

SPAIN: A MULTI NATIONAL FEDERATION IN DISGUISE?

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INTRODUCTION

Two terms in the title I have been asked to address are sources of controversy. First is the application of the term “multinational” to Spain, and the second is the applications of the label “federation” to Spain.

The debates over the “multinational” character of Spain arise from the history of the tension between multiple ethno-territorial cleavages and of centralizing nation-building. Until the eighteenth century, Spain was made up of various kingdoms and constituted a union state rather than a unitary state (Moreno 2007, p. 89, Harty 2005, p. 325). The composite monarchy was a loose dynastic union entailing variations in the relationships and degrees of autonomy of the constituent parts. These variations conditioned subsequent programs of nation-building right down to the twentieth century, fostering a tension between Spanish majority nationalism and the regional nationalisms of such groups as those in Catalonia, the Basque Country and Galicia (Moreno 2001, pp. 36-77; Moreno 2007, pp. 88-95). Despite the efforts of the Franco dictatorship (1939-75) to suppress and extirpate all forms of regionalism and sub-state nationalism, when after his death the transitional process to democracy began in earnest, two different conceptions had to be reconciled: “on the one hand the idea of an indivisible Spanish nation state, and on the other, the notion that plural Spain was an ensemble of diverse peoples, historic nationalities and regions” (Moreno 2007, p. 95). Thus, at that point Spain could be

described as “multinational” in the sense of being historically “a nation of nations” (Moreno 2007, p. 88).

The accommodation of these two forms of nationalism in the 1978 constitution has been labelled the *Estado de las Autonomías* (State of Autonomies). This leads us to the debate over whether this solution created a “federation” or not. It is noteworthy that nowhere in that constitution do the words “federal” or “federation” occur and the term “state” refers in Spain to the overall polity rather than the components. Nor does the word “federal” appear in any subsequent legislation passed by the Spanish Parliament. Numerous authors, therefore, have been at pains to point out that Spain is not a federation although it incorporates some federal features. Harty declares: “Spain is not a federation in name nor is it a state made up of ‘constituent units,’ as is the case with most federations, but it does share many of the institutional features of federal states” (Harty 2007, p. 327). Mireia Grau i Creus entitles a chapter on Spain in Ute Wachendorfer-Schmidt’s book on *Federalism and Political Performance* “Spain: incomplete federalism” (Grau i Creus 2000). Argullol and Bernadí state that the 1978 constitution “despite not having a federal name or nature, has allowed a decentralization of political responsibilities that is far superior to that of some nominally federal countries” (Argullol and Bernadí 2006, p. 239). López-Laborda, Martínez-Vázquez and Monasterio describe Spain simply as “a unitary country with most of the features of a federation” (López-Laborda et al 2007, p. 288). Aldecoa and Cornago say “Although not formally a federal country, Spain, the so-called State of the Autonomies, is a highly decentralized political system” (Aldecoa and Cornago 2008, p. 241).

A number of arguments have been advanced to support the claim that Spain is not fully a federation. Mireia Grau i Creus declares: “The degree of federalism may in general be measured according to two factors: the degree of self-government of the subnational entities that make up the state; and the degree to which those entities participate in federal policy processes (Moreno 1997: 141). In Spain, although the powers of the *Comunidades Autónomas* (CAs) have increased,

their participation in central government policy-making processes is weak and very poorly structured. Accordingly, Spain may not be considered to be a completely federal state” (Grau i Creus 2000, p. 58). Others, relying on K.C. Wheare’s relatively restricted definition of federal government as a principle (Wheare 1963, pp. 1-14) have noted the form of distribution of powers relying heavily on negotiation of Statutes of Autonomy, the financial dependence of most of the Autonomous Communities, and the weakness of the Senate as a chamber of territorial representation for the Autonomous Communities as evidence that Wheare’s criteria are not met. *The Economist*, recently assessing whether devolution in Spain has gone too far, went on to suggest: “It would have been easier for all concerned if Spain had adopted federalism in 1978. That would have set clear rules and aligned responsibilities for taxing and spending. The Senate could have become a place where regions were formally represented and could settle their differences akin to Germany’s Bundesrat,” (*Economist* 2008, p. 11).

But while many, usually taking a relatively restrictive definition of a federation, have emphasized that Spain is not a federation, others taking a broader definition have argued that Spain in practice is virtually a federation, or at the very least a quasi-federation. Indeed Arganoff and Gallarín (1997, pp. 1-3), Börzel (2000, p.17), and Aldecoa and Cornago (2008, p. 241) describe Spain as increasingly federal if not in name, or at least as a “quasi-federation.” Luis Moreno noting that there are variations among federations and that there is no single ideal model of federation, identifies six generally accepted basic criteria for federations and finds that Spain would qualify. He concludes: “Spain could well be considered as a multinational federation in disguise where the joint action between the two main governmental tiers (central and regional) needs further consolidation” (Moreno 2007, pp. 95-7, at p. 96).

What are we to make of this range of views about the character of the Spanish *Estado de las Autonomías*? In order to reach a conclusion we need to undertake two steps. The first is to clarify our definition of a federation. Then the second is to

examine and assess the Spanish State of Autonomies as it has developed since 1978 in relation to that definition.

