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Spain: Constitutional Transition through Gradual Accommodation of Territories

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Overview

Spain's peaceful transition to democracy (1975-79) offers an example of how a political agreement could overcome internal confrontations. In contemporary times, Spain experienced a cruel Civil War (1936-39) and a long period of dictatorship under General Franco's rule (1939-75). At the death of the dictator, the opposition mobilized around left-right cleavages as well as around several territorially-based nationalist movements that had been repressed by Francoism. The moment of constitutional transition, which would last from 1977 to 1979, arose from an alliance between moderate reform factions in the elites of the old dictatorship, supported by the new King, with opposition elites. Together, they agreed to call for elections and establish a full-fledged democratic regime amidst a great economic crisis, intense public mobilization and some instances of political violence. This constitutional moment would culminate in the passing of the 1978 Constitution, although the implementation of new territorial institutions would extend for several more years. But in less than a year and a half, from 1976, the country experienced the self-dissolution of the Francoist Parliament, the legalization of the Communist, and many other, parties; the call for democratic elections; the signing by all political and social forces of pacts to resolve the economic crisis; the restoration of the Generalitat of Catalonia and other pre-autonomy regional regimes and, finally, the approval of a democratic Constitution in December 1978.

This constitutional pact 'refounded' the Spanish state as a democracy and reinstituted the rule of law. It laid down the preconditions for the creation of a welfare state and the overcoming of the economic crisis. By recognizing nationalities and regions throughout the Spanish territory, it responded to old aspirations of autonomy not just in the territories with nationalist movements but in all regions, which shared the aspiration for economic development and democratization of the state. Thus, based on a wide consensus of both the national parties of the left and right as well as of the regional parties, the 1978 Constitution enabled the creation and institutional accommodation of seventeen regions and nationalities or "autonomous communities" (*Comunidades Autónomas*, ACs). This was given effect subsequently by the constitutional recognition of regional home-rule and cultural diversity and the extensive decentralization of powers and finance.

This recognized the existence of different languages, political traditions, and distinct civil-law traditions. It also endorsed some constitutional asymmetries notably concerning the funding of some ACs. Decentralization would enable nationalist parties both to form governments in Catalonia and the Basque Country during the first 30 years of democracy and to participate in governance at the center. This promoted the integration and legitimacy of the new Spanish system for many years, though challenges remain. The Spanish case also shows the importance of a conscious willingness of reconciliation among the elites and its determination to avoid the mistakes considered to have led to the demise of democracy and to civil war in the 1930s. Moreover, the introduction of a moderately proportional electoral formula, country-wide elections early in the process, and the design of a very inclusive and deliberative process of constitution-making to produce new institutions created a positive dynamic. This operated together with the moderation and demobilization of the mass movements and the support of new and "reborn" parties from both the left and ethnic-regionalist, in favour of a successful negotiation and accommodation between elites of a new constitution. Despite profound continuing disagreements among the parties, a large majority of the political actors and the electorate approved the final results of the negotiations without producing clear losers of the process. Only persisting ethnonationalist violence in the Basque Country for three decades, now finally ended, can be regarded as an exception to this overall positive assessment. The current secessionist bid of a radicalized

Catalan nationalist movement and the government of Catalonia also raise questions about the sustainability of the model.

Background

The lack of accommodation and integration of the territorial dimension of Spanish political life had been an unresolved problem for most of the twentieth century. The Second Republic, established in 1931, had tried to contribute to the resolve the country's ethno-territorial conflicts, but it ultimately failed to do so, if only because of its short duration. Its most notable improvement was the regional model of the constitution, situated somewhere between a unitary and a federal state. This led to the approval of Statutes of Autonomy for Catalonia, the Basque Country and Galicia. In addition, Aragon, Andalusia, Asturias, the Balearic Islands, the Canary Islands, both Castilles, Leon, and Valencia had expressed autonomist claims by the time of the military uprising on 18 July 1936; though many had not yet taken the legal steps required by the 1931 Republican Constitution, a significant number had begun some part of the process. Thus the regional autonomist process, though incipient, was spreading throughout Spain by the time the Civil War broke out.[1]

The issue of regional autonomy versus centralism was fundamental to the political polarization prior the outbreak of the Civil War (1936-9) and it also created innumerable controversies within the Republican forces themselves. The victory of General Franco's forces in 1939 ultimately destroyed the republican democracy and all chances of setting up a territorially-structured state. A long period of dictatorship and political centralization ensued, aiming at imposing a uniform Spain.

The Francoist conception of national unity degenerated into an obsessive and reactionary ideology that denied Spain's plurality and dominated the country uninterruptedly from 1939 to 1975. However, Francoism not only failed to eliminate Spain's internal ethno-territorial diversities, it achieved exactly the opposite[2]. The governing classes, together with the military and the Catholic hierarchy, had advocated a peculiar and artificial idea of Spain that made unitary centralism and dictatorship concomitant concepts. The result was that by the beginning of the democratic transition in the 1970s, the very concept of anything Spanish was regarded by the democratic forces as synonymous with repression and cultural hegemony.[3] During the phase between 1967 and 1975, internal conflicts within the regime resulted in weak institutional measures to deal with the post-Franco transition. The Organic Law of the State and the personal decision of Franco that his succession fell on the figure of Juan Carlos de Borbón effectively discarded the idea that some Francoist political staff had of a closed political project to continue in power after the death of the "Caudillo". Their internal conflicts greatly determined the form and substance of how the transition was carried out[4]. The same happened with opposition elements that proved unable to impose their objective of a clean rupture and so, had to reduce their pretensions and settle on a framework of democratic coexistence, including part of the legacy of the past.

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[1] Luis Moreno, *The Federalization of Spain* (Routledge Taylor & Francis Group 2001).

[2] As Conversi stated: "behind its centralist façade, Francoist Spain had at the very end brought about substantial political disunity. Indeed, the result of years of Francoist repression was further disintegration" Daniele Conversi, 'The Smooth Transition: Spain's 1978 Constitution and the Nationalities Question' (2002) 4 (3) *National Identities*, 223.

[3] Salvador Giner, 'Ethnic Nationalism, Centre and Periphery in Spain' in Christopher Abel and Nissa Torrents (eds), *Spain: Conditional Democracy* (Croom Helm 1984).

[4] Álvaro Soto, *¿Atado y bien atado? Institucionalización y crisis del franquismo* (Ed. Biblioteca Nueva 2005).

