

## **SCOTLAND AND GALICIA: DEVOLUTION VERSUS *AUTONOMÍA***

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### **INTRODUCTION: SCOTLAND AND THE SPANISH REGIONS: A DIFFICULT COMPARISON**

This article has a difficult purpose because Spanish and British legal and political frames are different, as are our traditions, the constitutional systems Scotland and Galicia belong to, and the statutes that grant devolution to Scotland and *autonomía* to Galicia. To this end it is organised in two main parts. The first one compares Britain's and Spain's different polities and approaches to devolution: to borrow the words of an anonymous referee, 'symmetric decentralisation using the same party system under Madrid control in a Napoleonic law context' along with militant Spanish nationalism, and 'pragmatic, asymmetric devolution with both different parties and a different system'. The second part concentrates in comparing certain dimensions of Scottish devolution and Galician *autonomía* in theory and practice.

It is difficult to establish a comparison between Scotland and Galicia or any Spanish region. For us continental Europeans, Scotland is an exceptional case

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unfit for any comparison south of the English Channel. Galicians distinguish Scotland from England by bagpipes, kilts, tartan and whisky. Only a cultured minority know of the peculiarities of Scotland. When autonomy was devolved to the Scots, people tended to think that until then Scotland had been under a centralist State like France or Spain and had finally reached a constitutional position similar to our leading *comunidades autónomas*.

Comparing Scotland with only one Spanish region is doomed to failure. Scotland's own civil society makes one think of Cataluña, to a far lesser degree since Cataluña never had its own education, Kirk and judicial systems. The Scottish Enlightenment and covenant tradition had no equivalent in Cataluña. From a socio-psychological perspective, Scotland echoes Galicia insofar as both show nostalgia - with specific Galician words: *saudade*, *morriña* - cultural self-denigration, and a tendency toward cultural rather than political reactions. The comparison becomes easier from the legal point of view. Scotland and Navarra both had and still have their own legal systems. Scotland had a Parliament until 1707, and Navarra until 1841. The compact-like laws that united them with England and Castilla respectively were in both cases a Union of Kingdoms. Economically, Scotland could be compared to parts of northern Spain whose economy was based on heavy industry (Asturias, the Basque Country, the Galician city of O Ferrol), though no Spanish region ever made ships and locomotives on a scale similar to the Clyde.

In spite of significant differences, the comparison between Scotland and Galicia is, to me, fascinating, for several reasons which we shall examine in greater detail.

## **THE UNITED KINGDOM AND THE ESTADO ESPAÑOL**

### ***Union state versus Estado unitario***

Both in Britain and Spain one can hear many an opinion that the UK is more centralist than Spain because it has a sovereign, unfettered Parliament. Yet this may be misleading, since the British compound Kingdom could hardly be considered a full *Estado* in our strongest sense. Suffice it to say that Scotland's status as a Kingdom with its flag, borders and pageantry raises no discussion in England. No one in England says that Scottish national identity is an artificial invention to erode British unity. The English have always

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ridiculed the Scots but the fact that the Queen is Head of the Church of England but not of the Kirk raises not a single eyebrow.

The UK was, and to some extent still is, centralist. It has a single source of sovereignty, a powerful executive and no regions within England. But it is a peculiar sort of centralism due to the weakness of *étatisme* in Britain - with no such a thing as *Staatslehre* or *Teoría del Estado* - and to the fact that the UK has always been a compound political community made up of several kingdoms, one principality and several islands. The Union State could well be very accommodating<sup>1</sup>. The UK did not exalt the idea of the Nation State as France did in 1789 (and subsequently Spain or Argentina). There was no real English nationalism, while Spanish nationalism was and still is rampant. Neither Hegel nor Napoleon had equivalents in Anglophone countries. There never was a repression of the regions comparable to France or Spain; and to this day there is no centralised Royal Academy of Language. Territoriality was not so decisive in the UK. The Union Jack is composed of the flags of the kingdoms. Indeed, the British State 200 years ago was not much more than the Queen in Parliament, Whitehall, a handful of officials, and the Anglican Church.

As for institutions, Scotland had separate Committees in the House of Commons, separate legislation - by Westminster but separate - a Ministry for Scotland that is over 100 years old, separate legal professions, education, and the Kirk. It was certainly 'Government by London', but 'Differentiated Government'. Constitutional conventions protect Scottish separateness (for example, English MPs generally refrain from attending meetings of the Scottish Committee in the House of Commons). The structure of the army (Scottish regiments), the police (a sum of local police forces) and the religious denominations (the Anglican Church, the Scottish Kirk and the Welsh Methodist Chapel) tell us a lot about the traditional architecture of the British polity.

If this rough sketch fits reality, one only has to reverse it to find the general landscape of the Spanish polity after 1700. Only Spain is considered a nation, and using 'nation' or 'national' for Galicia sounds strange, radical or nationalist. Since the Bourbons ascended to the throne in the 18th century, Spain has had a statist and centralist structure. It never reached the *étatiste*

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<sup>1</sup> Neil WALKER, 'Scottish Self-Government and the Unitary Constitution' (draft version).

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perfection of France but the official mindset was similar; systematic repression of the regions and things regional using the army, the civil service and universal education as tools.

Statist thinking became *de rigueur* and modern<sup>2</sup> during the re-founding of the Spanish State in the 19th century. It is still the form of thinking that one can expect to find in members of either the centre-left PSOE or centre-right PP throughout Spain: regional matters tend to be seen as artificial abnormalities, ephemeral troubles that some day will give way to 'politics as usual'. Spanish Prime Minister Aznar - a reasonable young leader with a typical low profile - seems unable to grasp the real depth of regional problems. The PP government conveys the image that most of Spain's evils derive from peripheral nationalism. Now that the PP has an absolute majority a bit of energy might settle the problems once and for all.

From 1833 (creation of the provinces) to 1981 (enactment of the *Estatuto de autonomía*) Galicia simply did not exist legally: Spain consisted of the State and the provinces, after the French model. When the 1978 Constitution came into force the panorama changed: Galicia, Cataluña, and the Basque Country were each recognised as a 'historic nationality', and all other regions were given some degree of administrative decentralisation and political autonomy. Yet many Spanish *comunidades autónomas* enjoy less decentralisation than Scotland before 1999. On regular visits to the UK in the last 20 years I have heard British colleagues praising the Spanish *comunidades autónomas* along the lines of 'the autonomous communities enjoy powers which might be the envy of many of the federal states'<sup>3</sup>. Certainly, but it depends which federation we mean: Germany, Venezuela, Canada, Argentina, or the US. In Spain there cannot exist a Secretary of State for a region, and special regional Parliamentary Committees are unheard of. 'Differentiated Government' would be considered entirely out of the question and contrary to Spain's unity; no

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<sup>2</sup>*Pre-Bourbon, pre-statist Spanish tradition is now mostly lost. It defended the plurality of kingdoms and bodies of law (fueros, Derecho foral), as well as among other things, tyrannicide. Traditionalist thought survived above all among the Carlistas and is now reduced to a handful of writers, some of them very prestigious but few in number and with little influence (D'ORS, or, among the younger ones, AYUSO).*

<sup>3</sup>*Charlotte VILLIERS, The Spanish Legal Tradition, Ashgate-Dartmouth, 1999, p. 85.*

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serious party, right or left, has defended anything of the sort. Constitutional differences between Britain and Spain are remarkable.

#### ***Constitutional position of regions in each state***

Any similarity that may exist between Scotland and Galicia abruptly ends when entering constitutional terrains. It would take too long to list the differences between Scotland and any of the *comunidades autónomas*. The most important is that all Spanish regions and ancient kingdoms have been treated almost equally by the State, while Scotland has benefited from 'differentiated government' in a manner distinct from Wales, Northern Ireland, and England. The West Lothian Question cannot exist in Spain because no region is over-represented to compensate for its lacking a Parliament. Several Spanish regions have their own minor bodies of private Law from the past, but they are restricted to certain areas of Civil Law<sup>4</sup>. No Spanish regions have a judiciary or bar of their own, and all belong to the same Civil Law system. The Scottish experience - an island of Civil Law surviving in an ocean of Common Law, somewhat comparable to Louisiana and Puerto Rico - would be unthinkable in Spain, were any region an island of Common Law in an ocean of Napoleonic Codes.