DEFINING “FEDERATION”

There has been much scholarly debate about the definition of federalism. Some, such as K.C. Wheare, have defined federal government in a narrow and restricted sense (Wheare 1963, pp. 1-14). This may have the advantage of precision but its application may be extremely limited. Indeed, virtually no federation today, even the United States upon which Wheare’s definition was originally based, would fully meet his criteria requiring the independence of each level of government in its own sphere. Others such as Riker and Elazar have adopted broad inclusive definitions to encompass a fairly wide range of political systems (Riker 1975; Elazar 1987). While this may have less precision, it has the advantage of being applicable to a reasonable range of examples for purposes of analysis and comparison, and on that score is in my view preferable.

Generally in the debate about “federalism” as a term it has been widely used as both a normative idea and as a descriptive category for a certain set of political institutions. For the sake of clarity I would suggest that we should distinguish three terms: “federalism,” “federal political systems” and “federations.”

In this distinction, “federalism” is used basically not as a descriptive but as a *normative* term. It refers to the advocacy of multi-tiered government combining elements of both shared rule and regional self-rule. It is based on the presumed value and validity of combining unity and diversity, i.e. of accommodating, preserving and promoting distinct political identities within a larger political union. The essence of federalism as a normative principle lies in the value of perpetuating both union and non-centralization at the same time.

“Federal political systems” and “federations,” on the other hand, are *descriptive* terms applying to particular forms of political organization. The former refers to a broad category of political systems in which, by contrast with the single central source of political and legal authority in unitary systems, there are two or more levels of government thus combining elements of collaborative partnership, i.e. *shared rule*, with autonomy for the governments of the constituent units, i.e. *regional self-rule*. The broad genus of federal political systems encompasses a broad spectrum of more specific non-unitary forms ranging from “quasi-federations” and “federations” to confederations, federacies, associated states, condominiums, leagues, and joint functional authorities (Elazar 1987; Watts 2008, pp. 8-18). As in a spectrum, the categories are not sharply delineated, but may shade into one another at the margins. Within the category of federal political systems, there may also be hybrids (Watts 2008, pp. 8, 11). An example is the European Union, which although originally a basically confederal arrangement, has in recent years incorporated some of the features of a federation. Another form of hybrid is that of quasi-federations which predominantly have the characteristics of a federation but which may include some features more typical of unitary systems. The original constitutions of Canada (1867), India (1950) and South Africa (1996) are examples.

Within the broad genus of federal political systems, “federations” represent a particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other. In federations each order of government has sovereign powers derived from the constitution rather than from another level of government. This contrasts for example with decentralized unitary systems in which no matter how decentralized the constituent units derive their authority ultimately from the central government. Federations also contrast with confederations in which the central government derives its authority from the constituent units. A federation may then be defined as a “compound polity, combining a strong central government and strong constituent units, each possessing powers delegated to it by the people through a constitution, and each empowered to deal directly with its citizens in the exercise of its legislative,

administrative and taxing powers, and each with major institutions directly elected by the citizens” (Watts 2008, p. 10).

From this definition six generally common structural characteristics follow in typifying federations as a specific form of federal political system (Watts 2008, p.9):

- at least two orders of government, one for the federation as a whole, and the other for the constituent regional units, each acting directly on its citizens;
- a formal constitutional distribution of legislative and executive authority and allocation of revenue resources between the two orders of government ensuring some areas of genuine autonomy for each order;
- provision for the representation of distinct regional views within the federal policy-making institutions, usually including some form of federal second legislative chamber;
- a supreme written constitution entrenched so that it is not unilaterally amendable by one order of government, such as requiring the consent of a significant proportion of the constituent units or special procedures for amendment;
- an umpire (in the form of courts, provisions for referendums, or a second federal chamber with special powers) to adjudicate disputes and interpret the constitution;
- processes and institutions to facilitate intergovernmental collaboration for those areas where government responsibilities are shared or inevitably overlap.

On the basis of the definition and the associated structural features that I have suggested, it is possible to identify in the contemporary world (apart from Spain) some 27 countries that are federations, claim to be federations, or exhibit most of the characteristics of a federation. Of these, in operation some six are probably more accurately described as quasi-federations (South Africa, Russia, Argentina, Malaysia, Venezuela and Comoros), one (the United Arab Emirates) as a hybrid of

federation and confederation, four (Bosnia Herzegovina, Sudan, Iraq and the Democratic Republic of Congo) as transitional incomplete post-conflict federal experiments (Watts 2008, pp. 13-14). This leaves some 16 (excluding Spain) that might be described as full-fledged federations. I should add, however, that what is important is not so much how they are classified, as how well the particular institutional form operates effectively in response to the particular circumstances of their own societies.

Four further points need to be noted. First, there is an important distinction to be recognized between constitutional form and operational reality. In many political systems political practice has transformed the way the constitution operates. In Canada and India, for example, the initial constitutions were clearly quasi-federal, containing some overriding central powers more typical of unitary systems. But in Canada these powers, while still formally contained in the constitution, have by convention fallen into complete disuse for more than half a century. In India, although some of the overriding central powers are still employed occasionally, their use has been substantially moderated, and constitutional reality has come more closely to approximate that of a full-fledged federation. Thus, to assess and categorize federal political systems in general and federations in particular, reference merely to constitutional texts is insufficient. It is essential to examine also operational practice.

Second, while knowledge about the structural character of a federation is important in assessing its character, equally important is examining the nature of its political processes. Significant characteristics of federal processes include a strong predisposition to democracy since federations presume the voluntary consent of the citizens in the constituent units; non-centralization as a principle expressed through multiple centres of political decision-making; open political bargaining as a major feature of the way in which political decisions are arrived at; the operation of checks and balances to avoid the concentration of political power; and a respect for constitutionalism and the rule of law, since each order of government derives its authority from the constitution.

