

Concepts of State and Regional Autonomy

(Are state and regional autonomy peacefully compatible? A reflection on the recent Spanish experience)

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Naar aanleiding van de komende grondswetswijziging, is het nuttig om even over de grenzen te kijken. Het spaanse "autonomiemodel" is een eigen vorm van machtsverdeling tussen de regio en de centrale regering. de auteur onderzoekt in welke mate in dit model conflicten kunnen rijzen, en wat de oorzaken hiervan zijn. Hij doet dit vanuit verschillende gezichtshoeken. Vooral het empirische onderzoek is hierbij interessant.

A l'occasion de la prochaine révision de la Constitution, il nous a semblé intéressant de regarder au-delà de nos frontières, et d'étudier l'expérience espagnole en ce qui concerne les rapports entre le pouvoir central et les régions. L'auteur examine à quelle point des conflits peuvent surgir dans le modèle des "Comunidades Autonomas". L'examen (sous différents angles) des causes de conflits peut être intéressant pour un constitutionnaliste belge.

Regarding the future revision of the Belgian Constitution, we thought it would be interesting to look at the foreign experience in the field of relations between the central power and the regions. The author examines the different causes which give rise to conflicts in the Spanish model of the "Comunidades Autonomas".

§1. Introduction. The Fundamental Question and its Possible Answers

A. The purpose of this paper is to give an answer, however provisional, to the following question: are state and regional autonomy peacefully compatible in theory and in practice? Of the possible answers, we offer three.

The first is the *merely formal answer*, the one which is given by laws, although these are not always implemented in practice.

The second is the *conceptual answer*, which can be deduced from the theoretical principles inspiring the idea of state and of regional autonomy, although the latter has obtained, to date, scarce theoretical attention and usually from an *étatiste* point of view.

The third is the *empirical answer*, which practice teaches us in countries where regional autonomy exists. We shall first focus upon the relations between state and autonomy to see if these are conflictive or peaceful in the *domestic sphere*, therewith emphasizing seven indicators: political tradition (étatiste or not); political parties; the financial founts of the regions; the existence or non-existence of a distinct regional law; the relation between local entities - provinces and municipalities - and the autonomous regions; conflicts of competences between the regions and the state (are they abundant or not; do they remain within normal tolerable limits); and, finally, the existence or non-existence of effective guarantees for the regions.

B. From the various regionalised states we have chosen Spain; within Spain we have mainly centred our attention upon one autonomous region, Galicia. Why have we chosen Galicia and not as usual, the Basque or Catalonian regions? First, precisely because it is not usual to study Galicia, whereas the other two cases are fairly well known. Secondly, because Galicia offers a series of interesting features: 1) Galicia is a frontier and a coastal region; 2) it is neither personalistic nor territorialistic - i.e., there is more "membership identification" than "territorial identification", to put it in ROKKAN and URWIN's terms; Galician nationalism is weaker than Basque nationalism but Galicia - within the Spanish territory - is historically probably the best defined region; 4) the political party ruling Galicia is (1) not the same as in Madrid (and in the majority of Spanish regions) - in the opposite case it would be of little interest to come to the conclusion that relations between the state and the region are not too uneasy - but at the same time it is not what we could call an independentist party - in this case it would be of little interest to come to the conclusion that relations between the state and the region are excessively uneasy. Galicia is located in the extreme north-west corner of Spain. It is Atlantic, has poor weather, is also economically poor - *per capita* income below the national average - and has a highly dispersed population which adds up to 2.750.000 inhabitants. It has seven cities of which Vigo and La Coruña are the major centres. The capital, however, is located in Santiago, the famous pilgrimage goal of the Way of Saint James.

C. Before delving into the subject of this paper we thought it would be useful to add a clarifying note on some Constitutional Law technicalities. *Autonomy* implies that the region has true political power which, although lesser than that of sovereignty, is greater than that of administrative decentralisation. It is a limited and derived power, non-originary, coming from a Constitution which defines it in precise terms and which for

(1) Stand of affairs in 1984;

this reason has to be a written and rigid one, which can not be freely changed by the central Parliament. The regional power exercises real governing functions, although limited, and is not hierarchically subordinated to the central Government. The regional Parliament has also legislative powers and is not subordinated to the central parliament - a fact that clashes with the classical British dogma of the Sovereignty of Parliament - but is rather the product of distinct regional elections. Thus understood, in its fullest sense autonomy exists only in Italy, Portugal and Spain.

Region refers to one of the large political units (different from the smaller provinces) into which the territory of a state is divided, having its own parliament and government and possessing its own Statute of Autonomy - which is, *mutatis mutandi*, like the constitution of a member-state of a federation. In Spain the regions are usually called *Comunidades Autónomas* in order to avoid conflictive terms such as *region* or *nation*.

National and *nationwide* mean, for our purposes, "of a sphere embracing all of Spain", whereas *nationalism* is used for the peripheral spheres only - Galicia, Catalonia, the Basque Country, and, to some extent Valencia, Andalusia and the Canary Islands. In Spain today one does not hear of nationalism not referring to the peripheral spheres. This seems indicative of the weakening of Spanish nationalism.

The *Statutes of Autonomy* of each region do not result from the regional legislative power but are rather enacted by the central Parliament. The same occurs in all the Italian, Portuguese and Spanish regions except Galicia, Cataluña, Andalucía and the Basque Country, where the people approved their own Statutes of Autonomy and the central Parliament only provided an *a posteriori* ratification. These Statutes of Autonomy are completely different from the acts passed in the regional Parliaments, which constitute the regional Statutory Law or Regional Statute Law of each region. (These regional statutes are called *leggi* in Italy, *leyes* in Spain, and *decretos legislativos regionais* in Portugal.)

In the strict technical sense mentioned before, regional autonomy appeared for the first time in the Spanish Constitution of 1931 - short-lived, for the Spanish Civil War broke out only five years later. The second Constitution which incorporated regional autonomy was the Italian Constitution of 1947, still in vigour today. One finds it then in the Portuguese Constitution of 1976 (applicable to two regions only) and in the present-day Spanish Constitution written in 1978. Therefore we are dealing with an experience which is not universal but rather brief and located.

§2. The Merely Formal Answer

We call the *merely formal answer* that what constitutions and Statutes of Autonomy state and what politicians declare on solemn occasions, or what one usually reads in common textbooks for students of Constitutional Law.

If we are to be bound by these merely formal criteria, then we would have to conclude that no important problem nor incompatibility exist between the state and regional autonomy. On the contrary, regional autonomy was born and has grown in *étatiste* countries - such as Spain or Italy - and is so compatible with the state that these countries have not even seen the necessity of converting themselves into federal states : they have continued to be unitary states although they have undergone a process of political decentralisation. Spain, according to the 1931 Constitution, was an "integral state" and now, according to the 1978 Constitution in force, it is still an unitary state, although with certain nuances(2). Italy, in agreement with the 1947 Constitution still in vigour, is a regional state - a midway point between the centralised unitary state and the federal system - but nonetheless it belongs within the unitary type. Portugal, according to the Constitution of 1976, is "an incomplete unitary regional state"(3). The Constitutions of these three countries anticipate that conflicts between the state and the regional autonomies are not to be solved according to the principle of hierarchy so typical of the public administrations of the continental European states because the regional autonomous organs - Parliament, Government - are not subordinated to the central organs within a hierarchical scale but rather are the result of political power which is proper to the region itself. Therefore conflicts have to be solved, basically, in the following manner :

- 1) By means of a Kelsenian type of Constitutional Court, called *Tribunal de Garantías Constitucionales* in the 1931 Spanish Constitution, *Tribunal Constitucional* according to the present-day Spanish and Portuguese Constitutions, and *Corte Costituzionale* in Italy.
- 2) By means of granting preeminence to the Central Government in cases of extreme necessity - natural disasters, for example, or instances of mutiny, riot or revolt - or when the regional organs gravely fail to comply with their duties. In such cases both the autonomic statutes as well as the federal Constitutions usually authorise the Central Government to intervene directly even though it would be contrary to the will of the regional autonomous institutions.
- 3) In the cases of conflicts between the rights of the state and those of the region, these conflicts are normally solved in favour of the rights of the state except when we are dealing with an issue which falls clearly within

(2) It is not possible to explain these nuances in detail here: "devolution" of powers to the so-called "historical nationalities", respect of the Constitution for historical rights anterior to it, approval by the peoples of each region of the autonomy statutes of the four main regions with a merely ratifying role on the part of Parliament. Unfortunately, the Constitution is far from clear on this topic.

