Spain: A Partisan, Non-Institutional Democratic Regime

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SPAIN TOWARDS THE AMERICAS

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In a period of just a few decades Spain has moved from consensus transition to adversarial democracy. A set of institutional rules that were initially conceived to produce broad multiparty agreements and resolve conflicts has produced unexpected incentives for minority governments and bipolar competition. In parallel, the decentralization of the Spanish state, rather than contributing to inter-territorial cooperation, has fostered increasing competition among autonomous governments and has become the setting for major confrontation between the two larger Spain-wide parties.

During the transition process in the 1970s, a set of institutions and rules were adopted with the intention of favoring stable government and durable democracy, which would have been in contrast with troubling, disappointing and short-lived past experiences of political freedom in the country. The constitutional agreement, as was reached by multiple political parties and obtained broad social support in the late 1970s, was based on the will and expectation to prevent a new civil war, the marginalization of maximalist actors (such as anarchists and fascists, who had been prominent in previous episodes), and the party elites’ flexibility and eagerness to adopt shifting positions in order to favor broad interparty agreements. However, the rules adopted strongly favored high concentration of power in the hands of the chief executive and discouraged solid institutionalization of political relations. Further changes in the party elites’ available resources fostered bipolar interparty competition for power, which produced permanent confrontation of leaders and a lack of interparty and inter-institutional cooperation. The virtues of transition were eventually replaced with the vices of democracy.

Specifically, as we will discuss in the following pages, Spain is the only country in Europe where no multiparty coalition government has ever formed. No government has been based on majority support in popular votes. Long periods of single-party governments and dominance, far from contributing to institutionalizing pluralism have instead generated greater concentration of power. Parliament is subordinated to the government, and the latter in turn to its president and to the leadership of the majority party. The Senate, or upper chamber, plays almost no role before the Congress and has not functioned as a federal chamber for negotiations between the central and territorial governments. The judicial system was particized and found it difficult to establish itself as an independent force. Generally, political relations have been monopolized by the party leaderships.

The main institutional factor of pluralism, and the principal novelty of the 1978 Spanish constitution, was the introduction of widespread decentralization, especially the creation of the so-called ‘autonomous communities’. In the rather restrictive context outlined above, features such as the high frequency of territorial executives not controlled by the party in central government and the emergence of regional parties are major elements of balance of power and political pluralism. However, they develop in a weakly
institutionalized framework and produce permanent competition rather than cooperation. The “state of the autonomies” has not been an equilibrium institutional formula, that is, a stable solution able to gain all relevant actors’ commitment to play by the rules, but rather a framework for competition among territorial governments demanding increasing self-government and inducing steady decentralization of the state. In sum, high concentration of power in the center has come together with increasing territorial dispersion. No robust institutionalization of political interactions has been achieved. The main elements of this analysis are addressed in the following pages.

Partisan choices of institutions

The transition and constituent period in the second half of the 1970s was dominated by the fear of civil confrontation, which induced ‘consensual’ agreements among the major parties, basically the ‘centrists’ in government (Union of Democratic Center, UCD), the former authoritarian conservatives (Popular Alliance, AP), and the opposition socialists (Spanish Workers’ Socialist Party, PSOE), communists (Communist Party of Spain, PCE) and Catalan nationalists (later transformed into Convergence and Union, CiU). Negotiations and agreements shaped the path to democratization without major violence, up to the point of making the Spanish transition to democracy a world reference for further processes of regime change in contrast with previous experiences resulting from revolutions or inter-state wars. (Colomer 1991, 1995, 2000, 2008, Linz and Stepan 1996, Gunther, Montero and Botella 2004, Bonnie and Hamann 2008, Gunther and Montero 2009).

Some pacts among party elites gave birth to basic institutional rules of the game. Most prominently, various precautions were adopted to prevent an excessive degree of party fragmentation that might become a source of political and civil conflict. The bias in favor of concentration of power was partly induced by a mistaken interpretation of political pluralism as a factor of instability in the previous democratic experience during the Second Republic in the 1930s, as had been repeatedly diffused by the dictatorship’s supporters. Outstanding among restrictive rules were: (a) The “corrective” measures included in the electoral rules, which tend to produce a marked deviation of actual representation from proportionality in votes, and a great reduction in the number of parliamentary parties. (b) The investiture of government by only a relative majority of deputies and the “constructive” censure motion making its overthrowing very difficult, which consolidate electorally minority governments. (c) The rigidity of parliamentary rules, which give the government almost absolute control of legislative initiatives and processes.

