

**THE FOUNDATION AND CRISIS OF THE AUTONOMOUS
STATE IN SPAIN**

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1. INTRODUCTION

Spain, in 1978, was the most centralist State of Europe and now it is one of the most decentralized. The Autonomous State in Spain has been a good framework to devolve the power, at least for 20 years, but now it is going through a two-fold crisis. The first consists of the serious structural defects of the autonomic system - numerous jurisdiction conflicts, scarce utility of the Senate, precariousness of the funding system..., among others. These defects require constitutional reforms and "rationalizing" the State, most probably in a federal sense. The second crisis arises from the need to set up a special position for Catalonia, the Basque Country and, perhaps, for others Autonomous Communities. This claim has been used by nationalist parties of these Autonomous Communities (ACs) in order to defend their argument in favour of independence from Spain. This position was a minority opinion in the past but it has grown significantly in four/five years, especially with respect to issues related to language, funding and other special circumstances encapsulated in the slogan "Catalonia is a nation"

In my opinion these two crises have different causes yet there is a relationship between them, because a segment of the Catalan population will reject separation from Spain if they foresee a reasonable constitutional reform, and in contrast they could vote for the separatist parties if the major Spanish parties do not announce any such changes.

Actually, there are also other crises. The social effects of the severe economic crisis have been felt in recent years due to the cuts in education, healthcare and social services. This economic crisis has been particular noted in the unemployment rate that remains very high especially among youth. But another crisis has also emerged – a "democratic" crisis. This is evident in the criticism of the functioning of representative institutions, the traditional parties, the monarchy and especially the corruption of politicians. This democratic and participatory approach has strengthened some political parties such as "Ciudadanos" (Citizens) and it has caused the emergence of new parties like

“Podemos” (We can). It is about the quality of democracy but of course it will also influence the immediate future of autonomy.

The difference between the decentralization in Spain and in the UK is obvious, despite the old idea of parallelism between Scotland-UK and Catalonia-Spain, but there are also common elements for reflection and discussion, for example, in the plurality of nations and their consequences. Another common element rests on the position of the regions in the European Union and the conditions of the new states (independence is no longer what it was), because some regions are much stronger than some states, but they are not in the European Council.

2. FOUNDATION AND EVOLUTION OF THE AUTONOMOUS STATE

Centralism, together with authoritarianism, has been a traditional feature of the modern State in Spain, unaffected by constitutional changes, although in short liberal periods of our history there were also attempts at decentralization, especially in the First Republic (1873) and the Second Republic (1931-1936). After this period, Francoism returned to extreme centralism and so it was logical to think that the first democratic elections in 1977 would bring some form of autonomy.

This phase of “transition to democracy” led to the establishment of an interim form of self-governing regions, which was based on an Assembly and a Government of limited power until the Constitution was passed in 1978. Despite the limited powers, this provisional autonomy, based on the provincial local institutions, was very useful for dialogue with the central government on the territorial organization, which was achieved without excessive conflict. The Constitution established two different degrees of power among regions, at least for the first five years after the adoption of the Statute of

Autonomy. But the Constitution barely set the procedures for organizing the Autonomous Communities (ACs), its institutions and some general principles, leaving the future development of the Autonomous State wide open.

The doubts raised about the development of the ACs were resolved in the Autonomic Pacts of 1981, made by Suarez, the President of the Government (Democratic Center Party, in Spanish, UCD) and Felipe González, the leader of PSOE (in English, the Spanish Socialist Workers' Party), the main opposition party. The process of decentralization evolved quickly, and in 1983 all the ACs Statutes were approved, the general laws of the State were reformed and all ACs held elections, thereby forming the 17 regional parliaments and governments involved.

Moreover, many Sentences of the Constitutional Court (CC) facilitated the operation of the system; and also the fact that the PSOE obtained a broad parliamentary majority consolidated the democracy, by giving the government stability for a long period (Felipe González, 1982-1996). These governments renovated and modernized institutions, with important reforms in the Army, health, education, etc. In 1986 Spain became part of the European Union, then called the EEC, and economic and political momentum favored the new democratic and social State. The persistence of ETA terrorism in the Basque Country appeared as the worst scourge, once the army was no longer a danger to the democracy. The monarchy of King Juan Carlos followed the European Parliamentary model and its role in the early years, which were the most difficult, contributed to the mutual benefit of the democracy and the monarchy.



