A Consociational Compromise?
Constitutional Evolution in Spain and Catalonia

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Abstract

This chapter examines the prospects of a consociational compromise in Spain and Catalonia as a response to the protracted constitutional stalemate between the two governments. While Spain's transition to democracy in the late 1970s had a clear consociational tinge, it has since evolved toward the entrenchment of a majoritarian and mononational interpretation of the state, hostile to its plurinational reality and to minority nationalist aspirations in territories like Catalonia. Hitherto, no institutional resolution has been found to satisfy the demands of both sides. This chapter argues that consociational philosophy has much to offer to Spain and Catalonia. While a more consensual approach to politics is crucial to thawing the frosty relations between the pro- and anti-independence sides, the development of a fully-fledged consociational system has yet to gain much traction.

Introduction

Over the past few years, Spain has come under unprecedented stress – economically, politically and territorially. Since 2010, the Catalan independence movement has garnered significant traction seriously calling into question Spain's constitutional status quo. Notwithstanding this sustained period of political turmoil - including an independence referendum in October 2017, the removal and reinstatement of the Catalan Government (in October 2017 and May 2018 respectively), the arrest and incarceration of several pro-independence parliamentarians and civil society leaders, as well as a regional election in Catalonia (December 2017), a change of government in Madrid (June 2018) and a left-leaning coalition government between PSOE (Spanish Socialist Workers' Party) and United-We Can (Unidas Podemos) following the 2019 general election - the territorial impasse remains unresolved. Hitherto, no palatable institutional resolution has been found to fulfil or even temporarily ameliorate the demands of either independence supporters or opponents.

The vehement constitutional clash between the Spanish and Catalan governments has precipitated a marked fracturing of Catalan society between pro- and anti-independence supporters. Claims of a polarized society hold some merit, particularly when measured along the constitutional-independence axis, but such assertions mask the broad consensus among the Catalan electorate vis-à-vis support for holding an independence referendum and opposition to the imprisonment of pro-independence representatives (CEO 2019).[1] There remains, however, a protracted stalemate that requires some form of institutional innovation to assuage

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[1] In a recent survey, 49.3% of Catalan supported independent statehood, while 41.2% were against. In response to the question, 'a referendum should be held in Catalonia because Catalans should decide the sort of relationship they want between Catalonia and Spain' 70.8% agreed. In the same survey, 75.2% of respondents considered the imprisonment of pro-independence representatives 'unjust' while only 16.4% supported this course of action (CEO 2019).

concerns of both independence supporters and opponents and ultimately break the political deadlock.

Power-sharing mechanisms are oft-promoted as leading forms of conflict management, particularly in disputes 'focused on antagonistic self-determination claims' (O'Leary, 2008: p. 47; see also McGarry 2019; McGarry and O'Leary 2010). Institutional tinkering is no panacea for all problems in plural societies, but the ability of power-sharing arrangements to temper majoritarian democracy, promote consensus, foster accommodative behavior and ultimately institutionalize political stability, renders it a political formula adept at managing centrifugal tensions in plurinational contexts (Keil and Anderson 2018; McGarry and O'Leary 2009). In Spain, a commitment to political decentralization was developed as part of the country's democratic transition in the late 1970s, but despite the pacted nature of the democratic transition, undergirded by elite cooperation and broad consensus, a model of majoritarian democracy took root. The majoritarian turn – which has also witnessed successive attempts at territorial centralization – has elicited vociferous criticism over the years and jars with the pro-autonomy and plurinational interpretation of the state widely held in Autonomous Communities (ACs) like the Basque Country and Catalonia (Brown Swan and Cetrà 2020). In the event, growing restlessness has translated into increasing support for enhanced autonomy, co-sovereignty, and ultimately independence.

The first and second sections of this chapter focus on the historical and political elements of the Spanish territorial system. They shed light on the consociational tinge of the Spanish transition to democracy and subsequent transmutation of the system from one of consensual agreement to majoritarianism. The next sections discuss the protracted constitutional clash between the Spanish and Catalan governments, before examining whether the implementation of a power-sharing regime is a workable alternative to the constitutional status quo. The main argument is that elements of federal and consociational thinking are considered necessary to guide and support relations between Spain and Catalonia as well as within Catalonia itself, but these have yet to gain much traction among Spanish and Catalan political elites.

The Consensual Transition

The historical evolution of Spain's territorial model has oscillated between periods of centralization and decentralization. The current system of decentralization is arguably rooted in the Second Spanish Republic (1931-1939) which sought to recognize the state's ethnoterritorial distinctiveness through the sanctioning of Statutes of Autonomy for Catalonia, the Basque Country and Galicia (Payne 1993). Such institutional recognition, however, was short lived. The advent of Civil War in 1936, the victory of General Francisco Franco in 1939 and a subsequent 39-year dictatorship precipitated a prolonged period of cultural and political repression, specifically targeting regional political institutions, laws, languages and symbols in the Basque Country and Catalonia (Conversi 1997). The Franco dictatorship witnessed the re-imposition of centralist control from Madrid underwritten by a fierce defense and promotion of Spanish nationalism.

The democratic transition that followed the death of Franco in 1975 sought explicitly to garner the support of Basque and Catalan nationalists through the promotion of a more accommodating stance towards claims for self-government. Unsurprisingly, the transition was fraught with complications, not least the delicate act of balancing the appetite of pro-decentralization forces with the autonomy-cautious military and representatives of the Franco regime. Given that discussions in the transition were concerned with power-distribution as

opposed to power-sharing, no concrete power-sharing model emerged during or after the transition. The peaceful transition however, had an indisputable consociational tinge, framed and influenced by a consensual and cooperative approach to negotiations (Huneeus 1985; Capo Giol et al 1990).

