

FEDERALISM IN SPAIN

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Abstract

The debate about federalism in Spain has experienced an extraordinary growth in relevance in recent years. Control over the bodies of Autonomous Communities shall be exercised by the Constitutional Court, in matters pertaining to the constitutionality of their regulatory provisions having the force of law, the Government, after the handing down by the Council of State of its opinion, the jurisdictional bodies of administrative litigation and the Court of Audit, regarding financial and budgetary matters.

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1. Introduction

In 1830, the Catalan Ramón Xauradó, exiled in Limoges (France), published his „Bases de una Constitución política o principios fundamentales de un sistema republicano” (Bases of a Political Constitution or Fundamental Principles of a Republican System).²

In this book he proposed a moderate version of the American Constitution, with a president elected for ten years, a provincial Senate and an Assembly in each State. Xauradó based his federalist model on his view that a direct relation between citizens and political power was necessary to assure freedom and representation, but that this political participation could only take place in small-sized states.

2. Constitutional aspects

Art. 148.1 of the Constitution specifies a series of responsibilities that the Autonomous Communities were enabled to take on upon their constitution, Art. 149.1 lists a series of responsibilities that are reserved to the state, and Art. 149.3 establishes that any responsibilities not covered by either list could be taken on by the Autonomous Communities if they wished.³

The responsibilities actually assumed were specified in the Statutes of each Autonomous Community, which were drafted by the representatives of the Community and approved by the central state parliament and, only in four cases, in referendum by the inhabitants of the Community. Furthermore, the transfer of responsibilities was formally irreversible, since the Statutes can be modified only through the procedures established therein.

The method employed by the Spanish Constitution to split power between federal and sub-federal governments is apparently straightforward. It enumerates a number of areas of decision, such as defence, the monetary system, environmental protection, railways passing through more than one Autonomous Community, roads lying completely within a single Autonomous Community, etc., and either sanctions their assumption by Autonomous Communities or reserves them to the state; any areas not listed are susceptible of being taken over by Autonomous Communities, and all areas that an Autonomous Community could have taken over but did not are retained by the state..

The Spanish Constitution addresses, inter alia, a task that must be undertaken by any federal Constitution: delimitation of the scope of federal competence and of subfederal competence. Its peculiarity is that while fixing the powers of the federation, it leaves sub-federal entities, i.e.

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² Peyrou F., *Federalism as an “Imagined Community”*: 19th-Century Spanish Republicanism and Democracy, in Pan-Montojo, J. L., Pedersen, F. (eds), *Communities in European History: Representations, Jurisdictions and Conflicts*. Pisa: Edizioni Plus, 2007, p. 97.

³ Maiz, R, Caamaño, F, Azpitarte, M., *The Hidden Counterpoint of Spanish Federalism: Recentralization and Resymmetrization in Spain (1978-2008)*, Regional & Federal Studies, 2010, p. 65.

Autonomous Communities, free to fix their own powers in their Statutes, so long as these powers do not overlap those that have been reserved to the state by the Constitution. Competences in any areas of decision that have been ‘overlooked’ are assigned to the state. These rules appear to take all possibilities into account and, to deal adequately with a problem that is typical of federal structures, the question of who is competent to legislate in matters that were unforeseen at the time the Constitution was passed. Nevertheless, the fragility of the Spanish solution was soon shown up by events.

The basic failing was that the set of areas of decision that the Constitution reserved to the state in Art. 149 was outdated from the start, having been based essentially on a similar list in the Constitution of 1931.⁴

That the Communities’ objective has been frustrated is due to two main reasons.

First, the broad powers claimed in the Statutes are, in many cases, ill-defined, which has allowed and encouraged the state to appropriate matters to its competence whenever their inclusion among the exclusive powers of the Communities has been sufficiently unclear.

Appeals to the Constitutional Court by the Federation on such matters have been both numerous and, in general, successful; and the activity of the state in these areas has hindered the development and execution of the Communities’ own policies.⁵

The second cause of the Autonomous Communities having failed to realize the potential of their Statutes has, in fact, already been more than hinted at: the recentralizing tendency of the Constitutional Court, which has pushed its interpretations of the text of the Constitution to the limit in this direction.

In principle, as noted above, Autonomous Communities can establish their own taxes.⁶

The only limits placed on this power by the Constitution are that the Communities cannot tax assets located outside their territory, and cannot impose taxes that hinder the free circulation of goods and services. Nevertheless, in 1980 the Organic Law of Autonomous Community Funding tightened these limits by stipulating that Autonomous Communities cannot tax assets or activities that are taxed by the state.⁷

Every year, the central government estimates the change in gross domestic product (GDP) over the next three years, and the central parliament approves the corresponding spending limit.⁸

3. The principles of federalism

The federal principle is based on a combination of self-rule and compromise.⁹

The provinces, as administrative units, were created in Spain in 1833, following the french model.

The 1978 Constitution avoids any federal/unitary classification in favor of ambiguity.¹⁰

Article 2 states, “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and solidarity amongst them all.” The Constitution then frames a three-tiered system. Article 137 allows for the organization of the country into “municipalities, provinces, and any autonomous communities.”

