

SUBNATIONAL CONSTITUTIONALISM IN SPAIN

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The Kingdom of Spain is a compound national State that incorporates various degrees of internal ethnoterritorial plurality comprising a total population of around 40 million inhabitants. After a long hyper-centralist dictatorship (1939-75), a peaceful transition to democracy (1975-79), and an active European involvement following its accession to the EEC/EU (1986), Spain has undergone a deep process of administrative and political decentralization, which has aimed at providing internal territorial accommodation by combining both federal principles of self-rule and, to a lesser degree, shared rule.

1. Devolutionary federalism

The Spanish 1978 Constitution¹ does not include the word “federal” in any of its provisions, or in any subsequent legislation. It recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all. Since the beginning of the 1980s the dynamics of the *Estado de las Autonomías* (State of Autonomies) are characterized by a latent federalization, and have followed a ‘top-down’ process of decentralization. The main features of the process of home-rule-all-round in Spain concord with those of devolutionary federalism. They also follow the federative criterion that legitimacy of each autonomous layer of government is constitutionally guaranteed. Thus, Spain is a democracy where two tiers of government --central and regional-- enjoy constitutionally separate powers and representative parliamentary institutions.



2. Subnational units

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¹ In the popular referendum held on 6 December 1978, the Spanish *Carta Magna* received 87.9% ‘yes’ votes, 7.8% ‘no’ votes, and 4.3% null or blank votes. Abstention reached 32.9% of the registered electorate.

Spain is composed of 17 *Comunidades Autónomas* (Autonomous Communities), three of which are recognized by the 1978 Constitution as ‘historical’ nationalities (the Basque Country, Catalonia and Galicia). In these nationalities, Basque, Catalan and Galician are regional languages with full legal status alongside Castilian (or Spanish as is usually refer to elsewhere), which is the official language of the whole Kingdom of Spain. Approximately a fourth of the Spanish population of 40 million is bilingual. The other 14 *Comunidades Autónomas* are: Andalusia, Aragon, Asturias, Balearic Islands, Canary Islands, Cantabria, Castille and Leon, Castille-La Mancha, Extremadura, La Rioja, Madrid, Murcia, Navarre, Valencia (see map above).

3. Constitutions, status and powers of subnational units

All Spain’s *Comunidades Autónomas* have democratic constitutional Statutes of Autonomy (*Estatutos de Autonomía*) for their internal organization. The 1978 Spanish Constitution is the legitimacy source for the right of self-government by the *Comunidades Autónomas*. The authority of the regional layer is not a surrogate of the Central government.

Statutes of Autonomy are the basic institutional rule of each Autonomous Community and the State recognizes and protects them as an integral part of its legal system. The Statutes of Autonomy contain the powers assumed within the framework laid down by the Constitution (see 6).

4. Functions of subnational constitutions

All matters not expressly assigned to the central State by the Constitution may fall under the jurisdiction of the Autonomous Communities by virtue of their Statutes of Autonomy. Jurisdiction on matters not claimed by Statutes of Autonomy fall with the central State. National law is suppletory of that of the Autonomous Communities (art. 148.3).

5. Federal constitution and the structure of subnational units

Title VIII of the 1978 Constitution (on the territorial organization of the State) provided for any number of *Comunidades Autónomas* to be self-governing, depending on the will expressed by either the inhabitants of each nationality or region, or their political representatives. The Constitution also made it possible for the degree of self-government to be wide or restricted, according to the wishes of each nationality or and region.