Other transition pacts, however, implied the postponement of actual agreements and involved deliberate ambiguity. On certain issues, “consensus” meant pushing resolution of institutional dilemmas out to some uncertain future. Regarding the territorial structure of the state, in particular, ambiguity and postponement prevailed. The constitution envisaged that the state could decentralize itself, but a federal model was not adopted. Not even the usual expression “state of autonomies” was included in the constitutional text.

The transition and constituent processes were worked out by political party elites that could hardly rely upon significant membership after several decades of systematic political demobilization of the population by the dictatorship. As all parties, both those formed from governmental or semi-governmental structures and those emerging from opposition
movements, were created almost from scratch, they were provided with legal overprotection. A few major political parties were to be financed by public funds and given advantaged access to public media; the electoral rules and the internal party rules would encapsulate and armor party leaders against significant pressures and control from both following and electors.

During the transition, interparty pacts and intraparty discipline were mutually complementary devices, as the former would not have been credible and effective without the latter. The constitutional pacts were achieved after a recent period of civil war, repression and confrontation, on the basis of mutual distrust and fear of conflict, thus requiring the firm commitment and proven capability of party leaders to implement interparty pacts through their organizations as a necessary condition for such agreements. At the same time, the high self-allocated decision power of the leaders in the political process helped them strongly to control the parties’ internal decisions. For political party leaders, external “consensus” and internal authoritarianism were two facets of the same game.

As a consequence of organizational self-interest, many of the choices on institutions were intended to confirm political parties and their leadership as the foremost actors in decision-making within a custom-made institutional framework. But when consensual policy-making vanished and was eventually replaced with adversary politics, rule by party leadership only helped to reinforce interparty confrontation and citizens’ political cynicism.

**Overprotected political parties**

When they ran for the first democratic election in 1977, no political party had coherent political platforms, mass membership, territorial penetration or solid organizational structures. Most candidacies in the foundational elections were formed of coalitions of small, disperse groups and celebrities. Immediately thereafter, political parties were constitutionalized as “essential instruments for political participation” (Spanish constitution, 1978, primary title). As regulated by the laws on financing (1987, 2007) and of political parties (2002), they have been generously funded with public resources from the state budget up to paying, officially, for 90% of electoral campaign costs. The distribution of subsidies is biased in favor of the two larger parties, as they are based on seats allocated by the electoral rules rather than on popular votes obtained (the two larger parties, the PSOE and the People’s Party, PP, have received on average about 70% of votes and 85% of electoral subsidies). In addition, parties receive public funding for their regular working, youth organizations and cultural foundations. Regional and local governments can give political parties unregulated provisions of funds. Parties with representation in elected institutions are also given access to regulated broadcasting time on public radio and television, which are also distributed according to the proportions of seats and not votes. They also enjoy reduced postal rates, as well as public space provided by local governments for displaying posters and holding public meetings.

The larger parties have contracted huge debts for bank loans obtained at below-market rates on pre-election expectations of later public financing, but many of them have been condoned by the credit institutions. As the parties tend to inflate spending, especially during election campaigns, they have also made resource to private funding, which is not effectively controlled by any impartial body. As has been proved in a number of judicial
sentences, several parties have set up fictitious companies as instruments for collecting contributions. Agreements between parties and business have provided hidden funds in exchange for concessions, contracts and licenses granted by the public administrations under party government control, especially local and regional governments. Donations to party local organizations, companies and foundations are not integrated in the parties’ accountancy books. Although Spain lies in 23rd position in the ranking of countries by GDP per capita, it is ranked 32nd in the corruption perception index. In the mid 1990s, corruption emerged in opinion polls as the most important problem in Spain (while the country was scored with 4.3 out of 10 points for transparency by international estimates; in 2009 it was scored 6.1). Only 28% of citizens said the government was effective in the fight against corruption in 2009. (Corruption Perceptions Index, www.transparency.org).

The protection of parties as monopolistic political actors is confirmed by the electoral rules. Spain is, with Portugal, one of the very few West European countries using closed party lists in all elections (local, regional, state and European). Closed party lists prevent intra-party competition among potential candidates for the electors’ votes, suppress voters’ personal representation, and inhibit regular exchanges between the citizens and their representatives. It has been observed that not even the inclusion of well-known persons, such as current or former presidents of government, ministers, incumbent members of parliament with long experience, members of regional cabinets and mayors as the top candidates in party lists can change significantly the voter’s choice for a party rather than for candidates. (Riera 2011).

Within the parties, the control of the organization by the leaders is paramount. In spite of the constitutional requirement that parties’ internal structure and working must be democratic, the actual party rules of most parties are highly centralized and personalized. Top-down decisions prevail regarding the launch of policy positions and electoral promises, the choice of leader and electoral candidate selection. (Sánchez de Dios 1999, Field 2006, Field and Siavelis 2008, Reuzen 2011).