Third, there is sometimes a mistaken notion that to be a genuine federation it must have been created out of pre-existing independent constituent units. A number of analysts have noted, however, that federations can be created either by a process of aggregation of previously distinct units or by devolution from a previously unitary system (Friedrich 1968), or as Alfred Stepan (2004, 33-7) has more recently put it, by the “coming together” of formerly separate units or the “holding together” of regions in a formerly unitary polity. Federations have in fact, been created in three different ways (Watts 2008, p. 65). One is the aggregation of formerly separate units. The United States, Switzerland and Australia are classic examples. A second pattern is through devolution from a previously unitary regime. Examples of this pattern are Belgium, Germany (after the Third Reich), and Nigeria. A third pattern has been a combination of these two processes, Canada and India providing major examples. The creation of the Canadian federation involved a devolution to two new provinces (Ontario and Quebec) created from the previous single province of Canada and the addition of two previously separate colonies, New Brunswick and Nova Scotia. The Indian constitution of 1950 involved both devolution to states that had previously been provinces, and the incorporation of the previously separate princely states into the new federation. The different paths have often affected the character of the resulting federation, but common to them all has been the eventual establishment, as a result of political negotiation, of a compound polity in which each of the different orders of government derives its authority from a supreme constitution rather than from another level of government.

Fourth, while certain structural features and political processes common to most federations can be identified, federations have exhibited many variations in the application of federation as a political form. There is no single “ideal” or “pure” form of federation. Among the variations that can be identified in federations are:

- the degree and distribution of cultural or even national diversity that they attempt to reconcile;
- their creation by aggregation of constituent units, devolution to constituent units, or both processes;

- the recognition by the constitution of two, three or more orders (tiers) of government;
- differences in the number, relative sizes and symmetry or asymmetry of the constituent units;
- the form and scope of the distribution of legislative and administrative responsibility among governments;
- the form and scope of the taxing powers and financial resources allocated to each order of government;
- the degree of political centralization or non-centralization and of economic integration;
- the degree of symmetry or asymmetry in the powers of the constituent units;
- the character and composition of their federative central institutions (republican or monarchical, presidential/congressional or parliamentary, role of second chamber, etc.);
- the specific processes for initiating and ratifying constitutional amendments;
- the processes and institutions for resolving conflicts (use of courts, referendums, or federal second chambers);
- the formal and informal processes and institutions for facilitating collaboration between interdependent governments;
- the roles of federal and constituent unit governments in the conduct of international relations.

The fact that there are such variations among federations needs to be recognized when considering whether the particular institutional form and practice of the Spanish Estado de las Autonomías can be classified as a federation in disguise.

THE CHARACTER OF THE SPANISH ESTADO DE LAS AUTONOMÍAS

Let us now turn to examining comparatively the extent to which the institutions and practice of the Spanish *Estado de las Autonomías* fits our definition of a federation.

At the outset I would be emphasizing two points. First, the significance of such an examination is not in considering such a category as superior to others. Rather it is in helping us to understand the nature of the Spanish political institutions and processes and the extent to which they accommodate the particular social and political circumstances of the multinational nation of nations on which they are based (Moreno 2007, pp. 88-9, 98-101).

Second, account must be taken of the fact that the Spanish *Estado de las Autonomías* has been undergoing a continuous inductive evolution since 1978, step by step, as a result of continued political bargaining (Moreno 2007, p. 87; Agranoff and Gallarín, 1997, pp. 1-3, 18-19; Argullo and Bernardí 2006, pp. 253-9). Over the period since 1978 the financial arrangements for the Autonomous Communities have been modified significantly several times, most notably in 1986, 1992, 1996 and 2001 (López-Laboda et al, 2007, p. 206). Furthermore, and as recently as during the past year a new Statute of Autonomy extending further the devolution of powers to Catalonia was negotiated.

A Federal Society

Before examining the institutional character of the current Spanish governmental regime, it is worth considering how federal is the nature of the Spanish society on which these institutions are based. In previous writings I have emphasized the importance of attempting to understand the interaction between a federal society, a federal constitution and a federal government (Watts 2008, pp. 19-23). Consequently, in assessing how federal the constitution and governmental regime in Spain are, we need to consider, at least briefly, how federal Spanish society is, i.e. how far it exhibits concurrent pressures for unity and diversity. Here it seems to me that Luis Moreno has made a strong case for the federal character of

Spanish society both in his earlier book *The Federalization of Spain* (2001), and in his more recent article, “Federalization in Multinational Spain” (2007). He describes Spain as a “historical nation of nations” (2007, pp. 88-9) and in both works develops the concept of “multiple ethno-territorial concurrence” and dual identities” within Spain (2001, pp. 90-104; 2007, pp.97-98). He provides statistical evidence of the degree to which citizens display a dual identity supporting both the overall state and the sub-state nations and regions, even in Catalonia and the Basque Country (2001, pp. 110-126; 2007, p. 98). It would appear that “Spanish citizens generally feel loyalty to both orders of government without perceiving this dual loyalty as contradictory” (Aldecoa and Cornago 2005, p. 243). At the same time, it is clear that there is a variation in the strength of the sub-national and regional identities (Moreno 2001, p. 115), with Catalonia and the Basque Country particularly leading the pressure for sub-national autonomy. This variation has been an important factor in the asymmetrical character of the distribution of powers among governments within Spain since 1978 (Argullol and Bernadí 2006, pp. 252-3). Clearly then, Spain as a society, with its concurrent dual pressures for *both* unity and diversity is one that is supportive of federal political organization.

