THE COEXISTENCE BETWEEN ONE STATE AND SEVERAL NATIONALITIES AND REGIONS. THE SPANISH CASE

ESTHER SEIJAS VILLADANGOS
Universidad de León
Spain

Esther Seijas Villadangos
Área de Derecho Constitucional
Universidad de León
Campus de Vegazana s/n
24071 León
Spain

Tel.: 34-987-291374
Fax: 34-987 291356

dpbmsv@unileon.es

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Directors: Prof. M.Keating/Dr. N. Lange
INDEX

1. INTRODUCTION

2. POLITICAL AND CONSTITUTIONAL BACKGROUND

3. NACIONALITIES AND REGIONS IN THE SPANISH CONSTITUTION
   3.1.- Frame of constitutional reception of nationalities and regions
   3.2.- The meaning of nationalities and regions
   3.3.- Consequences of being a nationality or a region

4. LAST BUT NON LEAST: “ASYMMETRY” IN THE SPANISH AUTONOMOUS SYSTEM

5. CONCLUSIONS

6. BIBLIOGRAPHY
I. INTRODUCTION

The main object of this paper is to make a reflection about the new coordinates that act in the Spanish scenery of territorial organization. The key point of that will be the concepts of nationalities and regions, and, added to these ones, a wider block that will include the neologisms of “diferencial fact” (hecho diferencial), asymmetry and dysymmetry.

In this era of globalisation the first step is to rethink the role of Regions, in Spain nacionalities and regions, to assure the future evolution of politicy. The Estado de las Autonomías has greatly transcended the tradicional political patterns in Spain. The Spanish case can be regarded, from a dogmatic point of view, as one of progressive evolution from regional patterns to federal design in line with a special model of federalism that Charles Dudley TARLTON defined like “asymmetrical federalism”(TARLTON CH. D., 1965, 869). The nature of the Spanish vision of this special model is the result of combine this theoretical model of asymmetrical federalism with the continue challenge of accommodating unity and diversity. Despite its secular conflicts between the center and the periphery, Spain has a clear identity like one only State far away from the simple aggregation of territories and peoples.

The social and cultural cohesion can’t hide internal oppositions specially in the Basque Country, Catalonia and Galicia. This situation has been described accuratley like “diversity in diversity”. Differents nacionalities and regions have fought for recovering a past and at the same time inventing a future, far the rest of nationalities and regions and, even, far from the whole of the country, the whole of Spain. The risk has the name of separatism. Recent events, particular important in the Basque country, have awaken the nightmare of the fragmentation and breaking of Spain.

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1 1898 is remebered like a representative date for fixing the comtemporary strain between center and periphery, between Castilla and Catalonia and The Basque Country, mainly. A process that will be partially and lightly reproduced in the case of Galicia. In that year the loss of Cuba and Puerto Rico gave the enough strengh to Catalan politicians to demand an autonomous government, oblying the central Government to recover the old institutions like Generalitat and Consel de Cent (AYALA F., 1997, 3; PAN-MONTOJO J., 1998, 163). The remote precedentes of these one are the “Sucession War” in 1715. Like the result of this war, the King Felipe V abolished the particularities of Catalonia trough a legal decision, The Decretos de Nueva Planta, because Catalonia has helped the other candidate of Habsburg Crown. (MADARIAGA S., 1979, 168; CAMBÓ , F., 1918, p.5 y PUJOL J., 1991, p. 11).

2 The Assembly of Municipalities created in february of 1999 have recovered and old dream of creating a new Basque territory trough the actual Autonomous communities of Tahe Basque Country, Navarra and the French Basque Country.
The gap between those political decisions and juridical and constitutional solutions oblies to close both posititons in an open performance that approachs both unity and diversity (ELAZAR D., 1990, 57), trying to keep a flexible equilibrium that permits to stop that centrifugal tendencies. Surely, the spirit of Constitution of 1978 (LUCAS VERDÚ P., 1985, 71) is valid, but it doesn’t mean at all that its letter were so. For that reason Spain and Spanish people could change the Constitutiona, but with the duty of getting the same support for a future text. From this perpective we’ll try to offer a vision of Spain through its nationalities and regions.

2. POLITICAL AND CONSTITUTIONAL BACKGROUND

The study of nationalities and regions needs a previous knowledge of the political background that contributed to its configuration. For that reason, we’ll make a brief comment of five decisive moments for the existence in Spain of the Autonomous System: transition to democracy, The 1978 Spanish Constitution, Agreements of 1981, Agreements of 1992 and governments of coalition in 1993 and 1996.

a) Transition to democracy: After the death of Franco in november of 1975 the transitional process to democracy began with the challenge of overcoming “the fear to fear” like the president Adolfo SUAREZ said in the public introduction of the Law for Political Reform in september of 1976 (LUCAS VERDÚ P., 1976, 118). Franco had developed a program of “national” homogenization where the Francoist conception of national unity implied the disappearance of cultural diversities. This was carried specially against multilingual character of Spain. This precedent has determined many controversial decisions and Laws in the actual Spanish democracy. For instance, The recent Law of Linguistic Policy of Catalonia recognizes literally that its meaning is owed to a “several factors, like political prosecution that they have suffered and the legal obligation of Castilian language”3.