The Autonomous Communities assumed competences and powers listed in the Constitution (art. 148).² Other competences remained within the exclusive competence

² According to art. 148 of the 1978 Constitution, the Autonomous Communities could assume competences over the following matters: (1) Organization of their institutions of self-government; (2) Public administration regarding municipalities; (3) Town and country planning and housing; (4) Public works; (5) Railways, roads and transport; (6) Ports and airports are not engaged in commercial activities; (7) Agriculture and livestock raising; (8) Woodlands and forestry; (9) Management of environmental protection; (10) Planning, construction and exploitation of hydraulic projects, canals and irrigation; mineral and thermal waters; (11) Inland water fishing, shellfish industry and fishfarming, hunting and

of the central State, although the central State may transfer or delegate to the Autonomous Communities, through an organic act³ passed in Parliament, some of its powers which by their very nature can be transferred or delegated (150.2).⁴

6. Amendment of subnational constitutions

The amendment of a Statute of Autonomy requires approval of the Spanish Parliament through an organic act (art. 147). Statutes may be amended only by a referendum of registered electors in the Autonomous Community (art. 147, 152).

7. Similarities and dissimilarities of subnational constitutions

De jure and *de facto* asymmetries have been due to the diverse inputs exerted by regional actors, elites and institutions. As a result the Autonomous Communities were constituted as 'historical' nationalities (Catalonia, Galicia and the Basque Country), nationality according to art. 151 (Andalusia), nationality according to art. 143 (Valencia), regions under art. 143, or *fuero* community (Navarre). Asymmetry of power in the nationalities and regions has developed alongside a basic administrative heterogeneity among multi- and uni-provincial communities.⁵ All things considered, the degree of heterogeneity among the 17 Autonomous Communities has leveled over time.

river fishing; (12) Local fairs; (13) Promotion of economic development of the Autonomous Community within the objectives set by national economic policy; (14) Handicrafts; (15) Museums, libraries and music conservatories; (16) Monuments of interest; (17) The promotion of culture and research and, where applicable, the teaching of the Autonomous Community's language; (18) The promotion and planning of tourism; (19) The promotion of sports and the use of leisure; (20) Social assistance; (21) Health and hygiene; (22) The supervision and protection of its buildings and installations. Coordination and other powers relating to local police forces.

³ Organic acts are those relating to the implementation of fundamental rights and public freedoms, those approving the Statutes of Autonomy and the general electoral system and other laws provided for in the Constitution (art. 81.1).

⁴ According to art. 149, the central State has exclusive competence over: (1) Regulation of basic conditions guaranteeing the equality of all Spaniards; (2) Nationality, immigration, emigration, status of aliens, and right of asylum; (3) International relations; (4) Defence and the Armed Forces; (5) Administration of Justice; (6) Commercial, criminal and penitentiary legislation; (7) Labour legislation, without prejudice to its management by bodies of the Autonomous Communities; (8) Civil legislation, except development by the Autonomous Communities of their civil law, foral or special, whenever these exist; (9) Legislation on copyright and industrial property; (10) Customs and tariff regulations; foreign trade; (11) Monetary system; (12) Legislation on weights and measures; (13) Basic rules and coordination of general economic planning; (14) General financial affairs and State Debt; (15) Promotion and general coordination of scientific and technical research; (16) External health measures; legislation on pharmaceutical products; (17) Basic legislation and financial system of Social Security, without prejudice to implementation of its services by the Autonomous Communities; (18) Basic rules of the legal system of public administrations; (19) Sea fishing; (20) Merchant navy and registering of ships; general-interest ports; general-interest airports; control of the air space, air traffic and transport; meteorological services and aircraft registration; (21) Railways and land transport; Post Office services and telecommunications; air and underwater cables and radiocommunications; (22) Legislation, regulation and concession of hydraulic resources; (23) Basic legislation on environmental protection; (24) Public works affecting more than one Self-governing Community; (25) Basic regulation of mining and energy; (26) Manufacturing, sale, possession and use of arms and explosives; (27) Basic rules relating to mass-communications media; (28) Protection of Spain's cultural and artistic heritage and national monuments; (29) Public safety; (30) Regulation of the standardization of academic degrees; (31) Statistics for State purposes.; (32) Authorization of popular consultations through the holding of referendums.