Although the Spanish transition has been fundamentally explained as an actor-driven process, the role of civil society should not be underestimated, as the works by both Threlfall for the case of Spain as a whole and Balfour, looking specifically at Catalonia demonstrate.[5] Arguably, political mobilization in the early stages of the Spanish transition was crucially driven by parties of the left and trade unions. And they were, at least at that time, more the expression and voice of civil society than were most state institutions holding state power. As Threlfall puts it, "civil society organizations (the Workers' Commissions, the whole spectrum of Left parties, organized students and women, and opposition media) were the chief drivers of the waves of protests that undermined the first government of the monarchy and closed off all options other than democratization".[6] The mobilization in factories, faculties, neighbourhoods, farmers, professional associations and associations of women found echo in the media and, contributed to the opening cracks and divisions amongst the regime's supporters— the church, army, judicature and big money. For the most part, civil society organizations have been praised for their role in moderating their rank and file, which certainly facilitated the success of the democratization process. But they also played an equally important, more active and somehow counterbalancing role leading public demonstrations and strikes that paralyzed large industries as well as public services in big cities, including Madrid, Seville, Cordoba, Barcelona, Zaragoza, Bilbao and Pamplona, as well as smaller ones.[7] The regime dealt with these protests in the street with harsh repression and a significant number of injured or dead. At the same time, the transition was throughout accompanied by terrorist attacks by the terrorist group ETA as well as by recurrent violence from both the extreme right and the extreme left, not to mention police violence. According to the French historian Sophie Baby, between 1975 and 1982 there were 3,200 violent actions and 700 deadly deaths in Spain, 530 of them caused by terrorism, with 361 murdered by ETA, and the rest by GRAPO, the extreme right, the police dirty war and repression[8].

Several opposition groups joined forces in cross-party platforms towards the end of the Franco period. In July of 1974, as a result of previous initiatives by the Spanish Communist Party (PCE), the *Junta Democrática* (JD) was established, incorporating other left-wing parties, trade unions and some independent opposition activists. Of the twelve claims put forward by the Junta, there was an explicit demand to recognise the territories of Catalonia, the Basque Country and Galicia as political subjects, and to extend this to any other region that so decided. A few months before the death of General Franco on 20 November, 1975, the *Plataforma de Convergencia Democrática* (PCD) was established under the auspices of the Spanish Socialist Party (PSOE) and the Christian-Democrats of *Izquierda Democrática.* No regional forces or nationalists from Catalonia and the Basque Country joined the PCD or the *Junta,* but in October 1976 regional representatives did integrate into the much broader *Plataforma de Organizaciones Democráticas* (POD). This included the *Platajunta,* which had merged the previous JD and PCD, but it also brought in the Basque Nationalist Party (PNV), the *Assemblea de Catalunya*, and other regional platforms.

[5] MonicaThrelfall, 'Reassessing the Role of Civil Society Organizations in the Transition to Democracy in Spain' (2008) 15 (5) Democratization 930; Sebastian Balfour, *Dictatorship, Workers, and the City: Labour in Greater Barcelona Since 1939* (Oxford University Press 1989).

[6] Threlfall (n 5) 940.

[7] ibid 938-42.

[8] Sophie Baby "Estado y violencia en la transición española: las violencias policiales", en Baby, Sophie; Olivier Compagnon and Eduardo González Calleja eds. (2009), Violencia y transiciones políticas a finales del siglo XX. Europa del Sur America Latina (Casa de Velazquez 2009). See also Xavier Casals *La Transición española. El voto ignorado de las armas,* (Pasado & Presente 2016).

There is some historical continuity from the party system during the Second Republic and that which emerged after 1977. This was especially true of parties of the left, which had not dissolved but remained active underground or in exile. In the so-called "historical nationalities" of Catalonia, the Basque Country and Galicia, the forces opposed to Francoism had developed a political discourse that combined denouncing both the absence of democracy and the continuous official attacks on their national identities and cultures. So for these nationalities democratic and ethno-territorial vindication became fused. Every time that Basque and Catalan opposition groups negotiated secretly in exile with other democratic forces, the demand for one thing was invariably tied to the assertion of the other. In this way the ideology of political decentralization made its way into contemporary Spanish democratic consciousness)[9].

In Catalonia, the clandestine *Assemblea de Catalunya*, founded in 1971, was capable of organizing an illegal, persecuted and heterogeneous political opposition. Its activities were based on a simple four-point programme: political amnesty, freedom, a statute of autonomy, and democracy. It gathered together in a clandestine movement opposed to the Franco regime representatives of various political groups (Liberals, Christian-Democrats, Socialists, or Communists), trade union leaders, representatives of local movements from Barcelona, groups of university students and teachers, as well as intellectuals and citizens in general,. It was highly representative of Catalan society in the 1970s. Its ability to create a democratically legitimate alternative to the Franco regime in Catalonia constituted a unique precedent for the peaceful transition to liberal democracy the whole country was later to enjoy.[10] On the other hand, Greer argues that the strength of Catalonia's web of regional social organizations facilitated the organization and weight of Catalan demands for autonomy during the Spanish democratic transition.[11] Although Catalan society had been largely demobilized under Franco's authoritarian regime, clandestine collective action did not disappeared entirely, and even more relevant, regional business and professional organizations throve during that time, creating a "distinct, sizeable and interconnected organizational infrastructure of Catalonia". In Greer's view, the survival of an organizational web in Catalonia under the dictatorship fostered the creation of a party system that structurally favoured autonomy, leading to what he refers to as the "Catalan autonomist consensus". In his words, "the existence of a shared Catalan agenda in the pacted transition was possible because two political forces – the Catalan communist party (Partit Socialista Unificat de Catalunya, Unified Socialist Party of Catalonia, PSUC) and the activist Jordi Pujol – were able to mobilize most of the available activists, dominate sources of social protest, and thereby prevent any other leadership espousing anything else from finding activists" [12]. These two parties were Catalanist parties, and their commitment to Catalanist goals made it possible for Catalonia to represent itself in the transition as a comparatively united nation[13].

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[9] Even regions that had previously shown only weak aspirations for autonomy or home-rule discovered regional identities and found reasons to claim these rights later in the 1970s.

[10] Josep M Colomer, 'Transitions by Agreement: Modeling the Spanish Way' (1991) 85 (4) American Political Science Review 1120. Carme Molinero and Pere Ysàs, *La cuestión catalana: Cataluña en la transición española* (Planeta 2014).

[11] Scott L Greer, *Nationalism and Self-Government: The Politics of Autonomy in Scotland and Catalonia* (State University of New York Press 2007).

[12] Scott L Greer, 'Who Negotiates for a Nation? Catalan Mobilization and Nationhood before the Spanish Democratic Transition, 1970-1975' (2015) 23 (4) Democratization 615.

[13] Ibid.