For the first election in 1977, the secretary general of the incumbent party, UCD, and later president of government, Leopoldo Calvo-Sotelo, in order to implement president Adolfo Suarez’s choices of candidates, “had to impose on the [other party] leaders an agreement by which they gave power only to me to present the lists in all the electoral districts” (Calvo Sotelo 1990: 57). Comparably, once in power, the vice-secretary general of the PSOE and vice-president of government, Alfonso Guerra, in order to implement president Felipe González’s choices of candidates for the 1986 election, warned his party fellows that “those who move don’t appear in the photo”, a lemma that he adopted from Fidel Velázquez, boss of the Workers’ Confederation of the Mexican authoritarian single party, PRI. González early cautioned the public that the PSOE was suffering a process of “oligarchization” (La Vanguardia, Oct. 4, 1986).

The legal overprotection of parties and their authoritarian internal decision-making reduce the subjective value attached by the leadership to the members’ contributions. In contrast to experiences in other European countries, all the Spanish parties have very low membership: they accounted for only 0.3% of all voters in 1976 and 3.2% in 2005 (in contrast to 5% as 20-country average in Western Europe). Holders and seekers of public office make up a large proportion of the membership. They usually have to submit to tight discipline from central party headquarters. (Mair and van Biezen 2001, Biezen 2003).
Organizational and personal rigidity permits expeditious decision-making, but it also favors conflicts, splits and ruptures, especially when party leaders are to be replaced. UCD’s leader and president of the government Adolfo Suárez resigned and left the party to create a new one before being replaced in 1982. The leader of the PCE, Santiago Carrillo also appointed his successor, but growing in discontent with his disobedient pupil, he soon left the party and created a new, ephemeral one in 1983. The Basque Nationalist Party, EAJ-PNV, split between the party leader and the president of the Basque country, the latter moving to create a new party in 1986. The leader of AP, Manuel Fraga appointed his successor, but the latter’s failure to emerge as a reliable candidate for president of government moved the former to regain the party leadership and select another appointee in 1989. Only the PSOE held a so-called “primary election”, actually reserved to a few thousand party members, to choose Felipe Gonzalez’s successor, but the chosen candidate was not the one preferred by the party leadership, so he was soon defrocked and replaced with the official one in 1998. Successful top-down designations of successor by incumbent party leaders are limited to CiU’s chairman and president of Catalonia, Jordi Pujol, who retired after winning six successive elections, in 2003, and PP’s president of government José M. Aznar, who did not run for a third term in 2004 after asserting that “personalistic prolongation of political leadership hurts the parties and generates unnecessary tension in the country” (El Mundo, Sep. 3, 2003).

Restrictive electoral rules

In the exchanges prior to the call to the first election in 1977, the main opposition parties, that is, the socialists, the communists and the Catalans nationalists, as uncertain as they were of their future popular support, opposed the government’s initial intention to establish a majority rule electoral system in single-member districts (as for the British model) and made the adoption of proportional representation rules a condition for their electoral participation. While majority rule would have permitted only a couple of large parties to receive seats and survive, the principle of proportional representation might be compatible with a higher degree of political pluralism. The incumbent’s electoral advantage, however, proved to exist in this case not only for the usual government’s capacity to provide selected information to the public about its actions, but also for its power to dictate the electoral rules.

A few weeks before the first election in 1977, a governmental decree law established the basic electoral system. As explained by the main author of the first draft, professor of constitutional law and conservative politician Óscar Alzaga: “The real political order was to write a law by which the government could get an absolute majority [of seats]. Since pre-electoral survey polls gave the future Union of Democratic Center [UCD] about 36-37% of votes, we intended to make a law in which the absolute majority could be located at about 36-37%. And with a mechanism that partly favored the rural areas, where in the pre-electoral projections the UCD prevailed in respect to the industrial areas, where there

1. “The political class and the political parties”, as well as “the government, the politicians and the parties”, are increasingly mentioned by citizens as one of “the three most important problems in Spain”, by 19.4% and 4.6% of people, respectively, coming only after the economy and unemployment, in the surveys by the Center for Sociological Research, CIS, in April 2010. The political parties score next-to-last in sympathy in a list of 12 social movements or organizations, only after the squatters (“okupas”). Up to 65% of people judge the political situation as being “bad” or “very bad” (while only 4% say it is “good or “very good”), and most predict it will worsen in the near future. The 2010 values cited are higher than ever before in twenty-five years, see Baròmetro, www.cis.es.
was greater favorable vote for the Socialist Party, we intended that the attainment of the absolute majority for the Socialist Party were not at 36-37%, but at 39-40%.” (Alzaga 1989: 127-128). As suggested by Alzaga’s comments, a party well established in rural districts could easily gain a greater number of deputies than another, more urban-based party which might have received more popular votes. So far, the system has favored the two most voted electoral lists. In 1985, when the PSOE had received an absolute parliamentary majority of seats, an organic law was approved which confirmed the basic electoral rules already enforced, with the corresponding advantage in favor of the PSOE and the new larger party on the centre-right, eventually the PP.