(3) MIRANDA, *Constituição e Democracia*, Lisbon, 1976, p. 415. The author, a professor of Constitutional Law, participated in the writing of the Constitution. The term "incomplete" refers to the fact that only two regions - Os Açores and A Madeira archipelagos - are granted autonomy by the Constitution.

the competences of the region. This solution is close to that which we find in the Federal Republic of Germany whereby the rights of the Federation are given priority over the rights of the *Länder* (section 31 of the Bonn Basic Law). The same criterion of the preeminence of the state is usually followed when the central and regional organs clash over issues which are shared by both.

In this manner, what is formally stated over whether or not the state and the autonomous region are compatible is this: indeed they are compatible they can even coexist with a certain degree of harmony within a tolerable level of normal conflicting interests without an excessive subordination on the part of the autonomous regions. Nonetheless, it is clear that the merely formal answer is quite insufficient because we are dealing with live realities which cannot be hemmed into legal and constitutional frameworks. It is relatively easy to come up with a schema which is almost perfect in theory but after that one comes face to face with reality which is never quite like how legislators imagine it beforehand. Furthermore, some constitutions are not even perfect in theory - the present Spanish Constitution, perhaps, is the worst from this viewpoint when compared with the other two mentioned above given the fact that it permits various interpretations which are markedly opposed one to another.

In spite of everything, it may be pointed out that the Portuguese case is, perhaps, the least conflictive from a formal-constitutional point of view, since the Constitution and the statutes of autonomy unequivocally place the state above the regions. This solution may not please everybody, but at least it is plain to say the least. The Portuguese statutes of autonomy are simple acts of the Lisbon Parliament which do not need to be approved via referendum by the residents of the regions. They could even be revised or reformed by a subsequent act of Parliament. It is also interesting to bear in mind that Section 299.2 of the Portuguese Constitution prohibits the very existence of regional political parties, a prohibition which finds no parallel in many non-federal and non-autonomous constitutions. In any event, the agreement on fundamentals in that country is much broader than in Spain.

§3. The Conceptual and Theoretical Answer

A. This answer - that is, that which can be deduced from the theoretical principles which inspire the very concept of the state - belongs to highly conceptual and theoretical formulations. Yet this answer is neither purely nor entirely theoretical, nor is it different from real or practical answers. This is so for two reasons. The first is that among the several forms of political association the state is the form which attains the highest degree

of abstraction and of conceptual theorising (4), so much so that one would dare to say that state theories and cultural traditions - *Etatiste* Culture as opposed to Civic Culture - make up an important part of the reality of the state, indeed of the state itself.

The second reason is that the theories on the state, even though they are sometimes presented as having an universal scope, can not be understood if they are quite detached from the concrete history of each country. For example, the theory of the Reason of State was born and developed in countries such as Italy and Germany where political power suffered from extreme fragmentation and weakness, in such a manner that a great need for strengthening political institutions was clearly felt. Also, in the case of France, the theory of sovereignty can not be explained without the framework of the gruelling religious wars during the Bodin era.

In any event, although it is not clear that theories of an universal scope can be formulated concerning the principles which inspire the state, nor is it evident that these are in conflict with regional autonomy nor to what extent, the following can be said, partly in agreement with MEINECKE and DYSON (5).

B. In the first place, we must keep in mind that historically the state did not arise to grant autonomy to the regions or the medieval kingdoms, but rather for a contrary reason - although not all the state-building processes have been equal - and when regional autonomy was granted by the state it was not always done easily and willingly, but rather belatedly and begrudgingly, or by force. Such was the case with Spain - autonomy was first granted to Cuba and Puerto Rico when the American armed intervention was clearly predictable - and France (6), although exactly the same can not be said of other cases such as Portugal and Italy. And it is funny to observe how in many instances the very medieval kingdoms which many centuries ago were subjected by the state are the ones which today cry out for autonomy from those states.

C. In the second place, it is difficult to exaggerate the importance of the theories and concepts on the state and of the "terms of political discourse" which in Continental Europe are markedly *étatistes* (7). Even our academic tradition is very *étatiste*, as can be readily observed in textbooks for

(4) This is an evident reality which is immediately grasped when one compares the continental states on the one hand, and classical Rome, Medieval Europe or the English-speaking countries on the other.

(5) MEINECKE, *La idea de la Razón de Estado en la Edad Moderna*, Madrid, 1983; DYSON, *The State Tradition in Western Europe*, Oxford, 1980.

(6) As in the recent case of Corsica (for this purpose, the fact that Corsica has not been granted full political and legislative autonomy lacks relevance).

(7) DYSON, pp. 81 and ff.

students of Law. Future jurists are taught - as a most natural and indisputable matter - the juridical personality of the state, the *Régime Administratif*, the holiness of the state, its moral superiority over the "selfishness" of other social groups or territories, the privileges of the state and its inherent right to be treated as "an object of universal service and respect" (8). It thereby becomes very difficult for us Continentals to remove the *étatiste* vision from our minds, a fact which proves to be a source of serious conflict because the nationalistic groups on the outer fringes also tend, in a most natural and indisputable manner, to forge an equally *étatiste* model - since the state constitutes our almost only framework of conceptual reference. This greatly hinders the possibility for peaceful dialogue with the central powers which, in turn and needless to say, also usually counter with their *étatiste* doctrinarism which is far from flexible. This fact - the almost universal diffusion of a mentality which we could call "doctrinary *étatiste*" - greatly hampers the implementation of regional autonomy since the functionaries of the state - as the most logical thing - tend to put obstacles in the way of the autonomous regional institutions which they consider to be dilettantes, illegitimate offsprings or potential enemies, and to torpedo the process of the transfer of powers from the central authority to the regions.

D. In the third place, another important aspect of this opposition of principles is the fact that the state, from its birth, has been the object of a process of canonisation which has left the regions in an inferior position from an ethical viewpoint and which began with the Divine Right of Kings, the supplanting of the nature and functions which hitherto were attributed to the Church, the Lutheran principle of *cuius regio, eius religio*, etc. Various authors contributed decisively in this process of sanctifying the state, of whom HOBBS and HEGEL (9) warrant special mention. As a result, the state appears to be endowed with an absolute moral superiority compared to civil society and any other social or territorial groups: the Common Good is prosecuted by the state only, which does not need to demonstrate that its purposes and objectives are *per se* altruistic and which embodies the good of the entire nation. Contrarilywise, all other groups, associations, institutions or territories other than the state by their

(8) DYSON, p. 51.

(9) To evaluate correctly Hobbes' stating of the case it could be useful to remember that he was a believer who possessed "a simple and unshakable faith" (JENKINSON, "The Civic Vision, a Critique and a Redefinition", paper given at the 1983 PSA Annual Conference). For this reason he did not call the Leviathan "mortal God" out of coincidence, nor was it a coincidence that he compared it with God the Creator (HALLIDAY, KENYON and REEVE, "Hobbes's Belief in God", *Political Studies* XXXI (1983), 418-433, especially pp. 421-423 and 432-433). From HEGEL the most important for us now is his consecration of the state as source of moral obligations, as a body capable of producing a specific morality. The Hegelian view is quite influential in Spain at the present moment.

own definition seek selfish objectives since they lack the moral excellence which the state instills in everything which it defines as being "state", as pertaining to the state.