Different level of competencies in the first period

In the early nineties, the ACs with the lesser degree of self-government called for the broadening of their powers, as allowed by the Constitution, and the “Second autonomic pacts” (with the PSOE in government at the time, and the PP, in English, the Popular Party, in opposition) conducted a substantial equalization of the power of all of the ACs, under the criticism of the nationalist parties. In recent years several financing reforms and a major reform of Senate rules, trying to improve the autonomic system have been performed. In 1996 the PP won the elections and formed the government, after negotiating with the nationalist parties. In the elections of 2000 the PP obtained an absolute majority and then problems began between Aznar’s government and some ACs.

Around the year 2000 the decentralization of the State foreseen by the Constitution is considered to have been fulfilled, because the transfer of services in education and health

was completed in all ACs, and this involved a high number of civil servants and a large quantity of financial resources.

Also, at the turn of the century some structural problems of the autonomous State appeared. The most well-known was the limited functions of the Senate, which has a similar composition to the Congress of Deputies but without power and with a weak relationship with ACs, even though the Constitution qualifies it as "House of territorial representation." In 1994 a reform of the Rules of the Senate was done to try to strengthen the relationship between this House and the CAs, but the change did not achieved its objectives and so the Senate itself voted for the necessity of a constitutional reform. However, twenty years later the reform has not yet taken place.

Another criticism extended among politicians and experts is the excessive State intervention in the powers shared with the CCAA, in very important matters (education, health, environment, general economy ...). These excesses generated continuous conflicts posed by ACs before the Constitutional Court (CC). This received so many appeals that it became saturated and dictated sentences long overdue (7 years or more).

The most important problem was that the Basque Nationalist Party (BNP) and nationalist Catalan party (Convergence and Union, C&U) launched harsh criticism of the autonomic system ("Barcelona Declaration", 1998) and in the following years tried to change the Autonomous State by the reform of the Statutes of Autonomy. From 2003, the BNP (while the terrorist activity of ETA continued) tried, unsuccessfully to pass several reforms to establish a kind of confederation or Free State with Spain. Afterwards Catalonia approved an ambitious bill of the reform of the Statute of Autonomy that was trimmed back by the Spanish Parliament (2006) and partially annulled by the CC in a controversial judgement (31/2010). As a reaction, several Nationalist Parties launched a referendum on the future of Catalonia, including the option for independence, partly inspired by the Quebec and Scottish examples.

3. INSTITUTIONS AND STATUTE OF AUTONOMY

In relative parallelism with the institutions of the State drawn by the Constitution, each Autonomous Community (AC) has a President, a Parliament and a Government of its own.

Each AC chooses a Parliament composed of a varying number of deputies, according to the population (Catalonia, 135; La Rioja, 33), and they all have legislative power and the faculty to elect the President of the AC, who is also the head of the government. The institutions of the ACs, especially the President and the Government have worked quite well in most cases, and Parliaments have not achieved more because of democratic weaknesses in the political system itself, so they do not require constitutional reforms, but better representation of citizens and more efficacy in their roles.

The importance of political autonomy can be seen in the fact that the institutions (Parliament and government, mainly) respond only to the electorate itself, without any hierarchical dependence on state government. The ACs have major legislative power, exclusive from or concurrent with the state, in areas such as urban planning, education, health, etc. In these cases and others the ACs exercise also the executive function, because they decide on the organization of the administration of major public services. So, the administrative and budgetary apparatuses which depend on the ACs are significant, especially since 2001 when all education and health services were transferred to the ACs, because the staff and financial resources in these sectors is considerable.

There is, moreover, a Superior Court in every AC, which has an ambiguous position between the State and the AC. There are also other autonomous institutions (Ombudsman, financial control, advisory council, etc.), that each AC organizes freely. Every administration depends on and is directed by the corresponding Government.

The Statute of Autonomy of each AC is the highest Law of the Community, like a regional Constitution, which regulates its institutions and competencies, contains some

general rules, and in the latest reforms, also introduces the rights that correspond to citizens, beyond those that are common to all Spaniards.