Among the total of fifty-two electoral districts, a dual electoral system operates. On the one hand, about 50% of all deputies are elected in districts with seven or fewer seats, which function as in a plurality system in which only one or two parties can receive seats. On the other, the remaining 50% of deputies are elected in a few districts with higher numbers of seats, which permit a degree of multipartism. Overall, the electoral deviation from proportionality between votes and seats has averaged 13%, the highest among all countries with proportional representation and very similar to the deviation produced by the plurality rule system in Great Britain. (Gunther 1989, Colomer 1990, 2004, Montero, Llera and Torcal 1992).

Specifically, in the ten democratic elections in the 1977-2008 period, the electoral system produced three single-party absolute majorities of seats in parliament, always based upon a minority of popular votes (in 1982 and 1986 for the PSOE and in 2000 for the PP). As a consequence that was intended by the electoral rule designers, small and medium-sized Spain-wide parties have been badly hurt by the system. A party has always been underrepresented in seats if it has obtained less than 20% of the votes. The seat-shares of the PCE and its successor the United Left, IU, have been around 50% of their vote-shares. In addition, the electoral rules have favored the strategic vote on behalf of the larger parties, commonly known in Spain as “useful vote”. Many voters have learned to anticipate the consequences of the electoral rules and have adapted their behavior: according to a number of surveys, the sympathizers of the smaller parties tend to vote more in accordance with their party preferences in twice as big a proportion in the large electoral districts as in the small ones. As a consequence of both mechanical underrepresentation and strategic vote, a number of small or medium-sized Spain-wide parties have been just removed from the system, including the Christian Democracy, the People’s Socialist Party PSP, the Democratic and Social Centre CDS, the Democratic Reformist Party PRD, and others that in alternative institutional settings might have become pivotal supports to form a majority coalition in parliament.

2. More details about the process of crafting the electoral rule decree and its collective authorship are provided in Alzaga et al. 2001, pp. 224-226.
3. In the election of 1989, the PSOE, with 39% of votes, received just 50% of the seats, 175 out of 350. The majority composition of the Congress, however, was altered as a consequence of the expulsion from the chamber of three deputies of the People’s Union (Herri Batasuna), a Basque independentist group accused of being an accomplice with terrorism, after they refused to fulfill an innovative oath of loyalty to the Spanish constitution, plus the absence of the fourth elected deputy of the group who had been killed the night before by a far-right terrorist patrol. The PSOE nevertheless reinforced its majority for the investment of president of government with the additional support of one deputy from the Canary Independent Group, AIC. (El País, La Vanguardia, Nov. 21, Dec. 5-6, 1989).
As a consequence of the overrepresentation of the two larger parties and the underrepresentation of the Spain-wide smaller parties, no government of Spain, whether supported by a majority of seats or relying upon parliamentary support not substantiated in government offices, has been based on a majority of popular votes. The average government has obtained only about 40% electoral support. This means that there has always been a neat majority of voters that have not voted for the party in government. On average, the government’s party has obtained a majority of votes in only four of the 17 autonomous communities. Only in one election did the winning party win by majority in a majority of communities (the PP in 10 communities in 2000). Only in two of the 17 communities has the winning and government party won majority electoral support in a majority of elections (Extremadura in 7 and Andalusia in 6 of ten elections). In two communities, the winning and government party has never obtained a majority of popular votes (the Basque country and Catalonia).

The electoral system that was established by decree of a nonelected government in 1977 and was basically confirmed by one of its greatest beneficiaries in 1985 has favored high and increasing levels of polarization of electoral competition between the two larger Spain-wide parties at the expense of political pluralism. The high degree of exclusion from governmental support it produces is unparalleled in Europe and has induced increasingly broadly diffused political alienation among citizens. Somehow, however, the electoral system backfired against certain aims of its designers and supporters. Since it favors the larger parties in the small districts and permits multipartism in a few large ones, some regional parties with significant support in their districts receive overall fair shares of seats according to their votes. This has made the larger nationalist parties of Catalonia, CiU, the Basque country, EAJ-PNV, and the Canary Islands Coalition, CC, frequent pivotal partners in the Spanish parliament to form legislative majorities in support of minority governments’ initiatives. Consequently, the issue of decentralization has gained prominence in the political agenda. Against some initial expectations, bipolar competition between the two larger Spain-wide parties has largely turned around the issue of the territorial structure of the state.