Scotland has historic memories of Braveheart and Robert the Bruce while no Spanish region has anything equivalent. No Bannockburns nor Cullodens can be found in Galicia. No Spanish region had a Declaration of Arbroath or a Claim of Right. The compact-like relationship between Scotland and England during the 19th century never existed for any Spanish region except Navarra to a far lesser degree. Scotland joined England to form Great Britain through two Unions with Scotland Acts (1706 and 1707). Nothing comparable took place in Spain except for the tiny ancient kingdom of Navarra, which kept its own parliament until 1841<sup>5</sup>. Navarra then joined the State via two *Leyes Paccionadas*<sup>6</sup> safeguarding for itself most tax raising powers, the *Derecho*

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<sup>4</sup>*There is Derecho privado foral in Navarra, Aragón, Cataluña, Galicia, the Basque Country and the Balears. But the ever-growing branch of Spanish law is Administrative Law.*

<sup>5</sup>*The Cortes de Navarra. It was not very active, but the fact remains that in non-parliamentary 18<sup>th</sup> c. Europe the tiny Navarra Cortes survived.*

<sup>6</sup>*The Leyes Paccionadas (compact-made statute acts, entirely unusual) of 1839 and 1841 provided for the integration of the old Kingdom of Navarra into the*

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*foral* (important in the private domain) and its own body of government, the *Diputación Foral*. In our context, Navarra (and the Basque province of Alava to a lesser extent) are quite exceptional cases of non-centralisation.

The constitutional situation of Scotland from 1603 to 1706-1707 reminds us of that of Navarra from 1515 to 1839-1841. In spite of being under the King of a larger State, both kept their institutions and customs. In 1984, under the present Constitution, Navarra and the State agreed to a sort of autonomy statute<sup>7</sup> with a new regional Parliament - not the old *Cortes de Navarra* - an executive, and some new, devolved competencies. Thus the constitutional position of Navarra between 1841 and 1984 echoes that of Scotland between 1707 and 1999. Navarra after 1984 and Scotland after 1999 retain their old privileges and are granted new governing bodies and competencies by the new statutes. In most devolved areas Navarra has fewer powers than Scotland. There are similarities between Navarra's 19th century *Guerras Carlistas* and Scotland's Jacobite Wars, which make both regions distinct in all Western Europe, but the affinities stop here. In other respects - sociological, cultural, economic - they have little in common.

The other Spanish regions bear little resemblance to Scotland from the legal point of view and regarding their incorporation into the Spanish State. Wales is more comparable because it was conquered by England and the Laws in Wales Act (1536) later abolished Welsh law and persecuted the Welsh language. This Act bears some resemblance to the 1707-1716 *Decretos de Nueva Planta* issued by Philip V of Spain (the first Bourbon and a grandson of Louis XIV), abolishing the law and institutions of the Crown of Aragón. Wales, unlike its Spanish counterparts, kept its flag, border, and nation status.

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*'constitutional unity' of the Crown (a far from clear concept), while retaining most powers of taxation, roads, municipalities, private law, and a body of police. The Diputación foral was a kind of an executive, devoid of legislative power but with far more powers than all others diputaciones provinciales. When special laws for Navarra were needed they had to be made by Madrid but its distinctiveness was generally respected. In taxation, Navarra to this day exceeds most federated states.*

<sup>7</sup>*The Amejoramiento del Fuero, a special name that reflects its uniqueness.*

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### ***The Scotland Act and the Spanish Estatutos: devolution and autonomía compared***

One realises upon examining the Scotland Act (1998) that it is quite different from the Galician *Estatuto de autonomía* and all other Spanish regional *estatutos*<sup>8</sup> which are clear and readable. To a foreigner, the Scotland Act echoes the British tradition of legal documents that are piecemeal, void of doctrine, casuistic, disorderly, very long, and difficult to read. It is open-ended and provides for a rather post-Westphalian Council of the British Isles.

Far from being a formalistic exercise, contrasting the Scotland Act to the Galician *Estatuto* tells a lot about the two different ways of understanding territorial autonomy. The Galician Statute belongs to a family of regional statutes that includes the Spanish, Italian, and Portuguese ones of the Açores and Madeira. They were enacted under written and rigid modern constitutions, so that all develop their respective constitutions or, at least, conform to them. Due to a common phenomenon, the Italian, Portuguese and Spanish statutes resemble their national constitutions and in some respects even imitate them. By contrast the Scotland Act can only be said to be in tune with British traditional law making.

The Italian, Portuguese and Spanish statutes are relatively clear and ordered, not excessively long, and rather understandable. Since distribution of powers in Açores and Madeira is different<sup>9</sup>, the Galician *Estatuto* comes closer to the Italian regions *a statuto speciale*, with the partial exception of Sicily whose *statuto* was enacted before the Italian Constitution, and Trentino-Alto Adige, that has two autonomous provinces within. The Spanish *estatutos* have little in common with the Bavarian Constitution or the constitutions of American states and Canadian provinces. Among the Spanish *estatutos*, the Galician, Catalan and Andalusian ones resemble each other in their general structure and wording.

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<sup>8</sup> See Fernando PÉREZ-BARREIRO, *As Autonomías de Escocia e do País de Gales*, Vigo, 1999, pp. 23-24.

<sup>9</sup> There are no matters of exclusive regional competence but 'materias de interesse da região', according to articles 227 and 228 of the Portuguese Constitution. Lisbon has a list of reserved matters (articles 161 to 165), but can rule on matters of regional interest as well.

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The framework of the average Spanish autonomy statutes is basically as follows:

1. They begin with an introduction that deals with territory, flag, official languages other than Spanish (where applicable), coat of arms, and capital city. Some include certain political declarations, often rather rhetorical, such as the Basque one. They often refer to rights and liberties, which is of little use because fundamental rights can only be those guaranteed by the Spanish Constitution. The Galician *Estatuto* is sober in these matters.
2. The *estatutos* then deal with the legislative and executive branches of government. Unlike in federalisms, there are neither regional judiciaries nor constitutional courts.
3. The *estatutos* provide for some basic aspects of the regional parliament, government, civil service, and other bodies such as the ombudsman.
4. There is an outline of the executive-legislative relations, including the vote of no confidence and similar questions.
5. From the territorial point of view, the structure of the relations between the region and the local governments - provinces and municipalities - is provided. Most *comunidades autónomas* consist of more than one province<sup>10</sup>.
6. The *estatutos* also deal with the relations between the *comunidad autónoma* and Madrid.
7. All *estatutos* provide for regional powers in several detailed lists: exclusive competencies (matters reserved to the region, really few in practice though the lists may be long), and shared competencies (with Madrid). These lists must be read with the Constitution in mind because it has its own lists (see Appendix below), which override the *estatutos* in the case of a conflict. If the *estatuto* gives the region a competence reserved by the Constitution - which happens often - it will remain in Madrid power. Several long lists of

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<sup>10</sup> *Asturias, Cantabria, Navarra, La Rioja, Madrid, Murcia, and the Balears have only one province, which, due to this fact, disappears. This fortuitous fact has avoided conflicts between the comunidad autónoma and the provinces, sometimes unwilling to submit to the regions, to the content of Madrid.*

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competencies are essentially central matters more or less disguised as regional. This rhetorical self-indulgence, common in Spanish constitutional culture, cannot be found in the Scotland Act.

8. Provision is made for financial arrangements and expenditures. Tax-raising powers of Navarra and the Basque Country are very important but are not given by their *estatutos* nor by the 1978 Constitution but come from their *Fueros* of old: they keep the taxation powers they had, and give a part of their annual income to the State. The other regions' schemes of finance deserve a bit more attention.

When autonomy started, Galicia, like the rest, was devolved a few, unimportant taxes - e.g. gambling. All other funds came from the State. Some were conditional grants ascribed to performing the task or function transferred - e.g. health. With not much money of their own, and often conditioned, the regions more than once ran into debt. Scarcity and predetermination acted as a handbrake on regional autonomy. 1996, when Aznar was first elected, marked a turning point. He thought that the regions should not run into debt and, although never with true autonomous tax-raising power, should feed on their own. As a result of two Agreements on Regional Financing (1996 and 2001), regions now share a part of some State main taxes<sup>11</sup>; these remain State taxes which the regions cannot abolish or create, but the regional share is no longer a matter of political bargaining. Obviously, rich regions get a good amount of their resources via this participation while poor regions get less, so that most of their funding still comes from Madrid<sup>12</sup>.