Historically, the Statute had an even higher significance because its approval meant the creation of the AC itself and the implementation of the institutions and the exercise of powers. The Statute of Autonomy could follow two different procedures for its approval. The first, which corresponded to the ACs with greater desire for autonomy (Catalonia, Basque Country, Galicia and Andalusia) involved the drafting of a proposal by the members of the Spanish Parliament elected in the region itself (deputies and senators from each of the regions), and this was followed by a joint discussion by a delegation of these parliamentarians and the Constitutional Commission of the Congress of Deputies. The resulting text was subjected to a referendum of the people of the region. The rest of the draft statutes were prepared similarly but were approved directly by the Spanish Parliament (called Cortes Generales) and they were did not submitted to referendum.

The most specific trend of the Statute is the drawing up of competencies of the AC, by mandate of the Constitution. The devolution process is not regulated in the Constitution but in the Statute of each AC, according to the “disposal principle” (principio dispositivo). That is to say, every AC choses the competencies that corresponds to them, with ratification by the State. From these functions the Statute are considered to have a quasi-constitutional nature, always subjected to the Constitution, but their protection in face of State Law depends on the Constitutional Court. This Court uses the corresponding norms of the Constitution and the Statute of Autonomy to define the competencies, and this criterium is called “bloc of constitutionality”.

4. THE SENATE AND THE NECESSITY OF REFORMING

The current Senate, because of its composition, is a duplicate of the Congress of Deputies, and because its functions is totally subordinate to them. At first glance the composition seems different, because it is mixed: There are 208 senators elected by a majoritarian electoral systems (four per province), who represent the major parties in the respective provinces. There is a minority of Senators (about 60) appointed by the Parliaments of the ACs, and therefore elected also by parties of these Parliaments. Despite this kind of Senator is distributed into general parliamentary groups of the political parties. So, the Senate has a composition more or less equivalent to the Congress of Deputies.

On the other hand, the Senate has much less power than the Congress. The appointment and the end of the Government depend on Congress (the Senate can only raise parliamentary questions), and the position of the Senate in legislative function is subordinate to the Congress. So, really the Senate is a rather useless body. But the main reason for reforming the Senate is not so much its limited usefulness as the need for an institution involving the ACs, such as a Senate or a Council of the Austria or Germany.

This idea of orienting the Senate toward the Autonomous Communities was so clear that already in 1994 a reform of Senate Rules was made to enhance its functions regarding the ACs, and soon afterwards the Senate voted unanimously to undertake a reform of the Constitution, but this was postponed and was never taken up again. In 2004, the Zapatero government included the Senate among the future reforms of the Constitution, but this aim failed. Today, no one denies the need to reform the Senate and alternatives include moving towards a parliamentary chamber, either elected by the citizens of the ACs (as in the US), or appointed by regional parliaments (as in Austria), or transforming the Senate into a kind of Federal Council (like the German Bundesrat).

In other occasions I have defended this last proposal, inspired by the German experience, because it allows a significant participation of the ACs in three major functions of the State. First, they would participate in passing laws affecting ACs, which would

decrease the current number of conflicts. They would also help shape intergovernmental relations between the ACs which are currently very weak. Federal Senate would also lead the participation of the ACs in the creation of European Union legislation. All in all, this kind of Federal Council would give the ACs much more power and would integrate them better in the ensemble of State.

In terms of the composition, the federal Senate would consist of representatives of the governments of the ACs, so that each CA had three representatives or votes at least and one more for every million inhabitants. Certainly a Senate or Council of the ACs, as proposed here, would be very different from the Congress, which is direct and general representation of citizens, whereas the Senate legitimacy would derive from the role of the ACs in the State. This composition and functioning would have great advantages, because the members of the regional governments are experts in each topic they address, and their participation would improve the implementation of these laws.

