

# Reforming the Constitution without Constitutional Reform:

## Identity Accommodation and Decentralization Demands in the current Round of Reform of the Regional Statutes in Spain

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# Questions and outline

- Constitutional change as a dependent variable: how it happened and why?
- Reform of regional statutes of autonomy (2005-2007)
- Content of reform
- Development of the process
- Explanatory factors

# Background

- New reformist mood unforeseeable four years ago. First time in 25 years that fast-track ACs propose to reform their statutes.
- Double condition of regional statutes as second order quasi-constitutional laws and regional internal constitutions
- Therefore statute changes may affect power distribution and intergovernmental relations in the system
- Rigidity of constitutional reform requirements led to an attempt at bottom up (confederal) reform
- Total revision (no amendment) of statutes

# The reform of regional statutes in Spain 2005-2007: relevance and peculiarities

- Deals both with integration, legitimation and efficiency problems entailing issues of community definition, economic resources, governance, etc
- Good case to look at the relationships between politics and law and between institutions and actors

# The outputs and content of reform

- So-called Ibarretxe-Plan, voted by the Basque parliament in December 2004 and rejected by the Spanish parliament in February 2005, politically frozen after Basque elections in April 2005
- 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—.
- Other two reform initiatives are currently being discussed in national parliament —Castile-La Mancha and Castile and León—.

# The outputs II

- More than concrete revisions or amendments but has meant completely new texts.
  - Catalan statute from 57 to 223 provisions, repealed the 1979 text.
  - Andalusian statute from 75 into 250 articles;
  - Aragon has completely replaced the previous provisions with 115 new articles and several additional and transitory provisions.
- In Galicia, Cantabria, Asturias y Murcia the process is paralised for lack of consensus between two main national parties.
- In Navarra, Madrid, La Rioja o Extremadura wait and see attitude, no initiatives so far.

# Content of reform I

## ➤ Identity and symbolism

- allusion to the definition of Catalonia by the Catalan parliament as a nation.
- inclusion of historical rights as a source of Catalan self-government contained in Art. 5
- Allusion to history and cultural peculiarities in most preambles

# Content of reform II

## ➤ Citizen Rights

- recognition basic citizens rights and state goals [Staatsziele] of government activity,
- mainly social, participation and linguistic rights, that were mostly already contemplated in regional legislation.
- Last generation rights (Access to new technologies, environment, minimum income, gender equality, sexual orientation, protection against domestic violence, etc).



# Content of reform III

## ➤ Clarification of competencies

- typology of competencies —exclusive, shared and executive—
- specification of the sub-matters or issues that each competence includes.
- some new competencies —many of them to execute national legislation— in matters of
  - agriculture, water and hydraulic works,
  - commerce and trade fairs,
  - popular consultations,
  - cooperatives and the social economy,
  - emergencies and civil protection, immigration (esp. work permits),
  - the environment, coasts and beaches, natural areas and meteorology,
  - religious entities,
  - public security,
  - social security,
  - transport such as regional railways,
  - work and labour relations, universities and judicial administration.

# Content of reform IV

## ➤ Finance

- provisions regarding principles that regulate sources of regional revenues
- criteria for financial compensation and solidarity.
- increase in tax autonomy and fiscal responsibility of ACs by way of the sharing with the central government of a larger amount of taxes and control on them (e. g. 50% income tax, 50% VAT),
- the idea of partial equalization, setting limits to redistribution among territories and abandoning the objective of total equalization.
  - ordinality principle,
- budgetary obligation to spend in public investments in infrastructures in Catalonia according to the share of Catalonia in the Spanish GDP (18%). Other regions have proposed different criteria such as population, territory, etc. for central government's public investment in their regions.

# Content of reform V

## ➤ Institutional innovations

- recognition for the first time of local entities and autonomy as a part of the Catalan institutional system
- creation of a regional tax agency,
- reinforcement of the Supreme Court of Justice of Catalonia (more powers to this deconcentrated court)
- creation of the Council of Justice of Catalonia —as a deconcentrated body of the Spanish Council of the Judicial Power
- creation of a Bilateral Commission Catalan Government-Spanish Government for general issues and one for economic issues
- provisions for eventual participation of regional government in central bodies and in the appointment of members of some Spanish constitutional bodies,

# Content of reform VI

## ➤ EU participation

- provisions for the bilateral participation of Catalonia in forming the State position in those EU affairs that affect it exclusively,
- its position should be decisive for the State position if it affects its exclusive powers.