Fourth and last, sovereignty in turn has different interesting implications. Sovereignty implies a *monist* starting point, a tendency of an *unitary* character in the organisation of both society and geographical territory (10), and a penchant towards the maximum and unlimited *concentration of power*. Monism, Unitarism and the concentration of power are intrinsically contrary to that diffusion of power which, although not as high as in stateless societies, nonetheless is necessary in order to have regions which are truly autonomous.

All these aspects are widely known and for our present purposes it will suffice to say that the spirit of sovereignty seems to be little compatible with that of regional autonomy, since autonomy goes beyond the mere administrative decentralisation and recognises the existence of true political power - although limited - which is not derived from mere delegations of the state and which are not subject of relations of hierarchical inferiority with regard to the central power. The principle of autonomy is that of a *pluralism* of powers within territorial limits, the proliferation of jurisdictional spheres and of juridical ordinations, the distribution of the functions of the state (such as the function of law-making and that of governing) among different title-bearers which at times operate separately and in different territories and upon separate matters, and at other times act concurrently, juxtaposing themselves in the same territory and upon the same matters. As a result, it can perhaps be said that if the regional autonomy is to work effectively and completely, a political panorama might spring up which one might be tempted to compare with the medieval pluralistic poliarchy which the state combatted and finally annihilated in order to implant itself. For the state affirmed itself by monopolising functions and powers which hitherto were dispersed and shared among different groups both territorially as well as socially; for example, the legal use of violence, the creation of Law, and taxation. The state formed itself by doing away with the diffusion of power so typical of the stateless societies and by firmly rooting the principle of territorial sovereignty while seeking uniformity and rationality and thereby procuring the rational concentration of power. For this reason, it would not be so strange if that historical

(10) Particularly in the French and Spanish tradition of state-building. The culminating moment arrived, perhaps, in the XIXth Century. That natural unitarism of the state is pointed out by POGGI, *The Development of the Modern State*, London, 1978, pp. 92-95: "It is a feature of the nineteenth-century state that each operates in its own territory as the sole, exclusive fount of all powers... Mature modern states are intrinsically 'monistic' and represent in this a return to the Roman tradition..." Which this last statement I can not be in agreement; for all I know, Rome was not *étatiste*. See D'ORS, "Sobre el no-estatismo de Roma", *Ensayos de Teoría Política*, Pamplona, 1979, pp. 57-59. POGGI refers mainly to the social and not the territorial aspects but I do believe that he can be quoted here.

process were to become inverted today, and that the effective development of regional autonomy should come to suppose - at least up to a certain point and *de facto* - the end of the monopoly on the functions of life and of politics which was brought about by the birth of the state.

One might also be tempted to establish a parallel between this territorial neo-pluralism and the social neo-pluralism which would be the result of the present-day flourishing of corporatism. We are referring to those processes which are relatively similar to medieval pluralism and which some authors have come to term "polycracy", "estamentalisation" and "new feudalism" (11). These authors are not talking about the overcoming of the state by territorial pluralism, but rather by social pluralism, but it may not be an error to include both phenomena within an unique broader process which would only need - in order to complete the process - the overcoming of the state in the international sphere.

Even supposing that the new order, as is to be expected, will not reach the ultimate consequences implied within these theoretical principles, we shall not be able to avoid frictions and conflicts which reflect the profound opposition between the monist state and the new order or system which we could call "territorially pluralistic". This denomination comes from the fact that we are starting from the basis that a system of regional autonomy which should lack a pluralistic fundament would surely remain in the merely formal, as - to put it in LOEWENSTEIN's terms - a constitutional system could remain in the merely semantical.

Regional autonomy means the re-establishing of an attitude of limited power. This is absolutely necessary in order that the autonomy be able to function because since in the autonomous states the ultimate resorts of power lie with the central Government, the central authority could with relative ease - all it would need is to take advantage of all the possibilities which the Constitution and the regional statutes attribute to this authority - undermine the powers of the regions or reduce them to practical nullity. It will be understood that we are not dealing here with the ethical problem of individual moderation in the case of each and all in the exercise of political power, for this moderation is nothing but a personal virtue which will not impede a moderate and prudent ruler from acting according to an étatiste behaviorist model bordering on absolutism, as so often has been the case of France or Spain. It could perhaps be pointed out at this moment that in Portugal, in spite of the fact that this is an étatiste country, there exists a bit more of auto-limiting of political power (12) which can be seen at work today because the Constitution and the statutes of autonomy place the state in a clearly dominant position with respect to the

(11) FORSTHOFF, *El Estado de la sociedad industrial*, Madrid, 1975, p. 20; GARCIA PELAYO, *Las transformaciones del Estado contemporáneo*, Madrid, 1977, pp. 113-120.

(12) See FERREIRA, *As Regiões Autónomas na Constituição Portuguesa*, Coimbra, 1980, p. 23.

autonomous regions but to date the central power has not abused too much of its preeminent position.

One final observation: the opposition between concepts and principles needs not to manifest itself in the same manner in every country. There exist great variations which depend upon whether or not the state considers itself menaced by centrifugal forces, upon whether or not the autonomous framework is used by independentist groups, etc.

§4. An Answer Stemming from Reality (1)

The answer stemming from reality can first be analysed from an international or political viewpoint, namely from the analysis of day-to-day political life in Spain and in Galicia.

If in the conceptual sphere it was difficult to come up with a truly general theory, it is even more difficult in this sphere which we term real and concrete. However we believe that Spain constitutes a reasonably good example - the historical experience of both Union State and Unitary State, early but enduring regionalisms or nationalisms, etc. - and the same can be said of Galicia - intense differentiations, underdevelopment, non-exacerbated nationalism, international complications, emigration, territory bordering the sea and another country, etc.

A. Some previous aspects affecting both Spain and Galicia must be taken into account.

1) The first has to do with the historical process of statebuilding which, obviously, is not the same in all countries. The schema presented by ROKKAN-URWIN (13), a fourfold classification of the various state-building processes, warrants reproduction here:

a) *The unitary state*, built upon one unambiguous political centre which enjoys economic dominance and pursues a more or less undeviating policy of administrative standardization. All areas of the state are treated alike, and all institutions are directly under the control of the centre.

b) *The union state*, not the result of straightforward dynastic conquest. Incorporation of at least parts of its territory has been achieved through personal dynastic union, for example by treaty, marriage or inheritance. Integration is less than perfect. While administrative standardization prevails over most of the territory, the consequences of personal union entail the survival in some areas of pre-union rights and institutional infrastructures which preserve some degree of regional autonomy and serve as agencies of indigenous elite recruitment.

c) *Mechanical federalism*, introduced, as it were, from above by constitutional means. A pattern of territorially diversified structures exists across

(13) ROKKAN-URWIN, eds., *The Politics of Territorial Identity*, London, 1982, p. 11.

all areas of the state, accepted or even introduced by the centre. This pattern of diversity is, nevertheless, accommodated within a hierarchical system of control, with a centre that is politically and institutionally stronger than any other constituent part.

d) *Organic federalism*, imposed from below as a result of voluntary association of several distinctive structures. These retain their distinctive institutional outlines with wide discretionary powers. Control by the centre is limited, having to take cognizance of the large degree of institutional autonomy residing in the constituent parts.

From this classification we can draw up the following figure :

FIGURE 1

A simple Typology of the State-building Process in Western Europe



Source: ROKKAN-URWIN, 1982, p. 12. Slightly adapted and modified by the author.

The Spanish state came about as a typical *union state* relatively similar to the United Kingdom, and thus it fits well enough in the ROKKAN-URWIN definition of the type: several parts of the Spanish territory were united "through personal dynastic union", and integration remained much less than perfect for centuries. In Spain we can still today observe the survival of pre-union rights and of institutional infrastructures as well as a distinct ordaining of laws.