5. THE DISTRIBUTION OF POWERS

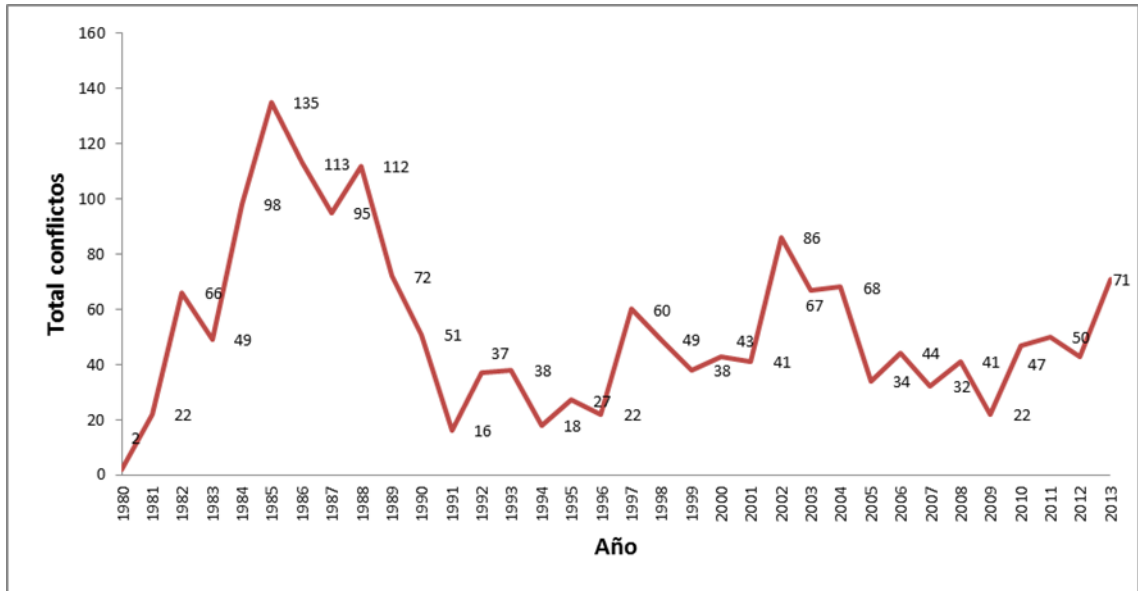
The distribution of powers was born in Spain burdened by the doubts of the constituent Parliament about the autonomic system. Namely the alternative was a partial autonomy granted to a few ACs or to its extension to the whole territory, and in this case, between an equivalent power of the ACs or a double level of self-government. Within maximum and minimum margins, the option was solved by each individual AC and was reflected in its own Statute of Autonomy. Thus, the powers and responsibilities of each AC could be different depending on both the Constitution and the Statute of the AC. Initially there were two different levels of power, the highest corresponded to 7 ACs, determined through complicated negotiation theoretically for those showing a greater interest in self-government (Catalonia, the Basque Country, Galicia, Andalusia, Navarra, the Canary

Islands and Community of Valencia). The other ten ACs had similar institutions but less legislative faculties. In any case, these ACs demanded equality and this was achieved in 1992, by “autonomics pacts” signed by the PSOE and the PP.

In the distribution of competencies there are different categories. On the one hand, there is the traditional kind of exclusive powers of the State (armed forces, for example), and the exclusive power of the ACs (urban planning or tourism, for example), including so-called "exclusive double competencies" (State-ACs) according to the length of the subject (mater), such as roads, railways and public works. In every case, exclusiveness means that all faculties (law, regulation and implementation) correspond solely to the State or to the ACs. On the other hand, there are also the categories of “concurrent” and “shared” powers. In the category of concurrent, the Constitution attributes the "basic law" to the State and confers legislation of development and implementation to the ACs, such as education and health. There are also some areas of shared competence between the legislation of the State and execution belonging to the ACs, as in labor law.

These different kinds of powers are barely defined in the Constitution and, moreover, there are only a few general clauses comparable to federal prevalence in Germany, for resolving contradictions between laws. Hence, the Constitutional Court is required to intervene continually in order to rule on conflicts between the State and ACs.

In addition, a lot of conflicts have occurred because in fact the distribution of powers in Spain the most important category is given to the concurrent powers affecting general economy, education, health and environment. In this case, the State and the ACs have legislative competences, the first only on the basic law and the ACs on the development of law and implementation. The profiles are ambiguous, because the basic law is different in every subject and at every political conjuncture.



The huge number of conflicts between the state and the ACs has given excessive importance to the Constitutional Court. The worst consequence of this is that the judgments of the Constitutional Court are not able to prevent new conflicts on the same subject and the amount of appeals generate delays of CC decision delays of 7 and 8 years from when the conflict occurred. The volume of conflicts and the delay of sentences of the CC is a serious problem, which affects the core of the system.