In the Basque Country, the separatist guerrilla group ETA[14] found considerable popular support, and given the oppressive political circumstances, it developed some links with the democratic movement. In 1973, ETA assassinated Admiral Carrero Blanco, Franco's Prime Minister, appointed by the dictator to become his political heir. At the time, those who advocated political violence against the Franco dictatorship were not regarded without sympathy by some sectors of the population, even beyond the Basque country. With the advent of liberal democracy, however, many who had felt such sympathy repudiated the ETA, which had paradoxically intensified its terrorist actions.[15] Several factors explain the violent nature and the historical origins of terrorism in the Basque Country. These include according to Fernández[16] broader contextual factors, such as the Franco dictatorship, the decline of the Basque language, the arrival of immigrants, the ambiguity or passivity of the Basque Nationalist Party (PNV), and the model of anti-colonial movements, as well as factors internal to the movement, , the influence of the ultranationalist groups in exile, an intergenerational clash, ETA's war imagery and ideological evolution, and more personal factors such as the emotional state of its leaders and the internal dynamics of the group.

Conversi maintains that the contrasting paths taken by Catalan and Basque nationalism, and their contrasting strategies played into the successful transformation of Spain.[17] While Basque radicalism and violence was largely directed towards destroying the old order, Catalan peaceful mobilization largely worked towards the building of a new state framework. For Payne, the differences between Basque and Catalan mobilization is rooted in their contrasting origins and ethos.[18] Catalan nationalism has from its origins and largely since has pursued the restructuring of the Spanish state and has sought to play an active role in the process. Conversely, Basque nationalism has always been more oriented towards separation. These differences showed in the different position they adopted towards rupture or an agreed solution. Following the approval of the 1976 Law of Political Reform, popular support for gradual change rose in most of Spain, including amongst Catalan political forces, thus leading the opposition to discard the idea of rupture. However, in Euskadi, where all nationalist parties kept to an intransigent line, the rupture strategy remained dominant. The ETA was a more radical and leftist movement that emerged in late 1950s as an informal student group with no direct connection with the first Basque nationalism of PNV and Sabino Arana. In the underground conditions in which it had to operate, it became progressively more radical and "the choice of violence became irrevocable by the mid-1960s at a time when dictatorial measures, coupled with economic boom, produced new strains in Basque society."[19] This was a deliberate, conscious choice to assume a paramilitary form, following the classic insurrectional model of 'cycle of action-repression-action', in which the more the state increased repression, the more the radical separatists gained support. Payne also suggests that some additional factors may have influenced the extreme radicalization of Basque nationalism compared with that in

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[14] Founded in 1959 in opposition to Franco's regime, ETA (*Euskadi Ta Askatasuna*, 'Basque Homeland and Freedom') has advocated secession for *Euskalherria* with the annexation of Navarre and the French Basque Country by means of armed violence. ETA has been responsible for killing nearly 900 people. On 20 October 2011 ETA announced a "definitive cessation of its armed activity".

[15] See Diego Muro "The Basque Experience of the Transition to Democracy", in Alonso, Gregorio and Muro, Diego eds. *The Politics and Memory of Democratic Transition: The Spanish Model* (Routledge/Canada Blanch Studies on Contemporary Spain 2011). Disregarding the transitional process to democracy, the military nucleus of ETA decided to maintain a strategy of increasing political violence insisting that the supporters of the Basque national liberation movement continued to be the victims of centralist oppression.

[16] Gaizka Fernández, *La voluntad del gudari. Génesis y metástasis de la violencia de ETA* (Tecnos 2016).

[17] Conversi (n 2) 224.

[18] Stanley G Payne, 'Nationalism, Regionalism, and Micronationalism in Spain' (1991) 26 Journal of Contemporary History 479.

[19] Conversi (n 2) 225.

Catalonia. The Basque provinces were "the region which suffered the most intense repression during the final decade of Franco regime, creating a persecution complex which only redoubled fanaticism and for the first time gave credence to the nationalist position in the minds of tens of thousands of formerly skeptical". Taxes paid by the Basque economy did not reverted in equivalent public services in the Basque provinces. There was even some resentment after Franco's death that negotiations for Catalan autonomy proceeded more rapidly and smoothly.

Spain's possible integration into Europe had an important effect in facilitating compromise among economic, political and social actors in the transitional period. Decades of international isolation and ideological and economic autarchy since 1939 led many Spaniards to believe that complete modernity was unattainable. Thus, becoming a fully-fledged European country was viewed as a necessary condition for political and institutional modernization. The dictatorship of General Franco fought liberal democracy and human rights, the very pillars on which the European Union was built. After 1975, recycled Francoists and opposition politicians shared the view that the transition towards democracy in Spain would be legitimized by the popular desire to return to mother Europe and to repudiate the anti-European sentiment of "Spain's exceptionalism".

The Period of Constitutional Engagement (1978-83)

Key elites played a crucial role in the successful establishment and consolidation of democracy. They showed skilful leadership, but they did not act in a social or political vacuum, since, larger mobilization within the population provided a positive context for the success of the elites negotiations that defined and consolidated the new regime[20]. On 15 June 1977, general democratic elections were held for the first time since the Second Republic. Appointed by the King Juan Carlos, Prime Minister Adolfo Suarez and Parliament Speaker Torcuato Fernández-Miranda had strategically led the legislature of the Franco regime to pass the Law on Political Reform[21] and granted an extensive political amnesty to all political prisoners.[22] The new law initiated a process of legalization of all political parties and a wide inter-party consensus set the basis for Suarez's call for fully democratic elections.

The distribution of seats in the new parliament contributed to reaching compromise. The two largest parties, the conservative-liberal UCD and socialist PSOE, won similar shares of votes. The UCD got 166 out of the 350 seats, ten seats short of a parliamentary majority. Support for nationalist parties was similar to that of the Second Republic in the 1930s, and while they emerged as strong political forces, they were still not the main ones in their territories—in Catalonia the Socialists and Communists won almost half the vote. However, the claims of these parties were further strengthened by protests and large demonstrations. The election result produced a minority government that would be preoccupied with the issue of the demands of the historic nationalities. This configuration also increased the opportunities for the Basque and Catalan nationalist formations (PNV and CiU) to influence the constitutional negotiations. With both the two main state-wide parties, and in particular the governing UCD, falling short of absolute majorities in both the 1977 and 1979 general elections, the Basque and

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[20] Ignacio Sánchez-Cuenca, *Atado y mal atado. El suicidio institucional del franquismo y el surgimiento de la democracia* (Alianza Editorial 2014).

[21] Georgina Blakeley, ""Keeping up Appearances": Torcuato Fernández-Miranda, "Heresthetics" and the Spanish Law for Political Reform", Revista Española de Investigaciones Sociológicas, (2016), 154, 3-20. Sánchez-Cuenca (n 20).

