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# The Transition to a Decentralized Political System in Spain

## Abstract

Spain's transition from a centralized to a politically decentralized system of government occurred at the same time as its transition from a dictatorial and autocratic government to a democracy based on the rule of law.

Three stages can be identified in the transition process to political decentralization. The first stage began with the death of the dictator, General Franco, in 1975, and ended with the adoption of the Spanish Constitution in 1978. During this period, the basis for democracy and the rule of law were established and a provisional system of decentralized power was created.

In the second stage, from 1978 to 1983, the Statutes of Autonomy of the regions or autonomous communities were passed, beginning with a bottom-up process of statute making and ending with a top-down process. During this time, crucial decisions were made, such as: the general extension of the decentralized system and its fragmentation; the establishment of the political and administrative autonomy of the regions; and the initial asymmetry among regions. The distribution of responsibilities between the central government and the regional governments was based on three kinds of powers: exclusive, shared and concurrent.

The third stage in the transition took place from 1979 to 1983 or 1987 – depending on the region. During this period, the autonomous communities established their governments and administrations, and the central government transferred services and economic resources to the regional governments.

This paper discusses the three stages of the process, and more specifically transfers of services and how the regions were financed during this transition period. The Constitutional Court played an important role during the transition. Regardless of the difficulties and criticisms associated with certain aspects of the transition, the process of political decentralization has generally been successful in Spain. A number of factors contributed to its peaceful transition, such as the international political environment, the existence of a certain "culture of democracy," the vivid memory of the Spanish civil war of 1936-1939, and the ongoing demands for self-government from some regions, such as the Basque Country and Catalonia.

Keywords: asymmetry; constitution; decentralization; federal; regions; Spain; transition.

## Introduction

In Spain, the transition from a centralized to a politically decentralized or "federal" system of government occurred at the same time as the transition from a dictatorial, autocratic government to a democracy based on the rule of law. Two regions (Catalonia and the Basque Country), endowed with their own "national" characters, had been calling for self-government throughout the twentieth century. In fact, they had enjoyed self-government for a short period of time (1933–1939), and during the military dictatorship (1939–1975) they maintained governments in exile while sustaining their desire for self-rule.

In response to these claims, at the end of the Franco dictatorship, almost all Spanish political forces accepted that the transition to democracy and the rule of law should be accompanied by political decentralization. In contrast, the dominant economic model – the capitalist one – was not subject to any radical transformation, although there were changes and adaptations, such as a new taxation system.

The transition process kept the legislation of the Franco period intact. The existing body of laws of the dictatorship provided the rules by which it was itself reformed. In addition, there was no widespread "cleansing" of the civil service or the military and, in 1977 the new democratic regime enacted a wide-ranging amnesty law. However, what is important and of interest is that the reform brought about a radical change in the over-arching, territorial structure of the political system. The reform entailed a change from a deeply centralized political system to one with a significant level of political decentralization.

### Stages and characteristics of the decentralization process

It is difficult to differentiate the distinct stages in the decentralization process. It would be subjective to conceptually segment a historical process that was, essentially, a *continuum*, a task complicated by the fact that the process was different for each of the autonomous communities which were to be set up in Spain.<sup>1</sup>

Bearing that in mind, three principal stages in the political decentralization process in Spain can be identified: the first, from the death of General Franco in November 1975 until the adoption of the Spanish Constitution in 1978; the second, from 1978 until the autonomous communities had each approved a Statute of Autonomy (1979–1983); and finally, the third, from 1979–1983 or 1987 (depending on the autonomous community), during which the autonomous communities established their governmental and administrative

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1. In Spain the "autonomous communities" are what in a federal system would be the "federal constituent units", and the "state" is what would be the "federal government" (the use of the word "state" is also applied to the whole political system which includes the federal government and the federal constituent units). In this paper the term "autonomous communities" will be used to refer to the "federal constituent units," and the terms "state" and "central government" to the "federal government."

bodies and began functioning. During the last stage the transfer of services from the central government to the autonomous communities was implemented and a financial system was established. Today, it can be said that the transition to a politically decentralized system has come to an end.

### **First stage: 1975–1979**

The process of transition began with the death of General Franco in November 1975, and reached its peak with the adoption of the Spanish Constitution in December 1978, the text of which recognised the possibility of constituting within Spain several autonomous communities endowed with self-governing powers.

#### **a) Laying the groundwork for transition**

In the period between the death of the dictator and the adoption of the Constitution, several developments occurred that assisted the transition towards decentralization:

- Establishing democracy and the rule of law. The Spanish Parliament enacted a law which declared shared sovereignty between the people and the King and created a bicameral Parliament, democratically elected, out of which a new Executive was formed. Trade unions and political parties were legalized – including, after a lengthy debate, the Communist Party. International treaties on human rights were ratified. An electoral law was enacted allowing free elections in June 1977.<sup>2</sup> This newly-elected Parliament drafted the Spanish Constitution of 1978.<sup>3</sup>
- During this initial stage, Spain also faced a grave economic crisis, with an inflation rate of 47 per cent, a considerable foreign debt, with high and rising unemployment. In response, all the major political parties, the two main trade unions and employers' organizations signed an important agreement, known as the Moncloa Pact,<sup>4</sup> which outlined measures to deal with the crisis.