Shared Rule and Sub-national self-rule

Turning to the consideration of Spain’s constitutional and governmental character, how, far does it exhibit the major characteristic of federal political systems generally, the combination of “shared rule” and “regional self-rule”? It is widely recognized that the Spanish *Estado de las Autonomías* has developed a high degree of regional self-rule. Despite some degree of asymmetry, the process of evolving ‘home-rule-all-round’ has evolved over time into one in which all the Autonomous Communities possess a considerable degree of self-rule. Indeed, in comparison with some federations elsewhere, although precise measurement of decentralization requires consideration of many factors, it could be argued that Spain has higher degree of overall decentralization than Venezuela, Pakistan, Malaysia, Nigeria, Argentina, Mexico, Russia, Brazil, Austria and Australia (Watts 2008, p. 177). Indeed, assessed in relation to federations elsewhere in terms of

non-centralization Spain would rank roughly with Germany, the United States and India although substantially less decentralized than Belgium, Canada and Switzerland.

In terms of shared rule through common institutions, the constitution has not only emphasized the indissoluble unity of the Spanish nation (Article 2), but established strong central institutions with a cabinet and legislature directly based upon and acting upon the electorate to deal with matters of common concern. Some analysts have pointed to weaknesses in the realm of the second federal legislative chamber and in the processes of intergovernmental relations (Moreno 2001, pp. 134-5, 139-43) (to which I will return later). Nevertheless, it is clear that in broad terms the *Estado de las Autonomías* has come to involve a combination of *both* sub-national self-rule *and* central shared-rule (Agranoff and Gallarón 1997, pp. 3-19). Clearly then Spain fits within the broad category of “federal political systems.” To what extent then does it fit into that more precise category among federal political systems of “federations”? I shall examine comparatively the extent to which the *Estado de las Autonomías* in operation has come to exhibit the six structural characteristics of federations.

At least two constitutionally established orders of government

Most federations have two constitutionally established orders of government, although some constitutions of federations formally establish additional tiers. For example, the constitutions of Brazil, Venezuela and South Africa recognize local governments as a full-fledged third order of government with their powers stipulated in the constitution. Some other constitutions of federations, notably Germany, India (since amendments in 1992), Nigeria in its 1999 constitution, and Switzerland in its new constitution of 1999, give considerable recognition formally in the constitution to the position and power of local governments. Otherwise, all federations in their constitutions have formally recognized at least two orders of government, federal and regional.

The Spanish constitution provides under Article 137 that “the State is organized territorially into municipalities, provinces and any Autonomous Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests.” Thus, including the central government, there are in fact four orders of government constitutionally recognized. Institutional arrangements are set out in the constitution framing the systems of autonomy and interdependence of the Autonomous Communities. There are three different ways in which a territory may become an Autonomous Community (through Transitory Provision No. 2, Article 143, or Article 151) hence the asymmetry among Autonomous Communities. There are currently 19 Autonomous Communities in Spain, two of which, Ceuta and Melilla established in 1995, are located on the north coast of Morocco, each having an Autonomy Statute that was approved by the Spanish Cortes. In a sense then the autonomy of each depends on parliamentary authority, but they are established under procedures prescribed in the constitution. The Autonomy Statutes set out the constitutional distribution of powers provided for in Articles 148, 149 and 150 of the constitution (Harty 2005, pp. 327-9; Agranoff and Gallerín 1997, pp. 3-12). Each Autonomous Community government has a constitutionally required unicameral elected legislative body, a council and president, and an administrative public service (Agranoff 1997, p. 3). Each is assigned some exclusive powers as well as concurrent powers. The progressive transfer of powers to the Autonomous Communities has meant that by 2005 the level of expenditure was significantly distributed among governments: central 51.2 percent, Autonomous Communities 36 percent and provincial and local government 12.8 percent (López-Laboda et al 2007, p. 307). Clearly then, the *Estado de las Autonomías* with the Autonomous Communities enjoying constitutionally separate powers and their own representative parliamentary institutions meet the criteria of a political system incorporating at least two orders of government each elected by and acting directly on its citizens, with the source of their legitimacy and authority lying in the constitution rather than simply from the central government (Moreno 2007, pp. 95-6).

A constitutional distribution of legislative and executive authority and of revenue resources

A characteristic of all federations has been a constitutional distribution of legislative and executive authority and of revenue resources (Majeed, Watts and Brown 2006; Shah 2007; Watts 2008, pp. 83-116). There is considerable variation among federations in the form and scope of distribution of legislative and executive authority to of revenue resources. In some federations the distribution of exclusive legislative authority to both the federal government and the constituent units and areas of concurrent jurisdiction is laid out in extensive detail (e.g. India, Malaysia and South Africa). In others only the exclusive and concurrent federal powers are specified with extensive unenumerated residual powers left to the constituent units (e.g. the United States and Australia). The range of concurrent or shared powers has ranged from federations where these are extensive (e.g. United States, Australia, Germany, India, Malaysia, Pakistan, Brazil, Mexico, Nigeria, Russia, Ethiopia and Venezuela) to those such as Canada and Belgium where these are relatively limited. Some federations assign some quasi-unitary powers to federal governments to deal with emergencies (e.g. India, Pakistan, Malaysia and Argentina). In some, for extensive areas of central legislation, the executive responsibility is constitutionally assigned to the constituent units (e.g. Switzerland, Austria, Germany, India and Malaysia).