**Single-party minority governments**

In Spain, the constitutionalization of the monarchy was incompatible with the direct election of president, in contrast, for example, with the parallel process of democratization in Portugal, and required democracy to adopt the form of a parliamentary regime. However, the chief executive, singularly called “President of the Government”, instead of the typical denomination of prime minister in parliamentary regimes, concentrates very high legal and factual powers.

The rules of executive appointment and control concede only a limited role to parliament. The President of the Government is appointed by the Crown, after having been elected by an absolute majority of the deputies in a first round, or by a plurality or relative majority in a second round. This implies that an early dissolution of the chambers can be avoided if no candidate gets majority support and a minority government can be formed thanks to sufficient abstentions by deputies. In contrast, the President of the Government can be overthrown by parliament only by a “constructive” censure motion requiring an absolute majority of deputies and senators in support of an alternative candidate. It is, thus, possible for single-party governments with minority support in parliament to survive if the
adversaries of the government party are sufficiently divided on both left and right or other issue dimensions. The presidential candidate is not obliged to present the members of the government to the parliament, and neither can the latter move motions of censure against particular ministers.

As a result of these rules, Spain is the only country in Europe where only single-party governments have been formed, all of them with minority electoral support, and most of them with minority parliament support, as mentioned. In practice the censure motions which have been presented (by the PSOE in 1980 and by the PP in 1987) have been mere denunciations of government and party propaganda exercises in front of the electorate. The President leads the Council of Ministers, but this does not operate on a collegial basis. Coordination is essentially hierarchical through the government’s delegated commissions, inter-ministerial commissions and under-secretaries’ commissions work, which adopt many decisions which are put to the council for ratification. (Biezen and Hopkin 2005).

From 1982 on, the Presidents of the Government, socialist Felipe González until 1996, conservative José M. Aznar until 2004, and socialist José L. Rodríguez-Zapatero since then, added to their position of head of a single-party executive the roles of maximum leader of their parties and president of the corresponding parliamentary groups in both chambers of parliament. One consequence of such a high degree of concentration of power is an extreme personalization of the political alternatives. The monopolistic control of public management by the successive presidents of government has produced “Suarismo”, “Felipismo” and “Aznarismo” -- a type of epithet that reflects both admiration and derision.

Executive dominance in Parliament

In the post-constitution periods in government of both the centrist UCD, the socialist PSOE and the conservative PP, decisions taken in the parliament have largely been determined by the agenda of the government and, in practice, of the leadership of the governing party. The parliamentary rules strongly restrict the role of parliamentary committees, penalizing any party indiscipline on the part of individual deputies and also any fragmentation of parliamentary parties.

To form a partisan parliamentary group in the Congress of Deputies requires fifteen deputies elected in the same Spain-wide party or five in the same regional party. Parties which have established an electoral coalition can form only a single parliamentary group. Consequently, only four parties have ever been able consistently to form their own parliamentary group in all legislative terms, namely the socialist PSOE, the conservative PP, the Catalan CiU and the Basque PNV. The remaining deputies that are not included in these groups, although they may have competed in various candidacies, make up the ‘Mixed Parliamentary Group’, which is usually large, heterogeneous and inoperative (it has contained up to 52 deputies from four to eight different parties, most of them regional).

The activities of individual members of parliament are very limited. Only the partisan parliamentary groups are authorized to introduce bills, while any amendment proposed by an individual member has to be endorsed by the party spokesperson. There is strong voting discipline at the heart of each party group, upheld through instructions and controls. The vast majority of members have neither assistants nor advisers (except in technical and
juridical matters). There is little continuity among the individual members of any single legislative committee, which prevents them from acquiring specialist expertise in any field and keeps them dependent on the decisions of the group leaders. Even questions to government members, though formulated by individual deputies, are always previously decided upon within the party parliamentary group. In practice, individual members of parliament work as a mechanical mouthpiece for partisan directives. For most deputies and senators, their presence in parliament is above all an opportunity for recruitment for other posts, and the main qualification for attaining such promotion is usually adherence to the party discipline.