At that moment democratic parties did not have a defined model for the type of decentralized state they broadly advocated. The slogan of this period was “Liberty, Amnisty and Autonomy”. The majority wanted some form of home rules for territorial organizations, but nobody declared clearly the degree of autonomy accepted for each one. The main tension was to decide opting for the model of the Second Republic of 1931 where only three territories, today nationalities, had got to pass an Autonomous Statute (HERRERO, 1993, 33) or, on the contrary, opting to generalize the model to all Spain (CLAVERO, 1983, 164). The final solution was in the middle of those options because if it’s true that all Spain become in a decentralized model, no all new Autonomous Communities had the same level of autonomy, but for checking it we have to analyze the 1978 Constitution.

3 Law 1/1998, of 7 of enero, Linguistic Policy (BOE N.º 36, 11 february). The development of this Law has suffered several problems, like a demand to Constitutional Suprem Court (Tribunal Constitucional) for inconstitutionality and, recently, the Supreme Court of Justice of Catalonia has stayed the application of two articles of the Decree 237/1998, of 8 of september, about measures for increasing the film offer traslated and subtitled into Catalan language.
b) The 1978 Constitution. The Constitution of 27th December declares in its second article that “recognizes and guarantees the right to autonomy of the nationalities and regions of which is composed, and the solidarity amongst them”. But, this is only one part, perhaps the most interesting for us now. The other face of the coin is the unity of the Spanish Nation, “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards”. This basic assertion is developed in the Title VIII (arts. 137-158).

This title designs an open model of decentralization inside a rigid coordinates, mainly the principles of unity, equality and solidarity. Article 138 calls for “ensuring the establishment and just economic balance between the different areas” and states that differences between the Statutes of Autonomy will not involve economic and social privileges. For that reason, we think that it’s not enough for the description of the model to assert it’s open, just opposite to a close model, otherwise we prefer the word “flexibility” for describing it, because with that idea we can deny the possibility of implementation any change or any reform of the Constitution which doesn’t attends to those basic principles.

What is most essential here is that the Constitution frames a three-tiered system including a new second tier regional government. In addition to the general, the central government, art. 137 allows for the organization of the country into “municipalities, provinces and Autonomous Communities”. It goes on to state that “all of this bodies shall enjoy self-government for the management of their respective interests”. Moreover, art. 143 restates the right of bordering provinces with “common “historic, cultural an economic characteristics” to form such self-governments in Autonomous Communities. This one will be recognized like the slow route to autonomy. The fast one is stated in art. 151, but really the second Temporary Disposition defined, impliedly, the subjects of this fast route: Catalonia, Basque country and Galicia. But the words nationalities and regions have dissapeared of this part of the Constitution. The final declaration of being a nationality or a regions submits to the text of Statute of Autonomy.

One of the characters of our Autonomus system is that the Constitution doesn’t design the map of Autonomous Communities, and even less the assignation of the title of nationalities and regions. The Constitution delegates in the political will expresed by the inhabitants of each nationality or region, or by their political representatives, the decision about the degree of self-government of their Autonomous Community. This decision isn’t definitive, because five years after having passed the Statute of Autonomy the Community could increase the level of competencies. The result has been described like an “imperfect federalism” (MORENO, 1994, 168).

In addition, the text of the 1978 Constitution reflects many of the tensions and political dilemmas which existed in the constitutional debate. At the same time it justify the ambiguity of many expresions, for instance the possibility of having differences in the Statutes of Autonomy (art. 138) or the clause “whitout prejudice to” so frecuent in the art. 149. Owed to this situation a serie of accords contributed to shape definitively the Autonomus State. Appart from the 1977 “Moncloa Pacts”, signed by all the political parties in the preconstitutional Parliament, and whose main target was of economic character, and whose main value was establishing the necessary consensus for drafting a
Constitution, we have to pay attention to the Agreements, specialized in autonomic issues, the agreements of 1981 and 1992.

c) The agreements of 1981. It was reached by the Accord of UCD, the government Party, and the major opposition party, the PSOE, intended to “harmonize” the uneven autonomic process. The precedent of this Pact was an Accord of “Experts” in territorial organizations.

The Pact of 1981 fixed, for first time, a map of Autonomous Communities and determined the level of competencies that they could enjoy. The legal result of that agreement was a Law, Ley Orgánica del Proceso Autonómico (LOAPA), was one of the biggest mistakes of the process of decentralization in Spain. LOAPA attempted to reduce some of the Autonomous Communities powers already negotiated and ratified in the Statutes of Autonomy, and to force Autonomous Communities Parliaments to seek central government approval for their laws. While stridently opposed by the Basques and Catalans they were unable to prevent enactment, but invoked a constitutional provision to delay implementation until a test before the Constitutional Tribunal. In August of 1983, the Court declared fourteen of LOAPA’s clauses to be unconstitutioinal, basically upholding pre-pact autonomy powers.