[22] The Government of Adolfo Suarez, a key figure in the transitional period who forged his political career within Franco's regime, issued a partial political amnesty in July 1976, freeing 400 prisoners, which was eventually extended to a blanket amnesty in May 1977.

Catalan nationalists were able to exact a price for supporting minority governments and their demands provided a decisive input in the process of decentralization. This regional leverage continued after the Constitution was approved because no party won a parliamentary majority in the elections of 1989, 1993 and 2004 (in all of which the PSOE led), and 1996 (in which the PP, successor to the UCD, led).

An immediate issue for the new Prime Minister Suarez was dealing with the urgent regional demands of the Catalan and Basque nationalists and he took very astute preliminary steps to start winning their trust. First, he reached back to the previous democratic legality of the Second Republic and brought back President Tarradellas of the Catalan government, which had gone into exile. Secondly, he implemented "pre-autonomy" regimes by decree-laws, first in favour of Catalonia and then of the Basque Country at the end of 1977. These rather symbolic initiatives were aimed at securing the support of Catalan and Basque nationalists, and it was hoped they would appease the climate of political violence in the Basque Country promoted by ETA. Such "pre-autonomy" decrees were regarded as "promissory notes" that regional autonomy would be recognized by the coming democratic Constitution. [23] Moreover, the provisional regimes of autonomy devised to accommodate Catalan and Basque demands for self-government, were also offered to other territories if requested.[24]

The country was in economic crisis and its political situation remained fragile. So representatives of the main political parties, the new unions and employers negotiated the Pactos de la Moncloa, which were signed in October 1977. These Pacts showed moderation between government, employers and trade unions and were explicitly designed to support harsh reforms necessary to combat the economic crisis and thereby "consolidate democracy". All social agents accepted increases in taxes and unemployment insurance payments, cost-containment in public spending, together with the avoidance of strikes and lock-outs and wage restraints in order to allay the fears of a military uprising.[25] Other Pactos also included an agreement not to use past history, with its traumatic memories of civil war, repression and exile, as a political weapon. The focus would be on the future[26]. The negotiation of the pacts set the pace and the tone for the subsequent negotiations for a new constitutional order.[27]

The UCD government wanted a commission of experts to write the initial constitutional draft, but the other parties refused and insisted that the parliament itself should do it. Political parties, including some that were short-lived, were thus the key stakeholders in negotiating the constitutional draft. They chanelled views on the right-centre-left political spectrum as well as on centralism versus decentralism. Parties agreed to appoint a drafting commission of seven deputies, most of them constitutional experts or professors (*ponencia*), representing different parties, tasked with drafting a first constitutional proposal. These seven politicians were to be known as the "fathers of the Constitution"; they represented the AP conservative party (1 member), the UCD center-right party (3 members), the PSOE socialist party (1 member), the PCE-PSUC communist party (1 member, also a Catalan) and the CDC Catalan nationalist coalition and the Basque Nationalist Group (1 member from the Catalan nationalists).

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[23] Paul Heywood, *The Government and Politics of Spain* (St. Martin's Press 1995).

[24] In fact, by the time the Constitution was passed, up to 13 regions had been granted a provisional regime of autonomy.

[25] Robert M Fishman, 'The Labor Movement in Spain: From Authoritarianism to Democracy' (1982) 14 (3) Comparative Politics 281.

[26] Carsten Humlebæk, "The 'Pacto de Olvido'", in Gregorio Alonso and Diego Muro, eds. *The Politics and Memory of Democratic Transition: The Spanish Model* (Routledge/Cañada Blanch Studies on Contemporary Spain 2011).

[27] Xosé M Núñez Seixas, Lina Gálvez Muñoz and Javier Muñoz Soro, *España en democracia, 1975-2011* (Critica/Marcial Pons 2017).

The constitutional process followed a complex procedure. The drafting commission was regarded as a subcommittee of the Parliament's Constitutional Committee composed of a larger number of deputies representing several parties. The parliament (*Cortes Generales*) thus turned into a constituent assembly. The drafting group of seven began its deliberations in an atmosphere of compromise and cooperation. Despite the fact that conservatives, liberals, centrists, socialists, communists and sub-state nationalists disagreed over a wide range of issues concerning the state organization, education, industrial relations, divorce and abortion—just to name a few—they were finally able to broker a broad political agreement whose fundamental aim was to achieve a comprehensive democratic transition[28].

This commission, met from late August until mid-December of 1977, when a first draft of the proposed Constitution was leaked to the press. Several conflicts aroused and coalitions formed within the commission that almost led to the point of break-up. All parties then had a period to propose amendments for consideration by the *ponencia*. After a second deliberative round, the commission submitted its final proposed draft in late March 1978. The text was then reviewed by the Constitutional Committee of the Congress of Deputies, which over two months engaged in much sophisticated discussion of the draft, for instance about the nature of Spain[29].

After successive readings within the Constitutional Committee a revised text was submitted to plenary sessions of the lower house of the parliament, where it was further revised, and then sent to committee and plenary deliberations in the Senate. A joint subcommittee of the two houses was required to solve differences between the texts passed by each, but party leaders had limited the extent to which the Senate had modified the text. The document got final parliamentary approval on October 31. It was then submitted to a popular referendum on December 6 1978, and was ratified by a vote of 88 percent,[30] with all provinces voting in favour. This completed the process of establishing a legitimate new democratic order.

The consensual approach among parties that had facilitated the economic pacts and the pre-autonomy regimes was also employed in the ensuing constitutional negotiations in the parliament. As a consequence, and for the first time in the Spanish history, the new constitution was not to be the product of the winning side or the majority party, but represented a broad inter-party compromise. The very process of negotiation confirms this point. Elite negotiation and accommodation of diverse interests continued to be the practice even after the transitional period. There were various methods adopted for the constitutional negotiations as ways to help reach agreement. Meetings of the negotiators were often carried out informally so as to avoid the 'interference' of the public eye when compromising about sensitive issues. Among the latter, the territorial organisation of the state and the institutional design of the general administration of the country were considered the most difficult set of constitutional provisions to agree upon.[31]

Several negotiating strategies facilitated deliberation and reaching an agreement: First, at the request of the opposition parties, the UCD governing party did not provide a constitutional blueprint, but the *ponencia* undertook the drafting of the whole text from scratch. Secondly, as strong conflicts between

[28] Soledad Gallego-Diaz and Bonifacio de la Cuadra *Crónica secreta de la Constitución* (Tecnos, 1989).

[29] Andrea Bonime-Blanc, *Spain's Transition to Democracy. The politics of Constitution-Making* (Westview Press 1987).