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2. The government that called the elections was headed by Adolfo Suárez, who had previously occupied senior positions in Franco's governments. In July 1976 the King named Suárez president of the Government and, despite his political past, his aim was to create a democratic system as soon as possible. He set up a centre-right political coalition (*Unión de Centro Democrático*, UCD) that won the elections in 1977, which allowed Suárez to rule the country until 1981.

3. The distribution of seats in the lower chamber was as follows: UCD, (34.5% of votes, 166 seats), Spanish Socialist Worker's Party (29.4% of votes, 118 seats), the Communist Party of Spain (9.3% of votes, 19 seats), the conservative Popular Alliance party, (8.2% of votes, 16 seats), the Popular Socialist Party-Socialist Unity (4.5% of votes, 6 seats), the Democratic Agreement for Catalonia (2.8% of votes, 11 seats) and the Basque Nationalist Party (1.6% of votes, 8 seats). The remaining votes and four seats were shared by a number of minority parties. In the Senate, the UCD held 106 out of 207 seats and socialists 47 seats; 41 senators were appointed directly by the King and the rest were distributed among the minority parties.

4. Moncloa is the name of the headquarters of the Spanish Government.

- Finally, in order to address the demands of Catalonia and the Basque Country, a number of provisional institutions, known as the “pre-autonomous-community institutions,” were established by a decree of the central government. In Catalonia, for example, the exiled prime minister of the republican autonomous community<sup>5</sup> was allowed to return, and an interim government was established in September 1977 as a result of this decree. This interim government was assigned responsibility for urban development, trade and agriculture.

However, one of the most significant features of these pre-autonomous community institutions was that they were not restricted to the two “historical” communities, but extended to almost all of Spain, which consisted of 13 new regions with provisional autonomy. The decrees that created these regions took a simple form. They envisaged the creation of an Assembly formed by the senators and members of the Spanish Parliament elected in the constituencies of the pre-autonomous communities, as well as by the representatives of the local supra-municipal bodies in the regions. The Assembly was charged with electing the regional government and the president. The powers of the pre-autonomous communities were specified and economically supported, at a later date, by decrees of transference. The autonomy which they enjoyed was purely administrative, but their creation served as a rehearsal for the subsequent establishment of the autonomous communities.

## b) The Spanish Constitution of 1978

The constitutional process was quite long. It began in October 1977 and concluded in December 1978. During this one-year period the work of the Parliamentary Commission was instrumental. The commission was created by the *Congreso de los Diputados*, the lower chamber of the Spanish Parliament. It was comprised of three representatives of the centre-right party, UCD (*Unión de Centro Democrático*), some of whom had been involved with the Franco dictatorship, one socialist, one communist, one Catalan nationalist and one representative from the conservative party (Popular Alliance). The Basque nationalists were absent from the commission.

The Constitution proposal was passed in the lower chamber by 250 representatives out of 325 and in the Senate by 226 out of 248. Afterwards, the Constitution was approved via referendum by 88.5 per cent of the votes (which represented 59 per cent of the total electorate). In the Basque Country the referendum was approved by 68.7 per cent of the votes, which represented only 31 per cent of the electorate.

As for the territorial distribution of powers, the 1978 Spanish Constitution

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5. During the II Spanish Republic (1931–1939), there was a decentralization process which provided Catalonia and the Basque Country with self-government institutions. After the Civil War (1936–1939), the exiled Catalan and Basque prime ministers kept alive the Republic’s institutional legacy.

provides for the possibility of setting up self-governing entities (autonomous communities). In addition:

- It establishes the powers assigned to the central government.
- It states that the autonomous communities could assume those powers not explicitly assigned to the central government in their constitutions. (According to the residual clause, powers not assumed by autonomous communities would fall under central government jurisdiction).
- It recognizes that the central government can delegate powers to the autonomous communities, and that in certain cases it could enact laws to homogenize matters falling under the powers of the autonomous communities.
- It also states that Spanish legislation supplements those of the autonomous communities and that, should there be a conflict, Spanish legislation would prevail over that of an autonomous community.

Finally, if an autonomous community fails to meet a constitutional obligation or seriously acts against the Spanish interest, the Constitution permits the central government to enforce the fulfillment of those obligations.

However, the Spanish Constitution does not have some key elements normally found in federal constitutions. These include: the specification of the federal entities (provinces/cantons/states/*länder*, etc.) that make up the federation, their powers, boundaries and financing, their main organs of government, and the political and administrative characteristics of decentralization.

Instead, the Spanish Constitution outlines the possibility of establishing self-governing entities, and sets out the procedures for becoming an autonomous community. However, the decision on whether or not a particular community can become an autonomous community is delegated to an assembly formed by the central government parliamentarians elected in the province seeking autonomous community status, plus, in some cases, by the members of the local supra-municipal bodies (provincial assemblies)<sup>6</sup> of the territories aiming to become autonomous communities. These assemblies were tasked with approving a draft or “proposal” of the autonomous community “Constitution,” called a “Statute of Autonomy.” These statutes established the institutions of government and the community’s powers, boundaries, financing and other matters. The statutes had to be passed by the Spanish Parliament and, in some cases, submitted to a referendum within the proposed autonomous community.