LOAPA provided for a number of principles of homogeneity: uniform regional elections, term limitations for regional legislators, subjection of regional governments to a constructive no-confidence vote upon petition of fifteen percent of each Assembly, limits on the size of Autonomous Communities Governments (ten members), regional supervision of provincial governments, provisions to transfer of national civil servants to...

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4 Vid. Informe de la Comisión de Expertos sobre Autonomías, Madrid, Centro de Estudios Constitucionales, 1981. The figure of Eduardo GARCÍA DE ENTERRÍA, professor of Administrative Law, guided all the works of that Commission of Experts. Their main advice to the Government was to lead all the autonomc process to the solw route, shaped in the article 143 of the Constitution.

5 The first point of The Autonomics Agreements of 1981 said: “The State will be organized territorially in the following Autonomous Communities: 1. Andalucía, with the provinces of Almería, Málaga, Granada, Jaén, Córdoba, Sevilla, Huelva and Cádiz. 2. Aragón, with the provinces of Zaragoza, Huesca and Teruel. 3. Asturias, with the province of Oviedo. 4. Baleares, with the province of Baleares, that includes the “Consejos Insulares” of Mallorca, Menorca and Ibiza-Formentera. 5. Canary Island, with the provinces of Santa Cruz de Tenerife and las Palmas de Gran Canaria, that includes the “Cabildos Insulares” of Tenerife, La Palma, Gomera, Hierro, Gran Canaria, Fuerteventura and Lanzarote. 6. Cantabria, with the province of Santander. 7. Castilla-La Mancha, with the provinces of Toledo, Ciudad Real, cuenca, Guadalajara and Albacete. 8. Castilla-León, with the provinces of Burgos, Soria, Segovia, Avila, León, Zamora, Salamanca, Valladolid and Palencia. 9. Cataluña, with the provinces of Barcelona, Tarragona, Lérida and Gerona. 10. Extremadura, with the provinces of Cáceres and Badajoz. 11. Galicia, with the provinces of La Coruña, Lugo, Orense and Pontevedra. 12. La Rioja, with the province of its same name. 13. Madrid, formed with the territory of its province. 14. Murcia, with the province of its same name. 15. País Valenciano, with the provinces of Castellón, Valencia and Alicante. 16. Basque Country, with the provinces of Alava, Guipúzcoa and Vizcaya. 17. Navarra”.

6 STC 76/1983, of 5 of August. The actors of that sentence were the Basque Government, the Basque Parliament, the Catalan Government of Generalitat, the Catalan Parliament and fifty Deputies of Central Parliament.
Autonomous Communities and harmonization of financing mechanisms for the territories. The part of LOAPA that survived the cut of Constitutional Court become LPA, Ley del Proceso Autonómico, enacted in October of 1983. Notwithstanding, apart from those critical points of the Law it served for maintaining overall unity (AGRANOFF, 1994, 71) something very important not only in that period of time, even now.

d) Agreements of 1992. The autonomic Pact of 1992 culminated the process of harmonization begun in 1981 (HERNÁNDEZ LAFUENTE, 1993, 135; RUIZ-HUERTA, 1993, 103). The major opposition party, the centre-right People’s Party, and PSOE, government party, agreed to transfer identical competencies in a number important of areas, including job training an education, to all Autonomus Communities of slow route (art. 143). The Pacts of 28 of february of 1992 detemined the enactment of a Law of transference of competencies to Autonomous Communities of article 143 of Constitution. The reform of twelve Statues of Autonomy culminated this phase where we can assert the final result isn’t as harmonized as it’s usually is presented (MUÑOZ MACHADO, 1992, 104).

e) Governments of coalition in 1993 and 1996. A feature of general policy like the composition of Parliament majority is going to be decisive for the role of Autonomous Communities at State. The general elections of 1993 and 1996 opened the door to nationalist parties, specially from Catalonia and the Basque Country to take part at the highest level of policy in Spain. It’s important to note that this situation of coupled governments isn’t connected to an ideology, right or left, notwithstanding to the need to reach a stable government of majority. Boths Pacts of Legislature, in 1993 with PSOE and in 1996 with PP, contains a serie of compromises that we could summarize in the break of the tendencies to harmonize the territorial map (LÓPEZ GUERRA, 1993, 75).

Here, public opinion realized more clearly than in past moments that we have different political subjects of all the decentralization process, not directly connected with the legal reflection at Constitution or Statutes of Autonomy. This gap helped to scholarships to introduce a new issue, symmetry and asymmetry. This elements try to change the nature of the game, but previously analysing both we’ll pay attention to the existence of nationalities and regions in Spain.