There are wide variations too in the assignment of expenditure responsibilities and revenue resources. For instance federal expenditures after intergovernmental transfers as a percentage of total federal-state-local expenditures in 2000-4 ranged from 84.3 percent in Malaysia to 32.0 percent in Switzerland, and federal government revenues before transfers as percentage of total federal-state-local revenues ranged in 2000-4 from 98.0 percent in Nigeria to 40.0 percent in Switzerland. But while these variations among federations have been extensive, what has been common to them is that in each there has been a distribution of legislative and executive authority and of revenues resources and transfers specified in the constitution ensuring that there are some areas of genuine autonomous action for each order of government.

It would appear that Spain meets this criterion. Article 148 specifies the exclusive authority of the Autonomous Communities and Article 149 specifies the exclusive powers of the Spanish State (Harty 2005, p. 329). Among the former (authority of Autonomous Communities) are the organization of their own institutions of self-government; town and country planning and housing; promotion of economic development (within the objectives set by national economic policy; libraries, museums, and music conservatories of interest to the Autonomous Community; the promotion of culture, of research, and where applicable the teaching of the language of the Autonomous Community; the promotion and planning of tourism within its territory; social assistance; and health and hygiene. The latter (central powers) include: nationality; immigration; emigration; status of aliens; right of asylum; international relations; customs and tariffs; foreign trade; defence and the armed forces; the administration of justice; civil legislation and legislation on intellectual property; taxation; promotion of scientific research; public safety; and promotion of Spanish culture. There are also extensive areas of shared powers which provide a context for intergovernmental relations (Agranoff and Gallarín 1997, pp. 5-10).

There are, however, two distinctive features about the Spanish distribution of legislative powers, both related to the role of the Statutes of Autonomy (Argullol and Bernadí 2006, pp. 244-5). While the constitution provides for the basic distribution of powers, it has transferred the precise determination of these to individual Statutes of Autonomy to be negotiated for each Autonomous Community. First, this has produced less stability as Autonomous Communities, over time, have negotiated the transfer of some of the State's exclusive powers through mechanisms provided by Article 150 of the constitution (Harty 2005, p. 329). This has provided flexibility but it has also to some extent undermined stability as some Autonomous Communities have pressed for revisions and re-negotiated an extended devolution, as for instance in the case of Catalonia.

Secondly, it has encouraged a clearly asymmetrical power distribution in the powers devolved to different Autonomous Communities (Argullol and Bernadí 2006, p. 252-3). While de jure asymmetry provided for by the constitution is not unknown among federations, existing to some degree in Belgium, Bosnia-Herzegovina, Canada, Comoros, India, Malaysia, Russia, and St. Kitts and Nevis (Watts 2008, p. 128-9), nevertheless, its extent in the *Estado de las Autonomías* is distinctive. Asymmetry is particularly notable in the financial arrangements which have involved two distinct categories of Autonomous Communities: *the charter of financing system* applying to Navarre and the Basque Country for historical reasons provides these two Autonomous Communities with a very high degree of financial autonomy through extensive taxing powers coupled with transfers from these regions to the central government for financing of central government services; and the *common regime* applying to the other Autonomous Communities under which the overwhelming bulk of taxing powers have remained instead with the central government and the Autonomous Communities have been funded mostly by a combination of lump-sum general grants and conditional grants, although under subsequent revisions some taxing powers have been ceded to the Autonomous Communities (López-Laborda et al, 2007, pp. 296-304).

In the allocation of expenditure responsibilities and revenues resources Spain fits well within the range typical of federations. The expenditures of the Spanish central government after transfers as a proportion of total central-regional-local expenditures at 51 percent in 2000-04 falls in the middle of the range, being greater than South Africa, Russia, the United States, Belgium, Germany, Canada and Switzerland, but less centralized than in Austria, Mexico, Australia, Nigeria, Brazil and Malaysia (Watts 2008, p. 103). Similarly Spanish central government revenues before intergovernmental transfers as a percentage of total central-regional and local revenues also fall right in the middle of the range being 69.2 percent, similar to Brazil, higher than Germany, Austria, India, the United States, Canada and Switzerland in degree of centralization, but lower than Belgium, Australia, South Africa, Malaysia, Russia, Mexico and Nigeria (Watts 2008, p. 102). The relative dependence upon central transfers of those Autonomous Communities

financed under the common regime is in comparative terms, however, on the high side with intergovernmental transfers at 72.8 percent of total Autonomous Community revenues. Only Mexico, Nigeria and South Africa come higher in this regard. Furthermore, only Mexico at 48.8 percent has a higher percentage of regional revenues in the form of conditional transfers (Watts 2008, pp. 105, 108). Generally, progressive decentralization has been more apparent in the realm of expenditures than in revenues, although there has been some improvement in the latter area as well more recently.

To summarize, then, regarding the constitutional distribution of legislative and executive powers and of revenue sources, Spain exhibits some distinctive features, but nevertheless, falls well within the range of federations elsewhere.