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

[31] Josep M Colomer, *Game Theory and the Transition to Democracy: The Spanish Model* (Edward Elgar 1995); Andrea Bonime-Blanc, *Spain's Transition to Democracy. The Politics of Constitution-Making* (Westview Press 1987); Soledad Gallego Diaz & Bonifacio De la Cuadra, *Crónica secreta de la Constitución* (Tecnos 1989).

the parties became more evident once the public parliamentary debates started, representatives from UCD and PSOE improvised dinner meetings at the Restaurant José Luis, which has become famously recognised as the place where the decisive "game of nocturnal consensus" took place. There, both political forces were able to resolve their deep-rooted differences behind the scenes. Although Communists and Catalan nationalists did not participate directly in these private bipartite negotiations, they were previously consulted on the issues.[32] Thirdly, in order to avoid undisciplined behaviour of party members, when the draft constitution text entered the Second Chamber party leaders imposed greater party discipline upon their Senate delegations, forcing them, in some cases, to withdraw amendments.[33]

Regarding the territorial issues in the constitutional negotiations, the centre-periphery conflict aligned the intensely Spanish-nationalist AP against the Basque and Catalan nationalists, with proposals ranging from a unitary and highly centralised system, to a symmetrical federal structure and even to some form of confederal arrangement, as was implicit in the Basque parliamentary group's proposal to re-establish the pact between the historic charter (foral) institutions and the Spanish Crown. The Catalan nationalists sought autonomy within a Spanish state that acknowledged Catalonia's distinctiveness. The territorial question was strongly divisive within the ruling party itself with some key members of UCD fiercely favouring a general decentralization throughout all Spain against others supporting some kind of institutional differentiation and special treatment for the historic nationalities.

Most of the constitutional draft proposed by the drafting commission was not substantially modified in the Constitutional committee of the Parliament. However, the very controversial nature of the territorial question made it the exception and it led to substantial changes late in the parliamentary debates.[34] The positions of the main parties on the territorial question were very divergent. On the right, the inheritors of late Francoism were willing to accept changes for democratization, but they were also aware that the *poderes fácticos* (or "powers in the shadow", especially the Armed Forces) would not be prepared to witness impassively reforms that could jeopardise the "indissoluble" unity of Spain. On the other hand, parties at the left—the PSOE and PCE—mostly identified with the principles of pluri-nationality and even the right of self-determination. However, and above all, they were the most convinced supporters of federalism (in its conventional symmetrical expression after the German model). At the difficult constitutional juncture, they managed to overcome an ideological approach and adopt an essentially pragmatic strategy in the constitutional bargaining. In this sense, they gave up their federal goal, in exchange for being part of the constitutional consensus.[35] They opted instead for an open-ended model that tried to build a bridge between the unitarist aspirations of certain groups of the right and the confederalist stance of some regional nationalist parties.

The identity of Spain, of the nationalities, and the nature and location of sovereignty in the new regime were fraught with symbolism, which is often the most emotional and difficult element in finding constitutional consensus. The constitutional authors sought to assert the identity of Spain as a nation while simultaneously restructuring its territorial organization. They spent several days on provisions such as Articles 1 and 2, which ascribed sovereignty to the whole Spanish people and had introduced

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[32] Richard Gunther, 'The Spanish Model Revisited' in Gregorio Alonso, and Diego Muro (eds) *The Politics and Memory of Democratic Transition: The Spanish Model* (Routledge/Canada Blanch Studies on Contemporary Spain 2011).

[33] Richard Gunther, 'The very model of the modern elite settlement' in John Highley and Richard Gunther (eds.) Elites and Democratic Consolidation in Latin America and Southern Europe (Cambridge University Press 1992).

[34] Jordi Jaria, 'La Forma del Estado en los Debates Constituyentes' in Miguel Angel Aparicio (dir) *La Descentralización y el Federalismo: Nuevos Modelos de Autonomía Política (España, Bélgica, Canadá, Italia y Reino Unido)* (Cedecs 1999).

[35] Jaria (n 34).

the term "nationalities" in the Constitution. This required a great effort in consensus-building, since such language sought to accommodate the ideas both of those who postulated the existence of a Spanish nation, as the social basis for the Spanish state, and of those from the so-called "peripheral" nationalities who sought recognition of differentiated sub-state national identities, especially in Catalonia and the Basque Country.

These highly divided positions on the territorial structure of the state and the nature of the political community prevented an agreement on a definitive and closed territorial model and led to a hybrid and open-ended one. Article 2 of the 1978 Constitution acknowledged the existence of sub-state "nationalities and regions" with a right to autonomy and home-rule within the "indissoluble unity of the Spanish nation", but the Constitution did not derive clear institutional consequences from this distinction in the territorial organization of Spain. Some asymmetries were constitutionally preserved, but the recognition of co-official languages[36] and the maintenance of traditional civil-law systems in some ACs did not give them greater legislative or administrative powers. The preservation of the Basque Country and Navarre's special system of *de facto* fiscal independence and the special provisions on the VAT for the Canary Islands were the only exceptions in relation to powers. These latter asymmetries have subsequently fuelled demands for the recognition of a "differential status", particularly in the Basque Country, Catalonia and, to a lesser extent, Galicia.[37]

The main Basque nationalist party deployed a rather ambivalent strategy during the parliamentary negotiations. Unlike the Catalan nationalists, no Basque representative was a 'father of the Constitution' so Basque nationalists were not directly involved in the constitutional negotiation, though one of the members of the *ponencia* from the centre-right UCD was rather sympathetic to their positions and expectations. In fact, a notable provision was added to the constitutional text before its approval that "protects and safeguards the historical rights of the so-called charter (*fuero*) regions (Basque Country and Navarre)", and that establishes that any "general revision" of its financing system (a special arrangement of fiscal independence) is to be carried out "in accordance with the Constitution and the Statutes of Autonomy of the Basque Country and Navarre". The parliamentary group of the PNV Basque nationalists, however, abstained in the final voting of the constitutional draft and advocated an "active abstention" in the referendum campaign for the approval of the 1978 Constitution. In two of the three Basque 'historical territories' (Gipuzkoa and Biscay), abstention reached 56 per cent of the registered electorate, although a majority of 67 per cent of the total turnout in the Basque Country voted for the 1978 Constitution so that 'Yes' votes amounted to 31.3% of the registered electorate.[38] These figures have subsequently been subjected to no little speculation. The abstention percentage in Gipuzkoa and Biscay was interpreted as a manifestation of the limited extent of the Spanish state's legitimacy in Euskadi. Following the inception of the 1978 Constitution, the Statute of Autonomy of

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[36] *Castellano* (Castilian), most commonly known elsewhere as Spanish or *Español*, is Spain's official language. Nonetheless, regional languages are co-official in the territories where they are spoken, namely, Aranese (*Aranés*, a variant of Occitan) in Catalonia; Basque (*Euskera*) in the Basque Country and Navarre; Catalan (*Català*) in Catalonia, the Balearic Islands, and the Valencian Community (officially as *Valenciano*); and Galician (*Galego*) in Galicia. Asturian (*Asturianu*), though not official, is a 'protected' language in Asturias. There are also some surviving minority Romance languages or dialects such as Astur-Leonese, Leonese, Extremaduran, Cantabrian, and Aragonese. Unlike Aranese, Basque, Catalan/Valencian, and Galician, these minority languages have no official status because of their very small number of speakers.