Parliamentary committees (“commissions”) are formed for different policy fields, but their party composition mirrors the seat distribution in the chamber and their functioning is submitted to rigid party discipline. Altogether, the real parliamentary business of discussion, negotiation and the drafting of bills and amendments are monopolized by the chairpersons and spokespeople of the party groups outside and before committee meetings. Over time, the influence of the committees has declined, as regards the ability of the government’s party parliamentary group and of non-governmental parties to affect policy substantially. The leaderships of the major parties thus control the deputies and senators and through them dominate parliament. (Caballero 2007, Maurer 2008).

Comparatively speaking, the Spanish parliament has produced a relatively small number of laws, most of them concerning regulating the government’s own institutions and public finances. The government largely controls the parliamentary agenda. Government bills are given priority; the government can request an “urgent” procedure or that parliament approve or reject a bill in a single vote. With the enforcement of these rules, 89% of all laws passed from 1982 to 2008 started as governmental, not parliamentary bills. More than 99% of government bills became law (in comparison to 80% country-average in all parliamentary regimes). In contrast, only 11% of all parliamentary bills presented in the same period passed. The decline of parliament in front of the government has involved increasing political polarization. Cooperation between the two larger parties, as shown in their joint approval of ordinary laws, has declined from 86% of laws in the first legislative period 1977–1979 to only 47% for 2004–2008. For constitutional-type or organic laws, the corresponding decline is from 95% to 73%. (Guerrero 2000, Capo 2003, Guerrero 2004, Field 2005, 2009, Gallagher et al. 2006, Sánchez de Dios 2006).

Partial justice

In Spain, the body responsible for the administration of justice is the General Council of Judicial Power (CGPJ), an institution based on the French model. The council nominates the presidents of the Supreme Court and its lower courts, as well as the High Courts of the Autonomous Communities, and is charged with the training and discipline of judges. In this context the Ministry of Justice has very little legal power of decision, except in providing finance for the service. Nevertheless the institutional procedure for designating the main organ of judicial governance does not guarantee its real political independence.

Under a 1980 regulation, twelve of the twenty members of the CGPJ were to be elected by the judges and magistrates themselves, and the other eight appointed by parliament (half by the Congress and half by the Senate). But a new regulation promoted by the PSOE parliamentary majority in 1985 established that the twenty members of the council would be appointed by parliament (again, half by each chamber). According to its
promoters, this new regulation sought to achieve “political coherence” between the judicial power and the governing parliamentary majority, although --as the Constitutional Court subsequently reasoned-- the partisan logic of distributing posts in proportion to the parliamentary force of each party has tended to frustrate the constitutional objective of pluralism.

Similar partisan control has been extended to the Constitutional Court, the institution charged with hearing appeals on habeas corpus, rights and liberties, laws which contravene the constitution, and conflicts between state institutions, especially between the central government and the autonomous communities. The Spanish Constitutional Court is composed of eight members appointed by parliament, two by the government and two by the CGPJ, a procedure which has also produced partisan majorities in favor of either UCD, or PSOE or PP governments, in different periods. In spite of the legal provision establishing secrecy for all deliberations and votes in the Constitutional Court, the press and other media regularly publish the political voting preferences of the Court members. Some of them even argue the ideological coherence of their positions in public. Due to increasing bipolar competition, the renewal of members of the Constitutional Court, which may require appointments by turns between the major parties, has been blocked for years. The four members appointed by the Senate, including the Court president, completed their terms of nine years in 2007, and another member died, but they had not been replaced three years later, at the time of writing. On average a case takes six years to be resolved.

At all levels, Spanish administration of justice is among the slowest in Europe. According to official data from the CGPJ, in 2008 the Spanish courts initiated about 8.5 million procedures, but dictated only 1.5 million sentences. At the end of that year, about 2.5 million judicial affairs were pending resolution, while 270,000 previous sentences were pending execution. When sentences are pronounced years after the facts have been submitted for consideration, it is very difficult to remedy the injury, establish adequate compensation or impose an effective or exemplary sentence. As a result, the justice system finds it hard to fulfill its role of guaranteeing impartially the rights of citizens in their relationships and disputes. In many lawsuits between individuals, between members of the public and institutions, and even between institutions themselves, there are often incentives for some of the parties to adopt fraudulent or abusive attitudes, since there is little likelihood of receiving a punishment proportionate to the harm inflicted and, above all, judgment is so far off that it is likely to involve a significantly inferior sanction to the unilateral benefit deriving from such conduct.