6. THE CONSTITUTIONAL COURT

The disputes between organs of the State may be more frequent in the federal and regional systems, and different formulas have been developed for solving these conflicts. In modern federalism the judicial solution has emerged as the main mechanism, which can be

arranged through the ordinary Courts US) or through a specific Constitutional Court (Kelsen, Austria, Germany).

The Spanish Constitution of 1978 has clearly followed the German model, calling on the CC to resolve disputes that may pit the state against the ACs, or the ACs against one another, without prejudice in selecting mechanisms that respond to other logic, such as political negotiation, appeals to the ordinary courts and the unilateral imposition of the State, which is foreseen for very serious situations in Article 155 of the Constitution, copying the German mechanism of federal coercion. As in the other countries mentioned above, the Spanish Constitutional Court also has jurisdiction in various fields, such as the protection of Human Rights and the general review of Acts of Parliament and delegated legislation of the Government.

Specifically, the “conflicts of competencies” brought before the CC are disputes between the State and one AC, or between several ACs, discussing the jurisdiction to pass an Act or a regulation because the author of the claim believes that the other (AC or State) does not have the competence to act. The procedure changes slightly depending on whether the object of conflict is an Act or a regulation, but in both cases the CC resolves the issue as a conflict of competences. The function of the CC is to analyse the Constitution and the Statute of the AC and decide whether the author of the work had jurisdiction to rule or whether, on the contrary, it has exceeded its powers and has invaded the prerogatives of the appellant. Therefore it is said that the essence of conflict of competences is the *potestatis vindicatio*. The advantages of the jurisdictional formula to solving conflicts, and more precisely of attributing the solution to the CC, are that the Court's decision must be based exclusively in legal criteria, and this is intended to make the conflict purely judicial. Although it may have had a political origin, it is resolved by the Court with legal criteria.

In this regard, the Spanish Constitution seems to have faithfully followed the federal model of the German system, but instead we have had very different results, as it is possible to see in various aspects.

First, the volume of conflicts between the State and the Autonomous Communities exceeds all expectations. Its number can be set at approximately 50 conflicts per year, which are resolved through several different procedures. Since its foundation in 1981, the CC has issued, more or less, 1.100 judgments deciding conflicts between the State and the Autonomous Communities. This number represents an annual average of 30 sentences or so, a number whose magnitude can be fully appreciated when compared to the annual average in Germany, where the Federal Constitutional Court usually resolves one or two conflicts per year.

The accumulation of unresolved conflicts has led to a very serious delay in the processing of sentences, which has reached approximately 7-8 years in the last decade. The responsibility for this delay is not attributable only to the CC, although it has relegated this problem to a position of lesser importance, giving preference to other issues. Nor is it exclusively the responsibility of the CC, because this high number represents appeals and conflicts posed by state and regional governments, by deputies and senators (50 signatures), and even by judges. Occasionally the parties involved benefit from these postponements in rulings, and the delay in judgment encourages irresponsibility on the part of politicians. Government officials may adopt unconstitutional decisions knowing that the judgment will take eight years (two normal legislatures), and normally will not affect them. Various reforms of the Organic Law of the CC in 2000 and 2007 have tried to reduce the problem, and they are positive, but so far a solution has not yet been reached, because the root of the problem is closely linked to the system of division of competences itself. Also we must remember that in Spain the Senate does not represent the ACs, unlike the Bundesrat in Germany, and the basic laws are decided solely by the State.

Moreover, the large number of judgments devalues the doctrine of the CC, because even for the experts it is difficult to know the criteria of competencies in force. This volume of conflicts, the delay of sentences and the diversity of judicial solutions have generated the loss of authority of the Court.

In consequence the governments do not pay attention the doctrine of the CC, even in cases where good constitutional theory has been applied. For example, the SCCS

13/1992 prohibits granting spending power to the State, but the State has persisted giving grants, and the ACs continues presenting claims to the CC. Out of curiosity, I counted the number of sentences on this subject in 2012, twenty years after the leading sentence, and I found 9 statements on subsidies which continue to trouble the State and the Autonomous Communities, with very similar content, based on the cited ruling.