After these changes, regional financing depends less on the good will of the State. Galician spending power is now high (by Spanish standards). Its tax raising power, although insufficient, has increased, and the destiny of its expenditures is much less predetermined than before. The trouble is that Aznar has recently passed a *Ley de Estabilidad Presupuestaria* forbidding all public administrations to run into debt. Denying autonomous borrowing capacity could well be unconstitutional, but this now depends on the Constitutional Court.

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<sup>11</sup> 35 per cent of the income tax and 40 of the VAT are the most important shares.

<sup>12</sup> In Cataluña, 61.86 per cent of its total funds come from shared taxation and 27.39 from State transfers. The figures for Galicia are 37.30 and 58.60 (data as of 2002; sources: journal *La Voz de Galicia*, 20 February 2002, and information kindly provided by the Galician Government).

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9. Finally the *estatutos* have miscellaneous provisions, including their own reform. Unsurprisingly in a culture of written constitutionalism, it is quite formal and difficult. If the intended reform deals with substantial aspects, it requires the consent of the people of the region in a referendum, plus the consent of both the Spanish and regional Parliaments.

The Galician *Estatuto*, like several others, has never been reformed in these twenty years. But in practice it has undergone important changes. Joining the Common Market changed our competencies on fishing, agriculture, and cattle. Other changes came from the substantially centralist interpretation of the Constitutional Court, and from frequent abuse by Madrid of its primary legislative power when the region has power only to enact secondary legislation. Since truly exclusive regional competencies are a rarity, this is important.

In conclusion, Spanish *Estatutos* looks formally like member state constitutions in that they function under the umbrella of a rigid constitution protecting their autonomy and competencies. Their ordered, systematic fabric and their rigid entrenchment add to this impression. But this federal appearance is rather formal and based on its literal phrasing. Spanish regions do not have a judiciary or a constitutional court, thus lacking full constitutional structure. They have little or no competencies for internal security (except Navarra, the Basque Country, and Cataluña). No region can amend its own statute by itself, not even if the constitutional framework is respected. Other typical member state competencies, such as education and municipalities, are shared competencies in which Madrid always decides the basic frame, as well as the details in many cases.

## **SCOTLAND AND GALICIA**

We now come to the second part of this article, devoted more specifically to Scotland and Galicia. We will start with a piece of basic information on Galicia and a general historical overview, to follow with constitutional aspects.

### ***Basic facts about Galicia***

The rainy northwestern corner of the Iberian Peninsula is, according to British historian Raymond Carr, the Ireland of Spain. With the fall of the Roman Empire, the Suebi established in old Gallaetia their only kingdom.

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During the Arab invasions from the 8th century on, Galicia remained unconquered. Early in the 9th century the tomb of Saint James was discovered in Santiago de Compostela (Santiago means 'Saint James') and soon hundreds of thousands of pilgrims visited from all over Europe, particularly France, Belgium, Germany, and Northern Italy. Romanesque art flourished in Galicia, crowned by Santiago's famous Cathedral. Medieval literature thrived, and the Galician language (originally the same as Portuguese) was the scholarly language of many Castilian poets.

Galicia was under nominal Castilian rule from the 11th century until the end of the 15th century, when the Spanish State was established under the *Reyes Católicos* Ferdinand and Isabella. Galicia had been governed in a rather quarrelsome fashion by unruly noblemen and bishops. The *Reyes Católicos* sent a small professional army, defeated the nobility, put things in order, and began a process termed the 'taming and gelding of the Kingdom of Galicia'. Formally it remained a Kingdom until the provincial division of 1833, when Galicia, like all other ancient kingdoms, legally disappeared. Romanticism brought about the re-birth of Galician culture and identity, which led to regionalism and eventually, especially after Franco, nationalism. The main nationalist party, the BNG (Bloque Nacionalista Galego), is a coalition dominated by the left wing.

Galicia covers 29,434 square kilometres, with a decreasing and aging population of 2.7 million; immigration is still not a significant factor. The seven largest cities are: the capital Santiago (100,000 inhabitants), Vigo (an industrial centre, 285,000), Coruña (240,000), O Ferrol (a decaying city formerly devoted to shipyards and the Navy, 80,000), Ourense (110,000), Lugo, still with its Roman walls (88,000), and Pontevedra (75,000). Galicia is far more homogeneous than Scotland as there is no Lowlands-Highlands type cleavage. The Galician language is widely spoken but lacks prestige, and the media do not support it.

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PPS per capita is 13,897<sup>13</sup>. Unemployment is now 12.6 per cent<sup>14</sup>. Joining the Common Market seriously chastised our economy as it was based on cattle, agriculture, shipyards, and fishing. The largest fishing fleets in the world were based in Galicia, mainly in Vigo, and our ships still fish in Scottish, Irish and English seas. The 1980s were times of tough readjustment: hundreds of thousands of people had to stop working in the countryside while the industry lost, in the first half of the decade, some 40,000 jobs<sup>15</sup>. After 1990 evidence suggests that the trend has inverted and Galicia has narrowed the gap with the rest of Spain little by little<sup>16</sup>. After intense de-ruralization, Galicia is no longer an agrarian economy, but the other sectors are not buoyant as yet.

Two positive aspects deserve attention: first, the fact of having an autonomous Government has been good for the economy; whether Galician Governments have done all they could or not, is another matter. Second, after European integration, Galicia and Northern Portugal are establishing closer links in terms of commercial exchanges, enterprises working both sides of the border, PhD students, doctors, tourists and workers coming and going, thus creating a kind of new but 'natural' Atlantic market from Coruña to Porto.

The *Estatuto de autonomía* was enacted in 1981. Results of the last elections (October 2001) were: turnout, 60.2<sup>17</sup>; PP (centre right), 41 seats; BNG, 17 seats; PSOE (socialists), 17 seats. Generally speaking, extremism has

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<sup>13</sup> PPS is Purchasing Power Standard: Cataluña, 21,389; Andalucía, 12,751. (Data as of 1999; source, Eurostat). Only Madrid, Cataluña, Navarra, the Basque Country and the Balears reach the EU average or slightly above it. The position of Galicia among EU regions is very low.

<sup>14</sup> Data as of 2001. (Source: website of the Instituto Galego de Estadística). In 1994 unemployment reached 19.37; in 1999, 16 (source: Informe Socioeconómico de Galicia, Santiago, Xunta de Galicia, 2000, p. 24).

<sup>15</sup> Informe Socioeconómico, p. 10.

<sup>16</sup> Informe Socioeconómico, pp. 20 ff.; also Andrés FAÍÑA et al., Plan Estratégico de Desenvolvemento Económico de Galicia 2000-2006, Santiago, Xunta de Galicia, 2001, pp. 53 ff. Others are less optimistic; see Xavier VENCE, 'Forzas e Feblezas dun Vello País', in Víctor FREIXANES (ed.), Galicia, Vigo, 2001, pp. 286-325, 319-321.

<sup>17</sup> Caciquismo (clientelism), and very low turnouts, even in cities, were part of Galician culture until the eighties.

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always been less numerous in Galicia than in the rest of Spain. Dual identity is widespread<sup>18</sup>.

### ***A historical overview***<sup>19</sup>

Galicia and Scotland share several possibly accidental features: bagpipes, rainy weather, and the common belonging to Europe's Celtic fringe of peripheral and rather disadvantaged regions. Both have pessimism, awareness of being peripheral, poverty, and experiences of massive migration during part of the 19th and 20th centuries.

The Scottish nobility anglicised itself and in many cases went to London; the Galician upper classes went to Madrid. Educated people in Glasgow and Edinburgh during the 18th century - including David Hume - abandoned their accent in favour of the 'received' English pronunciation. Rich Galicians abandoned their language in favour of Spanish or *castellano*, usually with a strong Galician accent.

In Scotland, British political parties have been dominant, whether the Liberals in the past or Labour now. Similarly, Galicia has always voted principally for Spanish parties, although lately the BNG seems to be on the rise and obtains better results than the SNP.