⁵ While both the old uni-provincial Autonomous Communities (Asturias, the Balearics, Navarre) and the new ones (Cantabria, Madrid, Murcia, La Rioja) have been able to adapt to their new modes of self-administration

8. Models of subnational constitutions

From the perspective of administrative organization, the Autonomous Communities have in most cases chosen to reproduce the central State apparatus instead of reducing its size.

Self-awareness of their own *differential fact* is a permanent incentive for the Basque Country, Catalonia and Galicia ('historical' nationalities) to maintain their institutional distinctiveness with relation to the rest of the Spanish *Comunidades Autónomas*. They claim a legitimate political 'advantage' over the other regions for having had self-governing institutions during the Second Republic (1931-39).⁶ Since the beginning of the process of decentralization in the late 1970s, they aimed at making prevalent the assumption of their 'distinct origin'. But *comparative grievance* determines that the exercise of the right to autonomy legitimately practiced by the regions compels them to claim the same degree of self-government as the 'historical' nationalities. This is a principle they actively apply to themselves. None of the regions wants to be left behind. Consequently, a process of *ethnoterritorial mimesis* has taken place by which 'late-comer' regions have struggled not to feel discriminated against by the achievements of those 'early rising' Autonomous Communities, and have claimed powers and institutional arrangements of a similar range and characteristics.

9. Subnational governmental structures

The institutional self-government organization of the Autonomous Communities is based on a legislative assembly, or regional parliament, elected by universal suffrage under a system of proportional representation, which is to assure the representation of the various areas of the territory; an executive council with executive and administrative functions and a president elected by the assembly among its members and appointed by the King. The president assumes leadership of the executive council, the supreme representation of the Autonomous Community and the State's ordinary representation in the latter. The president and the members of the executive council are politically accountable to the regional parliament.

A High Court of Justice, without prejudice to the nation-wide jurisdiction of the Supreme Court, constitutes the head of Judicial Power in the territory of the Autonomous Community.

10. Rights protections in the subnational constitutions

All Spaniards have the same rights and obligations in any part of the State territory. Further to this, no subnational regulation may hinder the freedom of movement and settlement of persons and goods throughout the Spanish territory (art. 139). The Constitutional Court deals with individual appeals for protection (*recursos de amparo*) against violation of the rights and freedoms contained in Title II of the Constitution, which apply to the whole Kingdom of Spain and all Spanish citizens.

comfortably from their previous and now extinct provincial councils, the remaining ten Autonomous Communities have been burdened with more political and administrative sublevels.

⁶ Moreover, Basque and Catalan nationalisms, along with other democratic opposition forces, were especially active during the late years of Franco dictatorship, and during the process of transition to democracy in Spain after 1975.

11. Institutions for the authoritative interpretation of subnational constitutions

The Constitutional Court has jurisdiction over the whole Spanish territory and, among other prerogatives, exercises the control over the bodies of the Autonomous Communities in matters pertaining to the constitutionality of their regulatory provisions having the force of law.

The Court has jurisdiction over the whole Spanish territory and, among other prerogatives, is entitled to hear appeals against the alleged unconstitutionality of acts and statutes having the force of an act. It rules over conflicts of jurisdiction between the State and the Autonomous Communities or between the *Comunidades Autónomas* themselves.

The arbitrating role of the *Tribunal Constitucional*, the highest court in Spain, has been of paramount importance for the subsequent implementation of the *Estado de las Autonomías*. It has amongst its attributes the capacity to decide in legal conflicts between the Central government and the Autonomous Communities, or even in conflicts among the latter.⁷ There is a need for compromise on the nomination of candidates to the Constitutional Court between government and opposition in the election of its members of the *Tribunal Constitucional*,⁸ a circumstance which has provided the highest Court with a great deal of authority and independence.⁹

12. Reforms of subnational constitutions

Except for some minor adjustments related to the European Union, the 1978 Spanish Constitution has not been reformed.