Non-institutional, competitive federalism

In contrast to the model of cooperative federalism, in which the governments of the federation and of the territories negotiate all the important decisions, in Spain the autonomous communities have developed steady competition for further decentralization of powers. In a framework of low institutionalization, direct relations between the parties have largely substituted intergovernmental relations. Typically the nationalist parties that govern in some autonomous communities employ more or less veiled threats of noncompliance and secession accompanying negotiation and cooperation and are met, in turn, with restrictions, reprisals and concessions by the central government. (Colomer 1999, 2007).
The constitutional provisions regarding the territorial structure of the state are far from certain, as mentioned. The model of the state is not defined as federal, regional or unitary. The number and list of autonomous communities was left to be the result of a further political process of inter-territorial competition. Usually, in bottom-up built federal countries, the constitution establishes a list of competences of the central government and leaves the rest in the hands of the territorial governments, while in top-down decentralized states there is typically just a list of powers to be transferred to the territories. However, the Spanish constitution provided two lists of areas (rather than legislative and executive powers properly speaking) delimiting the minimum activities of the central and autonomous institutions respectively, which opened the gate for broad competition on non-regulated issues.

There are very few institutional bodies to negotiate and arbitrate between the central government and the autonomous communities. Unlike truly federal states, the Senate in Spain is not organized in such a way as to enable it to contribute decisively in this role. Only less than one fifth of its members are elected by the autonomous parliaments, thus not reflecting the territorial distribution of power. The upper chamber has no significant legislative powers. Both the Congress and the Senate can introduce and modify bills, but if there is disagreement between the two chambers, the Congress prevails, so that in fact the Senate has scarcely ever exercised legislative initiative. The upper chamber plays no formal role in the relationship between central state institutions and the regional governments. Although in 1994 an annual debate in both the Senate Commission of Autonomous Communities and in the Plenary session was established with participation of the presidents of the central government and the communities, it has been called only twice in fifteen years.

In law, the autonomous communities have the power to initiate legislation before the Spanish parliament, but in practice they never exercise it. The central government has a delegate in each autonomous community, but he is usually busier trying to safeguard central powers than coordinating the activities of the various administrations. The main instruments of cooperation between the central government and the autonomous communities are the Fiscal and Financial Policy Council and the sectoral conferences held periodically by some central and regional ministers in the same areas of responsibility. A conference of presidents of the central government and the autonomous communities was created in 2004 with the aim of addressing common interest issues such as health finances, environment and research policies. However, as it was established that the conference should achieve “commitments” only by unanimity and “recommendations” by including the presidents of the central government and two thirds of the autonomies, it has been blocked by confrontation between the institutions controlled by the central government’s party and the opposition. Although it was scheduled to meet once a year, it has fulfilled less than half of this prevision.

There have been a significant number of conflicts over powers between the central government and the autonomous communities that have been referred by the Constitutional Court, most of them involving the Basque country or Catalonia. In practice, negotiations between the central and autonomous governments proceed along extra-judicial and extra-parliamentary paths, above all through the heads of political parties. In 1982, the main negotiations over decentralization took place between the UCD and the PSOE, which drew up an agreement on the “harmonization of the autonomy process” intended to work to the detriment of the nationalist parties (which was largely annulled by the Constitutional
Court), and in 1992, the PSOE and the PP agreed on greater uniformity of the autonomous communities’ powers. But in further periods cooperation between the two larger parties has largely been replaced with bilateral agreements between the central government, of either the PSOE or the PP, on the one hand, and the Catalan, Basque and Canary nationalists governing in their respective autonomous communities, on the other, resulting in transfers of resources to the autonomous governments in exchange for nationalist support for minority central governments in the Spanish parliament.

The membership of the Spanish state to the European Union and the process of increasing integration have opened new alternatives for certain territories in Spain away from the focus on their relations with the central government. In some aspects, Spain has become one of the most decentralized countries in Europe. The central government controlled 90% of public expenditure in 1979 and barely 50% thirty years later (most of it for retirement pensions and debt interests), although it still collects about 75% of tax revenue. But the autonomous governments have kept up constant pressure to transfer further powers. They have accused the central government of reserving basic legislation to itself, even in fields attributed to the autonomous communities, leaving the latter with only the development and execution of the legislation. The Constitutional Court has also accumulated jurisprudence, largely in favor of the central government. Lacking institutional settings for inter-territorial cooperation, and as a kind of reaction, since 2004 most communities began to elaborate new regional constitutions or statutes of autonomy to enlarge their capacity of self-government, following the initiative of the Basque Country and Catalonia. During the period 2006-2007, new statutes were actually approved for Catalonia (although it was threatened with suspension by the Constitutional Court for years), Aragon, Balearic Islands, Valencia and Andalusia.

