvious reasons, it creates confusion, and this should be avoided. That is to say, as laid down by the Constitutional Court in the sentence 40/1981, duplication can lead to error, and therefore the avoidance of this practice bodes well with a correct normative technique. There is a danger in reproducing State legal rules into Autonomous States legislation, as via such poor practices, alterations of the allocation of competence made by the Constitution, occur.

Regarding the *demoting technique* of rules it must be emphasised that virtual unanimity which exists in the prohibition of the general and implicit derogatory

clauses, which were more typical in by-gone years when the normative arena was smaller and of a better quality. Today, due to requirements of legal certainty it would not make any sense to continue including clauses such as these: all the legal rules that contravene the contents of this regulation are repealed. Should one proceed in this way a serious distortion of the Legal System would be caused.

The clarity in the wording of rules, especially with regard to its' strata, repeal, effects, dispensations, exceptions, amendments and validity of the rule avoids the atmosphere of darkness, opacity and ambiguity on which so many occasion's legislators and authorities are culpable. When this happens, we usually face an uncertainty of the power to act without limitations or restrictions. It is this expression of power which is uncontrollable and where legislators and administrators pursuing their personal agendas, use the Law and the normative technique as merely incidental instruments to fulfil the power's purpose. For this very reason it is so important that the rules or guidelines of normative technique have an appropriate legal stratum that allows the Law to continue being a deterrent to the immunities sought by the Government.

As regards to general principles on derogatory provisions that go into the final section of legal rules, in Spain we come up against so-called higher status law regarding the proposed National Budget. Presently, this term is no longer used but the reality is that through the force of the habit, amendments or modifications being made take advantage of the preceding laws passed annually. A principle of normative technique that we must follow in this matter is that the amendments must be made in the reference rule. If annually the benefits of a normative evaluation made by Ministries, come to the conclusion that a series of amendments or modifications in some legal rules are to be made, the question would be why then is there not a parliamentary practice to implement these amendments or modifications in these laws. Otherwise, we would have National Budget Acts which amend the Taxation Act, public functions, concessions of public works or marine fishing, to name a few. Certainly, this disturbing trend has been practiced by all governments of our young democracy and it does nothing to assist legal certainty. Firstly, changes are made in the legal rules without a complete perspective of the rule being amended, and, secondly, because of various entangled and tricky final provisions in the National Budget Act which amends acts of all classes and conditions, it is not easy for clarity and condition of the rules to prevail, but just the opposite, and this is what usually happens, causing serious damage to the Rule of Law and the Legal System.

With regard to the internal formulation of the rules and their structure, the considerations made by the professor Fernando Santaolalla are accurate, for whom the contents of the legal rules must be homogeneous, complete and logical; a characterization that gives an idea of how important it is for legal certainty that the rules fulfil the said requirements.

The homogeneity refers to the fact that each legal rule must refer to a sole matter, avoiding the dispersion and the temptation to the confusion and the ambiguity that occurs when a rule is used, for example, to repeal or to amend others. This is reasonable, because if the legal rules are used only and exclusively for a policy of law amendments without just causes, then once again the legal rules are not the expression of justice but an instrument of the status quo to achieve its objectives. It is convenient for legal certainty that each legal rule regulates a sole matter, as it is also convenient for a more coherent and reasonable legal interpretation task. Due to the federal State system there is a possibility that a coexistence of varying normative developments occur. It is a frequent case that in Spanish Law a matter is subject to basic legislation from Central Parliament developed via administrative rules originating in autonomous jurisdictions. The characteristic of this rule is so important that the Constitutional Court has already tendered a warning on the National Budget Acts on the dangers of occasionally deeply modifying pre-existing State Acts and that as we say in Spain: *they "take advantage of that the Pisuerga goes by Valladolid"* (with the excuse of doing one thing they do a different one, at the same time). Indeed, in the sentence 991/1987 the maximum interpreter of the Constitution pointed out that this practice was wrong. Some day, however, some acts that occur in this defect will have to be annulled on the grounds of a basic principle of constitutional importance such as that of legal certainty.