Ultimately, due to the lack of consensus amongst the political parties and a desire to allow the future autonomous communities some flexibility, the Parliament responsible for the Constitution delayed decisions on some aspects

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6. In Spain, the “*provincias*” (provinces) are the electoral constituencies for the general (federal) elections, as well as the territorial units of the Spanish federal public administration – that is, the basic units for the organization of public service delivery. Also, they represent the units for supra-municipal local authorities.

of the structures to be developed by the Statutes of Autonomy. This was one of the most distinct features of the political decentralization process in Spain.

### **Second stage: approval of the Statutes of Autonomy of the autonomous communities (1979–1983)**

#### **a) From a bottom-up to a top-down process of statute-making**

The second stage of the decentralization process was the approval of the Statutes of Autonomy of the autonomous communities.

The central and the regional governments were both involved in the drafting and the approval of the statutes. Proposed statutes were required to be drafted by regional bodies made up of the parliaments of the pre-autonomous regions or by the supra-municipal councils of the future autonomous communities. Thus, in theory, the process of drafting was a bottom-up process.

In practice, the process of drafting the first three statutes, those of Catalonia, Basque Country and Galicia,<sup>7</sup> was really a bottom-up process. The proposed Statutes were drafted by regional parties, or regional branches of national parties, without major interference from the central bodies of those national parties. Furthermore, delegations of the regional legislatures could defend the draft statutes before the Commission for Constitutional Affairs of the Spanish Parliament. The procedure established for the statutes of the other autonomous communities did not allow for those bottom-up consultations.

The drafting process for the other 14 statutes<sup>8</sup> was much more top-down. In May 1981, the two major national political parties, as well as other political and social actors, began to question the desirability of establishing the *territorial* structure of the country based on bottom-up processes. As a result, proposals to manage the process top-down began to emerge. The decision to change direction was also influenced by the attempted coup in February 1981 – when a group of right-wing military officers attempted a takeover of the Spanish Parliament.

In May 1981, a White Paper on the process of decentralization, drafted by a group of administrative law professors, was tabled. Another paper was tabled in July on the autonomous communities' financing system. The first paper provided the basis for the so-called Autonomy Pact, which envisaged widespread political decentralization throughout Spain and was signed by the two main nation-wide parties in July 1981.

The Autonomy Pact established the number and borders of the autonomous communities and, to a large extent, standardized the content of the future statutes. As required by the Spanish Constitution, these statutes of autonomy

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7. The constitutions (statutes of autonomy) of Catalonia and the Basque Country were approved in December 1978 and April 1981, respectively.

8. It should be noted that, despite the strong influence exerted on the shaping of the political map by the pre-autonomous-community institutions created before the approval of the Spanish Constitution, the number of autonomous communities eventually ended up totaling 17, and not 13 which reflected the number of pre-autonomous-community entities.

were formally drafted following a bottom-up procedure. However, in practice they followed the guidelines agreed to by the central branches of the two major political parties, whose members made up the majority of the autonomous-communities' legislatures. With the exception of Andalusia, the procedures established to approve the statutes did not allow legislative delegations of the autonomous communities to debate the draft statutes before the Commission for Constitutional Affairs of the Spanish Parliament. The drafts were merely submitted to Parliament which processed them in the same way as any other law. As a result, the Autonomy Pact envisaged a minor role for the autonomous communities' legislatures.

Nonetheless, the Autonomy Pact expedited the process of implementing the Spanish Constitution, with the result that between December 1981 and February 1983, 14 Statutes of Autonomy were passed.

#### **b) Structural problems addressed by the statutes of autonomy**

The Autonomy Pact and the Statutes of Autonomy produced four crucial decisions which have shaped Spain's federal system irreversibly:

- The general extension of the system of decentralization throughout Spain, which was not exclusive to communities that had historically expressed their desire for self-government;
- The fragmentation of the Spanish State through decentralization into 17 autonomous communities – some of them very small in size;<sup>9</sup>
- The granting of political and not merely administrative autonomy for all the autonomous communities – providing full legislative capacity in certain areas and, in turn, the capacity to establish their own public policy guidelines in those areas. However in order to attain maximum self-government, or more specifically, in order to assume all the possible powers, two different rates of devolution were established. As a result, the autonomous communities that historically enjoyed some measure of self-government, or those that had shown a greater desire for self-government during the transition process, could gain access to this maximum level of autonomy immediately, whereas others would have to wait at least five years after the adoption of their statutes in order to reach that level of self-government.
- This system, therefore, was initially asymmetrical but could become symmetrical in the future. In practice, the development of the Spanish system has led to a clear symmetry between all of the autonomous communities, with the important exception of the financing system of the Basque Country and Navarre.

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9. In some cases it would be debatable whether they have enough "critical mass" to exercise a genuine political autonomy. As of 2008, three autonomous communities had less than one million inhabitants and seven more less than two million. In any case, as mentioned, the fragmentation is now virtually irreversible.

Undoubtedly, the fundamental decisions made at this stage, such as the general extension of self-government, were partly influenced by the pre-autonomy systems.

Aside from the more substantive and long-term issues – such as the establishment of a truly federal culture, the promotion of values such as pluralism, the federal organization of the political and social players, etc. – the Statutes of Autonomy addressed the three fundamental problems that needed to be resolved. These were:

- 1) The need to determine which powers should be assigned to the central government and which to the autonomous communities.
- 2) The means of financing the autonomous communities; and
- 3) How to carry out the transfer of services from the central government (and the local intermediate bodies) to the new autonomous communities.