The hottest focus of conflict lies in the Basque country, where the interplay between the Spanish government, the Basque government, and the pro-independence violent group Basque Fatherland and Liberty (ETA) and its political branch, has not reached political equilibrium. The attacks by ETA caused about 80 mortal victims during the last seven years of the dictatorship and 839 since 1976. According to international criteria recognized by the United Nations, for about fifteen years this qualified as “minor” or “low intensity” conflict, a category of forms of political violence involving between 25 and 1,000 battle-related deaths in a year. However, ETA’s violent activity dramatically decreased since the capture of the organization leadership and central structure by the police in France in 1992, and especially following the broad popular rejection of violent practices after a bomb attack by an Islamist group linked to Al-Qaeda that caused almost 200 deaths in Madrid in 2004. There were 10 victims of ETA in the following six years. According to the criteria just mentioned, the conflict is considered “terminated”, although some “low activity” subsists.

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4. On the other hand, ‘dirty war’ actions by death squads, somehow supported by members of the Spanish security forces and secret services, caused 75 victims during the period 1976-1987. This resulted in the trial, conviction and imprisonment of several high officers, including a former minister of the Interior.
5. The basic categorization of armed political conflicts and other types of organized violence, as used by the United Nations, is based on data and analyses provided by a number of annual reports, namely *States in Armed Conflict* (Department of Peace and Conflict Research, Uppsala University), *SIPRI Yearbook* (Stockholm International Peace Research Institute), *Human Security Report* (Simón Fraser University, School for International Studies), and the *Journal of Peace Research*. See, in particular, the dataset of the Uppsala project at http://www.pcr.uu.se.
Yet, in the absence of new political and institutional rearrangements, the basic incompatibility has not been resolved. ETA is proscribed as a terrorist organization by the Spanish and French authorities, as well as the European Union and the United States. More than 700 ETA members are incarcerated in prisons in Spain, France, and other countries. Since the enforcement of the Spanish law of political parties in 2002, parties accused of links with ETA have been forbidden to participate in most elections. There were a number of negotiations between delegates of the Spanish government and of ETA to settle on peace agreements. They led to the dissolution of a branch of the terrorist organization in 1982, but further attempts largely failed in Algiers in 1988, Geneva in 1997 and the Dominican Republic in 2006.

The Basque country was the only community in which the 1978 referendum on the Spanish Constitution did not obtain majority popular support. Nevertheless, the Basques were the first to obtain their Statute of Autonomy and to hold elections for the corresponding autonomous parliament, having appeared since as the model of self-government to which most of the other regional governments would like to approach. The Basque parliament also approved a new project of Statute in 2004, which envisaged a confederal relation with the Spanish state “in the absence of violence”. But it was boldly rejected by a two-party majority in the Spanish parliament.

**Conclusion: vanishing consensus**

Political parties in Spain have lower membership, higher internal discipline and higher levels of perceived corruption than average values in European democracies. The partisan control of representative institutions has produced more subordination of parliament to government, more frequent governments with minority electoral and parliamentary support and higher concentration of power in the president of the government than in most parliamentary regimes.

During the transition to democracy, rigid intraparty discipline and highly centralized organization concentrating great power of decision in the hands of the party leadership was conceived as instrumental in making broad interparty pacts feasible. But in further periods, all fields for consensus-building in the 1970s have become opportunities for confrontation. For a while, the major opposition party put emphasis and gave salience in the public debate to issues along a non-ideological dimension, such as corruption scandals, “dirty war” against terrorism, or foreign policy. Certain institutional affairs touching the basic rules of the democratic game also became the subject of conflict, including electoral results, negotiations with ETA, the renewal of judiciary bodies, and the new Statute of Catalonia. More recently, major adversarial fights have incorporated traditional left–right dividing lines, such as the memory of the civil war, education, religious and moral matters, and the economic policy against depression. In all these and other issues, antagonism has replaced previous consensual agreements, ambiguous intermediate compromises or centripetal electoral competition for the center ground. On the other hand, significant disparity between the governing party in the centre and those governing in the regions has encouraged permanent inter-territorial competition for further decentralization. But a lowly institutionalized framework has not provided regular mechanisms for these demands to be managed within the system. Virtually no transitional consensus has remained alive. Only party discipline and leadership control have increased.
The development of increasingly polarized inter-party and inter-territorial competition has deteriorated the performance of the existing institutions and eroded their social support. Concentration of power, broad social exclusion from government, lack of participation of the periphery in the center and of inter-territorial cooperation, that is, few opportunities to exert “voice”, induce “exit” and increasing disaffection with the constitutional formula. The expectations at the time of establishing the basic set of rules in the late 1970s do not fit the current distribution of political resources and the subsequent actors’ strategies. The initial regulations subsist due to actors’ self-reinforcement and the consequent paramount costs of their hypothetical reform or replacement. But they entail highly inefficient performance and induce increasing apathy and disillusionment among the citizens.

References