The contents of the legal rules must be complete. The title of a rule usually defines its contents, and must be as complete as possible, but not to the extent of making headings or titles too long, which sometimes is no more than a reflection of the legislator's lack of method. In other cases, it just highlights confusion and ambiguity, which characterises the normative technique of our time. The content of a rule should be as complete as possible, but this doesn't mean it is final, as exactness is only usually possible through a combination of several rules. Look at the court system for example, and its protection of fundamental rights. Should a single law regulate it? Is it not more reasonable to include a specific matter for the protection of fundamental rights in an Act which governs each jurisdiction in every procedural order?

The contents of legal rules must be logical and suited to the objectives of the rules. That is to say, it must follow a systematic order to enable a better understanding of the rules' contents. Thus, following the seasoned tradition of good

normative technique, all guidelines or rules that deal with this matter must provide from a general aspect to a particular aspect, from the abstract to the precise, from the most outstanding aspects to the least important ones, from the normal to the exceptional aspect or, for example, from the essential part to the accessory part". The logical way to order these rules is to systematically divide them into three main parts: the introduction, dispositive and the final part.

The introductory part includes the general provisions, which refer to the purpose of the rule, its territorial scope, recipients, inspiring principles and definitions - should they be indispensable-as well as tendering the reasons on what led the Legislator or the Government-Administration to elaborate a particular rule. According to the nature of the rules, some have a long initial part where others have a long preamble.

The dispositive part is the substantial section of a rule. It includes the jurisdiction, organizational queries, the catalogue of rights and duties, obligations, prohibitions, exceptions, sanctions as well as normative amendments and modifications. That is to say, the dispositive part is the longest section of a rule, as it includes the prescriptions of the legal system and other questions, which centrally affect the issue, subject to regulation, as it would be bad practice to leave essential questions solely for the final part of a rule creating an entangled and over elaborate final provision.

The final part of the rule must be precise and concise. The additional provisions must add aspects which are incidental to the crux of the rule. The derogating provisions should be precise, clear and non-abstract. The final part should draw the rule to a conclusion, and provides a validation and moment of the rule coming into effect.

In accordance with Professor Santaolalla's reasoning, two essential requirements must be fulfilled by the rules' external formulation: The first is uniformity, this is to say, that a logical continuity exists with the rules in the same stratum. Second, a consistent and reasonable proportion of quantitative/qualitative correspondence between the object of the rule and its formal representation should exist. The popular saying of "*one cannot kill a fly with gunshots*" also applies to this matter. For example, it would not make sense to devote several provisions of a decree to amend errors.

We will now deal with the formal structure of the rules regarding the title, the preamble, the body and the final part of the rule, bearing in mind the principle requirements of legal security and certainty.

Rule headings must identify accurately and completely the subject matter of the regulation. Likewise, it must distinguish the rule from other norms that have a similar correlation. That is to say, the heading must allow the reader to accurately ascertain the type of rule, the authorising body, the date of enactment or publication and its numerical reference relating to its stratum and category.

The preamble of the rule is a rather controversial matter, mainly when its normative or interpretative value is under discussion. In fact, the preamble is the expression of the reason or reasons why the rule is approved, plus the inspiring principles which preside over it, as well as the main novelties that it incorporates into the Legal System. It has an obvious interpretative value that jurisprudence has always highlighted for the interpretation of provisions, which are not as clear as they should be in some sections of the rule. Furthermore, the statement of purpose undoubtedly helps one to understand the rule and facilitates a better knowledge of its objectives and main contributions.