The representation of distinct regional views within the central policy-making institutions

A feature typical of most federations has been provision for the representation of distinct regional views within the central policy-making institutions, usually including in most cases a federal second legislative chamber to represent these interests. Here too, however, there have been enormous variations (Watts 2008, pp. 135-55). Some federations such as the United States and the Latin American federations have adopted a presidential-congressional form including federal Senates with equal state representation and possessing strong veto powers. Others, notably those federations which previously were British colonies (e.g. Canada, Australia, India and Malaysia) and most of those in Europe (e.g. Austria, Germany and Belgium) have adopted parliamentary institutions with cabinets responsible to the first chamber of their legislatures. In these (although the German Bundesrat provides a notable exception) the federal second legislative chambers have usually been much weaker both legally or in practice, with weighted representation of smaller constituent units rather than equality, and possessing a limited or only suspensive veto. In these federations, the representation of distinctive regional views has depended less upon the operation

of the federal second chamber than upon representation within the federal cabinet and upon the advancement of regional views by regionally representative political parties.

Those who argue that Spain is not a full-fledged federation, often support this claim by pointing to the composition and weakness of its Senate (Grau i Creus 2000, pp. 58-60, 74). Even Luis Moreno has pointed to this as a short coming and to the need for reform (Moreno 2001, pp. 134-5, 139; Moreno 2007, p. 96). The Spanish Senate is composed of 259 members, of which 208 members are directly elected from the provinces (1, 3 or 4 per province which are sub-units of the Autonomous Communities) and 51 are appointed by the parliaments of the 17 Autonomous Communities. Furthermore, it has only a short two-month suspensive veto. Clearly, it is less representative of the Autonomous Communities and much weaker than the second chambers in the presidential-congressional federations or Germany. But when compared to most other federal second chambers in parliamentary federations it is not so different. The critical question is whether representation in the central cabinet or through the role of regional parties in the operation of coalition politics at the central level has given a prominent place to regional interests in central decision-making. Here it would appear that, while not as a constitutional requirement but as a result of political practice, regional interests have actually played a major role in central policy-making. This has been particularly so in recent years as national governments have been dependent upon the support of regional parties to stay in office (Grau i Creus 2008, pp. 7-9; Economist, Nov. 11, 2008, pp. 6-8). In this respect then, the political processes in Spain have in fact been more similar rather than dissimilar to those found in parliamentary federations elsewhere.

A supreme constitution not unilaterally amendable

A typical feature of federations is a supreme written constitution entrenched so that it is not unilaterally amendable, such as requiring the consent for amendments of a significant proportion of constituent units. This is required because if the

constitution were unilaterally amendable by a simple majority in only one order of government, then that would subordinate the other level to it. Unilateral amendment by the central government would ultimately make possible a unitary system, while unilateral amendment by the constituent units would be representative of a confederal system. But here, too, there are variations among federations (Watts 2008, pp. 161-5). In many federations, to begin with, a special majority in the federal legislature is required (e.g. United States, India, Malaysia, Argentina, Brazil, Mexico, Ethiopia (in a joint setting), Nigeria, Pakistan, Russia, and South Africa). Where ratification by constituent units has also been required the procedures have varied. The form of ratification by constituent units may be by the legislatures (as in the United States, Canada, India, Mexico, Nigeria and Russia). In Germany it is the consent of the Land governments through a special majority of their delegates in the Bundesrat that is required. In Switzerland and Australia, instead of ratification by constituent legislatures or governments, a referendum consisting of an overall majority and majorities in a majority of constituent units is required. In some federations a special majority in both houses of the federal parliament has been considered sufficient in lieu of ratification by legislatures, governments or referendums in constituent units. This procedure is intended to ensure that a simple majority in the federal legislature cannot impose a constitutional amendment where there is significant opposition in the constituent units. Examples are Brazil, Austria, Malaysia (for most amendments), South Africa and Pakistan. The Belgian procedure for constitutional amendments does not involve the Regions or Communities, requiring only a two-thirds majority in the federal parliament (Article 131), but most of the federal features of the constitution require a complex process involving a special election, special majorities in each federal chamber, and in a number of cases special legislation supported by a majority of the two main language groups in Parliament. Another feature found in a number of federations is that whereby different procedures are specified for different parts of the constitution, with those features relating to elements of the federal system being most rigidly entrenched. India and Canada are particularly notable examples.

In Spain the procedures for constitutional amendments are complicated and vary according to which parts of the constitution are to be amended. The initiating of constitutional amendments lies normally with the government, Congress or Senate, although there is provision for an Autonomous Community Assembly to propose constitutional amendments. Ratification is by a majority of three-fifths of the members of each federal chamber or, where they disagree by an absolute majority in the Senate and a two-thirds vote in the Congress. If a mere one tenth of the members request it this is followed by referendum. A total revision of the constitution or a partial revision of certain specific portions of the constitution is more rigidly entrenched, requiring a two-thirds majority in each federal chamber and ratification by a referendum. Thus, while the constitutional amendment procedures in Spain have their own specific features, like those in federations elsewhere they display varying degrees of entrenchment to ensure that the central level of government cannot simply or easily override the interests of the Autonomous Communities.

One particularly distinctive feature in Spain is the provision within the constitution for defining the powers of the Autonomous Communities through Statutes of Autonomy. These have provided an 'open model' for flexible and variable decentralization with the support of major political parties (Moreno 2007, p.86). While in form it is unique, functionally it is equivalent to one of the forms of amendment introduced into the Canadian constitution in 1982 for bilateral amendments (Constitution Act 1982, s. 43), and to the special flexibility provided for amending state boundaries in India (Constitution 1950, arts. 3,4).