In the British Empire Scotland played an important role as a partner, providing engineers, civil servants, and Highland Regiments. Millions of people bear Scottish names in Canada, Australia and the US, and the universities of these countries show the imprint of the Scottish educational tradition. By contrast, the Spanish Empire was Spanish-Castilian and Galicia as such played no part in it. There are hundreds of thousands of people of Galician descent in Latin America, including Fidel Castro and the Argentinean former Presidents, Alfonsín and De la Rúa. Yet the Galician impact in Spanish America is less articulated than the Scottish in the British Empire.

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<sup>18</sup> In 1994, 11.9 per cent of Galicians felt to be only Galicians, 24.3, more Galician than Spanish, 53.5, both equally, 5.3 more Spanish, and 4.4, only Spanish (source: Luis MORENO, *La Federalización de España, Madrid, 1997, p. 129*)

<sup>19</sup> *As for Scotland I am indebted to Luis MORENO, Escocia, Nación y Razón, Madrid, 1995.*

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Scotland has a tradition of Scots serving the British State. Once 'cleared', the Highlanders massively joined the Army. Among us, quite a number of Galicians served the State in important posts of the Spanish Administración (Civil Service)<sup>20</sup> since the 19th century. Many young Galicians leaving their poor homeland in the 19th and 20th centuries joined the Spanish Army. In fact, the massive presence of the Army and bureaucracy in Galicia to this day, along with the weakness of industrial structure, professions and civil society, help explain the Galician political culture. This is changing as both the Spanish Military and the bureaucracy are dramatically downsizing, while regional *funcionarios* now increase by the thousands. For the first time since the 16th century, one can envisage Galicia with little or no Spanish military presence and relatively few State *funcionarios*.

Some of the famous British centralists were Scottish. The Hanoverian Army at Culloden had plenty of Scotsmen<sup>21</sup>. Macaulay was a Scot like Tam Dalyell who actively campaigned against devolution in the seventies. Just as the British Labour party, which until recently defended centralism as the best way to territorial solidarity, included a significant number of Scots, Spanish centralism has been fuelled by many a Galician. Dictator Franco himself was a Galician born in Ferrol, stronghold of the Spanish Navy and notably *españolista* to this day.

#### ***Institutional frameworks of both regions***

The institutional framework established by the Scotland Act consists of a parliament and an executive (first minister, ministers, law officers, junior ministers, and a civil service) plus other minor bodies such as the Auditor General for Scotland (art. 69) or the Queen's Printer for Scotland (art. 92). Meaningfully, the Scottish Parliament comes first and takes up 43 articles out of a total of 132. Nothing is said concerning the judiciary, a traditional feature of Scotland.

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<sup>20</sup>*State civil servants* (funcionarios del Estado) *make up the* Administración del Estado, *originally tailored after the French model and basically imitated by regional administraciones when the latter came recently into being.*

<sup>21</sup>*I am informed by a student, Mr Ismael BRANCO, that in the Scottish army in Culloden there were some Galician. James III, the Pretender, spent several months in Galicia in 1719. In the same year, some 300 Galicians, along with exiled Scotsmen and Irishmen, went to Scotland, being defeated by the English Navy (Emilio GONZÁLEZ LÓPEZ, Historia de Galicia, Coruña, 1980, pp. 403-404).*

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The Galician *Estatuto* establishes an executive - the *Xunta de Galicia*, headed by a *Presidente* elected among regional MPs and served by an *Administración* - and a *Parlamento de Galicia*, as well as such minor bodies as the *Valedor do Pobo* (an ombudsman). The President calls for new elections every four years (or before, if helpful for securing a majority<sup>22</sup>). Parliament may pass a vote of no confidence or *moción de censura*. After the German *Grundgesetz* model, this has to be 'constructive', i.e. include a candidate for President who will automatically be invested with office if no confidence is voted for by at least 51 per cent of all Galician MPs. Due to the need for an absolute majority and a candidate accepted by all opposition groups, only one *moción de censura* has been passed in these twenty years. The unsuccessful *moción de censura* of the BNG against President Manuel Fraga in 2001 was rather a strategic move in the electoral campaign, and did not attract many votes for the BNG.

Since there is no third branch of Galician government, the few provisions in the *Estatuto* dealing with the judiciary refer to minor managerial aspects of the workings of Courts of Law in Galicia. The *Tribunal Superior de Xustiza de Galicia* is but the head of the Spanish judiciary in Galicia. There is no possibility of regional judges applying the European Convention on Human Rights.

The Galician executive is broadly similar to the Spanish one, as is its position vis-à-vis the legislature. It stems from the legislature and is accountable to it. When there is a clear majority in the House, as is usually the case, the executive is essentially in command of Parliament via the internal party transmission belts. The head of the Partido Popular, Fraga - in office since 1989 - is head at the same time of the party, the executive and, for all practical purposes, of a majority of MPs. If the same party is in office in Galicia and Madrid - as has been the case since 1996 - then the centre can virtually rule the region, and does so when something important is at stake or in order to take the sting off Galician claims. This phenomenon is common in partitocracies, where parties act as underground channels in spite of formal territorial separation of power. Thus vertical, hierarchical relations are to some degree preserved although the wording of the rigid Constitution technically prevents them. No one would say that Schleswig-Holstein or

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<sup>22</sup>*In several comunidades autónomas presidents cannot dissolve parliaments, the term of four years being thus fixed.*

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Alberta fall under direct control of the national government when the same party holds power in Berlin or Ottawa, but in Spain it is common to issue imperative commands to high officials of all *comunidades autónomas* governed by the PP (or PSOE, before 1996) or summon them to the Party Headquarters in Madrid in some cases. In February 2002 the Galician President defied Aznar defending the reform of the Senate, to turn it into a really territorial house, and more participation of the regions in Brussels - an exceptional move that made a lot of fuss.

Galician ministers are called *conselleiros*<sup>23</sup> (instead of *ministros*) and the Galician Government is the *Xunta*<sup>24</sup>. The Spanish Constitution and the regional *estatutos de autonomía* originally avoided using in the regions the 'sacred' words *Constitución, Estado, Gobierno, Ministro*<sup>25</sup>. There are no junior ministers in Galicia (nor in Madrid). In every *comunidad autónoma* there is a *Delegado del Gobierno* which represents the central government in the *comunidad autónoma*<sup>26</sup> and co-ordinates the offices of the Central Administration in the region, as well as with the Regional Administration - though in practice he co-ordinates little. The appointment is an internal party affair and the job is less important than that of a minister, a president of a region or a mayor of a mid-sized city. Except for commanding the police, the *Delegado's* functions are few and ambiguous because every peripheral administrative office is a branch of a central ministry, and ministers are in command of their offices throughout Spain irrespective of the territorial *Delegados del Gobierno*.

The State bureaucracy in Galicia has been large since the 16th century and especially since the 19th century. After 1978 it began to thin out but retained important powers, while the Galician bureaucracy grew through the transfer of State *funcionarios* and its own recruiting. In Spain in 1991 there were 900,576 State *funcionarios* and 565,460 regional, while local governments

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<sup>23</sup>'Councillors', in Spanish *consejeros*.

<sup>24</sup>Spanish Junta, an old word. During the Peninsular War the Junta Suprema del Reino de Galicia acted as a short-lived government, waging war successfully and signing a treaty with Britain in 1808 (GONZÁLEZ LÓPEZ, pp. 545-546).

<sup>25</sup>Parlamento is not so sacred a word in Spanish Constitutional Law.

<sup>26</sup>According to art. 152.1 of the Constitution, regional presidents, to avoid federal connotations, are also the ordinary representatives of the State in the region. In practice they do not play such a role; see the Basque case.

### *Scotland and Galicia*

had 359,877<sup>27</sup>. In 1999 they were 887,205, 677,160, and 504,550, respectively<sup>28</sup>. In Germany the total number of central civil servants in 1990 was 310,119 while the *Länder* had 1,535,908 and the municipalities 1,002,228<sup>29</sup>. In 2001 Galician figures were 31,975 central *funcionarios*, 73,815 regional, and 24,908 municipal<sup>30</sup>. The State still keeps more than one hundred offices in Galicia, including not only those of the Army and Navy but also delegations of roads, education, agriculture and health. After 1999, British departments of education and health have no jurisdiction in Scotland.