This entire complex of Law, rights and institutions was called the *Fueros*. The regions belonging to the Crown of Aragon lost their *fueros* just after the War of succession, partly as a punishment imposed by the new king Felipe IV - the French-born grandson of Louis XIV - for having combatted against him in the war. Two of the Basque provinces lost their *fueros* late in the XIX Century (1876), a fact which was of enormous economic significance and which played a role as a catalyst for an adverse reaction which led to the birth of Basque nationalism in the latter years of that Century. Navarra - a kingdom on its own right much before Spain became a political unit - kept its *fueros* and still maintains them today, although some

observers claim that the 1978 Constitution has meant the loss of its old pre-state and pre-constitutional rights and privileges. The Spanish *fueros* were an example of “non-centralisation”, non-*étatisme* and of pluralism as opposed to centralisation, *étatisme* and uniformity.

During this initial period the fledgling state was not submitted to particularly important menaces, either internal or external, and therefore no conscious *étatisme* arose nor was a very intense centralism imposed, nor did *étatiste* theories such as that of the Reason of State become developed.

In the XVIII Century the arrival of the Bourbon Dynasty meant the implantation of the French *unitary state* model, which was strengthened in 1836 by the administrative division of Spain into provinces, a copy of the *Départements*. In the same Century, however, nationalisms and regionalisms began to arise - first in Cataluña and Galicia around 1840 and later on in the Basque provinces around 1890 - and Spain became a typical unitary state with strong peripheral protests. In fact, this image of Spain as a regionally troubled unitary state is that which still prevails today and can be used in spite of what follows.

Although we consider the word *federalism* to be too “federal” a word to be applied to the Spanish case, in the XXth Century Spain also supplies some examples of *mechanical and organic federalism*. All the Spanish regions were given their autonomy by the 1978 Constitution, but only a handful may be characterised as cases of *organic federalism*. And, in any event, this can never be applied in the true sense of the term, as in the case of the Thirteen Colonies which joined together to form the American Union.

In this manner all four types of the mentioned classification can, in some way or another, be applied to Spain.

Logically, the particularities of the Spanish state-building process have an influence upon the manner in which nationalisms and regionalisms manifest themselves later on, as is the case in all nations. Thus, in the case of France it would seem that it has been the state which has built the nation, rather than on the contrary. In Germany and Italy we might say that it has been the nation which had been crying out for a state until it was finally achieved. In Spain one might be tempted to say more or less the same as in the case of France. These national differences are fertile in consequences. When it has been the nation which has constructed the state the regions appear to have fewer desires of political independence and the simple facts of autonomy or decentralisation - if they are not accompanied by an independentist background - are not necessarily considered as attacks against the “sacred” integrity of the state. On the contrary, when the nation owes its existence and its unity to the administrative apparatus which is the state, then “any decision tending to remove from the state any determined competence and to confer it to an elected local authority is

resented as a 'dismemberment of the state', as an attempt against its authority..." (14).

2) The second aspect which we must consider is the result of the Spanish nation-building process in order to see if there exists today a national society in Spain which is reasonably integrated. What "social integration" or "national integration" has been or what it is has been a question of great debate into which we cannot enter at this point. We shall limit ourselves to seeing if reasonable degrees of social and cultural homogeneity, agreement on fundamentals and legitimacy, not too pronounced cleavages and tolerable economic inequalities have been achieved. For this purpose another figure by URWIN and ROKKAN (15) may be helpful :

FIGURE 2
Economic Distinctiveness/Competition

	<i>Stronger</i>	<i>Weaker</i>
	<i>Spain</i> (Castille v. Catalonia, Viscaya, Andalusia, Galicia ; polycephalic ; strong economic contrasts ; linguistic heterogeneity)	<i>France</i> (some linguistic heterogeneity : Alsace, Brittany, Corsica, Paris dominant)
Cultural distance	Greater	<i>United Kingdom</i> (distinctive communities in Scotland, Wales and Northern Ireland, but London dominant)
		<i>Finland</i> (a distinctive linguistic minority, but monocephalic)
	<i>Switzerland</i> (four language communities ; religious differences ; polycephalic)	
	<i>Belgium</i> (two language communities ; religious and economic contrasts ; monocephalic)	
Lesser	<i>Germany</i> (linguistic homogeneity ; some religious differences ; polycephalic)	<i>Austria</i> (largely linguistically homogeneous ; markedly monocephalic)
	<i>Italy</i> (largely linguistically homogeneous, with small minorities along the borders ; marked economic contrasts ; polycephalic)	<i>Sweden</i> (highly homogeneous and monocephalic)
	<i>Netherlands</i> (largely linguistically homogeneous ; religious contrasts ; polycephalic)	<i>Denmark</i> (largely linguistically homogeneous and monocephalic)
	<i>Portugal</i> (linguistic homogeneity ; marked economic contrasts ; monocephalic)	<i>Ireland</i> (highly homogeneous and monocephalic)
		<i>Norway</i> (strong linguistic variations : monocephalic)
		<i>Iceland</i> (highly homogeneous and monocephalic)

Source : ROKKAN-URWIN, 1982, p. 7. Spanish case slightly modified by the author or this paper.

Spain stands out for being the European country possessing the greatest cultural distance - an ample concept, to be sure, which includes religious and linguistic differences and the like - and marked economic contrasts in greatest abundance when compared with the five most homogeneous and monocephalic countries in Europe : Austria, Sweden, Denmark, Ireland and Iceland. In Spain the agreement on fundamentals can hardly be said to exist and it must be pointed out that in 1898 - when the last remnants of the Spanish Empire were lost - a huge debate was initiated concerning the

(14) Commission Guichard, quoted by HAYNARD, "Incorporer la périphérie : l'essor et la chute de la régionalisation fonctionnelle en France", *Pouvoirs* 19, 1981, pp. 103-118.

(15) Although this figure was not designed by its authors with the aim of measuring the results of nation-building processes, but rather as a typology of conditions for territorial unification, we believe that it can be equally useful for our present purposes.

ending at the present time ; on the contrary, the rift seems to be getting broader.

Logically, there cannot exist the same conflictiveness in a country having so much heterogeneity and latent or manifest unrest as in another country having fewer problems, such as in the case of Portugal, the most homogeneous and monocephalic of the three states being analysed here for their regionalised structure.

B. What we believe to be able to infer - provisionally, since experience is still little so far - from the observation of the relations between the Galician autonomy and the Spanish state is that these relations are rather uneasy due to the existence of the following factors generating incompatibility :

1) *Spanish political culture and tradition.* These are so completely *étatiste* that Spanish nationalisms usually do not pretend as their goal any status different from that which can be seen in ordinary literature - statehood, regional autonomy ; not to mention the merely local status typical of cities, provinces or departments in the unitary states. Since Spaniards, on the whole, are not very well acquainted with the tradition of statelessness and since *étatisme* does not facilitate flexibility and imagination, it is quite difficult that they should have in mind models, goals or solutions similar to the types found in the cases of Canada under the British North America Act, Puerto Rico under U.S. Sovereignty, Scotland, the Isle of Man or the Channel Islands under the British Crown.

It may be pointed out that before the ascension of the Bourbon Dynasty to the Spanish throne there did exist in Spain a pluralistic mentality originating before the state although it was not that type which today we could call federalist or autonomistic. This mentality was the *foralista* tradition which we mentioned earlier and whose remnants are still with us today, although, obviously, quite diminished. In a conference held in Madrid in 1980, Prof. Daniel ELAZAR (Temple University, Philadelphia) who knows Spain very well told me that it was difficult for him to explain American Federalism to persons who lacked a federal tradition of pluralism and shared power which, according to his opinion, is similar to the ancient *foralismo* of Spain. Prof. ELAZAR went on to say that in order to properly implement the autonomous model a change of mentality would have to take place and that it would be convenient that Spanish politicians and jurists "recycle" themselves by way of experience in a country having a federal tradition, such as the United States, for example.

