

"The challenges of asymmetric devolution in Spain"

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Parts of the presentation

- Some conceptual clarifications and definitions of asymmetry
- Some background on the constitutional and institutional evolution
- Main elements and types of asymmetry in Spain
- Political dynamics and challenges
- Conclusions

Conceptual clarifications and definitions

- Different moral justifications and pragmatic justifications (not dealt with here)
- “differential treatment, recognition or special power position of a unit in a federation or decentralised system in the constitution or in practice”.
- Manifests itself in competencies, rights, duties, fiscal or financing arrangements, representation at the centre, bilateral treatment, or application of national policies or programs.

Definitional empirical dimensions

- diversities, factual or institutional, vs. differential treatment or asymmetries constitutionally protected
- hard asymmetry or asymmetry by design (not all units may access to it) vs. soft asymmetry or asymmetry by choice (an option open to all if they want)
- permanent asymmetry vs. provisional or transitional asymmetry
- recognition of ethnocultural differences vs. recognition of pragmatic economic situations

Types of asymmetries

	By design	By choice
Permanent	Asymmetries by design in constitutional status	Institutional differences in self-organization
Provisional	Transitory asymmetries	Asymmetries of policy or exercise of competencies in practice

Different implications and challenges of those types

- May confront different degrees of
 - difficulty of institutional design
 - political feasibility
 - public acceptance in the different territorial units
- May produce different degrees of
 - integrative capacity
 - efficiency of public policies
 - social cohesion
 - equity

Some background on Spain

- Initial flexibility or openness, autonomy process not regulated completely in the constitutional pact
- Process of autonomy *à la carte*
- Consensus of all the pol. parties to favour ACs with historical demands to get autonomy more quickly.
 - To the rest, possibility was left opened in a five years time.
- But, before Constitution already 13 regions had pre-autonomy arrangements and by 1982, 7 had all the powers
- Regional statutes, constitutional interpretation and political praxis tended towards homogeneity and symmetry.

Differences or permanent asymmetries or by design recognized and protected in Constitution

- Recognition of co-official languages, and positive discrimination for regional languages with implications for education, cultural policies and citizen rights in Catalonia, Galicia, Navarra, Valencia, Balearic Islands, Aragon and Basque country
- Recognition of traditional civil law systems in Catalonia, Galicia, Navarra, Valencia, Balearic Islands, Aragon and Basque Country
- Recognition and protection of special economic-fiscal Arrangements through constitutional recognition of “historical rights” of Basque Country and Navarra
 - (larger tax autonomy, tax collection systems, inverted transfer system of a quota of the total tax yield)
- Special economic-fiscal regime for the Canary Islands

Other institutional differences derived from self-organization capacity (but not reserved)

- The possibility of self-designation as “nationality” or as “region” in their regional statutes of autonomy. (six called themselves nationalities)
- Intermediate level of govmt. in Basque Country (historical territories) and the Islands. Supramunicipal districts (comarcas) in Catalonia
- Reinforced reform procedure of the regional statutes of the 151 (Basque Country, Catalonia, Galicia, Andalusia)
- Bilateral commissions with the central government (New bilateral commissions in new statutes)
- Bilateral commissions in European issues with the Basque Country and with the Canary islands.

Differences or transitory asymmetries (some of them obsolete or no longer applicable)

- Distinction of access tracks to autonomy (Art 143, 151)
- Limitations of executive dissolution power and fixed election day for 13 ACs
- Legislative and executive competencies on health and education were not transferred to 10 ACs from the central government till the mid 1990s
- Compulsory central public investment clauses in new statutes

Asymmetries by choice or in practice in the application or exercise of national or regional powers

- Police in Navarra, Basque Country and Catalonia (several statutes also contain the possibility of taking on this competence Galicia, Andalusia, Valencia and Canarias).
- Very active international or foreign policy by some autonomous communities (Basque Country, Catalonia, Andalusia, Galicia)
- Immigration control and labor permits, active employment policies, control of savings banks, road traffic control and responsibility for prisons and penitentiary centres (policies based on national legislation that Catalonia implements)

Political dynamics and challenges of asymmetry I

Two main tensions.

- A vertical tension

- between regional governments,

- wanting more resources from the centre and seeking to legitimate themselves before, and avoid blame from, their citizens, and

- the central government seeking to preserve its capacity to determine some common policies and legitimate itself.

- A horizontal tension

- between some ACs with nationalist governments

- seeking special recognition and powers to differentiate themselves and

- the other ACs aspiring to a similar treatment whenever that happens.

Political dynamics and challenges of asymmetry II

- Due to openness of institutional arrangements,
 - asymmetric devolution led to decentralization demands in all regions, and these led to new attempts at asymmetry.
 - At some periods, vertical tension prevails and moves the reform attempts. At others, the horizontal tension dominates.
- Sometimes both tensions combined due to party-political or environmental factors such as the fiscal, supranational influences or policy problems.
- The range of typical demands or aspirations for asymmetry
 - Special bilateral relationship with the central government for all issues
 - Special representation or veto powers in the senate and in the central institutions as the Constitutional court and European Institutions,
 - Symbolic recognition as nation,
 - Special fiscal regime

Conclusions I:

Prospects and feasibility of further asymmetry

- The Spanish case has experimented with a combination of elements of formal asymmetry or asymmetry by design with other forms of asymmetry in practice with some success
- These permanent constitutional asymmetries (structural feature) put a limit to the total homogeneity of the "autonomic" state.
- But model shaped by constitutional evolution and interpretation and by political praxis as basically homogeneous or symmetrical.
- Therefore, space for the recognition and protection of diversity and for the basic principle of equality, but certain constitutional and political limits to the degree of asymmetry achievable

Conclusions II

- Some space for the practice of certain soft asymmetry that responds to the objective differences.
- More difficult to push for additional hard asymmetry justified on the grounds of alleged unique history or status.
- More support for reforms leading to recognition asymmetry whenever not accompanied by economic demands or the perception that the demand for unequal treatment is justified on ideological postulates.
- Potential problems of social cohesion and of governability if generating privileges and jealousy.
- It may prevent a desirable basic equivalence of the living conditions of citizens
- Still uncertain whether recent reform initiatives and their new asymmetries will make the system more unviable or impracticable