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REPORT

**REGIONALISM SEEN FROM THE NATIONAL PERSPECTIVE
GIVEN EXAMPLE: SPAIN**

by

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1. Introduction: a sui generis model

1. The current Spanish model of regionalism derives from a highly centralised State which was constructed following the key elements of the French Napoleonic model. The model, called Estado de las Autonomías, or Autonomic State, combines diversity (mainly linguistic diversity) with a strong component of de-centralization. Although the model can be considered as “federal” this is a qualification avoided in Spanish political debate.

2. Historical traits

2. The origins of Spanish plurality can be traced back for centuries. The Spanish monarchy was constructed as the progressive addition of kingdoms (León, Castilla, Aragón, Navarra, etc) each of which had a single contract with the king. Since the Middle Ages, successive kings constructed a host of contracts with their subjects. These pacts were particularly significant as instruments to re-populate the territories taken to the Muslims during the Reconquista. Some of these pacts were the one granted in the Cortes of León by Alfonso IX (1188); the Privilegio General de Aragón given by Pedro III (1283) in the Cortes of Saragossa, which has been considered as the legally pacted basis for the freedom of the Crown of Aragón. Thus, Spanish monarchies were based on a tradition of contractual relationship with their subjects which consolidated their rights. The Spanish Kingdom was constructed as the addition of personal contracts between the King and particular group of subjects. Heterogeneity of personal statutes within the Crown was the usual situation.

Mainly during the XVIII century, the Austrian kings developed a form of absolutism based on the suppression of specific contractual relationships. The Borbons deepened this trend; the first King of this dynasty imposed the decree of Nueva Planta, which ended up with the privileges of Catalonia.

3. During the XIX century and following the romantic movements towards nationalism and national independence in Europe, peripheral regions with own languages (such as Galicia, Catalonia and the Basque Country) witnessed the emergence of forms of nationalism which vindicated their recognition within the Spanish state. Their claims varied from cultural recognition to a federal state but it was only during the second Spanish Republic (1931-1939) when these three regions saw their political claims recognised. They were granted political autonomy (i.e. self-government) which was nevertheless suppressed by the Franco regime (1936-1975).

3. The 1978 Constitution and the regional model

4. The transition to democracy and the 1978 democratic constitution provided the opportunity to settle demands for self-recognition and to create, simultaneously, a template of the Spanish model. The basic element was the recognition of the “right to autonomy” of regions and “historic nationalities”. This right should not be confused nor equated to the right of self-determination. Explicitly, the constitution differentiated (initially) between these two kind of territorial entities. “Historic nationalities” were these with their own language and which had approved an instrument of self-government (statute of autonomy) during the I Republic (i.e. Galicia, Catalonia and the Basque Country). Then, the rest of the country could be organised in regions (i.e. territorially homogenous entities, even though they were not pre-identified).

5. The most innovative aspect of the Spanish constitutional design was the principle of choice or voluntariness (so-called *principio dispositivo*). This meant that the initiative to accede to devolution was left to the very territorial entities benefiting from it. For this, the Constitution designed two different procedures: the first one was conceived for historical regions. These elected an assembly who was entrusted with the drafting of a regional statute. Then, the statute

would be jointly negotiated between the regional assembly and the national parliament. Finally, the text would be approved by referendum and the national parliament would ratify the text. In symbolic terms, it meant that historical communities had the legitimacy of a referendum and, thus, a higher political standing.

6. For the other regions, the procedure was slightly different: provinces, an administrative unit created in the XIX century and which gathered several local authorities, would express their will to form a region and access to self-ruling. The effect of this first step was that the boundaries of future regions were not pre-established, even though in general terms, historic borders of traditional regions were adopted. The second step was drafting a statute. For this task, a body of provincial and national representatives was created. Finally, the Spanish national parliament approved the Statute as if it were a organic law. The effect is of course an *a priori* lower degree of political legitimacy.

7. These charters or statutes of autonomy thus acquired the quality of being both national organic laws and basic institutional —quasi-constitutional— norms of the regional entities, which could not be unilaterally amended by the Spanish Parliament and that were utilized to complete what the Constitution had left open for the sake of successful consensus-building. Statutes had to be approved and reformed through a procedure that represented a kind of pact between the regional Parliaments and the Spanish Parliament.