3. NACIONALITIES AND REGIONS IN THE SPANISH CONSTITUTION

The main purpose of this paragraph is the explanation of a singular description that Spanish Constitution uses for categorize future different Autonomous Communities. The first step is, for that reason, defending the coexistence between the legal-administrative category of Autonomous Communities and the political issue of nationalities and regions. Second, we’ll consider the coexistence between one State, one Nation-State like the second article of Constitution describes with a variety of nationalities and regions.

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3.1.- Frame of constitutional reception of nationalities and regions

The distinction between nationalities and regions appears in the first Bill of Constitution, prepared by the Commission on Constitutional Affairs and Public Liberties of Deputy Congress, dated 5th January of 1978, whose second article stated that “the Constitution is based on the unity of Spain and the solidarity among their people, and recognizes the right to self-government of nationalities and regions that are integrated therein”. That mention caused commotion in the public opinion for using it in a text that deals about one Spanish State, whose political form is parliamentary Monarchy, about an Spanish people who has sovereign power and about Spain that it’s set as a Social and Democratic State of Right (CORCUERA, 1992, 14). It’s important to note that in that text doesn’t appear any mention to Spanish Nation.

At the begining of political transition, the will of building a democratic integration including the different personalities of nationalities becomes in a central element of political life. The importance of nationalism and nationalities, worsen in Euskadi with the problem of terrorism and of the rest of territories that imitate Catalonia, Basque Country is on the base of a political language that speaks about Spain as Nations of Nations (PECES BARBA, 1978, 1902).

The first recognition of multinational character of Spain is in the Document about “nationalities and regions” submittd by the democratic oposition on 3rd February of 1977. That text concluded so: “Justice and political stability need a proper solution to the worse problem of the building of a State that admits national and regional plurality of Spain, that is a historical reality that political forces compromises to mantein and defend”.

In that frame, could be explained the reception of “nationalities and regions” by the government party, and its inclusion in the first Bills of Constitution.

But we can’t forget that of the three principles derived from art. 2, that which concerns the unity of the spanish nation is placed in a preferential position in respect with the rest, even autonomy, the autonomy of nationalities and regions. National unity is the foundation of the Constitution and consequently of the Spanish State as a political organization. From this, the unity of sovereingnity, that is, national sovereignties whitin the Spanish people, and as a consequence, the right to self-determination of the different peoples that may co-exist in the territory of the Spanish State.

At the same time, the notion of national unity involves the unity of the juridical system from the Constitution downward, without prejudice of the existence of autonomous subsystems and the relationships between these and the the Central State subject to Constituional rules. Economical unity is also implied, with freedom of

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movement for both goods and persons throughout the Territory and equal basic conditions in Constitutional rights and liberties. In this antagonic scenery we only can understand the constitutional reception of nationalities and regions.

3.2- The meaning of nationalities and regions

It’s not easy to give a brief explanation about the meaning of the terms “nationalities and regions” in Spanish Autonomous System. To begin with the expression “nationalities” we could quote the opinion of the actual Director of INAP, Spanish Public Administration Institute, a brilliant professor of constitutional Law, who summarizes the doctrinal positions about this issue in three: First, “nationality” like a concept very close to Nation, so Spain could be considered like a “Nation of Nations”. This opinion gives an important sociological base for becoming Spain in a federal State. Second, the meaning of “nationality” will be similar to “Region”, expressing the same sociological and political entity. And the third option, will present the concepto of “nationality” like a different to both “Nation” and “region”, really a tertium genus between Nation and Region, using AMBROSINI’s famous expression. The latter will contribute to build the theory of cultural nations, leaving apart the political dimension.

Apart from historical references to nationalities, v. gr. Austrian-Hungarian Empire or the former Soviet Union, where there were a problem of self-government of territories which claimed for a nationality, the concept of nationality gets worsen if it’s put together to the principle of nationalities of the XIX century.

According to the spirit of 1978 Constitution, not exactly the letter of this one, we could defend the characterisation of nationality like a “collective entity built by cultural and historical links and compatible with political unity integrated therein”.

If it’s difficult to give a characterisation of the meaning of an “nationality”, we can recognize that it’s less difficult to identify what are the nationalities in Spain. There are an important consensus to consider that Catalonia, the Basque Country and Galicia are nationalities. The problem appears when we read Autonomy Statutes, for instance Andalusia^9, Valencia^10, Canary Islands^11 or Aragon^12 Autonomies, where it’s stated that

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^10 Ley Orgánica 5/1982, of 1 July, Statute of Autonomy for Valencia (BOE n.º 164, 10 july). Art. 1: “Valencian people, historically organised as Kingdom of Valencia, it’s constituted in Autonomous Community, inside indissoluble unity of Spanish nation, as expression of its historical identity and in the implementation of the right of self-government that Constitution recognised to all nationality...”.