The response to all these problems came through constitutional channels and by means of political agreements between the two major federal parties – with some participation of the regional Catalan and Basque nationalist parties.

### c) **The distribution of powers**

This sub-section will analyze the distribution of powers established by the Constitution and the Statutes of Autonomy. It deals with the transfer of services from the central government administration to the autonomous communities, and will examine the autonomous communities' financing systems, which are part of the third phase of the decentralization process.

The Spanish Constitution enables the Statutes of Autonomy to determine the powers assumed by the autonomous communities. By doing so, the statutes indirectly also determine the competences of the central government. The residual clause provides that powers not assumed by the autonomous communities automatically fall under the central government.

The Constitution contains a list of powers that are exclusive to the central government. Powers not on this list may be adopted by the autonomous communities via their statutes. However, during the first five years – except in the statutes of the four autonomous communities that had expressed a clear desire for self-government – the statutes (of the remaining 13) could only adopt powers specified in another list provided by the Constitution.

After five years, they could amend their statutes to adopt the maximum level of powers, while respecting the powers that the central government reserved for itself. Thus, in practice four statutes followed the “fast path” (the Basque Country, Catalonia, Galicia and Andalusia) and they did so by assuming all powers the Constitution had not explicitly assigned to the central government. In this sense the central government did not gain new powers through the residual clause.<sup>10</sup>

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10. The only exception was the case of supra-territoriality which is discussed further below.

For two of the autonomous communities that had not followed the “fast path” (the Canary Islands and the Valencian Community), the Spanish government used its capacity to devolve competences. As for the others, they had to wait until 1992 to assume, by means of their statutes, a level of powers similar to those of the “fast path” group.

There are *exclusive powers* that belong to the central government and to the autonomous communities, in which all legislation and implementation is attributed to the central government or to the autonomous communities. There are *shared powers*, which occur when the central government enacts the basic legislation and the autonomous communities follow with their own legislation and implementation. Shared powers can also occur when the central government legislates and the autonomous communities implement. There are also *concurrent* or *unassigned powers*, when both the central government and the autonomous communities have power over the same functions and matters.

The powers exclusively reserved for the central government include, among others:

- the regulation of the basic conditions that ensure the equal exercise of the constitutional rights to all citizens;
- nationality, immigration, aliens and the right of asylum;
- international relations;
- administration of justice – which is a non-decentralized power in Spain;
- national defense;
- trade;
- criminal and prison legislation;
- customs, tariffs and foreign trade;
- general finance and debt of the autonomous communities;
- maritime fishing;
- railroads and transport across more than one autonomous community;
- public works of general interest;
- possession and use of weapons and explosives;
- authorization for calling a referendum;
- public security “with the possibility to set up an autonomous-community police force.”<sup>11</sup>

The areas in which the central government keeps basic or framework powers, but where the autonomous communities have the legislative and the executive powers are:

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11. Such a case has been implemented by three autonomous communities (Catalonia, Basque Country and Navarre).

- social security;
- the legal system of all public administrations – and therefore also autonomous communities and local ones;
- environmental protection;
- health;
- education;
- press, radio and television regulation;
- mining and energy;
- general planning and economic activity;
- credit, banking and insurance regulation;
- woodlands and forestry

The areas in which the central government has the legislative power, but the autonomous communities have executive powers, are:

- labour legislation;
- legislation concerning intellectual and industrial property;
- legislation on weights and measures.

The only field over which the central government and the autonomous communities share the same powers is:

- culture.

Finally, the autonomous communities have exclusive powers in the following areas:

- industry;
- agriculture;
- internal trade;
- inland transport;
- consumer affairs;
- water pertaining to intra-autonomous-community basins;
- hunting and fishing.

This description of the distribution of powers established by the Constitution and the statutes leads to three main conclusions:

- The model has not enshrined a dual system of distribution of powers as not all functions regarding a particular matter are assigned either to the central government or to the autonomous communities. Rather, there is a mixed system in which there are a large number of shared powers as well as those that are exclusive to these bodies.
- The autonomous communities have a large measure of political freedom. They can establish their own public policy guidelines in several fields,

especially through: a) their exclusive powers; b) their full legislative powers; and c) their powers to develop framework legislation.

- The central government holds a paramount position regarding the autonomous communities. This is not due to the general clauses established in the Constitution<sup>12</sup> since, in practice, they have almost never been implemented. This situation is due to other factors such as the political, social and economic leverage the central government wields, as a result of its reserved powers and its powers to regulate Spaniards' fundamental rights.

In addition, central government "paramourcy" over the autonomous communities has been strengthened through a centralizing interpretation and implementation of the Spanish Constitution and the Statutes of Autonomy. This trend, rather common in politically decentralized systems – including federal ones – is displayed in the autonomous communities' lack of capacity to establish their own public policy guidelines in those fields over which they have exclusive powers, or over which they have the power to develop central government legislation.

In fact and in practice, the self-governing power of autonomous communities is more an administrative power than political. Autonomous communities have the authority, in essence, to implement overarching central government policies rather than establish their own policies.

There are a number of factors that drive this phenomenon; chief among them is the extension of the basic powers of the central government. In theory, framework powers should restrict the central government to establishing generic and common principles, very often they have been used to establish very detailed rules.