4. The powers of the regions

8. The statutes of autonomy defined the name of the region and regulated the regional organs. In all cases, this implied a regional parliament directly elected by the citizens and a regional government which would be elected by the regional Parliament. Additionally, the statutes did identify the powers assumed within the framework laid down by the Constitution. Typically, the Constitution did not assign automatically areas of authority to regions. They had to choose among a list of powers available to them. What the constitution did was to assign exclusive powers to central authorities in a number of areas (for instance, defence). Then, the regions could choose to exercise powers on housing, public works, urbanism, economic development, environment, tourism, agriculture, culture, social services, etc. Additionally, regions could exercise powers on education, health and police. Moreover, the clause of residual competence felt with the autonomous communities: Matters not expressly assigned to the State by this Constitution may fall under the jurisdiction of the Autonomous Communities by virtue of their Statutes of Autonomy (Section 149.3). The role of the central authorities is secondary: Jurisdiction on matters not claimed by the Statutes of Autonomy shall fall with the State, whose laws shall prevail, in case of conflict, over those of the Autonomous Communities (except for those matters in which exclusive jurisdiction has been conferred upon them).

9. The initial assumption is that not all regions would want to exercise all possible powers. Moreover, it was assumed that the three historical regions would aim at the beginning to the highest possible level of self-government. What happened in reality was that 7 regions attained from the beginning the highest possible level of self-government whilst the other 10 did choose a lower level of autonomy.

10. However, the constitution did not close the system: apart from the powers listed in their regional statutes, regions could acquire further powers by several ways: 1. central state delegation. The central authorities may transfer to one or various Communities the power to pass legislation for themselves within the framework of the principles, bases and guidelines laid down by a State act. Each enabling act shall make provision for the method of supervision by the Spanish Parliament over the Communities legislation (Sec. 150.1). But, also the State may transfer or delegate some of its powers which by their very nature can be transferred or delegated. The law shall, in each case, provide for the appropriate transfer of financial means, as well as specify the forms of control to be retained by the State (Sec. 150.2). The second

mechanism for increasing regions' powers is reform of the regional statutes.

5. The working of the system

11. Although this design operated in favour of diversity and some *de jure* asymmetries were constitutionally entrenched —primarily in issues of fiscal arrangements, language, culture and civil law—, the Spanish autonomic state increasingly evolved, through the repeated adaptation of some regional statutes and by political praxis, as a virtually homogeneous or symmetrical cooperative federal model, with shared competencies and finance as the prevailing *modus operandi* of the system. The distribution of powers, largely accomplished through the intervention of the Constitutional Court when resolving conflicts, got increasingly coherent and clear for political actors.

12. The evolving model, despite its relative success, was never without opponents and there was always discontent and criticism of its operation, and frustration of some high expectations mainly coming from regional nationalist parties and governments, that had been paradoxically the main beneficiaries of the system. For a set of different reasons, until 2003 their discontent had never translated into proposals of reform of their regional statutes of autonomy or the Constitution. In the last three years, however, due to a combination of political, ideological and conjunctural factors, both at the regional level and the central level, and to the very institutional conditions of this Spanish model of federalism, several initiatives to reform the autonomy statutes have been discussed and enacted by regional parliaments in several ACs.

13. Five totally renovated or amended autonomy statutes have recently come into force —Valencian Community and Catalonia (in 2006), Balearic Islands, Andalusia, Aragon (in 2007)— or are about to be passed by the Spanish Parliament (*Cortes Generales*) —the Canary Islands, Castile-La Mancha and Castile and León—. In other ACs, parliamentary reform committees are currently working on reform proposals or waiting for the best political opportunity to do it. Although this is not the first time that regional statutes have been amended, the novelty of this process derives from the fact that it is the first time in 25 years that the ACs that acquired their autonomy through Article 151 —those initially belonging to the first-track autonomy—, propose to reform their statutes. Another significant novelty is that it is the first time that regional parties and Parliaments set the agenda of reform of their statutes without a previous consensus or agreement among national political forces regarding the orientation and goals of reform. In fact, although most of them have been ultimately approved with consensus among the two main Spanish parties both at the regional and the national arenas, they have not responded in general to any global plan or scheme concerning the Spanish territorial model to be achieved.

14. In most cases, the reform undertaken reaches more than concrete revisions or amendments and has meant completely new texts. In this fashion, though not formally effecting a constitutional reform, they have had far-reaching constitutional implications, since most of them have used its constitutional leeway to regulate, alongside their internal organization or institutions, new regional competencies and resources for ACs, thus affecting the role of the central government and intergovernmental relations. Moreover, the voluntary character of the process and the discretion of regional Parliaments to demand again different degrees of power and establish different institutional set-ups, has necessarily implied, within the broad limits of the constitution, a reversal in some aspects to growing diversity within the system. For example, in terms of competencies, resources and institutional arrangements and relationships with the central government. As in the previous round of reform, and largely depending on the correlation of political forces present in each region, several ACs, have followed suit in the path of the more assertive ACs, emulating some of their proposals into their reforms.