It was a tremendous stroke of luck for Scotland to have had its own Secretary of State. When devolution came the Scottish government already had a body of civil servants trained to work for Scotland. The same happened, to some extent, with the *funcionarios forales* of Navarra. The other *comunidades autónomas* started with small, ill-funded *administraciones* almost entirely transferred from the State, often half hearted or longing to return to the State bureaucracy. Although the regional administration has outgrown the central one in Galicia, many Galician bureaucrats were trained as State *funcionarios* and then transferred, and retain much of their original mindset. Even those directly recruited by the Galician Government are educated in law schools under a rather statist mentality and sometimes have an inferiority complex. They tend to accept that the central government is the really important one, and that Madrid has and should have the upper hand. Sometimes they even retard the region from fully utilizing the autonomy granted by the Constitution, and are unwilling to seriously defend Galician competencies against Madrid encroachment<sup>31</sup>.

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<sup>27</sup>Source: El País, 22 Feb 1992; see KEATING, *The Politics of Modern Europe*, London, 1993, 357.

<sup>28</sup>Source: Eliseo AJA, *El Estado Autonómico*, Madrid, 1999, 236. In 2000, for the first time, State funcionarios (753.783) went below regional (904.401). Yet State expenditure is still higher than regional expenses. (Sources: Boletín del Registro Central de Personal, 1 July 2000; and La Voz de Galicia, 8 January 2001).

<sup>29</sup>Source: Statistisches Jahrbuch, Wiesbaden, Statistisches Bundesamt, 1992; see KEATING, 303.

<sup>30</sup>Sources: data kindly provided by the Delegación del Gobierno en Galicia, and journal La Opinión, 14 January 2001.

<sup>31</sup>On the role of legal training in the framing of statist tradition see Robert DYSON, *The State Tradition in Western Europe*, Oxford, 1980. It has to be contrasted to the

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### ***Parliaments***

Unlike in Britain, Parliaments are not central to Spanish politics. To start with we will deal first with the Scottish one.

Some reports indicate that Scots are glad to have their own Parliament to scold and that it has fallen under intense popular criticism because the MSPs have hurried to provide themselves with substantial salaries, parking places, and like recriminations<sup>32</sup>. But these are the sort of things that could only be expected. The Scottish parliamentary tradition previous to 1707 seems to be gone. The present Parliament is not a continuation of an older one, but has been born in a strong parliamentary culture. In contrast, Spanish parliamentary tradition is meagre. To the candid observer, the Scottish Parliament seems to bear a resemblance to Westminster. Except for the horseshoe s(ape, foreigners immediately feel the 'family air': neutrality of the Speaker/Presiding Officer, question time, and so on. There is a reasonable amount of written questions, which are responded to with tolerable speed. Some MSPs have complained that they have had to wait two weeks to get an answer, but this would be considered a short wait in the Galician Parliament. Question Time is reasonable, forty minutes fixed per week, and First Minister's Question Time is twenty minutes per week. In the Scottish Parliament normally the First Minister has to personally answer questions on matters under his exclusive responsibility<sup>33</sup>. The role of individual MSPs seems more important and the committees more independent than in any central or regional parliament in Spain. Spanish regional parliaments follow the model of the central *Cortes Españolas* - admittedly not the best part of Spanish constitutionalism.

In Galicia there is no fixed question time, nor compulsory attendance requirement for the President to be questioned in Parliament, and Fraga, like Felipe González from 1982 to 1996, seldom goes to Parliament. The *conselleiros* attend more but are not scheduled regularly, and the agenda of

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*weakness of statist thinking in British education. Scotland, with its own universities, has been spared this problem. After the Reyes Católicos, officials that were to work in Galicia were trained at the Royal Chancery in Valladolid.*

<sup>32</sup>'Scots Have Their Very Own Parliament to Scold', New York Times, 22 September 2000.

<sup>33</sup>*Standing Orders, rule 13.7.*

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these sessions depends greatly on the majority party. The PP has thus been able to take the sting out of this parliamentary resource - something the opposition parties complain about.

Scottish Ministers and Junior Ministers have to be approved by Parliament<sup>34</sup>. Any MSP may be a candidate for First Minister with just the support of another MSP, which does not mean much in practice but gives us a hint of how parliamentary government should be. Similarly a vote of no confidence may be introduced by any MSP, although the support of twenty-five fellow members is needed.

The general openness and accessibility to the public of the Scottish Parliament and its committees should not go without mention<sup>35</sup>. The Scotland Act and the Standing Orders of the Scottish Parliament provide the power to call for witnesses and documents<sup>36</sup>, something non-existent in the Galician Estatuto. In Galicia people may attend parliamentary sessions only with a pass or invitation, although this is obtained without difficulty. As is customary in Spain, committee sessions are not open to the public. Indeed, the casual tourist will encounter less accessibility to visit the Galician Parliament than Westminster.

Parliament was first established in Galicia in 1981 with no parliamentary history to fall back on. Galicia does not have, for example, backbenchers, parliamentary customs or a tradition of neutrality on the speaker's part. People are accustomed to an executive branch of government, whether democratic or not, but not to a parliamentary branch. People do not say 'Parliament will have to fix this or that', or 'Parliament has done a good or ill job'. Lacking this mentality, partitocracy fills in the gaps and takes over, so that, for example, the appointment of the Speaker becomes an internal party affair. Parliaments in Spain are seldom a subject of conversation, and the Galician Parliament has added little more than a new body of government and bureaucratic machinery. When, in 1996, with a split Spanish Parliament, the PP formed a minority Government supported by the Catalans, some of us hoped that the Government's need for political support would bring about a more important role for the Cortes. However, Parliament remained passive

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<sup>34</sup>*Standing Orders, rules 4.6 and 4.7.*

<sup>35</sup>*Chapter 15 of the Standing Orders.*

<sup>36</sup>*Scotland Act, art. 23.*

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and the real protagonists were the secretariats of the parties in office, often meeting outside Parliament.

In Scotland the grip of parties on parliamentary life seems to be, for now, not too tight. In the Galician (and the Spanish) Parliament parties are all-important. The role of the individual Galician (or Spanish) MP is weak. Individual members in plenary sessions of the Galician Parliament cannot speak unless permitted by their parliamentary group. Debates are not very lively and do not carry much weight, not helped by the regular absence of President Fraga, a very able discussant.

The relationship between Parliament and society is of little significance in Galicia. Nobody writes letters to their MP because it has never been done in Spain and because the electoral system<sup>37</sup> does not allow you to properly have 'your Member'. If you want to complain to Parliament there is no specific MP to listen to your problems. The rank-and-file Galician MP attends Parliament mostly to please the party boss, who has the power to exclude him/her from the party list at the next election. Galician MPs do not seek to please the electors, whom they cannot know because the constituency is far too large<sup>38</sup> and because electors vote for the party list or the important person who stands first in the list.

Small wonder then that Parliament is of little consequence for Galician politicians or voters. People see that the President and the Administration make roads and grant licences or subsidies, but Parliament has little to attract their attention. For Fraga, in office since 1989, Parliament seems to be, de facto, like a kind of electoral chamber to re-elect him every four years, and that could well be dissolved until the next election. It should be noted that voters do not punish this. They see Parliament as just another body in the machinery of regional government. The average person seldom if ever thinks of Parliament since very few applications, petitions or complaints are laid before it.

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<sup>37</sup>*Blocked lists, one in each of the four Galician provinces: Coruña (1,108,419 population and 7,876 square kilometers), Lugo (366,000 and 9,803), Ourense (345,000 and 7,278), and Pontevedra (912,000 and 4,477).*

<sup>38</sup>*Since the Spanish Constitution enshrined the province as the electoral constituency, to have smaller constituencies would require a constitutional reform - another dubious side effect of the written Constitution.*

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### ***Competencies***

The scheme of competencies - reserving certain matters to London and giving all else to Edinburgh - is perhaps the only important element clearer in the Scotland Act than in its Galician counterpart. The functions devolved to the Scottish Parliament seem to allow a substantial degree of self-government, although more powers to tax should be added.

Since in Britain there are no different categories of laws - organic, basic, *Rahmengesetze* - things are simpler than in Spain, the only interesting distinction being primary and secondary legislation. The Scottish Parliament can enact primary legislation, although Westminster retains its sovereignty<sup>39</sup>. There is no list of shared competencies because Westminster can make laws on devolved matters although it is unlikely to do so. In practice some matters are obviously shared: e.g. economic development or the environment.