The Constitutional Court is a fragile institution that has enormous power based only on its prestige. The CC can override laws passed by parliament and regulations made by governments, but it lacks the democratic legitimacy of elections and it will not be able to impose its decisions without authority, if it is starved of prestige.

As is generally accepted, the prestige of the CC is essential to fulfil its peacekeeping role, and now its reputation is weak. In the early years of democracy, the members of the CC were professors or judges with enormous prestige, whereas now the situation is relatively mediocre. The main reason lies in the quota system that the parties use to divide appointments (system called *lotizzazione* in Italy). Although the Constitution requires a qualified majority for the election of magistrates, the political parties share the number (quota), and every party appoints judges with a certain political affinity, without taking into account their capacity. The consequence is a loss of quality in terms of the magistrates and poor professionalism in the Court.

Moreover, the improvement of some jurisprudential lines is not easy if the political parties do not make major institutional reforms, especially to correct the distribution of competencies and the lack of representation of the ACs in the Senate, for example.

There is another additional general reform specific to the CC and connected to the conflicts of competences: the possible participation of the ACs in the appointment of judges. The provisions in place in Canada (three judges must be from Quebec) or Belgium (distribution according to linguistic communities) do not seem ideal, because the judges appointed by a territory or community may see their decisions questioned given that they are part of the conflict. Germany's solution is to permit the *Länder* to elect half of the magistrates through the *Bundesrat*. This line could be simple to apply in Spain if the

constitutional reform of the Senate progressed. In any case, reserving all the appointments of the constitutional judges for the Congress and a federal Senate could be a good solution.

The possibility of reforming the Constitution can be approached in several ways. The first would change the structure of powers, incorporating formulas that do not generate as many conflicts and modify the system of appointment of judges to the CC, excluding the “quota” method of political parties to elect judges (the Italian lottizzazione) because it leads to ignorant and partisan Courts.

7. WEAKNESS OF THE INTERGOVERNMENTAL RELATIONS

In all federal systems, in recent decades, the change from dual federalism to cooperative federalism has occurred, with the generalization of partnerships between governments of the federate states, or Länder, and between those States and the Federation. This transformation has been more or less pronounced depending on the country, but it is a general feature that translates into institutions profound changes in the federal system. Surely this new orientation could become excessive, generating criticism like that of Darnstadt, who ridicules the excess of cooperation in Germany, but we must be aware that it reflects the process of economic integration and, ultimately, globalization.

In Spain the 1978 Constitution did not at all foresee relations between governments as a basis for solving the problems that extend beyond separate ACs, except the mention of a possibility of the agreement between ACs in art. 145.2 SC in order to establish their control. In the same manner, the ACs ignore the usefulness of horizontal cooperation.

The Constitutional Court (CC) was the first to point out that cooperation is an essential trait of any compound state, including the Spanish autonomic system and found no

need for a specific rule to authorize partnerships, because they derive from the nature of the State or, in any case, from the principle of autonomy of Article 2 EC (the first, SCC 18/1982).

The legislation and the Administration began timidly introducing techniques of intergovernmental collaboration. The legislation created sectoral conferences where the respective Minister and representatives of the AACC meet periodically. Subsequently, Law 30/1992 systematized the regulation of different techniques, including joint programs and other possibilities, and therefore greatly favored this practice, although this led to the undue prominence of the central government.

The compacts or agreements (*convenios*) signed between the central Government and the Executives of every AC is the most utilized instrument (more than 1.000 per year before the economic crisis, now half) and frequently they possess a similar content for several ACs. Horizontal agreements between ACs are much less, probably due to political and ideological reasons.

The Sectoral Ministers' Conferences are the meeting of one minister of central government with the autonomic ministers ("consejeros", counsellors) of the same administrative sector. Regulated by the Act 30/1992, the position of the central minister is decisive because he convenes and chairs the meetings and controls the secretariat of the Conference. Once again, there are no horizontal Conferences, as exists in Germany or Switzerland. On the other hand, there are some Conferences working well (about 10) and others functioning very irregularly, depending on the mood of the central minister, because of his decisive position. There is also the bilateral cooperation, mainly between executives, but their functioning is very heterogeneous. As the number of constitutional conflicts was so high, in 2000 a Commission has been created (outlined in article 33.2 Act of CC) to bargain the content of each possible legal conflict, in order to avoid going to the CC. This is a paradox: one instrument of cooperation of the governments to diminish conflicts between Acts passed by Parliaments.