[37] César Colino, 'The Spanish model of devolution and regional governance: evolution, motivations and effects on policy making' (2008) 36 (4) Policy & Politics 573; Luis Moreno 'Federal democracy in plural Spain'. In Federal democracies, edited by Michael Burgess and Alain-G. Gagnon, 160-177. (Routledge 2010).

[38] Juan J Linz, Manuel Gómez-Reino, Francisco Andrés Orizo and Darío Vila Carro, *Conflicto en Euskadi* (Espasa-Calpe 1986).

the Basque Country was also submitted to a referendum in 1979, in which nearly 90% of those voting, or 59% of the registered electorate, supported the Basque constitutional law. Once again, such figures made secessionists and sympathisers of ETA point out that the lack of legitimacy because the Statute received little more than a simple majority of eligible votes (53% according to data provided by the Basque Government).[39]

It is important to underline that not only historic nationalist parties, notably the Basques and Catalans, had been decisive in lobbying for the decentralization of power, but state-wide parties, notably the PSOE and even the UCD, also embraced the demands for increased autonomy of the regions and, thus, greatly contributed to Spain's federalization and the articulation of territorial interests, either "top-down" or "bottom up". The new elites of all parties shared a consensus on the need for the transition to solve the "territorial question" especially in those regions with traditional nationalist movements. In this regard, the support given by the PSOE and other state-wide, left-wing parties to the political agendas of the peripheral nationalist parties led to significant constitutional concessions, which recognized the historic nationalities as special. This was an acknowledgement of their autonomous status in the Second Republic. Therefore, they were automatically recognized as ACs under the new regime and could acquire autonomy more quickly, while for the other ACs this possibility was left open over the next five years. Furthermore, the Constitution recognized historical economic and fiscal rights for the Basque Country and Navarre.

Spain had 50 provinces, which was considered to be too many jurisdictions for the extent of devolution envisaged. The constitution required most of them to merge in a manner satisfactory to the Cortes if they were to qualify to receive the powers that could be devolved in an autonomy agreement. With mergers, seventeen autonomous communities appeared, only a few of which had been single provinces before. The mergers were decided, in most cases, by votes of the provincial and municipal counselors, though in a few cases the issue was put to local referendum. The proposed mergers then had to be ratified by the Cortes.

As the new ACs were established, each could chose its own sphere of powers within the framework of two constitutional lists of shared- and exclusive competences, which effectively provided a menu for decentralization à la carte. Regional *Estatutos de Autonomía* were approved by democratically elected regional assemblies. In the cases of the "nationalities", which opted for the fast track established in Art 151 of the 1978 Constitution (Basque Country, Catalonia, and Galicia, and later Andalusia), the statutes were also approved in popular referenda during 1979 and 1980 preceding final assent by the Spanish Parliament.

Outcomes

The Constitution finally approved provides for an open-ended model of decentralisation. It had not really resolved the ultimate territorial structure of the state: it did not specify the constituent units but it set forth various alternative paths for the creation of Autonomous Communities. The Statutes of Autonomy are organic laws, which must be approved by the national parliament, represent a sort of regional constitutional laws so that Spain's effective "constitutional moment" carried on through the preparation of these statutes. To that aim, and in accordance with a "principle of voluntariness" (the

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[39] Juan Díez Medrano, *Divided Nations. Class, Politics and Nationalism in the Basque Country and Catalonia* (Cornell University Press 1995); André Lecours, *Basque Nationalism and the Spanish State* (University of Nevada Press 2007).

so-called *principio dispositivo*), the Constitution left the decision to opt for autonomy to the very territorial entities that were to benefit from it.

The Constitution did not create the State of Autonomies; it did not constitute the ACs, delimit their territory, establish their organisation, or determine their powers. It created principles, conditions and procedures for these in which the protagonists were: (a) the regional representatives who must manifest their desire for autonomy; (b) the central institutions, and in particular the lower Chamber of the Spanish Parliament (*Congreso de los Diputados*), and (c) the Constitutional Court, in its role of supreme interpreter of the constitutional text.[40] In fact, Title VIII of the 1978 Constitution (section 'On the Territorial Organization of the State') reflected many of the tensions and political stumbling blocks that existed at the time of the inter-party discussions on the territorial organization of the state. This issue was highly contentious even in the general consensual climate during the transitional period. A constitutional "open model" for political decentralization unleashed later on a process of federalization geared at providing internal territorial accommodation by combining both federal principles of self-rule and, to a lesser degree, shared rule. As was graphically expressed by the Minister of Economy during the period 1979-82:

> Title VIII [of the Constitution] allows Spain to have one regional autonomy, or three, or a few, or all, or none, according to the will expressed by the people or the representatives of a given territory, and allows that autonomy to be wide or restricted, and that different communities should have the same or different degrees of autonomy, and that they organize themselves homogeneously or heterogeneously, and for the mistakes made in the process to be rectified.[41] [Original in Spanish, translated by the authors]

The period after the passing of the Constitution (1978-83) brought about deep institutional changes and the setting up of a new constitutional order in Spain. Key changes materialized in the promulgation of the Statutes of Autonomy-- of the 17 *Comunidades Autónomas*. The latter were fully implemented according to the following chronological sequence: Basque Country, 1979; Catalonia, 1979; Galicia, 1981; Asturias, 1981; Cantabria, 1981; Andalusia, 1982; Aragon, 1982; Castille-La Mancha, 1982; La Rioja, 1982; Murcia, 1982; Navarre, 1982; Valencia, 1982; Canary Islands, 1982; Balearic Islands, 1983; Castille and Leon, 1983; Extremadura, 1983, Madrid, 1983.