## ➤ International activities.

- In several articles, it recognizes the capacity to act internationally derived from its own competencies. This has been reproduced in most new statutes too

## ➤ Other policies: natural resources such as water

- five of the new statutes include new competencies in water management and water resources

# Explanatory factors

- 1. Pressures or triggers for reform
- 2. Characteristics of political and technical ideas and proposals of federal reform
- 3. Conjunctural and processual political factors
- 4. Federal institutional arrangements and their intrinsic reform-capacity or propensity

# Pressures or triggers for reform: why now, why so?

- Need to adapt to changing social circumstances
- Perception of lack of financial resources, perception of deficient public services
- Perception of exploitation by other regions and insufficient investment of the central government (fiscal balance)
- Lack of control of immigration
- Lack of control of infrastructures to promote economic development
- The notion of recentralizing attempts by the central government
- This all leads to significant electoral growth of the secessionist party ERC.

## 2. Characteristics of issues and reform ideas and proposals

### ➤ Political

- Idea of a complete new statute regulating all issues as the solution to all problems
- Idea of selfgovernment or autonomy as expression of historical rights and national identity
- Idea of asymmetric federalism and plurinationality of the Spain and mononationality of Catalonia
- Idea of a “Plural Spain” on the part of the PSOE

### ➤ Technical

- Idea of separation and “shielding” of competencies
- The idea of changing national organic laws through the regional statutes, given their condition as organic laws too
- The idea of single administration and decentralization of the judicial power

# 3. Conjunctural and processual political factors I

- Change of leadership both in Catalonia and the central government
- Introduction special parliamentary committees in which experts and representatives of the civil society were called in hearings,
- Role of expert commissions, advisory councils or legal academic centers.
- Regional phase
  - Processes of reform dominated by party political negotiation. proposals of experts just as a starting point for political bargaining for their party electoral interests. Not much concern for the technical or legal soundness of proposals
  - Struggle for political hegemony in Catalan nationalism determines positions of parties in the negotiation phase at the Catalan level



### 3. Conjunctural and procesual political factors II

#### ➤ National arena

- The second phase of the reform process has usually entailed political negotiations at the national arena,
- attracted the media coverage during months.
- lengthy negotiating sessions between regional and national party politicians during several weeks.
- Formal meetings of the Constitutional Committee of the parliament,

# 4. Federal institutional arrangements I

- Nature of regional statutes as organic laws that can effect a distribution of competencies by establishing the powers and responsibilities that ACs may exercise, thus indirectly affecting the powers and resources of the central government.
- Requirement of a “double will” to reform the autonomy statute. Both regional parliament and national parliament must intervene
- The concertation between the interests of the AC and the general interests of the state and other ACs is theoretically assured by inclusion of a delegation of deputies from the proposing regional parliament, which will defend the regional change proposals in the discussions of the Committee on Constitutional Matters of the Spanish parliament.
- In some ACs the population has to approve the final version through binding referendum.

## 4. Federal institutional arrangements II

- Regional statutes are organic laws and not constitutional laws, which in practical terms means they can be passed without the agreement of the main opposition party.
- It produces a need for negotiation and agreements between parties at the two levels and between central and regional actors to reform the system.
  - possibility of unilateral regional initiative of reform,
  - absence in the process of the rest of ACs,
  - large discretion given to ACs will
- Bound to lead to bilateralism, asymmetry and conflict with the central government and other ACs.

## 4. Federal institutional arrangements III

- Procedure is bound to lead some regional politicians in their regional parliaments to follow strategies of
  - over-promising,
  - outbidding the other regional parties,
  - overdemand and the straining of the Constitution without much cost for them.
- This will end up with the rejection or watering down at the central parliament of regional proposals and the ensuing frustration of citizens' expectations.
- if regional reform proposal is
  - large in scope,
  - has not been previously negotiated and
  - entails a new interpretation of the Constitution,
- the most likely result is the intervention of the Constitutional Court.

# Conclusions

- Elite-driven reform
- Decentralizing impulse but not clear whether more accommodation achieved
- Process of emulation depending on political forces and electoral competition in each AC
- Importance of electoral competition both at the regional and national levels
- Importance of policy windows and actors' constellations
- Importance of technical and political ideas of elites and a new interpretation of the constitution
- Not a big difference among several issues
- Final agreement reached through ambiguity and at the cost of central government's resources and powers
- Relative success of initiative and some innovation in the system despite the difficulties in the negotiation process