^11 Ley Orgánica 4/1996, of 30 of December, of Reform of L.O. 10/1982, of 10 of August, of Statute of Autonomy of Canary Islands. Art. 1: “Canary, as expression of its singular identity, and in the implementation of the self-government right that Constitution recognised to all nationality...”.

they are “nationalities”. Then, the question is How many nationalities we have in Spain, definitively? A hypothesis is the defence of existence of two classes of nationalities: One first class or “business class” occupied by Catalonia, Basque country and Galicia. And, a tourist class, whose occupants would be Andalusian, Valensian, Canarian and Aragon’s people.

We can’t admit it, and, what it’s most important, traditional nationalities will never admit it. At this phase of self-definition by Autonomous Communities of what means to be a nationality, probably, they have taken into account two elements: First, the meaning of history, that it’s recovered as a key instrument for legitimizing this attitude of being a nationality. Second, the will of changing the nature of the Autonomous Community, connected to the will of underlining the difference of its territory. In other words, comparative grievances or, simply, jealousy.

In this dissertation we have postponed, that not forgotten, to study the meaning of Regions. The concept of Regions appears like a natural base of building an Autonomous Community. The official notion of “regions” describes them as “bordered provinces with common historical, cultural and economic characteristics; insular territories o single provinces with historical regional entity”, (MAP 1993, 82), so they are connecting the slow route for becoming an Autonomous Community with the fact of being a “region”.

So the conclusion is that the fact of being characterised like a region doesn’t mean that they haven’t history (BLANCO VALDÉS, R., 1997, 62). Even, we could admit that if could quantity that feature we could get richer results in some territories designed like “regions” than in some “nationalities”. So far that, we think the question isn’t connected to the past, notwithstanding with the present, with actual attitudes and the will of distinctiveness.

3.3.- Consequences of being a nationality or a region

One major point of interest here is to discuss the influence of being a nationality or a region on the type of self-government they can enjoy. The question is if is there any real consequence, apart from the nominal problem, of being described like a nationality or like a Region. In this point we need to make a distinction between de facto or de iure perspective.

From de facto point of view, we could present a periodification of the evolution of the Spanish Autonomous System. In a first period (1978-1992) the competencial level of the a priori Nationalities, according to the Statutes of Autonomy, Catalonia, The Basque Country, Galicia, was higher than the rest territories, a priori Regions. In a middle point between them, we can find those Communities we situated in the category of quasi-nationalities (Andalusia, Valencia, Canary Islands) whose competencial ceiling was near full nationalities thanks to legal machinery who got to present like a normal process. I’m doing a mention to the doubtly legal autonomous
process of Andalusia\textsuperscript{13}, and the popular LOTRAVA and LOTRACA, Organic Laws that completed and increased the competencies transferred to Valencia and Canary Islands. We haven’t any proof of that conexión, but citizens of those nationalities enjoyed of a higher degree of autonomy. Then in this phase we could note important cleavages between them. The only possible explanation is not connected with external events to every Autonomy, but mainly to the own evolution of every Territory. It’s a mathematical question, if you begin first you could reach the aim first.

The situation begins to change when in 1992 twelve Autonomies receive a serie of competencies, for instance education, intelectual property, energy... Apart from Social Security, Police Services, Banks and Employment Services Agency we could defend an equalization between levels of competencies, like art. 148.2 implied. The conclusion is, from this empirical perspective, that the difference between “nationalities” and “regions” can’t be of degree of self-government, nevertheless of way of implementation of this same degree, according to peculiarities and feelings of nationalities.

From \textit{a iure} point of view, we have to admit a general position where it’s defended that no difference could be obtained from the title of being a nationality or a region (\textsc{Maiz}, 1996, 33; \textsc{Tomas y Valiente}, 1996, 515\textsuperscript{14}). Nevertheless, just in a contrary sense, there are an important sector of authors, mainly form the periphery of State, so from “nationalities” who defend a \textit{legal} or \textit{formal} conexión between being a nationality and enjoying of peculiar consequences (\textsc{Castsells} 1997, 114; \textsc{Ferret i Jacas} 1995, 165; \textsc{Herrero} 1998, 153).

We think, according to majority, that it’s impossible to reach a legal conexión of being a nationality with enjoying a peculiar status, being a distinct entity. The reason is that Constitutional Order hasn’t determinated what nationalities exist in Spain and what are their characteristics. In spite of that, we have a rule compatible with the material existence of that nationalities. \textit{Ubi lex non distinguit, nec non distinguere debemus.}

From the above considerations it can be concluded that autonomy appears in the constitutional implementation as the right to exercise a limited self-government, that is, within the frame of certain competencies, every day more and more with an important risk of becoming the Central State in an historical memory, and having present the principles of unity and solidarity. This right of self-government is far of being determined for an ambiguous title of nationality or region. It’s only connected with the principle of autonomy, common for all the Autonomous Communities. Nevertheless, the three Communities having higher collective conscience, Catalonia, Galicia and the Basque Country, can use political consequences of feeling inside like a nation or nationality, according to constitutiional expression, for reach the highest level of autonomy.