Even so, it must not be forgotten that the official *étatiste* culture in Spain lives alongside an effervescence of peripheral regionalisms and nationalisms, as well as with an absence of *étatisme* in the everyday life of the common citizen. The man on the street, it may be said, has as his most significant "étatiste" features a rage for state offices and for state jobs, a

fear of the state, and a vague hope that all the problems of the nation will be solved by the state.

2. *Political parties.* From our point of view we are concerned here with seeing how the uneasy relations between the state and the autonomous region of Galicia are manifested by the *important* political parties, that is nationwide and not regional parties. For this reason we shall dedicate little space to regionalistic or nationalistic parties although - of course - they do exist in Spain and in so fair a number that a complete listing would indeed entail an arduous task. Compared with the other countries mentioned in this article - Portugal must be excluded since regional parties are forbidden as we saw (16). It can be said that there are more regionalist or nationalist parties in Spain than in Italy. For all I know, in the latter country there are only three non-nationwide parties worthy of mention: the *Südtiroler Volkspartei*, the *Union Valdôtaine* and the *Movimento Friuli*; all three are seated in border regions and cater to important non-Italian ethnical and/or linguistical minorities. Of these, the SVP is the only party capable of gaining a fair percentage of votes, usually more than fifty percent in its home constituency.

Although Spain does not contain within its borders any ethnic or foreign-speaking minority, in the 1979 election - the election registering the greatest number of nationalist and regionalist votes - these added up to approximately 1.832.600 votes, a very decent number for a country having 37.000.000 inhabitants (17). In the regional Catalanian election of 1984 the nationalists obtained a clear victory over the PSOE - Socialist Party. In the regional election of 1984 in the Basque Region, the nationalist vote from the right (PNV) and from the left (EE, HB) obtained 64 percent of the total valid votes counted. In any instance the Basque case is special: it is possible that in the Basque Country we have reached that situation wherein the division between nationalists and non-nationalists becomes more important than the division according to classes. And whenever that moment arrives, as O'LEARY writes, "it will only be matter of time before the nationalist movement gets its way, be peaceful negotiation or otherwise" (18).

(16) "Parties which for their designation or programatic objectives have a bearing or scope of a regional nature can not be constituted". It is significant that this constitutional prohibition - unthinkable in Spain - did not stir up much protest, not even in Açores and Madeira, and that it should have survived the important constitutional reform carried out in 1982.

(17) This is the result of adding the votes obtained by CiU and ERC-FNC of Catalonia, PNV, HB and EE of the Basque Country, PSA-PA of Andalusai, UPC of the Canary Islands, PAR of Aragón, plus other parties and coalitions stemming mainly from Galicia, Valencia and other regions.

(18) O'LEARY, "Celtic Nationalism: A Study of Ethnic Movements in the British Isles", *The Jerusalem Journal of International Relations*, 2, Winter 1976-77, pp. 51-73; p. 71.

As for the important nationwide parties, these are the PSOE (Socialists, in power since late 1982) and AP (Conservative). Both are, in spite of their electoral platforms, markedly contrary to regional autonomy and can be fitted squarely within a classical *étatiste* tradition. In these matters they are in agreement over fundamentals and they would like to enforce a lasting two-party system in Spain. For this reason they are planning to reform the electoral system in order to make it even more difficult than it is at the present moment for the small parties.

The PSOE represents, perhaps, the maximum *étatisme* ever known in the history of Spain, in spite of the fact that its internal structure is *pro forma* federal in the sense that in each region there exists a Socialist Party which apparently is different from its analogues in other regions and from the ruling party in the country, to which it is linked in virtue of federal bonds only. The region where the Socialists show a greater degree of independence from Madrid is, surely enough, Catalonia. The PSOE is the ruling party in almost all the Spanish autonomous regions. Since the party exercises rigid internal discipline, it can be said that these regions receive direct rule from Madrid. For this reason we are wont to ask ourselves: what good is it for the regional institutions not to be officially bound to Madrid by means of a relation of hierarchical subordination if the regional leaders of the nationwide parties are themselves bound in such a relation, by their party rules, to the leaders of the central government?

In 1984 Rafael Escuredo, member of the PSOE and President of the *Junta* - regional government - of Andalucía, behaved in a moderately regionalistic manner and voiced some independent views with respect to the official Madrid party line and was subsequently removed from office, for all practical purposes, by Madrid (19).

In Galicia, the *Partido Socialista de Galicia-PSOE* - This is the official name in view of the federal character - is the main opposition party in the Galician Parliament and it acts as "His Master's Voice" for the Madrid-based party; it would prefer to follow instructions from the central Government before defending Galician interests. For example, one of the important issues in Galicia today is a broad movement against the Government plan for dismantling industrial facilities. In August a wide Platform was constituted with the aim of combatting the plan. Typically, all the political parties and trades-union in Galicia - *except* the PS de G-PSOE and the UGT (Socialist Syndicate) - joined in to take part in the platform.

(19) The formula employed was one which has once more become quite popular among Spanish politicians nowadays: uncover a financial scandal. At this moment the Socialist Government has begun proceedings against the nationalistic president of the Catalonian Government but it doesn't seem that the financial scandal they are looking for is going to turn up the way they would like it to. For one, the action taken has served to stir up irritation among the Catalonians and public opinion, as well as to undermine the concept of Justice that the man on the street could have held.

The most relevant *galleguismo* of the Galician branch of the Socialist Party consists of the usage of the Galician language and of having included several prestigious independent *galleguistas* on their election lists for the Galician Parliament.

The other big nationwide party, the Conservative *Alianza Popular*, has been the ruling party in the Galician region since 1981 when it first occupied charge of the *Xunta de Galicia*. Because of the background of its leaders and due to its roots in Galicia, AP is in great measure a Galician party, in the same way that it can be said that the PSOE in Andalusian. Nonetheless, AP is not committed first and foremost to Galicia nor does it defend Galician interests energetically before the Spanish Government. AP, like most parties whose range encompasses the entire country, was not formed in order to defend the regions against the central authority; rather, on the contrary, AP does not favour autonomy as something proper to itself, nor does it deem that it should be developed and consolidated. AP plainly and simply lacks a real and consistent project of Government for an autonomous region. In important matters - the so-called "affairs of the state" - the conservative Galician Government does not attack - or only in a feeble manner - the Socialists Government of Madrid. The *Xunta de Galicia* run by AP does not defend Galicia whenever such a defense would force it to adopt an attitude which could be tinted as nationalistic and it supports, with few protests, all the mistreatment it receives from Madrid (20). It is evident that the leader of AP, Manuel Fraga, would not tolerate from the leader of the PSOE the things which his followers in charge of the Galician Government tolerate from Madrid. Among other reasons, AP's attitude can be explained from the fact that it would not like to be in charge of the Spanish Government one day and have to confront rebellious regional Governments.

It is interesting to observe what both great Spanish parties do in the Galician Parliament because at times instead of using the Parliament as a real Parliament which is valuable in itself and by itself, they take it as yet another forum for direct confrontation or indirect confrontation over national issues. The opposition PSOE often appears to be the representative of the central Government which it always undertakes to defend, whereas AP on its part dedicates an enormous amount of energy towards criticising the Madrid Government (21).

(20) Last June, on the occasion of the visit to Galicia of the Argentine President Alfonsín, the Spanish security service harassed several members of the Galician Government (press reports dated June 10th). And on July 26th Dr. Fernández Albor, the Galician President, maintained an interview with the Spanish President Felipe González, in which he was treated with manners bordering on lack of courtesy and education.

(21) De ALFONSO BOZZO, "Dos años de Parlamento en Galicia", *Revista de las Cortes Generales*, 1, 1984, 220-234, especially 222, 231. The author was the Clerk of the Galician Parliament when he wrote this article. At the present moment he holds public office in a post designated by the central Government.