The body of the rule refers to the most important part: being the correlative division in numbered sections that are the most traditional and current display of the systematic exhibition of the legal system containing the relevant rule. It seems obvious that this section must contain edited arguments units in a concise, brief and complete way, as those confusing and entangled articles that on so many occasions are not more than the deliberate intent of ambiguity and confusion by legislators, governments and or public administrations, are an attack to legal certainty. Where the nature of the norm demands it, for length or importance, it is not inconvenient to divide the articles in a way that better suited to understanding the norm. The precepts are usually divided, into titles, chapters or sections.

The final part should not be the most important, and judging from the use made of it to unexpectedly include some important amendments, means it must be the object of particular attention, so that it fulfils the tasks which have been assigned thereto and not that of a collection of odds and ends which today is unfortunately the norm. The final part ordinarily consists of the additional provisions, the temporary provisions, and the derogating and final provisions. The additional provisions are thought to establish the exceptional systems, dispensations, reservations of application and the reference whenever impossible to regulate these questions within the other sections. If there is a will, it is not difficult to incorporate the contents of additional ones in its sections. Often long and complex additional provisions where everything fits are preferred, and this constitutes an attack to the most elementary requirements of the principle of legal certainty. Temporary provisions are unavoidable in reference to a rule that regulates a matter previously regulated, so that the rules' recipients clearly appreciate the applicable Legal System to which it applies to the legal situation born before the coming into effect

of the new rule. The derogatory provisions must point out with clarity and conciseness the repealed rules, it being recommended therefore to avoid the general or abstract provisions and, if it is possible, incorporating charts of validity of the affected rules for further legal certainty. Finally, the final provisions are confined to the application rules, of supplementary, to the authorisations as well as to the delegations and rules of validity.

A question that is usually broached regards the style of the rule, which is a matter, connected to legal security and certainty. Should rules be worded in a convincing, persuasive and pedagogic way?...asks Professor Santaolalla. To answer this question it is necessary to depart from an aforementioned fundamental premise: that rules should be worded with clarity; the command implied in the rule should be under conditions of it being understood by those who fulfil it. This means, if we follow *Santaolalla*, the style of the rule must be objective, rational, clear, not necessarily convincing, and finally concise, non doctrinal or pedagogic.

The style of the rule should be objective and among other things the terms used should be adequate and appropriate to the contents of the rule, without making emotive allowances that are today all too apparent in political and social life. Its word formation should be clear to avoid being disjointed and that the excess of terms shall be avoided, so that the content of the rule is intelligible, at least for its recipients. The style shall be concise so that the explanations or doctrinal approaches in interpretation matters are not, as a rule, within the normative style. This, however, doesn't mean that we are establishing general and universal categories of application to all of the units that compose the Legal System. They are general principles that permit exceptions. These exceptions must be precise. It is also possible that some rules, due to their special purpose or content, could require a pedagogic style of interpretation. This is to say, each rule is a particular case and the rules of normative technique are general and so they must respect the nature, purpose and objectives of each legal rule and sometimes it is advisable to follow different approaches without losing the condition of valid rules.

The style of the rule, therefore, must be objective, clear and concise. It neither means that the normative style must necessarily be poor or impersonal, as correctly pointed out by Fernando Santaolalla. Certainly, within the normative general style, the wording of the rules must assist the subsystem where they are recorded. The style of a local rule on policing a cemetery won't be in the same style of as an educational act passed by the Parliament of an Autonomous State. An administrative rule cannot be the same vein as a rule with the force of law. That is to say, in the scope of the normative general style, we find specialties and peculiarities of the so-called administrative style as well as in the legislative style

interchangeably, allowing the possibility to make a distinction depending on the sector of the Legal Administrative System.

On the other hand, one cannot forget, as Santaolalla says, that the style of rules is an expression of the underlying matter in the way in which the Law must fulfil its function to society. As the main function of Law is to achieve justice, the style of the normative language will be unabridged, and the linguistics will permanently remind us that the purpose of these rules is to achieve this ultimate purpose.