In 2005, after many recommendations of experts, President Zapatero convened the Conference of Presidents of the ACs, that has a long experience in Austria, Germany and more recently in Switzerland. Afterwards the standard of meeting has been one per year, and Rajoy government has continued the norm, but the efficacy of this organ remains far from its equivalents of European federalisms.

The road traveled since 1978 has been remarkable but still has defects (the virtual absence of cooperation between regions, the minimal power of common institutions, etc.), and improvement surely requires constitutional reform that legitimizes and strengthens partnerships, especially in the form of a general body of participation, such as the Conference of Presidents or a federal Senate.

8. THE AUTONOMOUS FINANCING

In Spain the idea that autonomy must include a system for financing the decentralized institutions is deeply rooted, because the exercise of power requires sufficient financial means. In contrast, the Spanish Constitution on this point merely mentions some general principles, that are too generic to regulate such a complex matter. It made sense in 1978, because nobody knew the ACs that would be created, nor the power they could have, but it's very different 35 years later. As in all other areas, the Constitution should contain the main principles and rules for this sector and the problem is –once again- the lack of constitutional reform.

As the Constitution lacks adequate standards, the Organic Law on Financing of the Autonomous Communities (well-known LOFCA in Spanish), which was adopted in 1980, after the first Statutes of Autonomy were enacted, replaced the role of the Constitution, establishing the rules for the income and expenses of the ACs. In fact, the

first approach of LOFCA only regulated the autonomy of expenditure, which also governed by the narrow principle of “effective cost” of the transferred services. The resources that the ACs needed for education, roads, etc. were received as grants or transfers.

In these decades, LOFCA has been revised several times, virtually every five years. This reform has had advantages and disadvantages. The worst problem is that the revision of LOFCA implies a crisis within the whole system, for lack of constitutional norms, and further, the reforms have been made through opaque negotiations and amid mutual accusations between the ACs of lack of solidarity. However, the reforms have enabled a range of almost total freedom of expenditure, with autonomy in revenue reaching approximately 65% of economic resources through taxes transferred by the State and other shared taxes, like 50% of the Income Tax and VAT.

There is an important joint negotiating body, which includes the State Minister of Finance and other government representatives of the regional governments. It is called the Council of Fiscal and Financial Policy and it works fairly well, although the State predominates. This has been exacerbated in recent years by the economic crisis and the control resulting from involvement in the European Union, which has even led to the amendment of article 135 of the Constitution, to ensure fiscal stability.

The regions of the Basque Country and Navarre have special tax and financial status, as distinguishing factors, and the Canary Islands also have some peculiarities. The diversity of problems in such a complex system has been studied recently in the book coordinated by Sandra Leon.

9. THE AUTONOMOUS COMMUNITIES AND THE EUROPEAN UNION

Spain had applied for membership in the European Economic Community (EEC) in the sixties but it had been rejected for the lack of democracy posed by the Franco regime. When the democracy began and the Constitution was adopted, in 1978, it foresaw a specific pathway to facilitate the entry in the EEC preventing need for constitutional reform. This shortcut has allowed the changes brought about by the reform of European treaties – including those as important as Maastricht and Lisbon- without amending the Constitution.

Spain joined the EEC on January 1, 1986 but one must remember that before and after there was and has been expansion and strengthening of the EEC. From the initial 6 States, it grew to 15 in 1994, 25 in 2004, and to 28 in 2013. Also the consolidation of institutions was progressive from the creation of the EEC with the Treaty of Rome, through the major reforms of the Treaties: Single European Act (1987), Maastricht (1993) and Lisbon (2007), among others.

From its origin, the EEC was a union of States, and remains it so, but while the position of the regions was negligible in the early stages, but it has grown in importance little by little. The involvement of regions in the European Union (EU) may be described at three levels: downward, upward and direct representation.

Downswing phase is the application of Community law by the States themselves, which they do according to their own rules, so that the EU does not come into internal execution (principle of institutional autonomy), according to established doctrine from the International Fruit Company Judgment (1971). In Spain this means that the State or the ACs intervenes depending of the type of competencies involving Community law (STC 115/1991 consolidates this doctrine).