In the early 1990s, the *Estatutos de Autonomía* of the 'late-comer' regions (art. 143) were upgraded following a pact between the two main government and opposition parties (PSOE and PP). In recent times, proposals for reforming the Statutes of Autonomy of the Basque Country, Catalonia and Andalusia have been put forward and are in the process of intense political debate.

13. Statutory law and local authorities

⁷ The Central government may appeal to the Constitutional Court against provisions and resolutions adopted by the bodies of the Autonomous Communities, which shall bring about the suspension of the contested provisions or resolutions, but the Court must either ratify or lift the suspension within a period of not more than five months.

⁸ Due to the Spanish system of proportional representation (D'Hont rule on provincial constituencies for the election of the MPs to the Chamber of Deputies or Lower House) it is highly unlikely that a single political party could ever achieve the required three-fifths of the total members of both Houses of Parliament.

⁹ The important ruling of the Court (5 August, 1983) on the LOAPA Act ('Organic Law on the Harmonization of the Autonomy Process'), passed by the Spanish Parliament, reinforced the open and federalizing interpretation of the 1978 Constitution very much against the views of center-right UCD and left-left PSOE Governments.

The Constitution guarantees the autonomy of local authorities (mainly provinces and municipalities). Other territorial units include *cabildos*,¹⁰ and island councils.¹¹ They enjoy full legal personality and their councils, mayors and presidents are democratically elected. Local authorities may promulgate administrative regulations and ordinances.

14. Claims to reform

Twenty five years after the approval of the first Statutes of Autonomy (Basque Country and Catalonia in 1979), the process of decentralization of powers has achieved a high degree of popular support largely transcending past patterns of internal confrontation.¹² In policy terms the process of decentralization has allowed for considerable regional autonomy and home rule. Transferring of powers and services from the central State to the regional State, together with fiscal federalism arrangements, have allowed the public budgets of the *Comunidades Autónomas* to grow very considerably. If public spending is to be identified as a good indicator of the level of regional autonomy, then it should be concluded that the Spanish *Comunidades Autónomas* enjoy a much higher degree of self-government as compared to federated units in other formally established federations in the world (see Table below).

Territorial Distribution of Public Expenditure in Spain (%)

	1981	1984	1987	1990	1993	1996	1999	2002
CENTRAL	87.3	75.7	72.6	66.2	58.3	58.9	56.2	48.7
REGIONAL	3.0	12.2	14.6	20.5	25.8	26.9	28.2	35.5
LOCAL	9.7	12.1	12.8	13.3	15.9	14.2	15.6	15.8

Notes: (a) During 1999-2002, strong regional increases corresponded to the decentralization of education and health powers to all 17 *Comunidades Autónomas*.

(b) Spending on social insurance pensions has not been taken into account as it would introduced a bias were it to be included as a Central government matter.

Nationalists in the Basque Country, Catalonia and Galicia have insisted on the idea of a 'shared sovereignty' within the Spanish State. On 16 July 1998, the 'Declaration of Barcelona' was signed by the Basque *Partido Nacionalista Vasco* (PNV), the Catalan *Convergència i Unió* (CiU), and the Galician *Bloque Nacionalista Galego* (BNG). They have claimed the establishment of a confederal model of political accommodation in Spain.

¹⁰ These correspond to each of the Canary Islands (Fuerteventura, Gran Canaria, Hierro, La Gomera, La Palma, Lanzarote, and Tenerife).

¹¹ Or *Consells* of the Balearic Islands (Mallorca, Minorca, and Ibiza / Formentera).

¹² In 2002, public assessment of the setting-up of the *Comunidades Autónomas* was considered 'positive' by 67 per cent as compared to 51 per cent in 1994. Those who had a 'negative' opinion decreased from 19 to 13 per cent, while the same 11 per cent of the surveyed expressed neither 'positive' nor 'negative' views.