As a result of this clear conscience of the fact that until such time as the big parties stop being centrist and *étatiste* it will be difficult for the regional autonomies to function well, Miguel Roca, the *catalanista* leader, has founded a great nation-wide party based upon the alliance among moderate or nationalistic regional parties - mainly from Catalonia, Galicia and the Basque Country - and some Liberal parties which are nationwide in scope. The problem derives from the fact that if this new party satisfies the wishes of the splinter parties it will be difficult that this does not bother the population of those regions where there is little or no interest for autonomy, and vice-versa.

3) *Finances*. Finances are another area of conflict between the state and the autonomies, up to the present moment to the disadvantage of the latter as far as can be seen. It is widely known from the experience of federal countries that at some moment of the centralising process, which all have undergone, the main sources of money transfer from the member-states to the federation. The most classical example of this is that of the United States where from the XVI Amendment of 1913 onwards, things have changed in such a manner that many States of the Union, above all the poorer, live as pensioners depending upon Washington for the allocation of funds to be received from the Federation. In this manner it could crudely be said that where there is no money properly owned there can be no autonomy. On this matter the Spanish Constitution is categorically unitary: "the originary power for levying taxes corresponds exclusively to the state" (Section 133.1). Add to this the fact that the autonomous regions have been granted very few powers in money matters. The only Spanish regions having some say over finances which are not received by the state are Navarra and the Basque Provinces. After the approval of the 1978 Constitution a mechanism (22) was created to provide the allocating of funds to each of the autonomous regions automatically by virtue of criteria which vary in each case, such as *per capita* income and population, in order to avoid haggling, unending negotiating, discriminatory treatment and the possible avarice of the state. In any event, the key of the treasure-box is always in the pocket of the state which can fail to fulfill the law or change it; it is indeed very different to be in the position of the one who gives than to be in that of the one who receives.

From this point of view the experience of Navarra is especially interesting. For being a kingdom in its own right when it joined the Spanish state, it conserved some of the faculties it previously held, fundamentally its own

(22) Fondo de Compensación Interterritorial, Ley Orgánica 8/1980 de Financiación de las Comunidades Autónomas, Ley 30/1983 reguladora de la cesión de tributos del Estado a las Comunidades Autónomas.

foral code of laws and the originary power for levying taxes(23). The result of this is that Navarra can, thanks to this, carry out auto-government in a very high degree.

4) *The existence of regional rights proper, different from the general Spanish ordinance and exempt of legislative power.* This is another key to the anatomy and yet another point in which conflict between the state and the region manifests itself. Up to the present day experience has been scarce and it is too early to come up with a pessimistic conclusion, yet there seems to exist not much ground for an optimistic one.

In those matters in which the autonomous regions have legislative power which they share with the state, ordinarily the Constitution and the statutes of autonomy establish that the last word corresponds to the state legislative body which regulates the bases and limits in which the regional legislative bodies can legislate. For this reason, in these cases there does not exist a real exemption from the central legislative power. Thus, the issues over which the autonomous region alone can produce laws are indeed very scarce and of little importance - although this does not occur in all regions, obviously. The result is that the regional Parliaments, up to the present moment, have legislated very little and frequently in matters of insignificant importance such as the organisation of their own regional institutions, the administration of their own annual budget and other financial laws. Therefore we can say that until the present moment proper regional laws are not being created.

During 1982 and 1983 the Galician Parliament passed 13 laws(24) of which three had to do with budget and financial matters, other three with regional institutions and the remainder with matters of varied importance, such as intensive action in rural parishes(25), the creation of Galician television, foundations of Galician interests and the limiting of property in the non-state operated highways of Galicia(26). The Basque Parliament - to cite a significant example - has passed 57 acts since its creation in 1980

(23) A certain similitude with Scotland appears to be apparent. The equivalent to the Union with Scotland Acts was the *Ley Paccionada*, an Act pacted upon between Navarra and the Spanish state when Navarra, like Scotland, stopped having its old - and little used - Parliament and stopped being ruled by a Viceroy, a situation that occurred between 1832 and 1841. The difference comes from the fact that Scotland, which saved from centralisation so many valuable things such as its code of law and universities, did not reserve for itself dominion over its own money; Navarra did do so.

(24) See BOZZO, "Dos años de Parlamento en Galicia", p. 231.

(25) Unlike Spain, the Galician countryside is divided into parishes which are administrative units as well as ecclesiastical units.

(26) Unfortunately for the regional Government, these roads are not too plentiful; of course, all the important highways in Galicia are under the powers of the state. Yet this is one of the few acts that do create a proper code of laws and in an issue that has certain saliency in Galicia given the dispersal of its population.

and up to mid-December 1983. The majority are also dedicated to the organisation of regional institutions and to financial and budgetary matters, so we can say that not even the nationalist-dominated Basque Parliament is creating a new and proper code of laws which could substitute the state juridical ordaining structure.

To this we have to add that the attitude of the Madrid Government in the face of regional legislation frequently consists of being on guard against anything it could denounce as being potentially anti-constitutional to the rather pro-Government *Tribunal Constitucional* (27). Of the above-mentioned 57 Basque acts, 12 have been impugned by Madrid before the *Tribunal Constitucional* - a very large number if we bear in mind that 32 of the 57 had to do with financial or budgetary matters or with the organisation of the regional institutions (28). Of the Galician acts, only one has been denounced to the *Tribunal Constitucional*.

Even supposing that in the future it is improbable that the regional legislatures produce many laws, this would not be strange because the Italian and Portuguese experience shows us that we should not expect anything else. Even in federal countries as is known, in the last decades legislation on the part of these bodies is on the downswing. Concretely, the German manner of understanding federalism consists - to state it simply - of having the *Bund* legislating and the *Länder* executing, with the consequent loss of pluralism and the gain of rationalisation and of centralisation. This federalism is not very federal but has been very entrenched within German tradition since 1871 (29). It also is the case in Austria and it is called "Cooperative Federalism" (30). Since the central power legislates and delegates and has the right to supervise to see whether or not execution is carried within the terms of the delegating laws, the result is that the central

(27) FIGUEROA, "Crónica de la actividad del Parlamento Vasco (1980-1983)", *Revista de las Cortes Generales* 1, 1984, 240-258. The Navarran Parliament is by far and large the one which most legislates, but we are dealing with a case which lacks significance due to the *foral* tradition of Navarra and to the fact that it has been in existence the longest time of all the present-day regional parliaments.

(28) FIGUEROA "Crónica de la actividad del Parlamento Vasco (1980-1983)", 252-253. It would however be unjust to omit that the attitude of the Basque Nationalist Party (PNV) currently in office is not autonomistic but independentistic, so that up to a certain extent the mistrust and uneasiness of Madrid is somewhat justified.

(29) FRIEDRICH, *Trends of Federalism in Theory and Practice*, New York, 1968, pp. 70-75, and especially "Germany: Delegated Administration at work", pp. 129-134. The *Bonner Grundgesetz* now in force provides for the execution on the part of the *Länder* in Section 83: (they) shall execute the legislation of the *Bund* "as a thing proper".

(30) Although the term "Cooperative Federalism", for all I know, was coined not in Germany but in the United States by Jane Perry Clark in 1938. It already involved, at least up to some extent, this idea of legislation by the Union and administration and execution by the states. See BEER, "The Modernization of American Federalism", pp. 73-74, in ELAZAR, ed., *The Federal Polity*, New Brunswick (N.J.), 1974, 49-95; and FRIEDRICH, *Trends of Federalism*, p. 74.

power enjoys the rights to *Bundesaufsicht* - supervision, vigilance - (Sections 85,3 and 85.4 of the Basic Law) which, in reality, does not differ all that much from the purely hierarchical relations which occur within the administrative set-up of an unitary state according to the classical French model. For this reason some Spanish authors who are not too favourable towards true political autonomy for the regions now defend - and this is the paradoxical thing - the moving up of the Spanish regional autonomous system closer to a federalist model - of mere execution or of delegated administration (31). LOEWENSTEIN used to say with irony that the broad legislative function of the Bavarian *Land* made it possible, even, for it to promulgate a law ... against the unconsiderate manner of skiing (32). To end this Section on the tension between state and autonomy from the viewpoint of Law, we must make another reference to Navarra which - like Scotland - had and continues to have an important proper juridical order - by far the most remarkable of all the Spanish regions - in virtue, not of a concession but by way of the "non-centralisation" (33) of its *Fuero*.