As well, the "exclusiveness" of the exclusive powers held by the autonomous communities has been limited by the central government's use of certain "horizontal" constitutional powers. These concern "powers to establish the bases and coordination of general planning and economic activity," and "the regulation of those basic conditions which must guarantee the equality of Spaniards in the exercise of their constitutional rights."

There are two other "techniques" limiting the flexibility of the autonomous communities and both are linked to the central government's spending power.

The first is the system of grants the central government provides to the autonomous communities in fields that fall under the powers of the latter. Grants are made dependent on the suitability and conformity of the autonomous communities' proposals with regard to the objectives and criteria set out by the central government.

The second is the use of the notion of "supra-territoriality" by the Spanish

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12. Those clauses include: the residual clause, the prevalence and paramountcy of the Spanish law clause; and the "exception" or "emergency" powers clause.

government to justify its activities and, by doing so, to assert jurisdiction over fields that, in principle, fall under the powers of the autonomous communities. In this sense, the central government often replaces the autonomous communities in their activities by arguing that the policy involved, “artificially” created by the central government, would affect more than one autonomous community.

Although such a process of “recentralization” occurs in most politically decentralized systems, in Spain it is not counterbalanced by effective mechanisms in order to involve the autonomous communities in the decision-making processes (such as a Senate that would truly represent the autonomous communities).

### **Third stage: setting-up the autonomous communities (1979 to 1983 or 1987)**

Immediately after the adoption of the autonomous communities' statutes, the transfers of services from the central government to the autonomous communities began (some transfers had already taken place during the pre-autonomous-community stage) and economic resources were progressively transferred to the communities.

Autonomous community elections were also held to elect the respective Parliaments and their autonomous communities' executives. The Parliaments quickly began attending to their legislative tasks.

In Catalonia, for example, the Statute of Autonomy was adopted in December 1979, the elections were held in March 1980, the Parliament was formed in April, the regulations governing the internal functioning of the regional parliament were issued in July, and in September of that same year the first law was passed.

In Galicia and Andalusia, the first laws were passed in June 1982. In fact, between 1981 and 1983 all the autonomous communities passed laws to create their governmental bodies (president, executive and parliament). By 1983 the decentralized political system was already formed and functioning.

Despite the fact that some statutes of the autonomous communities stipulated that the transfer of services should occur within two years of the adoption of their statutes, the transferral process took place gradually. The deadline was interpreted with flexibility and involved different time frames depending on the matters to be transferred and the autonomous communities affected. However, by 1987 the major transfers of services had already taken place, coinciding with the entry into force of the self-styled “definitive” financing system, which replaced the system referred to as “provisional.” Thus, by 1987 the transition was completed and the decentralization policy was established and consolidated.

The next phase began in 1992, when a decisive step was made towards establishing symmetry between all autonomous communities. The current, final phase began at the beginning of 2000 with the reform process of some statutes.

### a) Assumption of powers and transfer of services

This section will discuss the processes of assuming powers and transfer of services from the central government to the autonomous communities and the establishment of the systems of finance for the autonomous communities.

The new autonomous communities exercised their exclusive power to self-govern, establishing therefore not only their bodies of government but also their own administrations. As such, the majority of autonomous communities in the early 1980s passed legislation setting up their public services, creating their own police forces (in the cases of the few autonomous communities that had this power), and organizing their administrative structures, which was very much modeled on that of the central government.

In practice, however, the administrations of the autonomous communities were not built from scratch. In the majority of cases, they were created through the transfer of services that included officials, assets, buildings and financing, from the central government. They were created almost exclusively from the *peripheral* central government administration — namely the officials and public servants who were already in place in the autonomous community and from local supra-municipal bodies (provincial or “county councils”).<sup>13</sup> These transfers provided cost savings, expedited the process and provided the autonomous communities with experienced officials.

The management of these services in a decentralized way did not encounter serious difficulties. The adaptation of the transferred officials to their new functions was rapid (unlike many civil servants remaining with the central administration of the central government, who in many cases maintained their centralistic habits). The peripheral central government administration was decentralized, and the “centre” of the central government administration maintained the same number of civil servants — despite the loss of many functions. Consequently, when the regional administrations developed, the total number of civil servants in Spain also increased.

The transfer of services from the central government and from the local supra-municipal bodies to autonomous communities began as early as the pre-autonomous-community phase, before the adoption of the Constitution. At that stage there were two centrally-established joint commissions: one had an equal number of representatives of the central government and future autonomous communities, chaired by a representative of the Central government. The other, also on an equal basis, had representatives of the pre-autonomous-communities and local supra-municipal bodies which were to transfer services to the pre-autonomous-communities. These commissions were responsible for reaching an agreement on the number of civil servants and financial transfers from the central government necessary to finance them. They were also responsible for providing those agreements to the central government so that the latter could enact transfer decrees.

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13. In both cases the procedure was regulated by means of the central government decrees.

The Spanish Constitution did not outline a system to carry out transfers of services. It had not attributed this task exclusively to the central government, as had been done in other European countries. The first three autonomous communities (Catalonia, the Basque Country and Galicia) established a system of two joint commissions very similar to what already existed in the pre-autonomous-community phase.