In the social sciences the style of texts helps one to understand the content. For this reason, the normative technique promotes the virtues of style being the most appropriate element for the best comprehension of a rule, particularly for its natural recipients. This does not mean that the language and style of the rules should be so exact and accurate that even experts misinterpret it. As Santaolalla points out, it is about the preservation of the validity of the Legal System within social reality, which implies a serious and renovated effort to adapt the language and the normative style in a context in which justice thrives.

From another point of view, the question regarding the accuracy of normative language and the requirements of justice, must be considered, to the extent that the normative technique is an art of making the rules and a projection of justice; otherwise, we would be faced with an inferior version of the normative technique of adverse consequences. This being so, it is true that this purpose can be achieved, bearing in mind that the language and style varies from some rules to others, and that the language/style of an agrarian administrative rule does not use the same language as a statute on Autonomous States.

With regard to whether the normative style shall be convincing, we have already pointed out that as a general rule, it is not crucial for this to be the case. However, from a democratic point of view, there is no doubt that the law and legal rules, as pointed out by Santaolalla, are more consistent and solid, if they have a greater capacity conviction to their natural recipients. Maybe for this reason, the sentence of the Constitutional Court on May 13th 1987 provides that rules must aspire to be convincing according to democratic values”.

With regard to the use and selection, by a Legislator or by the Government-Administration, of legal or normative terms; the general rule required by the good normative technique is always to choose terms already inserted in the legal heritage or culture of a country. In this task the reciprocal influence between ordinary language and normative language, a more intimate relationship than what appears to be, is evidenced, and projected with a varying intensity according to the localised

legal culture. That is to say, it is reasonable to maintain the normative expressions characteristic of the normative wealth for obvious reasons.

Normative language, on the other hand, is open and dynamic. It is never an expression of a repressive system for the simple reason that dynamism and renovation are essential characteristics of any normative system. However, the change and the reformation that are inherent in the social system, must not encourage the use of vulgar or colloquial expressions within the language and normative style, albeit a current trend, no matter how much ordinary language lends to this.

Another as important question usually raised with regard to the normative style is that of the compulsory nature of the so-called stylebook. In my opinion, the existence of this stylebook is positive as a guide but cannot be rules of compulsory fulfilment.

Nowadays, transparency in legal rules is not one of its more frequent characteristics. As Fernando Santaolalla points out, the real purpose of the rule is sometimes unknown due to surrounding circumstances that raise doubt or suspicion and conceal the objectives or purposes pursued by these rules.

Transparency and the process of elaboration of the rules are two matters that inseparably go hand in hand together. To such an extent that if in the procedure of making of rules the participation and presence of citizens and the professional sectors affected by the rules are encouraged and helped, it is easier to guarantee legal certainty. That is to say, that the legal operators and the natural recipients of the rules might know to what to follow.

Transparency is tied up with legal certainty. Indeed, when we focus on the abrupt appearance of rules elaborated from unilateral and secretive grounds, it is legal certainty that is left wanting.

On the other hand, transparency is also tied up with so-called normative viability. Is a legal rule not more transparent when the pursued objective is obvious? Is a legal rule not more transparent when the legislator or the Government-Administration is sufficiently aware of the reality on which the relevant rule will act? Is a legal rule not more transparent when the possibilities of its application have been appropriately studied? In this sense, if we are to analyse some of the existing rules thoroughly, we will find many of them to be provisional and uncertain.

If the proper consideration of the pre-existing roots and the applicability of similar rules are compared to countries of a similar cultural milieu to our own was realised, the importance in the procedure of the elaboration of rules, certainty, transparency and legal security would become more apparent. In this sense, our own Constitutional Court has already occasionally noticed that the absence of background research in the elaboration of the rule deprives us from the necessary elements for the ultimate success in the decision process in each case being heard.

The background, as professor Santaolalla points out, must clear up the conclusions and objectives of the rule, its necessity, why current regulation is insufficient, a valuation of the preferred method and its viability.