The route to autonomy was made faster for the historic territories (based on their Second Republic statutes and plebiscites) of Catalonia, the Basque Country and Galicia.¹¹

⁴ *Idem*, p 71.

⁵ *Idem*, p 72.

⁶ *Idem*, p 73.

⁷ *Ibidem*.

⁸ *Idem*, p 76.

⁹ Moreno, L., *Ethnoterritorial Concurrence and Imperfect Federalism in Spain*, Instituto de Estudios Sociales Avanzados (CSIC) Working Paper 93-10, 1993, p. 10.

¹⁰ Agranoff, R., *Federal Asymmetry and Intergovernmental Relations in Spain*, Asymmetry Series, 2005, 17, IIGR, Queen’s University, p. 3.

¹¹ *Ibidem*.

These three territories and Andalucia (through a special constitutional route) did accede to AC status very quickly, whereas the other territories took a slower and somewhat different route to autonomy.

Spain's fifty provinces are currently divided into seventeen ACs, all of which achieved autonomy by 1983. Some incorporate a large number of provinces, e.g. nine (Castilla y Leon) and eight (Andalucia), whereas seven ACs are based on single provinces.¹²

The four faster route ACs have received greater power transfers and at much earlier stages, and in some cases the slower route communities did not receive certain powers until over twenty years after the other four communities. Some powers that are essentially central, such as regional police, are only exercised in the historic communities.

Distinctive status extends another step through the constitutional recognition of six co-official languages, Castilian, official in all parts of Spain, Catalan, Eskaudi (Basque language), Galician, Valencian, and Majorcan.

The government of Catalonia has maintained much greater regulatory and operational control over its financial institutions, and devotes the funds to economic development. They also possess unique shared legislative controls over banking operations.

Catalan and Galician legal codes are different from those of other communities, particularly in regard to civil or private law, family legislation, land tenure and land inheritance.

Another difference is the role played by the Basques and Catalans in foreign affairs.¹³

Although foreign policy is an exclusive central competency, both have made extraordinary international moves based on their identity as "nations."

Decisions or sentencias of the Constitutional Tribunal (TC) have not only controlled the actions of some ACs (the overwhelming challenges have involved Basque and Catalan AC issues), but have upheld the right of the central government to intervene in matters of constitutional integrity, fundamental rights, and in matters of the national interest.

The Tribunal has interpreted AC powers as including the "right to make the final decision" regarding its competencies but has upheld the central government's role in basic legislation, in matters of fundamental personal rights and in matters of national interest.

In these respects, it has overturned a Basque language law requiring that all new civil servants to know and use basque language, and upheld the right of the central government to become involved in tourism. The latter is an exclusive AC competency, but because of its connection to the country's economy, the TC upheld the central government role.

The central government's role as the negotiator and final arbiter with the EU has to a degree eroded some AC competencies, by bringing all of them back through Madrid's "final decision" role within the EU, where negotiations are country by country.

This has affected agriculture, fishing and fisheries, industrial policy, environment, regional planning, transport, culture, and energy policy.

Law making process in Spain is related with the role played by the upper chamber.¹⁴

The 1978 constitution established the Senate in a chamber of territorial representation with a double electoral system; 208 members are based on the provinces and 51 are based on the *Comunidades Autónomas*. On the one hand, provincial senators are directly elected by the population. There are four senators per province, three for the larger islands and two for the smaller islands. On the other hand the assembly of each AC appoints at least one senator up to a limit of one senator per million of inhabitant in the region. The result is that designed senators range between one of La Rioja or Navarre to eight appointed by Andalusia. Ceuta and Melilla each had two directly elected senators since 1995. Those senators are bargained depending on the majorities in the regional assembly, so it can be that are senators from different parties are appointed to represent

¹² *Ibidem*.

¹³ *Idem*, p. 5.

¹⁴ Lago-Penas S., Simon-Cosano P., *Regionalism in Spain*, Assembly of European Regions Study on Regionalism, 2014, p. 18.

the region. The inclusion of both electoral systems mix the criteria of “one person, one vote” and “one region, one vote”, despite it is nearer to the first idea.¹⁵

The Senate has some reserved powers over constitutional appointments. In terms of legislative powers, the Senate has to participate in the law-making process. Nevertheless, in case of disagreement between the Senate and the Congress, the first one can be overridden a majority in the lower house. Therefore, it is a clear case of asymmetric bicameralism.¹⁶

4. Conclusions

In the matter of Spanish federalism, we can find some directions of future evolutions.

Firstly, to create a federal culture where the main target is to prepare civil society to assume the values of federalism connected to stability and unity.

The political parties communicate these ideas to the citizen in order to build a culture linked to federal ideas.

It is important for that federal proposal that a federal culture would be able to gain the same support that, currently, nationalist culture enjoys. It is crucial to emphasize the importance of limits. The essence of federalism -unity and self-government- is not compatible with secession.

Secondly, a specification of the main characteristics and the main scenarios of the federal evolution in Spain where an advanced Spanish federal map would be focused on asymmetry, a union of a functional federalism and nationalist federalism,

Thirdly, transforming that proposal to a legal challenge, especially at the constitutional level.

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¹⁵ *Ibidem*.

¹⁶ *Ibidem*.