From 1978 to 1985 a significant number of transfers took place using this system. In the case of the autonomous community of Catalonia, 78 royal decrees were issued to transfer services between 1978 and 1985, and transfers have continued to the present day, although at a slower pace (84 royal decrees were issued from 1986 to 2000).<sup>14</sup>

However, the major transfers in health, education, industry, agriculture, occurred before 1985, and “extensions” of these first transfers took place later. In 1979, transfers in the health sector, in areas such as food safety, sanitation, health promotion, training, authorization of health centres and inspection, were made. In 1980 a number of health centres and administrative units were transferred. Finally, in July 1980 the transfer of virtually all health centres took place, as well as those of hospitals and administrative establishments.

In education, transfers of nursery schools, basic general education, special education, high school and vocational training occurred in 1980. In 1985, universities were transferred.

In contrast, the major transfers in the justice sector did not take place until 1990.

The transfers were made in different timeframes. For example, in health administration, the most important transfer in the Basque Country occurred in 1984; while in Galicia, it was not carried out until 1990. The pace of these transfers was dependant on the willingness of the central government and the individual autonomous communities.

After carrying out the transfers of services, parity-based joint commissions composed of representatives of the central government and autonomous communities, known as Evaluation Commissions, reviewed the economic resources that the central government had to transfer to the autonomous communities in order to manage the services transferred, based on the “real cost” criterion.

The following section explains some of the features of the system that was implemented to assist in managing the initial financing of the autonomous communities.

The statutes of the autonomous communities, drafted and ratified after April 1981, established a somewhat different model as a result of the Autonomy Pact between the two major Spanish political parties. Specifically, together with the bilateral joint commissions, sectoral committees were set up on the national level (one per ministry) and made up of representatives of the Spanish government and of all the autonomous communities.

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14. These figures however have a relative value, since some royal decrees contained many transfers while others referred to only one of these.

These sectoral committees acted as “bodies of support” to the bilateral joint committees and proposed the transfers to be ratified and passed by the central government. The sectoral committees were part of an effort to make the transfers uniform, reducing the role of the bilateral negotiations and ensuring uniformity of services that the central government had to continue providing to the autonomous communities.

At the outset of the decentralization process, no deadlines were set for its implementation. The only exceptions were some transitional provisions that set a two-year deadline for proceeding with the transfer of services. This deadline was not strictly met, although this did not cause major conflicts, since the process was not interrupted. Essentially, the transition can be considered brief when compared to other similar decentralization processes.

Finally, the transfers of services do not imply any transfer of powers, but, rather, the means or instruments for exercising powers. This means that the autonomous communities were able to exercise their powers from the moment their constitutions were approved. However, in practice this exercise in many cases and specifically in the case of the executive or implementation competences, was impossible without the transfer of the necessary material, personnel and financial means. This is why “constitutional loyalty” is essential to ensure the efficiency of the transfers and their “completeness,” that is, to ensure that the services related to each specific matter are transferred without delay.

As well, despite the fact that the decrees of transfer contribute in an indirect way to define the autonomous communities’ scope of competences, the delineation of powers is prescribed only by the Spanish Constitution and the Statute of Autonomy of each autonomous community. Therefore, in case of conflict over the scope of a particular competence, the Constitutional Court cannot apply a decree of transfer to rule on constitutionality.

In contrast, when it comes to legislative power, the need to carry out the transfers in order to exercise the powers of the autonomous communities is less important. Immediately after the enactment of their respective statutes, autonomous communities began to enact laws without waiting for the transfer of services.

#### **b) Financing of the autonomous communities during the transition**

Financing of the autonomous communities is regulated by the 1978 Constitution, by the 1980 central government’s Law on the Financing of Autonomous Communities, and by the Statutes of Autonomy.

The financing of the autonomous communities is based essentially on the following principles and rules: the principle of “financial autonomy,” that of “coordination with the central government treasury” and that of “solidarity among all Spaniards.” In order to put into effect the principle of solidarity and rectify inter-territorial imbalances, the central government administers an inter-territorial Compensation Fund.

In order to affect the principle of coordination, the central government's Law on the Financing of the Autonomous Communities set up, among other mechanisms, a Council of Taxation and Financial Policy made up of central government ministers of economy and public administration plus the finance ministers of all the autonomous communities. The Council is “the coordinating body between the financing activity of the autonomous communities and the central government treasury.” Its functions concentrate on issuing reports, recommendations and studies on:

- issues such as the distribution of the resources of the Compensation Fund among the autonomous communities;
- the method for calculating the actual costs of central government services transferred; and
- the coordination of policies on public investment and debt.

In Spain there are two financing systems: the “common” one for most autonomous communities and the “special” one for the Basque Country and Navarre. This second system is characterized by the two autonomous communities collecting all taxes and transferring a certain quantity to the central government as compensation costs for services provided by the central government within these autonomous communities, and the common expenditure to all autonomous communities.

The result of this model favours these two autonomous communities, in terms of management autonomy and their higher level of fiscal revenues, compared with other autonomous communities.

In contrast, the common model has the central government collect virtually all of the taxes and other revenues and transfer their respective shares to the autonomous communities.