Adjudication of disputes

No matter how much the drafters of constitutions in federations attempt to make the terms in the constitution and the distribution of powers clear, there are inevitably bound to be questions over conflicting interpretations. Consequently, all federations have found it necessary to establish processes and institutions for the adjudication of disputes. With only a very few exceptions federations have

assigned this function to courts. In many, federations these have taken the form of a supreme court as the final adjudicator of all laws including the constitution, as in the United States, Australia, India, the four Latin American federations, Malaysia, Nigeria, Pakistan, Comoros, Micronesia, Belau and St. Kitts and Nevis. A substantial number of other federations have instead set up a constitutional court, specializing in constitutional interpretation. Examples are Germany, Austria, Bosnia and Herzegovina, the United Arab Emirates and Belgium. Two federations have altogether different arrangements from these.

In Switzerland the Federal Tribunal may rule on the validity of cantonal laws but not of federal laws. In the case of the latter it is the electorate through the instrument of the legislative referendum that is the ultimate adjudicating body. In Ethiopia, the House of Federation, the federal second chamber composed of members representing the states which, advised by a Council of Constitutional Inquiry, ultimately interprets the constitution.

In Spain, the 1978 constitution (Title IX: Articles 159-65) established a Constitutional Court. It consists of 12 members (4 nominated by the first federal chamber, 4 by the Senate, 2 by the government and 2 by the General Council of the Judiciary for nine years). This court under Article 161 has jurisdiction over all Spanish territory and is empowered to hear appeals about the unconstitutionality of laws and regulations, individual appeals against violation of rights and liberties, and conflicts of jurisdiction between the State and the Autonomous Communities or between the Autonomous Communities themselves (Harty 2005, p.331). In practice the number of constitutional challenges and conflicts, especially in the early years has been high, numbering 960 challenges in the period 1981-97 (Moreno 2001, p. 142). Consequently the Constitutional Court has played a major role in the evolving definition of the relationship between the State and the Autonomous Communities confirming a federalizing trend (Moreno 2007, p. 96; Agranoff and Gallarín 1997, pp. 8, 12-8). Indeed, as recently as 2008 the Court has been called upon to rule on the proposal of the president of the Basque government to call for a referendum on Basque independence and to rule on the

constitutionality of the new Statute of Autonomy for Catalonia (Grau i Creus 2008, p.9). This has placed the Court itself at the centre of the issue of territorial reform with tensions between proponents and opponents among the judges on the Court. With the terms of four of judges about to expire, the fact that these judges in effect are appointed by the two largest parties means that the resulting composition affects support in the Court regarding the new Catalan statute. Issues of method of appointment and terms of office affecting objectivity of the courts as adjudicators have arisen in many federations, and therefore the Spanish Constitutional Court is not unique in this respect.

Processes and institutions to facilitate intergovernmental collaboration

The inevitability within federations of overlaps and interdependence in the exercise by governments of the constitutional powers distributed to them has generally required different orders of government to treat each other as partners (Watts 2008, pp. 117-23). Although the Dicey-Wheare definition of a federation emphasized the independence of each order of government from the other (Wheare 1963, pp. 1-14), as Daniel Elazar has pointed out, federations like the United States have right from their beginnings had to recognize interdependence and hence interaction between governments as a fundamental feature (Elazar 1962). This has in every federation been a potential source of conflict and has necessitated extensive consultation, cooperation, collaboration and coordination between governments, although the form and scope of such interaction has varied greatly.

The institutions and processes for intergovernmental collaboration in federations have served two important functions: conflict resolution and facilitating adaption to changing circumstances. Normally they have had two important dimensions: that of relations between the federal and constituent units and that of inter-unit relations. Within each of these dimensions relations commonly may involve all the constituent units within the federation, regional groupings of units, or be bilateral

(i.e. between the federal government and one constituent unit or between two constituent units).

While intergovernmental relations, both cooperative and conflictual, have been an important fact in all federations, there has been considerable variation in their character and range. In some federations, especially the newer ones, specific provision for institutions and processes to facilitate intergovernmental collaboration have been incorporated in the constitution itself. Notable examples are the Australian Loan Council created by a constitutional amendment in 1927, the Inter-State Council and the Finance Commission established under the Indian constitution (1950), and the constitutional provisions relating to processes for intergovernmental cooperation and the creation of the Finance and Fiscal Commissions in South Africa (1996). In Germany, the constitutionally mandated Bundesrat has provided the focus for a cluster of intergovernmental meetings and processes. In many cases, especially in the older federations, institutions or processes to facilitate intergovernmental collaboration have instead been simply established pragmatically ad hoc and have proliferated as needed. In this respect Australia has been a pioneer with the creation of such bodies as the Commonwealth Grants Commission and the Council of Australian Governments. A notable difference between federations with presidential-congressional institutions and those with parliamentary institutions has been the particularly dominant role of governmental executives (ministries and their officials) in the latter. In these the executives supported by their legislatures have been particularly influential (Watts 2008, p. 118). Among contemporary federations “executive federalism,” as the pattern has come to be labelled, has been most extensively developed in Australia and Germany, but has also been significant in India and Canada.

One factor particularly inducing federal-unit collaboration has been the form of the distribution of powers in which the administration of much federal legislation is constitutionally delegated to the governments of the constituent units. This

arrangement, particularly typical of most European federations, has necessitated close collaboration between the legislating and the administering governments.