The Scottish and Spanish schemes of competencies are as different as their constitutional frameworks. The Spanish one starts from a statist point of view and a written but ambiguous Constitution. Rather than entrenching regional competencies, it guarantees Madrid the last say in nearly all substantive matters. Article 149 contains a list of 32 items reserved to Madrid (see Appendix below). It is so long and detailed that almost nothing of consequence is left out, although implementation may be left to the regions in many cases.

A second list contains areas that can be devolved to the *comunidades autónomas* (article 148.1; see Appendix). These are less numerous (22) and of relative unimportance except for a few minor cases (cattle, agriculture, certain public works). Broadly speaking, articles 148 and 149 do not guarantee a substantial degree of self-government. But if the central Government is under pressure or otherwise wishes to do so, article 150 permits it to delegate secondary legislation in reserved matters under certain conditions and retaining final control (see Appendix). In a partyocracy, regions without parties of their own are unlikely to benefit from this provision.

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<sup>39</sup>It reminds us of the Portuguese scheme. Its written Constitution does not entrench regional powers.

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And to avoid would-be excessive dispersion out of autonomous legislation, article 150.3 (see Appendix below) provides for further central controls, the *leyes de armonización*, apt to interfere even in exclusive regional competencies. To conclude the competencies scheme, a sort of overarching supremacy clause is provided for in article 149.3 of the Constitution (see Appendix).

Summing up the meaning of all the constitutional provisions regarding competencies, the State keeps all controls, even beyond what could be wise or necessary.

On their part, the *estatutos* often grant the regions competencies that the Constitution reserves for the State. As mentioned, the *estatutos* basically list, first, competencies exclusive to the region<sup>40</sup> (a small number), and, second, competencies shared by Madrid and the region, on unequal terms. Combining articles 148 to 150 of the Constitution with the provisions in the *estatutos*, the regions have, in the end, three kinds of competencies: matters entirely reserved to the *comunidad autónoma* (almost none), matters in which primary legislation is reserved for Madrid while secondary legislation and execution belong to the region, and matters in which primary and secondary legislation are reserved for Madrid while the region is granted only execution and implementation.

Although unclear, the system is less complicated than the German one, which includes matters reserved to the Bund (articles 71 and 73 of the *Grundgesetz*), shared (articles 72, 74 and 74a, a rather long catalogue), federal basic laws<sup>41</sup>, implied powers<sup>42</sup>, and competencies common to Bund and Länder when performing certain joint tasks (*Gemeinschaftsaufgaben*, articles 91a and 91b).

The Spanish system was created along the lines of political decentralisation in contrast with Portuguese administrative decentralisation. Prima facie it looks

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<sup>40</sup>There are differences among regional estatutos, the three main regions having more formally exclusive competencies, along with Navarra, Andalucía, Valencia, and the Canarias.

<sup>41</sup>Rahmengesetze. Article 75 of the Grundgesetz states the competency of the Bund to enact laws establishing basic principles or frames for the Länder to act within: a list of seven items deals with general principles of university education, hunting, and other matters.

<sup>42</sup>Not to be found in the literal wording of the Grundgesetz.

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like dual federalism, but since no competence is really exclusive to a region, it tends to share matters, thus approximating the German system. But unlike Germany, it fails to ensure cooperation between member territories and the State. Mistrust rather than *Bundestreue* is to be found in the Constitution, regional participation in central decisional bodies is not provided for, and the State keeps always the final say, should any conflict arise. For example, in education, Galicia has in practice extensive implementation and managerial powers, administers a lot of money, commands many workers, and can even create new universities. Yet there is no real Galician educational system because the vast majority of the decision-making competencies are reserved to the State. All laws regulating education at all levels are State laws, which descend to every detail. Galician universities are like all Spanish universities, the curricula depend largely on Madrid, and the region cannot even recruit teachers in its own manner, especially after the controversial *Ley Orgánica de Universidades* was passed by the PP in 2001. In the German *Länder*, American states or Scotland, central governments lack such a degree of power in education.

Scottish powers, although devolved by a legally omnipotent central power, look more federal in practice. The scheme is residual, has no veto, and includes most important matters typical of member states (except taxation and freedom to reform the Scotland Act). At first glance the Scottish competencies look reasonable and the list of matters reserved to Westminster seems not excessive - twenty-six items without special intricacies, containing neither small print nor 'without prejudice' clauses. Some may be expanded or abused by Westminster - say, consumer protection - and others could well have been devolved - road safety or gambling. But on the whole, and including matters kept from of old, the scene looks not too bleak. Conflicts of competence are to be solved by the Privy Council, whose quasi-international flavour recalls self-governed dominions rather than decentralised regions, although Privy Councillors are appointed by London. The Scotland Act echoes those Acts of Parliament that in the past gave self-government to British dominions without 'small print' to disguise central control. Its general flavour recalls the dictum of a British politician on self-governing colonies: 'liberty, once given, will not be taken away'.

#### ***Is the written constitution so safe a protection?***

I have often been told that Britain needs a rigid constitution to protect autonomous territories from the whims of Westminster. Be it so, but the British Constitution might be not so bad for Scottish identity and self-

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government by being piecemeal, devoid of doctrine, flexible, and politically, although not legally, pluralistic<sup>43</sup>. Galicia's twenty years experience would suggest that a written constitution could perhaps be not so safe, although an unwritten constitution would have achieved no miracles. First, the territorial provisions of the Spanish Constitution are ambiguous and permit several interpretations. (Ambiguity may be useful, but one does not enact a written constitution to achieve ambiguity.) Second, much depends on the 'basic' legislation and the Constitutional Court. Third, this Court is a central body without regional representation, and ten of its twelve judges are appointed after bargaining between Government and opposition at the centre. So, most *comunidades autónomas* can appoint no judge, while the central Government directly appoints two of them. Written constitutions end up in the hands of Constitutional or Supreme Courts just as flexible constitutions end up in the hands of MPs.

Galician competencies exemplify the real working out of our written Constitution. It is difficult to say exactly which they are. The *Estatuto* has several ambiguous articles - 27 to 36 - attributing competencies. Article 27 has thirty-one items labelled 'exclusive competencies' of Galicia but many of them are hollow (e.g. regional railways, since there are none), or have the 'without prejudice' clause built-in, or cannot be exclusive because the Constitution prevents it. In other cases, the *Estatuto* gives Galicia secondary legislation (articles 28 to 33), or power to execute and implement only. The constitutional 'small print' of subjection to basic State laws, the general interest, the bases of the economy and like clauses haunt the *Estatuto* and guarantee ultimate control for Madrid in nearly all matters. Besides, the *Estatuto* more than once grants the region more powers than allowed by the Constitution. For example, article 31 of the *Estatuto* grants full and universal powers in education in such a fashion that an alien, upon reading it, would think that Galicia has nearly total capacity — until he reads articles 27, 81, and 149.1.30 of the Constitution, mentioned in the 'small print' of the same article 31<sup>44</sup>.

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<sup>43</sup> WALKER, 'Scottish Self-Government'.

<sup>44</sup> ...Without prejudice to [...] article 27 of the Constitution and to such organic laws as, according to article 81.1 of the Constitution, develop the said article 27; and to the functions attributed to the State by article 149.1.30 of the Constitution, and to the high inspection' of the State to those ends. The combination of all these articles of the

## CONCLUSION

We now come to a close. As stated, in Spain it is often said that our system is federal in all but name, and some think that our regions are among the most decentralised territories in the world. Aja writes that our system works well and is really federal, 'surely between Germany and Austria', the difference between Spain, Austria and even Switzerland lying in the fact that Spain is more asymmetrical<sup>45</sup>. But if federalism means substantial self-government and extensive horizontal dispersion of power, I do not think I can agree. Certainly the *comunidades autónomas* have federal features, but on the whole they are not federal: they are not free to reform their *estatutos*, do not have all three branches of government - not even police patrolling the roads in most cases - and lack important competencies on matters that all federated states (and Scotland) have. Disciplined, all-pervading and highly centralised parties, along with the absence of a territorial Senate or a Scottish Grand Committee tell the rest. The weakness of civil society and professions crown it all. (Yet, rich regions governed by their own parties enjoy more autonomy.)