5) *The Ordaining of Local Entities (Provinces and Municipalities)*. This is yet another of the conflicting points between the state and the regions in Spain. Until the Constitution of 1978 Spain was divided into provinces and *municipios*, and the regions did not exist. After the approval of the Constitution and of the statutes of autonomy of all the regions, Spain was divided into 17 autonomous regions (34). The provinces (Figure 4) did not disappear, however, but rather on the contrary are maintained and raised to the constitutional level by Sections 137 and 141 of the 1978 Constitution, according to which the province is at the same time a local entity with its own juristic personality and its own distinct autonomy - and as such is ruled by the *Diputación Provincial* - and a territorial division of the state for the latter's own ends - and as such is ruled by the *Gobernador Civil*, a figure more or less similar to the French *Préfet* in charge of each

(31) GARCIA DE ENTERRIA, *La ejecución autonómica de la legislación del Estado*, Madrid, 1983.

(32) LOEWENSTEIN, *Teoría de la Constitución*, Barcelona, 1976, p. 378.

(33) "Non-centralisation" is a term which I borrow from ELAZAR, "Cursed by Bigness or Toward a Post-Technocratic Federalism", in ELAZAR, ed., *The Federal Polity*, 239-298. It consists, not of receiving from the state (decentralisation) but rather of not giving to the state, of retaining for oneself, of rescuing from centralisation an area untouched by the state. According to ELAZAR, it is "the true principle of Federalism" whereas decentralisation "is essentially an administrative device, and he who can decentralize can recentralize as well". According to ELAZAR, England was, before the Tudors, an example of non-centralised polity (p. 241).

(34) These are Galicia, *Asturias*, *Cantabria*, The Basque Country, *Navarra*, Aragón, Cataluña, Castilla-Léon, *Rioja*, Extremadura, Castilla-La Mancha, *Madrid*, Valencia, *The Balear Islands*, *Murcia*, Andalucía, and the Canary Islands. The regions made up of just one province are printed in italics.

Département. The Constitution in Section 140 also guarantees the autonomy of the municipalities in such a manner that three types of territorial autonomous entities arise.

This organisation of the Spanish territory, apart from being incoherent with the autonomy of the regions, is also very unjust because by its virtue the seven autonomous regions which contain one unique province - that is a province under the old division now transformed into an autonomous region - are spared the problems of duplication of institutions and the polemics and conflicts of competencies between the *Diputación Provincial* and the *Gobierno Regional* since they both coincide. As well, the very territorial organisation of the state suffers from this proliferation of institutions since apart from the Civil Governors which already existed a new set of figures, the Delegates of the Government in each region, have come to exist. In the case of regions having only one province both figures are embodied by the same person.

This peculiar Spanish system can be explained basically by the wish to put a brake or counter-force to the autonomous regions using for this purpose, above alle, the obsolete and unused instrument of the *Diputaciones Provinciales* as well as - on some occasions - the municipalities. For it is easy to understand that neither the municipalities nor the provinces can defend their autonomy in the face of the state, which is very far away, but rather in the face of the region. Although the Constitution concedes much more relevance to the autonomous regions, although their finances - timidly below the regional governments, and although the *Diputaciones Provinciales* have not had but few and unimportant tasks, in the last few years the state has strengthened them artificially with the aim of weakening the regional autonomy. This has been done by the granting of economical resources which are proportionally much higher than the grants to the autonomous regions, and by the granting of official character - by means of Decree 1672/81 - to an organism hitherto only semi-official which was created in 1981 under the auspices of UCD, the party then in power, and by the PSOE, and which is called the *Federación Española de Municipios y Provincias*. This Federation - whose creation for some has meant a surreptitious constitutional change (35) - has as its aim, among other things, the establishment of direct financial relations between the provinces and municipalities on the one hand, and the state on the other.

Galicia is a good example of how this policy of strengthening the local bodies against the regions has produced results. In the Summer of 1983 the City Corporation of Vigo - the largest city in Galicia, with 300.000 population - ruled by a Socialist Mayor officially rebelled against the conservative Galician Government and expressed its wish to be related direct-

(35) ZAFRA, "La Constitución española extravagante", *La Ley* 4, 1981, 922-929.

Figure 3: The old map: Spain divided into provinces according to the French model.

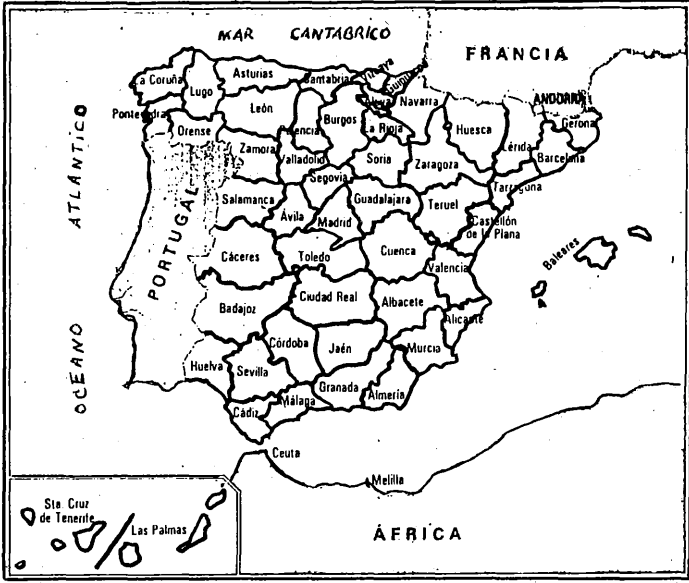
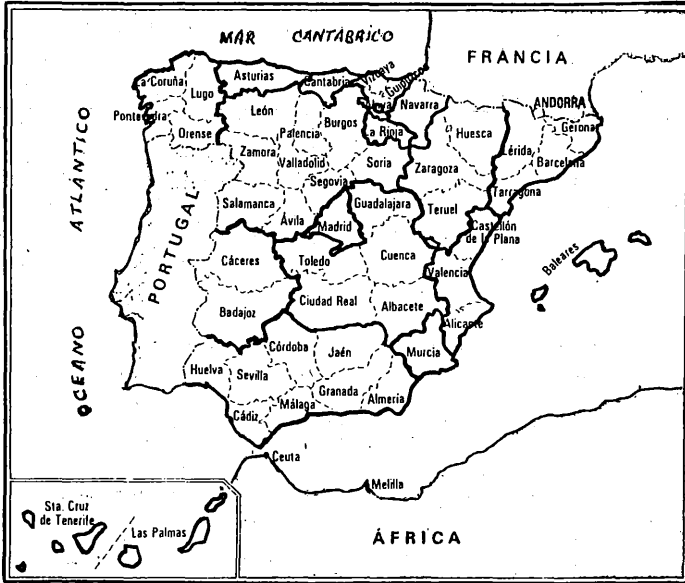


Figure 4: The new map: Spain divided into autonomous regions - but the provinces remain.



ly with Madrid. It is worthy of mention that the conservative aldermen of Vigo also voted against their *confrères* in the conservative Galician Government. Also, the two *Diputaciones Provinciales* in Galicia ruled by AP carry out their policies against - or at least apart -- from the regional Government, and it is interesting to note that both are ruled by competent conservative leaders who voluntarily wished to abandon their posts in the regional Government in order to take charge of the *Diputaciones*.