Another fact affecting the character of intergovernmental relations has been the number of constituent units comprising a federation. Where the number of constituent units has been fairly limited as in Australia and Belgium with six, Canada with ten (13 if the territories are included) and Germany with sixteen it has been easier for each constituent unit to exert a significant influence in its relations with other governments than in federations like Russia with over eighty, the United States with fifty, Nigeria with 36, Mexico with 31, or India with 28 full-fledged constituent units. A notable recent development has been the trend in some federations, for the government of the constituent units to establish a formal council together both to facilitate inter-unit collaboration and to coordinate their positions in negotiations with the federal government. Examples are the Conference of Cantonal Governments in Switzerland and the Council of the Federation in Canada.

As Agranoff and Gallarín have noted, in Spain the existence of a range of shared functions has led to the development of institutions and processes for intergovernmental relations involving, as is typical of federations, a high degree of political bargaining (Agranoff and Gallarín 1997, pp. 6-12, 19-38). For example, as in most federations important intergovernmental institutions have been created to deal with financial relations, examples being the Fiscal and Financial Policy Council (CPFF) and the National Commission of Local Administrations (López-Laborda, et al., 2007, p. 295). Then there are also some two dozen sectoral conferences (Moreno 2001, pp. 139-41) and the Conference of Presidents launched by Zapatero in 2004 (Aldecoa and Cornago (2008), p. 256).

There are some distinctive features about these developments in Spain. First it would appear that there has been a shift “from competitive regionalism to cooperative federalism” under the impact of the progressive integration within the European Union which has made necessary new forms of cooperation between the

Autonomous Communities and the central government (Börzel 2000; Grau i Creus 2000, p. 66). The sectoral conferences first legally established in 1983, initially had limited effectiveness. By 2000, however, there were 24 conferences of which in Börzel's judgement about one-third were highly institutionalized and producing significant output, one-third while somewhat less effective were nevertheless functional, and one-third produced mixed results (p. 40). It would appear that growing implementation problems relating to European policies have stimulated significant interest from both the national government and Autonomous Communities in mutual consultation and cooperation. The resort to cooperative federalism as a response to the challenges of Europeanization is not, of course, unique to Spain. It has its parallel in Belgium, Germany and Austria where joint participation of the regions in European policy-making has evolved to compensate them for the loss of competencies and to ensure effective implementation of European policies.

One feature of Spanish intergovernmental relations which analysts have commented upon is that these have tended to be primarily bilateral rather than multilateral (Grau i Creus 2000, p. 67). This is sometimes attributed to the asymmetry of the Autonomous Communities leading to a variation in the salience of particular intergovernmental issues for different Autonomous Communities. For instance, Navarra and the Basque Country have had much lower levels of participation in intergovernmental agreements due to their different financing system and the fact that they do not take part in the system of redistribution of funding from the central institutions. No doubt asymmetry is a factor, although one might note that in Canada this did not prevent the Quebec government from taking the lead in the establishment of the multilateral Council of the Federation to facilitate inter-provincial cooperation in relations with Ottawa.

A feature which a number of analysts have commented upon about intergovernmental relations in Spain is the degree to which they have been dependent upon the colouring of the different political parties in charge of different governments and upon party political considerations (Moreno 2007, p. 96-7;

Agranoff and Gallarín 1997, pp. 31-6; Grau i Creus 2000, pp. 69-73). This is not unique, however, and is found in many federations, of which one outstanding example is Germany.

While there may be imperfections in Spanish intergovernmental relations, even that is not untypical of federations as Canadians would be among the first to attest. The *Estado de las Autonomías*, as it has evolved, has clearly exhibited as one of its features the development of some significant institutions and processes for intergovernmental collaboration, whatever may be their perceived deficiencies in the eyes of some critics.

CONCLUSIONS

What then are we to conclude about whether Spain is a multinational federation in disguise? The original constitution of 1978 clearly avoided the label and set out to establish a devolved union rather than a federation. However, if we accept the definition of federal political systems and of federations that I have outlined earlier, and examine the development of the constitution and governmental practice of the *Estado de las Autonomías* as it has evolved over the past thirty years, it would seem that under the pressures of a multinational society, a compound nation of nations, the *Estado de las Autonomías* has come to exhibit the basic structures and processes typical of federations. Some of its features like the use of Statutes of Autonomy and the form of asymmetry are unique. But as we have noted there is no single pure model but rather a wide range of different specific arrangements implementing the basic features of federations elsewhere. While critics may point in Spain to the weakness of the Senate and the reliance instead upon political parties for regional influences in central policy-making and to deficiencies in intergovernmental relations, nevertheless in functional terms the Spanish political processes meet all six of the basic criteria of a federation. Thus, I would conclude that Spain is “a federation in practice if not in name.”

At this point, however, I would emphasize that we should not be preoccupied with or mesmerized by labels. Particular labels are useful only if they help us to understand how a political system actually operates. In this respect what is important is not whether the label 'federation' is applicable now to Spain, but what are the significant features of the *Estudo de las Autonomías* and how effectively are these meeting the needs and requirements of Spanish society? In that respect it would appear that Spain may benefit from comparisons with the experience of federations elsewhere but also that federations elsewhere can learn much from the operation of the distinctive features of the *Estudo de las Autonomías*. Some insight into the operation of the Spanish political system as it has developed may be gleamed from the current pressures for reform, whether of the Statutes of Autonomy or of the central institutions and the machinery and process of intergovernmental relations. After thirty years of constitutional practice and negotiated agreements leading to decentralization and federalization, Spain, like most federations, is still faced with the continuing challenge of how to integrate rather than assimilate its compound identities and of adapting to changing political and economic circumstances. Federations are not static but dynamic structures. This, too, is a feature which Spain shares with federations elsewhere

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