In the United States prices vary from Illinois to Indiana because taxes vary. In Louisiana French law is partly still in force, and in Puerto Rico the old Spanish Civil Code is in good health. In Bavaria, the traveller will hardly meet federal policemen, and the impression of federalism at work will be similar if one visits a university. The German judiciary and their training, including law schools, depend on the *Länder*, most of which have also a Constitutional Court. Scottish jurisdiction includes all criminal law except drugs and firearms while in Spain this is entirely outside regional competence. In Spain, civil law remains primarily with the State, while nearly all civil law is traditionally a Scottish matter. Like Bavaria or Massachusetts, Scotland is in command of its territory. In Galicia, as in all Spanish *comunidades autónomas*, local governments are entrenched against regions by the Constitution<sup>46</sup> and partly depend on Madrid. They have recently been granted direct access to the Constitutional Court to protect them from

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*Constitution reworks the competencia plena to not much more than generous decentralised management and administration.*

<sup>45</sup> See AJA, pp. 239, 240.

<sup>46</sup> See articles 137, 140 and 141.

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regional governments<sup>47</sup>. Local elections are regulated from Madrid and local government is broadly regulated by the *Ley de Bases del Régimen Local*, which leaves little room for the regions to manoeuvre. Sometimes, local projects are designed by municipalities, endorsed by Madrid, and approved (and financed) by Brussels with no participation of the region involved<sup>48</sup>. Coruña, the second biggest city in Galicia and a stronghold of Spanish nationalism, has been ruled for nearly twenty years now by an idiosyncratic PSOE mayor who overtly challenges the Regional Government to the glee of the Spanish Government and centralist media. Strong localisms have always been a problem in Galicia, a polycentric territory.

I would conclude that Galicia has quite a number of mostly executive competencies but with modest decision-making capacities. The Constitution and the *Estatuto* have created a Galician political system for the first time in many centuries, with its proper distinctiveness - this cannot be denied. Some horizontal separation of power is also provided, although at risk when the same party rules in Madrid and Santiago de Compostela. Galicia has come into existence and plays a role in Latin America and among its fellow European regions. Some say that we are undergoing some ('light') process of nation building due to having a regional scenario, a (modest) decision-making centre, and regional policies. Autonomy has been good for Galicia, but we are not establishing ourselves 'as a substantially self-governing region in Europe', as MacCormick says of Flanders<sup>49</sup>. Real decisions in important affairs are reserved for Madrid, if not Brussels. Implementation and execution are left to the *comunidad autónoma* in many areas, but less than in Scotland because we lack judges. From the perspective of the competencies of Galicia, it looks like a case of large and generous administrative decentralisation. Institutionally, it is a political arena with a parliament, an executive accountable to it and not to Madrid, party politics and regional elections. Galicia is, thus, a real yet dependent political community. Were our judgment based only on the tasks performed and the degree of independence in their execution, we could conclude that extensive decentralisation could have had roughly a similar

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<sup>47</sup> See article 10 c) bis, Ley Orgánica del Tribunal Constitucional as amended in 1999. This provision seems of not much use as yet.

<sup>48</sup> For example, a project to improve a marshy area in Pontevedra (Autumn 2000).

<sup>49</sup> Neil MACCORMICK, 'Stands Scotland Where She Did?', *The Irish Jurist*, pp. 1-16, 7.

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outcome - although not in all cases, as the flourishing foreign relations and European activity indicate.

My reasons for this unorthodox conclusion are, first, that most funds still come from the State. The second is abuse by the State of the basic laws, frame laws, general conditions of the national economy, general economic policy, and other clauses that turn exclusive Galician competencies into competencies shared with Madrid and in which Madrid plays the most important role. There are no devolved matters that can entirely escape this. Third is the absence of a *Bundesrat* or equivalent body to guarantee participation of the regions in central decisions<sup>50</sup>. Fourth comes the party system and the political culture. And fifth is the impact of the EU on regional matters.

For example, fishing in inland waters has traditionally been a very important activity for Galicia. In the *Estatuto* it is an absolutely exclusive competence, i.e. reserved to Galicia at all levels: primary legislation, secondary legislation, and execution. In these cases the relations between Madrid and the region become 'horizontal' instead of 'vertical', unlike shared matters, in which the State retains primary or primary and secondary legislation, thus maintaining some 'verticality'. In Germany, land of cooperative federalism, this verticality is balanced via the extensive participation of the *Länder* in both the German and European spheres of government. Since Spain's quasi-federalism lacks this participatory dimension, it would be important to have competencies where verticality gives way to horizontality. This could have been the case with inland fishing, until Spain joined the EU, taking fishing out of Galician hands, not very different to agriculture after being devolved to Scotland.

We do not have substantial self-government in a substantial number of matters but half a loaf is better than none. Our present degree of autonomy, after centuries of unitary centralism, has been positive, granting us governing bodies, funds, elections, and a voice in Europe. This EU dimension, along with the rediscovery of Northern Portugal and the reduction of the Spanish Army and *Administración*, will, over time, add to autonomy. Yet the Spanish system does not seem suited to accommodate all tensions coming from both the regions and the EU, so that some substantial unrest keeps on. I do not think it is sensible to leave things unchanged. To my mind, full-blown

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<sup>50</sup> *Even defenders of the system recognise this failure. For AJA, a Bundesrat-like Senate and a channel for intergovernmental relations are urgent; see pp. 276-278.*

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federalism would be the right and realistic way to follow. Even Aja, who favours the system and says there is no alternative other than secession, proposes a set of reforms that in practice would turn the system into real federalism: reducing 'basic' legislation to the really basic, participation of the regions in important decisions in Madrid and in Brussels, devolving them nearly all executive functions, giving them some of the Constitutional judges, and devolving to the regions substantial powers over local government<sup>51</sup>.

Is it realistic to expect the State to accept this? In the short term, experience suggests otherwise.

### **APPENDIX: LISTS OF COMPETENCIES OF GALICIA AND SCOTLAND**

#### *Matters reserved to London*

1. The Crown, the Union of the Kingdoms of Scotland and England, the Parliament of the United Kingdom;
2. International relations, including foreign trade except for: observing and implementing EU and ECHR matters<sup>52</sup>;
3. Defence and national security; treason; provisions for dealing with terrorism;
4. Fiscal and monetary policy, currency, coinage and legal tender;
5. Immigration and nationality, extradition;
6. The criminal law in relation to drugs and firearms, and the regulation of drugs of misuse<sup>53</sup>;
7. Elections, except local elections;
8. Official Secrets, national security;
9. Law on companies and business associations, insurance, corporate insolvency and intellectual property, regulation of financial institutions and financial services;
10. Competition, monopolies and mergers;
11. Employment legislation including industrial relations, equal opportunities, health and safety;
12. Most consumer protection; data protection;

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<sup>51</sup> See pp. 266 ff.

<sup>52</sup> Observing and implementing ECHR is not a regional competence in Spain.

<sup>53</sup> All criminal law is a State competency in Spain.

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13. Post Office, postal and telegraphy services;
14. Most energy matters;
15. Railways and air transport; road safety;
16. Social security;
17. Regulation of certain professions, including medical, dental, nursing and other health professions, veterinary surgeons, architects, auditors, estate agents, insolvency practitioners and insurance intermediaries<sup>54</sup>;
18. Transport safety and regulation;
19. Research Councils;
20. Designation of assisted areas;
21. Nuclear safety, control and safety of medicines, reciprocal health agreements;
22. Broadcasting and film classification, licensing of theatres and cinemas, gambling;
23. Weights and measures; time zones;
24. Abortion, human fertilization and embryology, genetics, xenotransplantation;
25. Equality legislation;
26. Regulation of activities in outer space.

#### ***Main functions devolved to the Scottish Parliament***

1. Health;
2. Education and training;
3. Local government, social work, housing and planning;
4. Economic development and transport; the administration of the European Structural Fund<sup>55</sup>;
5. The law and home affairs including most civil and criminal law and the criminal justice and prosecution system<sup>56</sup>; police<sup>57</sup> and prisons;

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<sup>54</sup>According to the Spanish Constitution it is for the State to regulate professions.

<sup>55</sup>The administration of the European Structural Fund is not an exclusive regional competency in Spain.

<sup>56</sup>Regional prosecutors cannot exist in Spain.