\textsuperscript{13} Almeria, one of its nine province, didn’t get to pass the requirements of the art. 151 of Constitution. There it wasn’t got the absolute majority of votes. A reform of the Law of Referendum admitted that members of the Deputy Congress and Senate could substitute that failure.

\textsuperscript{14} \textsc{VV.AA.} (1996): \textit{Ante el futuro del Senado}, Barcelona, Generalitat de Catalunya, Institut d’Estudis Autonòmics.
Furthermore, although we can’t find in the Constitution a precise answer to the question connected with all past reflections, if Spain is a Nation of Nations, a plurinational State, what we can find is that the constitutional legislator was conscious of the cultural pluralism of Spain, v. gr. art. 2, ar. 3, art. 138, art. 149.1.8, D.A. 1ª, D. T. 2ª. The interpretation of that fact implies increasing the area of analysis, using concepts like “differential fact”, asymmetry or dysymmetry.

4. LAST BUT NON LEAST: “ASYMMETRY” IN THE SPANISH AUTONOMOUS SYSTEM

Title VIII of 1978 Constitution sets the different ways of access to autonomy, giving specific content to the so called “legal provision principle” and making possible a relative heterogeneity in the degree of self-government and the volume of competences for the seventeen Autonomous Communities and two Autonomous Cities (Ceuta and Melilla). At the same time, no obstacle is set however for all Autonomous Communities to eventually achieve the same degree of autonomy (VIVER Pi-SUNYER, 1991, 11). The Constitution marks ways and competence ceilings at the start, but does not define the resulting model.

Finally, the problem to resolve is: ¿How is it articulated that special cohabitation between nationalities, regions and one State? The balance has been very difficult and now, we live in a relative calm that we use for thinking and offering ideas to our politicians, theirs is, at the end, the final decision. So, we can increase the sphere of researching, including in it not only the literally expresions that Constitution contains, nevertheless other basic concepts like “differential fact”, asymmetry and dysymmetry. That will be the last item of our Paper.

The expression “differential facts” could be dated in the period of Restauration (AJA 1996, 158) , mainly at the end of XIX century. Forgotten, by force, during more than forty years was recovered with a big strength in the transition to democracy helping to introduce the thesis of decentralization in Spain. Its political nature, in origin, has changed incorporating a legal dose that permits it to claim new dimensions of implementation. For speaking about the existence of a “differential fact” we have to find, connected to it a serie of characteristics, that briefly we could summarize in :

A) Permanent: A constant presence in the history of a territory (TOMÁS Y VALIENTE 1997, 23). That circumstance presents the “differential fact” as an structural element of a autonomous territory so in a retrospective point of view, ex ante, as in a prospective one, ex post, by its will of continueing in future.

B) To be based on a constituional background (LÓPEZ AGUILAR 1997, 60). The “differential fact” must be derivated from the Constitution. The main consequence of this one is that the “differential fact” will get the protection that Constitution offers to all the rule contained in it.

C) Singularity and a exceptional character of the fact that constitutes the “Differential fact”. That means that “differential fact” can’t be exported, neither
generalised to other territories. So, “differential fact” refers to “some characteristics that we can’t find in the whole Spain or in other Autonomies” (CLUB ARNAU 1983, 21).

D) Relative character. The existence of a “differential fact” only can be appreciated like result of an exercise of subjective comparation between a common reality and a differential one. In other words, being different always implies a relation, being different to other.

E) Qualitative character. The difficulty to measure the “differential fact” is, really, a direct consequence of all previous notes. The existence of a “differential fact” can’t quantified, more accurately it could be considered like a hamletian question, to be or not to be.

From the above characterisation it can be concluded that the “differential fact” is a circumstance or a serie of different features of an Autonomous Community respect to others, constant in its history, a symbolic reference of the will of their inhabitants and favoured with a constitutionally recognition, being a limit to uniformity.

And the following question is to identify what are the “differential facts” that connecting to that definition. Spain has a numeros clausus of “differential facts”:

A) “The cultural-linguistic differential fact”. It’s stated at Constitution (art. 3). The Autonomous Communities that have the titularity of that “differential fact” are Catalonia, The Basque Country, Navarra, Galicia, Valencia and Illes Balears. The linguistic cooficiality is the major proof of the existence of this “differential fact”.

B) “The juridical-foreal differential fact”, stated in D.A. 1ª CE and developed in its civil version in art. 149.1.8. It’s the direct consequence of the consolidation of the history and historical rights at the Constitution. The Autonomous Communities that we consider titular of this one are: The Basque Country and Navarra. In the case of Catalonia, Illes Balears, Aragón, Extremadura and Galicia, although they enjoy of peculiarities in the normative area, designed in same cases even like “fueros”15, we can’t define it like authentic “fueros” of historical territories. The first Additional Disposition of Constitution stated that “Constitution protects and respects the historical rights of foral territories”. Abandoning the possibility of defending “tacit historical rights” (HERRERO DE MIÑÓN 1998, 152), the condition of foral territory is only applied to, according to historical and legislative precedents quoted in the D.A. 1ª, to Navarra, Álava, Guipúzcoa and Vizcaya (FERNÁNDEZ, T. R. 1985, 226). The new territorial structure oblige to change the presentation of the last three provinces in one Autonomous Community, The Basque Country. So, in conclusion the “juridical-foreal differential fact” is connected to Autonomous Communities of Navarra and the Basque Country.