Galicia, however, is not the only region having these problems. The Constitutional Court in its Sentence dated 28th July 1981 annulled Catalonian Law 6/1980 according to which the four Catalonian *Diputaciones* were left with hardly no functions nor budget and incorporated into the region. From a legal technical point of view it would seem that the Constitutional Court was right but from the political point of view the fact remains that regional autonomy is not possible if the provinces - whose very existence does not appear to be wholly justified - operate against or apart from the regions. In Italy, on the contrary, the regions since 1971 have a large power - although not complete - over the *provincia* and *comuni* (36), without for this reason there arising any problem which has not been able to be solved.

6) *Conflicts over Competences between the Central Government and the Regional Governments*. Up to a point, these conflicts - even though they are quite frequent - from part of the every-day life of federal and autonomous systems. Yet we must point out that in Spain conflicts between the central power and the regional Governments ruled by Socialists are less frequent or else are solved within the inner framework of the party itself. These conflicts do not have all that much importance whenever they produce themselves around normal and ordinary matters. However, it may be interesting to point out that in the case of Galicia the invasion carried out by Madrid concerning matters of strict Galician competence are so numerous that we can not speak of mere coincidence. It is significant that on some occasions the intrusion on the part of the central Government, of the PSOE, has been carried out with the consent of a local body of AP (37). Another interesting and recent case of invasion into Galician jurisdiction is

(36) BISCARETTI, *Diritto Costituzionale*, Napels, 1974, pp. 678-679.

(37) The last example is from this Summer. According to the Galician press from July 26th to August 1st, the services of the *centro de Ordenación del Territorio y Medio Ambiente* of the central Government were required by the *diputación Provincial* of Pontevedra, in spite of the fact that we are dealing with matters already transferred to the Galician Government. What made a difference between this and other former Madrid intrusions was the fact that in this case the Galician Government protested officially and even dared to state that it hoped that this would be "the last of an already too long list of incidents which go above and beyond simple misunderstandings". Naturally, the central Government rejected the accusation of invasion of competences and played up the fact that, according to it, its services had been required by the mentioned *Diputación*.

Lax 23/1984 on Marine Cultures approved by the Spanish legislative body; in its Article 1 the criterion alledged to recover power formerly transferred from the state to the region could not be more *étatiste* : territoriality.

7) *The Inexistence of Effective Guarantees for the Regions*. Of course, the Italian, Portuguese and Spanish Constitutions place the state in a position of clear preeminence over het regions, a thing that also occurs in federal systems and therefore needs not be underlined.

However, what is worthy of mention is that the institutions which the constitutions provide to serve as a guarantee for the autonomy of the regions are not plentyful. Namely, they are usually of two types, tribunals and upper houses of parliament. As is easy to understand - and this is common to autonomic and federal systems - ordinary constitutions do not have nor can they easily have mechanisms which defend autonomy against such important realities as political parties or state-operated mass communications media. For one can not ask of a political party to not contest and win both national and regional elections, and then to not maintain its internal relations and bonds. Nor can we ask that newspapers of *étatiste* tendency do not distribute their paper all over the national territory, although in the case of Spain it is not the newspapers but rather television which to date has been a monopoly of the state and which in practice operates as an instrument of the party in power, especially visible since the socialist electoral victory of 1982 (38).

We must add that the real functioning of these excessive constitutional institutions is not at all completely correct and this goes in detriment of the regions.

a) As for the constitutional tribunals, in Spain and Italy - and in Portugal since the 1982 constitutional reform - these exist according to the model of Hans Kelsen. The same occurs in the Federal Republic of Germany (the famous *Bundesverfassungsgericht* located in karlsruhe) and in Austria, Kelsen's own homeland. Leaving aside the fact that I particularly happen to prefer the classical Anglo-saxon Supreme Courts or High Courts, the problem most likely to arise with the Kelsenian Constitutional Courts is

(38) The Basque Country and Catalonia already run their own regional television networks. The Galician Parliament in its session of 9th December 1983, passed a law for the creation of a Galician channel. As for radio and the press, these are quite splintered in Spain; this does not mean that they are less regionalistic, especially the smaller newspapers who hold a more or less regionally-oriented editorial line. In Galicia, concretely, there exists a reasonable number of journals, soms of which are reasonably good if we bear in mind the not-so-high standard of the Spanish press in general. Of the nation-wide papers the most important, pro-Government and anti-autonomous regions is *El Pais*. Sports information which caters to a large audience and which constitutes one of the last vestiges of *españolismo*, is almost exclusively broadcast in Spanish and with a rather nation-wide bias, often from Madrid, on radio and television.

the almost inevitable danger that they be used for political ends as can be fairly observed in Spain today. From our present point of view the main aspect of this politicising is a rather centralistic trend clearly visible in the constitutional jurisprudence of Germany, Italy and Spain, although with important variations in each concrete case and country.

It is normal that laws should organize institutions which later in practice do not function very properly. But in the case of the Spanish Constitutional Court it can be said that from the moment of creation by the 1978 Constitution it could already be seen without one having to be an expert - that the Constitutional Court was not going to function impartially, since the way of naming its members - similar to the German *Bundesverfassungsgericht* - is as follows (Section 159.1 of the Constitution): of the twelve members, two are named by the central Government, four by the Lower House - in other words, by the party or parties dominating the *Congreso*, which are *étatiste* - and four by the Senate - in plain language, by the party or parties dominating which at the present moment are the same as in the Lower House. The regions do not participate in the naming of the constitutional judges, the same as in Italy and Portugal, and in Germany - except via the *Bundesrat*. In contrast, the short-lived 1931 Constitution in its Article 122 conceded one member from each region to sit on the defunct *Tribunal de Garantías Constitucionales*.

Before the Spanish Constitutional Court the state and the regions are not on an even standing even from a merely formal point of view. Thus, when the central Government appeals to the Court to impugn a regional law, this produces the automatic suspension of the law decreed, even before the judges deliver a judgement (Section 161.2 of the Constitution). The contrary does not happen when it is the regional Government which attacks a state law. We must also underline the fact that the Government of the country can also impugn non-legislative internal dispositions and acts of the regional organs (Section 161.2 of the Constitution) even though the constitutional jurisdiction was not created for this purpose. Obviously, the regions received an unfair treatment. The central Government has already made use of this faculty by impugning the proposal of a candidate to preside the Navarran regional Government put forth in 1983 by the Speaker of the regional parliament of Navarra - to the advantage of its fellow Socialists in Navarra. The sentence of the Constitutional Court was favourable to the central Government.

b) As far as upper houses are concerned, do they make any difference? Leaving Portugal aside, where the Upper House does not exist, in Italy and in Spain the respective Senates do not at the present time function as chambers of territorial representation but rather of party representation, so that with respect to the lower houses they do not make all that much difference. Yet we must point out that formally both Constitutions conceive them as territorial chambers (Sections 69.1 of the Spanish Constitution and 57 of the Italian Constitution). In Italy, the Senate has never represen-

ted the regions but rather the political parties and not even its electoral system - a mixture, in practice, of uninominal and proportional representation - responds to a truly regionalistic proposal (39).

As for the Spanish Senate, it must be said that its criterion of territorial representation continues being much more *étatiste* than regionalist even according to the letter of the Constitution, for it is very heavily province-oriented (Sections 69.2 and 69.5). We can now understand that if the Spanish Senate were to function properly as a chamber for the regions we could not declare, as we have just done in the above statement, that the autonomous regions play no part in the appointment of the members of the Constitutional court. Professor ELAZAR, in the mentioned Madrid Conference, proposed that the Senate be converted into an effectively regional chamber. This would have the advantage of not having to reform the Constitution. Of course this opinion seems reasonable enough, but there still remains another problem which is very difficult to solve, namely: to what advantage is it to convert the Upper House into a truly regional chamber if it does not have, to start with, any important task to carry out? The predominance of Lower Houses over the Upper Chambers is general the world over - with the exception of the United States and Italy - but in the Spanish case the Senate can hardly be said to have any real legislative functions (Sections 74 and 90 of the Constitution), not to mention other functions such as the financial one or that of electing or firing the Prime Minister.

(39) BISCARETTI, *Diritto Costituzionale*, 1974, pp. 292-293.