Given their strong identity as 'historical nationalities', the Basque Country, Catalonia and Galicia aimed at replicating the powers and symbols of the Spanish central state by having their own police forces, official visits to foreign places, public policies in the field of education, health and policy, police, external and ornamental signs such as the flag, the anthem, and so forth—all of which was permitted by the new constitution. A second group of *Comunidades Autónomas* with 'earlier' aspirations for home rule (Andalusia, Canary Islands, Navarre, Valencia) then attempted in the 1980s to 'imitate' the institutional outlook of the 'historical nationalities' as they developed their autonomy statutes. Finally, a third group of 'late-comer' regions in the home-rule process of decentralization (Aragon, Asturias, the Balearic Islands, both Castilles, Extremadura, Murcia) struggled not to feel discriminated against by the achievements of those 'early rising' regions referred to in the second stage of the mimetic sequence. In the end, they sought to copy the powers assigned to the other, even though they have less well-defined

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[40] Enric Fossas, 'Assymmetry and plurinationality in Spain' (Working Paper 167, Institut de Ciències Polítiques i Socials-UAB 1999). Victor Ferreres, *The Constitution of Spain: A Contextual Analysis* (Hart Publishing 2013).
[41] Jaime García Añoveros 'Autonomías, un proceso abierto'. El País, 29-30-31 May, 1984.

ethno-territorial identities.[42] Thus what was thought, at the time when the constitution was passed, might be a very asymmetric system, with the historic nationalities having greater devolved powers than the other ACs, turned out to be remarkably symmetric because of the imitation effect reflected in the Autonomy Pacts of 1981 and 1992. So in practice, the extension of home-rule to all Spanish ACs implied the genesis of a *de facto* federal state in all but name.[43] The evolution of the constitutional court rulings on the issue have consolidated the notion that the ACs have formal, constitutional equality and the right to the same elements of autonomy (with the important exception of the special fiscal privileges of the Basque Country and Navarre).

The Basque Country and Navarre achieved a special regime with its own tax arrangements (the *concierto económico*). This allows them to levy their own taxes and negotiate a transfer to Madrid to pay for common services. This system has subsequently created some resentment in other ACs, because the Basque Country and Navarre are able not only to have a higher level of regional public expenditures per capita but also to remain outside the structured system of state-wide fiscal equalization, despite being among the wealthiest ACs in Spain.[44] According to the constitutional provisions, the economic agreement of the charter(*fuero)* regions (Basque Country and Navarre) builds on a political agreement or pact between the central and Basque governments, which is to be ratified by the two parliaments (regional and central) without possibility of amendment (legally it has the same procedure as international treaties). According to this procedure, the only role of the Spanish Parliament is to ratify an agreement previously reached between the Basque institutions and the Spanish State Government. Thus, Spain's Cortes is not entitled to modify such rules unilaterally. This ensures an advantageous bilateralism between the *fuero* regions and the State and strengthens the position of both Basque Country and Navarre, since the approval of measures is dependent upon the existence of special agreements. The genesis for the enactment of "shared sovereignty" was highly conditioned by the political circumstances under which negotiations were taken place, and was regarded as a means to appease Basque nationalism and to prevent violence by ETA.

After 25 years of constitutional decentralisation, some *Comunidades Autónomas* decided to renegotiate their Statutes of Autonomy to gain more autonomy and resources.[45] The practice of bilateralism or "executive federalism", which is characterized by meetings in Ministers councils and negotiations between the central and regional governments, has been reinforced to a great extent by the atrophy of the Senate as the upper chamber for territorial representation and decision-making. Centralists encroached in sections of the public administration, and the main Spanish parliamentary parties have favoured bilateral and *ad hoc* centre-periphery relationships to the detriment of advancing a common shared rule as in most federal regimes. All this has given impetus to a certain centrifugal political dynamic, which is particularly felt in Catalonia and the Basque Country. Secessionists in these ACs have found new "windows of opportunity" to advance their agendas for secession.

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[42] Certain areas lacking in self-governing experience suddenly professed aspirations to autonomy. Cantabria, La Rioja and the province of Madrid became uni-provincial autonomies although they had never had a tradition of self-government, Moreno, *The Federalization of Spain* (n 1).

[43] Ronald L Watts, 'Spain: A Multinational Federation in Disguise?' (Paper prepared for the conference on 'The Federalization of Spain-Deficits of Horizontal Cooperation,' Saragossa, Spain 27–28 March 2009).

[44] Luis Moreno & César Colino "Kingdom of Spain", in Luis Moreno & César Colino (eds), *Diversity and Unity in Federal Countries,* 288-319 (McGill-Queen's University Press 2010).

[45] These were: Aragon (2006); Catalonia (2006/2010); Valencia (2006/2011); Andalusia (2007), Balearic Islands (2007); Castille and Leon (2007); and Extremadura (2011).

The most dramatic events have been in Catalonia. In 2006, this AC negotiated a new statute of autonomy, which was then passed by the legislature in Catalonia, by the parliament nationally and then in a referendum by Catalan voters. However, the Popular Party challenged this before the Constitutional Court and the court finally ruled in 2010, striking down some provisions and curtailing others. It found against the giving the Catalan language a status above that of Spanish and said that "The interpretation of the references to 'Catalonia as a nation' and to 'the national reality of Catalonia' in the preamble of the Statute of Autonomy of Catalonia have no legal effect".

Several drivers or socio-political preconditions –such as the successful creation of a collective grievance discourse, a postulated democratic right to decide, considerable and sustained popular support and the mobilization of the civil society, and the interests and behaviours of some leaders immersed in an outbidding electoral competition for the nationalist vote – lie behind the current secessionist bid[46]. Both the Court's ruling and the central government's refusal to accept a new fiscal pact was used by the Catalan prime minister's Mas to justify a sudden and far-reaching tactical and strategic change, which took advantage of the soaring secessionist sentiment among the Catalan population, in part due to the economic crisis. In 2012, in a large demonstration held on September 11th in Barcelona; proliferating civil society secessionist organizations, with the support of the Catalan official public media and the Catalan government itself, were able to mobilize the general discontent of thousands of Catalans due to the crisis and other grievances around the banner of sovereignty. A very effective populist rhetoric against "Spain" and focused on the "plundering" or "pillaging" of Catalonia by Spain and the alleged disregard for Catalonia within Spain was utilized. The secessionist programme, after snap regional elections by the end of 2012, was built on the 2013 parliament declaration, the coalition agreements and the so-called roadmap of January 2015. It has sought to reach independence either by legal means or through unilateral action.