C) The “economic and fiscal differential fact”. Recognised in the D.A. 1ª and 3ª of Constitution. The Autonomies that have this one are: The

15 Remember the Fuero of Baylío, Extremadura.
Basque Country -Concierto Económico-, Navarra -Convenio Económico- and Canary Islands -Régimen Económico y Fiscal-. This is one of the most conflictive ones, owed to the conexión between money and jury, and the observation of that change for all citizens.

We can’t finish our dissertation about “differential facts” with that identification, because according to the nature of this one, we have to add to that singularities the will of the inhabitants of the Autonomous Communities, the feeling of being different because they have all of these features, or, just in a contrary sense, because they feel, firstly, different and, then, they can express that differences through those features. This second thesis was defended by PRAT DE LA RIBA (1917, 102).

In addition to the “differential fact” we can note a neologism, asymmetry, with we refer to the consequences and manifestations, de facto and de iure, of the constitutional recognition of these particularities of some Autonomous Communities. The main are the special rule for insularity, the special ways of paying taxes in Navarra and the Basque Country, the qualification for Judges that know a coofficial language or are specialized in foral Law, the quotas for radio or cinema for transmitting in a coofficial language, and the special treatment applied to that Autonomies because they have got a representation, through national parties, at the Senate and at the Deputy Congress.

Far away from these asymmetries, we can find in the Spanish political scenery other expressions inspired in the "differential facts", but not really connected to them. We are dealing about the aims of implementation, from the “differential fact”, of a global status that’d prevail some Communities respect others. This situation will be described like dysymmetry.

Actually, Mass Media and Public opinion are occupied with that dysymmetries whose origin we can situate in a triple-nationalist front, Catalan front and Basque front. Let’s see both.

**Plurinationalities’ front:** The different meetings held by main nationalist parties (BNG, EAJ-PNV, CiU) in Barcelona, Vitoria and Santiago through 1998 helped to fix a common position of the peripheral forces against the central parties. The target of those meetings was to fill “a deep reflection about a cultural policy according to the recognition of their national realities”\(^\text{17}\). Their main proposal is to develop a “second reading” of Constitucion, a idea defended especially by Catalan forces, where could guarantee a recognition of their “differential facts”. One of theirs proposals is to give the qualification of “oficial” to catalan, galician and euskera at European level, and consequently in EU Institutions. The different consequences that it implies are: the right of the Galicia, Basque Country and Catalonia’s citizens could access in their own languages to all the information about Policy and Legislation of EU; the right to fill in documents in their own languages to EU Institutions: the incorporation of euskera,

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\(^{16}\) The explanation is connected to the prefix used in each expression. Asymmetry begins with a-, that refers to absence of one characteristic, in this case the absence of symmetry, in a neutral sense. But, just in the opposite side, we have dysymmetry, where the prefix dys- means a fault in the existence of symmetry, with a negative acceptance or pejorative sense.

galician and catalan language to all the educational programs of EU or the increase of programs in these languages in all EU.

*Basque front:* The Covenant of Estella/Lizarra is the main point of reference for speaking about the new aims of Basque nationalism. Then the second event is the constitution of Assembly of Municipalities of the Basque Country, in all its demanded dimension. The nationalist conception of Basque Country divide it in three administrative parts two of them in Spain, the Basque Autonomous Community and Navarre, and one in France, the Basque territories of the Department of Pyrénées Atlantiques.

Inspired in the peace process of Northern Ireland it was proposed a accord for restoring the peace at the Basque Country. The lights requirements for stabilizing the negotiation have concluded in a declaration of future abandon of violence by ETA terrorist movement. But, the main proposal of Estella Accord is the decisive position in order to get a referendum of self-determination, “where all the citizens of Heuskal herria could say the last word and at the same time the implied States respect their decisions.”

*Catalan front:* Catalonia has given a new direction to their claims, situating them in a near position to Basque Country, something new if we make an historical comparation (NUÑEZ SEIXAS 1993, 131). The self-determination claims have appeared, firstly in a proposal of the Catalan Autonomous Parliament of october of 1998:

“El Parlament de Catalunya en el marc de la celebració del cinquante aniversari de la Declaració universal del drets humans, ratifica un cop més el dret del poble cataà a determinar lliurement el seu futur com a poble, en pau, democracia i solidaritat.”