Another very important question in the relationships between normative technique and legal security is found in the chapter devoted to the integration of the normative texts into the Legal System. This is a very important matter since the rules are a basic component of the Legal System, a system that has a series of principles and criteria that logically affect the rules and their elaboration. For example, the legal certainty principle is one of the approaches to the normative architecture that all rules must observe to deserve the qualification of a legal rule. The same thing could be promoted for the principle of legality, of publicity, of irretroactivity, in good faith etc, etc, etc.

The Legal System is developed by criteria of clarity and rationality. These criteria are essential exponents, to the composition of the Legal System, destined to fulfil its own objects, among which the achievement of justice is crucial. In other words, in order for the Legal System to be effective, the rules must be integrated with each other and articulated in a way that the general principles of law are present so that justice prevails.

We know that the Legal System is a timeless and vast normative system as pointed out by Santaolalla, because it is the result of an experience' and decisions' accumulation process. These experiences and decisions constitute a group of teachings that should help us to rectify some directions and to safely pass through the path of legal security and certainty, that can be achieved if we are aware that the rules should always be elaborated from this angle, resisting the subtleties and strong temptations to utilise the normative technique in the service of the whims of contemporaneous Executive power.

It is true that the Legal System is in a state of permanent change. Moreover, reform is part of its strength and its personality as a social science to assist the improvement of the conditions of a citizen's life. Everyday, if one reads the official gazettes of the Executive and follow case law we will note the speed and rhythm of

normative change. Despite the mechanical legislation of which Fhorstoff talks about, it is paramount that the system works pursuant to its logic and internal harmony in a way that the coherence and the sense of the Legal System as an expression of the permanent achievement of justice, is maintained.

In this field, the normative technique appears to us like a formal science with material profiles: security and legal certainty that should take shape in the making every one of the rules of the Legal System.

It is true that the principle of unit of the Legal System –is an important characteristic even in countries like ours with an Autonomous State structure - is a reference in which the normative technique should also operate. In Spain, we have appreciated for a very long time that a deliberate intent of certain minorities to destroy the unit of the Legal System through the construction of a Nation requires it to have its own Legal Systems, that would coexist, in parallel with the Legal System of the State. However, the reality is that Spain is a unitary country, a strongly politically and territorially decentralized State but a State with a Legal System where different sub-systems attach according to the nature and the normative stratum of rules.

The principle of continuity and conservation of the Legal System is essential. The System, as an expression of justice follows a continuous line, with obvious changes and reform connected to the aspiration of justice. That is to say, the Legal System is timeless. It operates in this framework. The problem arises when in an open, dynamic and complementary context where the Legal System operates, radical changes occur in relation to justice and the technique of making rules. I refer to the unpleasant situation, today present in numerous democratic countries, of the assault on the Legal System by using old-fashioned approaches to conceive and build the Legal System up as another tool for the transformation of reality without considering justice because as I insist, the rule becomes a weapon that is usurped to divide, fraction or in any event to impose a status quo to conjure up a world and reality that surrounds us. In this atmosphere, legal security and certainty are only accidental variables that may or may not suffice if demanded by the superior interest of keeping power at all costs, as the case may be.

In the Legal System some clear general rules of common application, without prejudice, contain peculiarities dictated by reason are commonplace. Daily in Spain the lack of clear rules means the possibility of self-destruction of the System's unit because of the concessions that are made to unilateral alterations of the Constitution, outside the procedures especially designed in the Constitution for the reform.

On the other hand, the proliferation of rules with endless remissions frequently entangled subsidiary provisions and complex systems of transitory law cause continuous tensions that essentially damage the unit of the System. This unit of course is the compatibility with diversity. Moreover, if the common soul of the legal System is maintained, this diversity can be understood through balance and logic, that could even strengthen the unit, for the simple reason that in the normative system, the Legal System, is an entire series of subsystems coexisting within their own rules that, obviously, that reflect the inspiring principles of the subsystem where they are integrated.

In the Spanish case, our Legal System is made up by the Legal systems of every Autonomous State, plus the general legislation of each local Entity.