<sup>57</sup>Police forces are almost entirely run by the State except in the Basque Country, Navarra, and Cataluña. Galicia, like some other comunidades autónomas, has several hundred policemen with a few tasks and hardly distinguishable from the central police. Local governments in Spain have numerous corps of police and many more competencies in policing than the comunidades autónomas.

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6. The environment;
7. Agriculture, fisheries and forestry;
8. Sport and the arts;
9. Research and statistics in relation to devolved matters.

***Matters reserved to the Spanish State according to the Constitution<sup>58</sup>, article 149, 1 and 2:***

'(1) The State holds exclusive competence over the following matters:

'1) the regulation of the basic conditions which guarantee the equality of all Spaniards in the exercise of their rights and fulfilment of their constitutional duties;

'2) nationality, immigration, emigration, aliens, and the right of asylum;

'3) international relations;

'4) defence and the Armed Forces;

'5) the Judiciary and administration of Justice;

'6) commercial, criminal, and prisons legislation, procedural legislation, without prejudice to<sup>59</sup> the necessary specialties which in this order may derive from the particularities of the substantive law of the *comunidades autónomas*;

'7) labour legislation, without prejudice to its execution by the *comunidades autónomas*;

'8) civil legislation, without prejudice to the preservation, modification, and development by the *comunidades autónomas* of their *foral* or special civil law, where they may exist; in any case, the rules relative to the application and effectiveness of legal norms, civil legal relations having to do with the form of marriage, regulation of registers and public instruments, the bases for contractual obligations, norms for resolving conflicts of laws, and the determination of the sources of the law—in this last case, with respect to the norms of the *fueros* and special law;

'9) legislation concerning intellectual and industrial property;

'10) system of customs, tariffs, and foreign trade;

'11) monetary system, foreign credits, exchange and convertibility; the general bases for the regulation of credit, banking, and insurance;

'12) legislation on weights and measures, determination of the official time;

'13) bases and coordination of general planning and economic activity;

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<sup>58</sup>*This English version is based on the one by the University of Wuerzburg in its web page, with slight modifications.*

<sup>59</sup>*The famous sin perjuicio ('without prejudice') clause infects the distribution of competencies in the Constitution and the estatutos de autonomía. It is the cause of the federal appearance but decentralised reality of many regional powers.*

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- '14) general finance and debt of the state;
- '15) promotion and general coordination of scientific and technical research;
- '16) external health; bases and general coordination of health; legislation concerning pharmaceutical products;
- '17) basic legislation and economic system of the social security, without prejudice to the execution of its services by the *comunidades autónomas*;
- '18) the bases of the legal regulation of all civil services and the legal condition of their officials, that shall in every case guarantee that the public will receive a common treatment by them; a common administrative procedure, without prejudice to the specialties deriving from the particular organisation of the *comunidades autónomas*; legislation on forcible expropriation; basic legislation on contracts and administrative concessions, and the system of responsibility of all public administration;
- '19) maritime fishing, without prejudice to the competencies attributed to the *comunidades autónomas* in the regulation of the sector;
- '20) merchant marine and the ownership of ships; lighting of coasts and maritime signals; ports of general interest, airports of general interest, control of the air space, transit and transport, meteorological service and registration of aircraft;
- '21) railroads and land transport which crosses through the territory of more than one *comunidad autónoma*; general communications system, traffic of motor vehicles; mail and telecommunications; aerial cables, submarine cables, and radio communication;
- '22) the legislation, regulation, and concession of water resources and projects when the waters run through more than one *comunidad autónoma* and the authorisation of electrical installations when their use affects another comunidad or when the transport of energy goes beyond its territorial area;
- '23) basic legislation on environmental protection without prejudice to the faculties of the *comunidades autónomas* to establish additional standards of protection; basic legislation on woodlands, forestry projects, and livestock trails;
- '24) public works of general interest or whose realisation affects more than one *comunidad autónoma*;
- '25) bases of the mining and energy system;
- '26) system of production, sale, possession, and use of arms and explosives;
- '27) basic norms of the system of press, radio, and television and, in general, of the other media of social communication, without prejudice to the powers that in their development and execution belong to the *comunidades autónomas*;
- '28) protection of the cultural, artistic, and monument patrimony of Spain against exportation and exploitation; museums, libraries, and archives belonging to the State without prejudice to their management by the *comunidades autónomas*;
- '29) public order, without prejudice to the possibility of the creation of polices by the *comunidades autónomas* in the manner which may be established in the respective

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*estatutos de autonomía* within the framework of the provisions of a future organic law;

'30) regulations of the conditions for obtaining, issuing, approving, and standardising academic and professional degrees and basic norms for carrying out Article 27 [of this Constitution] in order to guarantee compliance with the obligations of all public powers in this matter;

'31) statistics for State purposes; and

'32) authorisation for convocating popular consultations via referendum.'

(2) Without prejudice to the competencies which the *comunidades autónomas* may assume, the State shall consider the service of culture a duty and essential attribute and shall facilitate cultural communication among the *comunidades autónomas* in agreement with them.

### ***Matters that can be devolved to the comunidades autónomas, according to article 148.1 of the Constitution:***

'(1) The *comunidades autónomas* may assume competencies in the following matters:

'1) organisation of their institutions of self-government;

'2) alterations of the municipal boundaries contained within their territories, and in general the functions concerning local corporations that belong to the State and whose delegation is authorised by the legislation on Local Government;

'3) regulation of the territory, urbanism, and housing;

'4) public works of interest to the *comunidad autónoma* in its own territory;

'5) railways and highways whose itinerary runs completely inside the territory of the *comunidad autónoma* and, within the same boundaries, transportation carried out by these means or by cable;

'6) ports of refuge, recreational ports and airports, and generally those which do not carry out commercial activities;

'7) agriculture and livestock raising, within the general regulation of the economy<sup>60</sup>;

'8) woodlands and forestry;

'9) implementation and execution concerning environmental protection;

'10) water projects, canals, and irrigation systems of interest to the *comunidad autónoma* as well as mineral and thermal waters;

'11) fishing in inland waters, hunting, and river fishing;

'12) regional fairs;

'13) promotion of the economic development of the *comunidad autónoma*, within the objectives marked by the national economic policy;

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<sup>60</sup>This is another centralising clause frequent in the Constitution and the estatutos.

## *Scotland and Galicia*

- '14) handicrafts;
- '15) museums, libraries, and conservatories of interest to the *comunidad autónoma*;
- '16) monuments of interest to the *comunidad autónoma*;
- '17) promotion of culture, research, and, when applicable, the teaching of the language of the *comunidad autónoma*;
- '18) promotion and regulation of tourism within its territorial area;
- '19) promotion of sports and adequate utilization of leisure;
- '20) social assistance;
- '21) health and hygiene; and
- '22) custody and protection of its buildings and installations, coordination and other functions regarding local police forces under such terms as an organic law shall establish.'

### ***Other relevant Constitutional provisions***

(1) Article 150.1 and 2: the State can delegate secondary legislation in reserved matters under certain conditions:

'1) The Cortes Generales, in matters of the competence of the State, may grant to all or one of the *comunidades autónomas* powers to enact laws within the framework of the principles, bases, and directive criteria established by a State law. Without prejudice to the competence of the Courts of law, in every law shall be established the method of control by the Cortes over these laws of the *comunidades autónomas*.

'2) The State may transfer or delegate to the *comunidades autónomas* by an organic law, powers on such reserved matters, as are apt to be transferred or delegated because of their own nature. These laws shall in each case contain the pertinent transfer of financial means as well as the forms of control that the State retains.'

(2) Article 150.3, on *leyes de armonización* to control dispersion of autonomous legislations:

'The State may enact laws which establish the principles necessary to harmonize the norms made by the *comunidades autónomas* even in the case of matters attributed to their competence when the general interest so demands. It is for the Cortes Generales, by absolute majority in each House, to evaluate this necessity.'

(3) Article 149.3 (an overarching supremacy clause):

'Matters not attributed expressly to the State by this Constitution belong to the *comunidades autónomas* by virtue of their respective *estatutos de autonomía*. Competence over matters not assumed by the *estatutos de autonomía* shall belong to the State, whose norms shall prevail in the case of a conflict over those of the *comunidades autónomas* in everything not attributed to their exclusive competence. State Law shall always be supplementary to the law of the *comunidades autónomas*.'

*March 2002*