The resources of the autonomous communities consist of: (a) taxes ceded wholly or partly by the central government; (b) the surcharges on central government taxes and other participations; (c) their own taxes; (d) transfers of inter-territorial compensation funds and other allocations charged to the budgets of the central government; (e) the yields from their incomes and assets governed by private law, and (f) the income from credit operations.

In practice, the principle supply of revenue is the sharing of the central government's incomes. Essentially, the financial autonomy of the autonomous communities is only a *spending autonomy* since the volume of their own revenue is almost irrelevant. It is, therefore, a model of financing based not on taxation but on the revenue sharing of the central government.

Specifically, the taxes ceded (such as taxes on assets, gambling, inheritance, part of the tax on luxury items) have a very limited return. The autonomous communities' own taxes are almost non-existent largely due to the fact that, legally, taxation of the autonomous communities on items already taxed by the central government is prohibited. In contrast, revenues from the leveling

mechanisms (Compensation Fund, endowed with 40 per cent of the public investment) are more important. All autonomous communities previously received those resources, since at that moment they were all creditors of new investments, though some received more than others. The Fund served not only as a leveling mechanism, but also as a financing mechanism for the autonomous communities.

Regarding the autonomous communities' major source of funding (central government revenue), both the central government's Law on the Financing and the Statutes of Autonomy established two systems: the "transitory" and the "definitive" systems. The transitory system was to remain in effect until 1986, during which the transfers of services were to be carried out. The definitive system, established after that date, was thought to be unalterable and permanent, although in practice it has undergone many changes.

The transitory system (1980–1986) was based on the "real cost principle" according to which the central government ensures the financing of services transferred to the autonomous communities. It provided an amount equal to the real cost of the service in question at the time of the transfer. Direct costs, indirect costs and investment expenditure had to be taken into account in order to assess the real cost. The Spanish government/autonomous community joint commissions had to specify the cost of each service and include it in the central government's annual budget for the following year.

In practice there were considerable problems in precisely determining these costs since it was difficult to determine the level of "central government" management allocated to each autonomous community. The calculation depended more on political negotiations than on applying the criteria laid down in the previous system.

In 1982, the Tax and Finance Policy Council took up proposals made in July 1981 by the Commission of Experts and approved a method of calculating the "real cost" that all the parity-based joint commissions should apply. Its aim was to specify categories of direct costs (staff and operating costs directly linked to the provision of the central and peripheral service, and the tasks to be carried out in order to provide it), indirect costs (staff and operating costs that are required to perform the functions of support, management and coordination of the service transferred) and investment costs (those relating to the preservation, improvement and replacement of the means required to provide the service).

The actual cost of services must be recalculated each year to determine the autonomous communities' shares of central government's revenues. This system was not applied until 1984. In fact, in the early years, in many cases the central government continued to pay the staff transferred to the autonomous communities.

The model in place from 1987 onwards was no longer based on real costs. Instead, the share of each autonomous community in the central government's revenue was dependant on applying a set of criteria or indicators such as population, taxation base, shortfalls in social services and infrastructure.

## The Constitutional Court

To resolve conflicts over powers, the Spanish Constitution envisaged the establishment of a Constitutional Court, which began operation in 1981. This Court is made up of 12 judges who are appointed for a nine-year period. The law requires that they must be legal professionals. Most of them have been law professors, though there have also been several career judges and, exceptionally, some lawyers.

The procedure to appoint the 12 judges of the Court is outlined as follows: four are appointed by the *Congreso de los Diputados* (the lower chamber of the Spanish parliament), four by the Senate, two others by the central government executive and the final two by the judiciary (the executive body of the judiciary — the *Consejo General del Poder Judicial*).

Until 2009, the autonomous communities had no formal participation in the appointment of Constitutional Court judges. Since then, the autonomous community legislatures can take part in these appointments through the Senate, by proposing to the upper chamber two candidates for each autonomous community parliament. However, the Senate can select judges other than those proposed by the autonomous communities.

The resolution of conflicts of powers is not the sole function of the Constitutional Court, nor does the Court have a monopoly for exercising this power. This type of conflict — when it does not affect laws, but rather regulations — can also be brought before the ordinary courts of law.

However, in practice the Constitutional Court plays a major role in resolving conflicts of powers. The Spanish Constitutional Court's legal rulings have tended to favour the aims of the central government, although there have been key rulings that have nullified important Spanish laws. The Constitutional Court has usually taken the role of "negative legislator." When judging an act, the Court has limited itself to saying whether it falls within the broad provisions of the central or autonomous community's constitution but does not impose the "unique" meaning of the constitution.

The contribution of the Spanish Constitutional Court to the configuration of a politically decentralized Spain has been important but not critical. The Court has not designed the model, but rather it has limited itself to analyzing whether decisions fit into the scope set out in the Spanish Constitution and the Statutes of Autonomy of the autonomous communities.

## Racial groups and armed militias

During the transition in Spain there were no racial or marginalized groups that needed to be integrated. However, there were regions claiming and demanding their own national status such as Catalonia, the Basque Country and, to a lesser extent, Galicia. Political decentralization was the instrument used to attempt to accommodate this plurality of national groups within Spain. The

phenomenon of immigration, which has brought with it other issues, did not begin in Spain until long after the political transition.