The ascending phase refers to the participation of the ACs in the development of Community rules because, as was shown first by the German Länder, they are weakened by

the centralization implied in the continued expansion of community law. After several attempts, following the German experience, the ACs participate in European institutions through the Spanish State delegation and can participate in the activities of the Joint Conference on Issues Related to the European Union, which was created in 2004.

Initially the regions were passive subjects of some European policies, but the Maastricht Treaty created the Committee of the Regions, although it only had advisory powers which it shared with local authorities. These limitations have prompted the search for new ways to strengthen regions such as the Network of Regions with Legislative Powers, the empowerment of representative offices in Brussels and the extension of cross-border cooperation policies.

10. THE “DIFFERENTIAL FACTS” AND THE FEDERALISM IN VARYING DEGREES

The problems in the current crisis of the autonomic system are not limited to the areas of self-government that has just been discussed, common to all ACs, but extends to the very conception of the State, because some ACs consider themselves as nations, and criticize to the autonomous system for denying a specific position. This is clearly reflected in the positions taken by the nationalist parties in Catalonia and the Basque Country, but also in other ACs, to varying degrees. The constituent power of 1978 articulated this national plurality assigning to Spain the concept of nation and allowing some ACs to assume the idea of "nationality" or "region" in its Statute, but denying that the distinction of nationality-region has consequences in general competences or financing. The consideration of some ACs as nationality meant progress in recognizing the complex territorial reality of Spain, but has not been enough for the nationalist positions of Catalonia and the Basque Country, which are pushing for their recognition as nations, especially after

the suppression of two categories of competences, made by the 1992 autonomic agreements.



Different official languages

Instead the Constitution did recognize the peculiar character of some regions, stemming from a more or less remote history. The clearest example is the use of the languages other than Spanish, (Catalan, Basque and Galician). The Constitution also refers to the specific Civil Law of some regions (Navarra, Catalonia, Aragon ...) or to the traditional financing system (the “economic concert” in the Basque Country and “economic convention” in Navarra), and has also allowed the creation of a regional police force in the Basque Country, Catalonia and Navarre, as well as territorial entities in the Basque Country, the Canary and Balearic Islands. These features of some ACs are usually known

as "differential facts" and are mostly reflected in the ACs expressing a greater willingness to self-government.

Each of these "facts" or factors and their differential regulation is established by the related Statute. For example, co-official language in the territory of the ACs affects the education, the media and the relations with the administration and justice. In my book there are some maps showing the extent of the differential of the ACs, that in summary are as follows.

Basque Country: language, police, provincial institutions and economic concert.

Catalonia: language, civil law and police.

Galicia: language and civil law.

Navarra: economic convention, civil law and police.

Canary Islands: island councils and special tax regime.

Balearic Islands: language, island councils, civil law.

Valencian Community: language.

Aragon, civil law.

As can be seen at first glance, the dimension of differential facts varies from region to region, but the intensity and political significance of each element in every specific AC is even more decisive. Even the same differential fact, such as the language, plays a very different institutional and political role in Catalonia, the Basque Country and Galicia, and it is even more different in others, such as the Valencian Community or the Balearic Islands.

Therefore it is difficult to make a dual classification of the ACs, from the differential facts point of view, and they are rather ordered in a graduated scale. Catalonia and the Basque Country probably express more desire toward the self-government,

followed by Galicia, the Canary Islands, Aragon and Navarra, but as well as Andalusia, which has improved its autonomy in recent decades.

The main issue now is to set the political balance of the ACs with strong nationalist parties (especially Catalonia and the Basque Country) and the rest of the ACs, and this depend in part on the constitutional idea of nations. In fact, the Canadian “theory of clarity” can help to decide the future of these ACs. If there is an absolute approach to the idea of nation, so that to each nation or nationality corresponds one State, the future of Spain could result in secessions of several territories. If instead the option is for the compatibility of nations with the nationalities and regions in the same State, the continuity of the State will be possible, after a considerable reform of the Constitution.

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The general study of the object of this article, can be consulted in AJA, Eliseo, Estado autonómico y reforma federal, Alianza Ed., 2014. This text is also available in Catalan, on line.