After an illegal pseudo-referendum at the end of 2014, with scarce turnout, in October 2017 the Catalan government under Premier Puigdemont and his short majority proceeded to pass two unconstitutional laws in the regional parliament providing for a binding self-determination referendum and the transition to a new independent republic. These two laws were suspended by the Court but the vote was held anyways, without any of the usual guarantees, and where allegedly a 92 percent voted in favour of independence, but again with a very low turnout. The Spanish government had ordered police to try to stop the illegal referendum vote forcibly, which led to highly publicized confrontations. The events became critical, with the Spanish and Catalan governments testing one another.   The Spanish government threatened direct rule, but said it would back off it the AC would hold elections. But on October 27, the parliament of Catalonia declared independence from Spain unilaterally. This led the Spanish government to invoke its constitutional power to assume direct control over some of the AC's government's powers; it proceeded to dismiss Puigdemont and his cabinet, and to dissolve the parliament and to call regional elections in December 21. The elections were narrowly won by the secessionist parties, but many of their elected candidates have been arrested or fled the country because of charges of rebellion against them and this has left them without a majority and unable to form a government as of April 2018. This crisis has led to significant polarization of opinion within Catalonia, while in Spain it has produced a hardening of attitudes towards the demands of Catalonia. It has also demonstrated the lack of international support for a unilateral declaration of independence by a region

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[46] See César Colino & Angus Hombrado, "Besieged and paralyzed? The Spanish State facing the secessionist Challenge in Catalonia and coping with the Reform imperative", in: EZFF ed. *Jahrbuch des Föderalismus 2015,* 293-317 (Nomos 2015). Andrew Dowling *The Rise of Catalan Independence: Spain's Territorial Crisis* (Routledge 2018).

within a democratic country. Its longer-term impacts on Spanish politics and government are highly uncertain.

Lessons

While our account above ends with the Catalan crisis of 2017-18, it should not obscure Spain's relatively successful transition to democracy in the late 1970s and its consolidation in the early 1980s. It gives confidence that Spain will deal with its challenges peacefully and democratically. The transition in the late 1970s shows the importance of a combined action by old and new elites for developing a broad consensus on a new constitutional order. The old elites of the former regime still had important powers over key institutions, while the new elites, who had been politically excluded, now had the support of new or rejuvenated political parties and much of civil society that had been mobilized during the socioeconomic and cultural modernization in the latter years of Franco. The nature of the former regime, a skilful leadership by the King during the transition, the moderation of the elites and a very encouraging international environment in Europe were all factors that shaped the approaches of the main political actors and promoted the constitutional transition to a stable and legitimate regime in Spain. The central objective of the key economic, political and social actors during the period of constitutional engagement (1975-1979) was to overcome constraints so as to make democratisation and decentralisation possible. To this end, all stakeholders involved in the political negotiations were prepared to limit their sectional interests for the sake of achieving a common agreement.

Elite negotiation and accommodation of diverse interests continued to be the normal practice after the transitional period, whether through intergovernmental relations or informal practices, such as the presence of important regional leaders from different ACs in the central cabinet. The Spanish case also shows the importance of a conscious willingness of reconciliation among the elites and its determination to avoid the mistakes considered to have led to the demise of democracy and to civil war in the 1930s. Moreover, the introduction of a moderately proportional electoral formula, early elections at the central level soon in the process and the design of a very inclusive and deliberative constituent process to produce new institutions, operated together with the moderation and demobilization of the mass movements and the support of new and "reborn" parties from both the left and ethnic-regionalist, in favour of a successful negotiation and accommodation between elites of a new constitution. Despite the profound existing disagreements among the parties a large majority of the political actors and the electorate approved the final results of the negotiations without producing clear losers of the process.

There may have been a breakdown in this pattern of elite reconciliation over the future of Catalonia— as currently seen in the stand-off and the lack of communication between Catalan separatists and the national government—that has been precipitated by several domestic Catalan factors and in part by the ruling of the Constitutional Court, which was construed as overriding a major political compromise on Catalonia's revised Statute of Autonomy in 2006, and the subsequent inaction of the Central government, as well as by the extraordinary nature of the issue in question: the right or not of a region to secede. Spain is by no means unusual amongst democratic states in maintaining there is no such right, but declaring any issue out-of-bounds for political discourse creates challenges in a democracy.

We can then summarize several characteristics and preconditions of success of the Spanish case that may be useful elsewhere, especially in similar processes of transitions from similar authoritarian regimes.
- A particular sequence of elections and decentralization, with national elections having place prior to regional and local elections which gives the central government and leaders initiating the

transition legitimacy to deal with regional demands for more autonomy and establishes clearly the subject of the "stateness" and of the constitutional process

- A general perception and consensus among the new transition elites from all the parties of the need to solve the "territorial question" especially in those regions with traditional nationalist movements. The supporting role of state-wide left-wing parties to the programs and agendas of the peripheral nationalist parties during the transition is a case in point. It led to the decision to establish two paths towards full autonomy and the constitutional decision to distinguish two tracks according to the autonomy granted in the Second Republic. It also led to the recognition of historical rights for the Basque Country and Navarra that were respected and constitutionalized

- Pervasive memories of the previous conflicts or civil wars and wish for reconciliation to avoid repetition of the past. These memories of past civil conflicts and repression are transmitted alongside political cultures in an intergenerational fashion. The Spanish transition shows the positive persistence or resurgence of nationalist parties that were the same or the heirs of parties in the Second Republic. This accounted for their rapid organization and capacity and their integrative force as sub-state nationalist parties that moderated their stances and demands. The Spanish case also featured the return of several political leaders, active during the Second Republic, from exile into political activity again. Opposition forces have also to renounce some of their past symbols for the sake of compromise.

- The strength and predominance of support for state-wide parties (or their regional branches) in national elections in all regions. This profoundly affected the political dynamic because there were no regions, including Catalonia and the Basque Country, in which nationalist parties were stronger than state-wide parties. This reflects the presence of dual Spanish and regional identities among citizens.

- The decision for a reinforcement of the party system to favour larger parties. The proportional electoral system had majoritarian effects due to the type of electoral district chosen (the old provinces) and to the public financing of parties which produced a rationalized and functional parliament.

- The decision to create "pre-autonomy regimes" that set the stage for a possible generalized devolution.

- The design of the scheme of devolution. The favouring of shared competences over exclusive competences, but with national paramountcy; give each AC a role in designing its statute of autonomy and its own public policies; but a meaningful framework legislative role for the central parliament.

- The conscious use of constitutional ambiguities and silences as a device for accommodating diverse interests and aspirations and different definitions of the national community. The Spanish constitution is a paradigmatic example of ambiguity of the constitutional pact in territorial issues. The type of open-ended territorial arrangements agreed as a compromise among unitarist, federalist and confederalist visions were the only possible consensual solution. Issues where complete agreement could not be reached were left to be resolved when democracy was fully consolidated.

- The bilateral way in which devolution would be subsequently negotiated step by step in bilateral committees with representatives of the central government and new regional authorities.

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CONTRIBUTING ORGANIZATIONS

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