The last item of this new attitude of Catalan forces is the declaration of the President of Catalan Government, Jordi Pujol, in order to apply a second reading of Constituiton. This proposal was prepared four years ago for the Deam of Pompeu Fabra University, Dr. ARGULLOL MURGADAS. Without Reform Constitution or Statutes of Autonomy they propose to get a high ceiling of autonomy that’d include a solely Administration in Catalonia, competences in Justice Administration, foreign affairs, technology, research and increasing the level about normative power.

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18 The Basque Autonomous Community covers 7, 261 Km²; its total population was in 1991 2,159,000 inhabitants -1,184,000 in Bizcaia with its capital is Bilbao, 697,000 in Guipúzcoa with its capital is San Sebastián and 278,000 in Alava with its capital is Vitoria -. The population of navarra is 523,000 inhabitants. The French Region of Aquitaine includes in one of its five Departments, the Pyrenées Atlantiques, the three northern territories of Labourd (Lapurdi), Basse Navarre (Nafarroa Beherea) and Soule (Zuberoa) with cover an area of 2,962 Km² and whose population is 250,000 inhabitants. *Vid. LETAMENDIA, 1997, 40.*

19 We suppose the reference is to Spain and France, mainly.


21 “The Catalan parliament in the frame of 50th Anniversary of Universal Rights Delaration, ratify the right of catalan people to determinate with freedom its future like a people in peace, democracy and solidarity”.

From above considerations we have to add, that effectively Article 138 calls for “ensuring the establishment and just economic balance between the different areas” and states that differences between the Statutes of Autonomy will not involve economic and social privileges. *Sensu contrario*, differences are perfectly constitutional in Spain. But if we develop this possibility passing the limits we could break the constitutional consensus.

The risk of break constitutional consensus can be avoided by a new agreement about the pattern of decentralization for the inmediate future (PÉREZ DE ARMÍNÁN, 1998, 9). This Pact has to be negociated between major parties of right-center and left-center, but at the same time nationalities parties may have part in it, breaking the tradition of the previous Agreements of 1981 and 1992. It would be very difficult, but not impossible. It will avoid dangerous situation like we have seen in 1998, with the Agreement of Estella, or the Declarations of Barcelona, Vitoria and Santiago and its provocations to unity and genral stability.

So, in conclusion, from this distinction between symmetry and dyssymetry we’d tried to offer a scent to resolve the decisive question about the degree of asymmetry that Spain can admit (KEATING, 1996, 218). If we have no doubt about Spain has asymmetrical frame we can’t fix accurately it. But we can deny this asymetrical feature to many expressions that hide themselves behind that constitutional appearence.

**5. CONCLUSIONS**

The Spanish Constitution of 1978 made it possible to configurate a complex model of State, which differed widely from the centralist tradition which was foremost from as far the 18th Century, without prejudice of remakable brief experiences such as that derived from the First Republican Constitution of 1873, Catalan Mancomunitat of 1914 or Republican Constitution of 1931. In fact, the new design for the territorial organization of the State have even changed from the model started to take form during the years of political transition.

Spain is a national State made up of nationalities and regions (MORENO L., 1997a, 65) legally performed in Autonomous Communities. The basic legal clause in order to understand it, is the second article of 1978 Constitution: “The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, an solidarity amongst them all”.

Several questions are ever present in the Constitutional debates: the pluri-national reality of the Spanish State and the need to choose a formula for coupling the presence of nationalities and regions and a Nation-State. We can’t admit that the existence of different routes of acces to autonomy and of several competence ceilings may give to three Autonomus Communities (Catalonia, Galicia, Basque Country) prevalence over the rest. At the same time, political implementation is obliged to reach a satisfactory and reasonable application of “differential facts” in all the features of the
routine where they can exist. This a duty to preserve a model that only from a functional point of view can be described like a federal system.

In other words, the “differential fact” of Catalonia, Basque Country, Navarra and the insularity of Canary Islands and Illes Balears should be guaranteed as originators of the model. According to that reason, we’ve tried to find a formula to admit these heterogeneities like non discriminatives for the rest of Autonomous Communities and their inhabitants.

Really, this is a problem of “minds” not of Constitutions, but if it’s very difficult to reform the Constitutiona or to change a Law, we admit that to change the way of thinking or feeling it’s really near an utopia. In the middle point of that two options, we find political solutions like the “asymmetrical performance” of a decentralization model. The proper fitting of territories with “differential facts” should be provided through different measures in institutional, linguistic, mass media, registration areas. These asymmetries will be presented like “consequences derived from the constitutional recognition of specific particularities of a numeros clausus of Autonomous Communities (fact from it’s derivated legitimate singularities of Statues of autonomy)”.

In very different manner, we can’t mix these asymmetries with “ a wish of implementation, from these singularities, of a type of global legal status of difference favourable to a three Autonous Communities against the rest of Communities”. The latter one have been described like “dysymmetries”.

At the end, we are conscious that the political decentralization provided in the 1978 Constitution and in the several Autonomous Statues is under construction process. Thinking in that inmediate future, we have discussed about these posibilities and, specially, about the risks of every one.

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