In fact, there were neither genuine armed militias or insurgent forces in Spain, although throughout the transition there was continued activism by the ETA (an acronym which means Basque Homeland and Freedom), a terrorist group based in the Basque Country which demanded independence and socialism for both the Spanish and French Basque Country. The ETA was responsible for a large number of casualties during the transition. The group still exists today, though it is much less active due to effective security and legal measures mounted against it.

On another note, a sector of the army which advocated the continuation of a dictatorial regime after the death of General Franco and, therefore, did not share the democratizing and decentralizing goals of the transition, staged an attempted coup on February 23, 1981. A group of armed soldiers invaded the Parliament when the two Houses and the Spanish Government were in session, and caused a brief crisis. The coup failed and the new government carried out a severe reform of the armed forces.

The armed forces had been a basic pillar of the Franco dictatorship. During his reign, the military enjoyed significant political power. They were not subordinate to civil authority. In addition to the traditional function of national defense, they performed the task of maintaining public order and obeyed their own laws and courts. The 1978 Constitution established the basis for the political neutrality of the armed forces and their submission to the higher domain of civilian authority as well as to the common courts of justice – with the exception of strictly military activities. Activities of the armed forces were limited to national defense, leaving the tasks related to internal public order to the police.

Since the Spanish Constitution was approved in 1978, legislation has been passed in order to implement those constitutional principles. However, such an adaptation process was expedited, right after the 1981 failed *coup d'état*, by the accession of Spain to NATO and the change of governmental power in October 1982, when the Socialist Party won the elections.

Among the measures adopted since is the 1984 reform of the fundamental Spanish law regulating the basic criteria of national defense and military organization. The reform clearly stated that responsibility for defense policy and military administration belonged exclusively to the central government.<sup>15</sup> In this sense, the number of civilians holding senior positions within the Ministry of Defense rose while the number of military personnel decreased, especially officers' positions, by means of a system designed to promote voluntary early retirements. The military budget was substantially increased, especially between 1983 and 1988. Then, as a result of the 1988 economic

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15. The Government of Spain is advised on the subject by the *Junta de Defensa Nacional*, a military advisory body.

crisis, budgetary restrictions were applied to the military as in many other policy areas. The 1983–88 increase allowed for improvements, especially with regard to the quality of weaponry and the income of army officers.

Some measures were taken to achieve the political neutrality of the Army. In 1986, the Army was legally exempt from intervening in matters of public order, which were, since then, exclusively in the hands of the police. In 1987, a law was passed to restrict the limits of military judicial tribunals strictly to military activities. Other reforms were made to military education including changes in teaching staff, access, and above all programs such as the introduction of courses on constitutional principles and values, fundamental rights and public freedoms.

## Conclusion

In Spain, the process of political decentralization has been successful. In a relatively short period, a highly centralized political system was transformed into a relatively politically decentralized system. The system, from the very beginning, seems to have performed well. In the 10 years since its inception, 17 governmental bodies, the autonomous communities, were established and, with them, 17 new administrations. Powers, services and economic resources were transferred and 17 regional systems of political leadership were created.

Notwithstanding, several problems arose during the decentralization process. There were attempted *coups d'état* which had an obvious and negative impact on the process of decentralization as well as the changes of direction in decision-making by the political leadership, some of which were more or less improvised. The quality of some of those decisions questionable. In addition, both the decentralization process and the democratization process took place simultaneously. With this in mind, it should be noted that during the initial transition period, there were no political parties, citizens had no freedoms, no democratic elections had taken place over a 40-year period, and a democratic political culture was not rooted or developed. Nevertheless, the fast pace with which political parties were created, new political rules were understood by society, and a thriving, mature democratic political culture emerged and took root, should be noted.

Undoubtedly, a variety of factors contributed positively to this peaceful transition, including:

- the international situation;
- the abolition of the southern European dictatorships;
- the need to join the European Union that brought with it the demand to democratize;
- the existence of a certain culture of democracy; and
- the vivid memory of the Spanish civil war of 1936–1939.

There was firm resolve from all the political forces, the social and economic players and the general population to avoid any confrontation and to seek at

all costs the consensus necessary to establish a common program of action. The results of this willingness to reach a consensus were embodied in the Moncloa Pact which was needed to cope with a severe economic crisis, and the drafting of the Constitution, which demanded significant compromise from all the political parties. This also explains the broad amnesty granted to participants in the former dictatorship and the desire not to prosecute excesses and crimes committed during the dictatorship, and not to cleanse the civil and military services.

The decentralized political system established in Spain is still the object of debate and reform proposals. Curiously, this debate is more alive in the two autonomous communities that had claimed self-government before the beginning of the transition process, the Basque Country and Catalonia. In these autonomous communities there are many social and political groups that demand a higher level of political decentralization and even a new territorial organization system.

In the other autonomous communities, political decentralization was not an objective at the outset but it now has majority support. In that sense, one must bear in mind that it is broadly accepted in Spain that political decentralization has been a factor which has decisively contributed to the economic and social development of each and every autonomous community. More importantly, unlike what has happened in other similar processes, decentralization has not produced territorial inequalities, but rather has contributed to greater parity among the autonomous communities. It is noteworthy that a recent study by the Spanish government's Center for Sociological Research (*Centro de Estudios Sociológicos*) clearly shows that more than 70 per cent of citizens now prefer the decentralized political system.

APPENDIX 1: POLITICAL MAP OF SPAIN



## Carles Viver Pi-Suñer

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