The Spanish transition has been variably hailed a 'pacted transition' (Linz and Stepan, 1996: p. 87), 'an elite settlement' (Gunther, 1992: p. 38) and 'transition by agreement' (Colomer 1991) given it was characterized by a politics of consensus that sought to foster an inclusive decision-making process with all major political actors. A conscious decision by most political actors, albeit spearheaded by Adolfo Suárez after his appointment as Prime Minister (PM) in 1976, collaboration and cooperation to facilitate democracy were prized over inter-party competition and confrontation. For most political actors, particularly the pro-democracy opposition, negotiation in the spirit of compromise was a necessary task to eschew any return to conflict and dictatorship. The establishment of a parliamentary democracy took precedence over partisan competition.

PM Suárez' Union of the Democratic Centre (UCD) party was instrumental in this process, not least given its internal consociational make-up (Huneeus 1981). The UCD itself was a coalition of numerous smaller parties but equally translated its intra-party consensual approach to state-wide politics in the early stages of the transition, including Suárez' enthusiasm for engaging with all political actors, particularly regional representatives from the Basque Country and Catalonia and reform-oriented members of the Franco regime. As Hopkin (2005: p. 14) attests, Suárez 'generally favored a more consensual style of democracy based on continuous negotiation as an antidote to the disastrous consequences of a confrontational style of politics in the 1930s'. Following the enactment of the 1976 Law of Political Reform, democratic elections were organized for the following year. UCD emerged as the largest party, albeit 11 seats short of an absolute majority. Having been charged by the electorate to lead the transition, including the drafting of a new constitution, the new UCD administration's approach sought to avoid excessive political fragmentation or polarization and instead build broad-based consensus, both inside and outside parliament. As a minority government, UCD relied on the support of other parties to successfully deliver the transition and took a distinctly consociational approach to parliamentary politics. The government rejected the notion of a grand coalition (Clark, 1985: p. 86), but several non-UCD ministers were appointed to the cabinet in an attempt to foster consensus for constitutional negotiations (Rodríguez-Teruel 2011), while parliamentary votes were often approved with 'supermajorities integrating virtually all parliamentary groups' (Hopkin, 2005: p. 9). The Suárez government did not conform to any textbook definition of a consociational regime, but there was clear consociational influence in how the government perceived and advanced its model of transition.

The consensual approach to the transition was also instrumental in the development of positions vis-à-vis Spain's territorial model. The dismantling of the Franco regime went hand in hand with discussions with Spain's regions – namely the Basque Country and Catalonia – on a commitment to decentralize power; fulfilling some of the claims of the historic territories while further developing the democratization process. As a result, pre-autonomy decrees were issued for the Basque Country and Catalonia in 1977, re-establishing the regional governments that had been abolished and exiled by the Franco victory at the end of the Civil War. In the case of Catalonia, President-in-exile Josep Taradellas returned to head the re-established Catalan government in a move that was widely interpreted as a necessary compromise to gain the trust of the Catalan political elites and society in the transition process, as well as hugely symbolic in terms of recognition of Catalonia as a historic entity and the Spanish elites' commitment to

decentralization (Magone, 2008, p. 235). Notwithstanding negotiations on the territorial model, both Basque and Catalan elites, influenced by the experiences of the Franco dictatorship, sought to secure significant regional autonomy in the shape of executive and legislative power as opposed to the establishment of consensual decision-making institutions with the central state (Clark 1985). There was little appetite for institutionalizing a long-term consensual approach; the priority was to achieve regional autonomy.

Figure 1: Map of Spain's Territorial Organization

The climate of consensus around the territorial model was also translated into the wider constitution-drafting process, which included a broadly representative committee and sub-committee. What resulted regarding the territorial model, however, was an ambiguous solution that exemplified the competing interpretations of the Spanish state but one that rejected the overweening centralist approach of the Franco regime and supported the institutionalization of self-government for Spain's sub-state entities. In only a short space of time, the decentralized model became a territorial structure with wide support throughout Spain and aided the recognition of the constitution as a product of consensus not imposition (Viver, 2012: p. 220). The success of consensus politics was to prove to be a short-term feature in the evolution of Spanish democracy.

The Evolution of the Territorial Model

On 23 February 1981, Colonel Antonio Tejero in an attempt to derail democracy, and specifically the ongoing decentralization process, sought to overthrow the Spanish government in a *coup d'état*. Although failed, the attempted putsch precipitated serious discussion on the evolution of the Spanish territorial model, evidenced in the Autonomic Pact and Organic Law for the Harmonization of the Autonomic Process (LOAPA) in August 1982. Introduced under the UCD government, headed by Leopoldo Calvo-Sotelo following Suárez' resignation at the beginning of 1981, and supported by the PSOE, LOAPA sought to impede the devolution of

further powers to Spain's ACs through a symmetriziation process that would ultimately bring all ACs in line with the more extensive autonomy provisions granted to ACs like Andalucía, Catalonia and the Basque Country (Agranoff and Gallarín, 1997: p. 12-14). For those ACs that had strived for special recognition during the constitution-drafting process, the turn towards competence standardization was interpreted as the re-imposition of centralist control from Madrid, which undermined the constitutional pact achieved in the late 1970s, specifically the implicit recognition of the 'historic nationalities' in the Constitution. Challenged by Catalonia and the Basque Country in the Constitutional Court, several of LOAPA's articles were struck down, but the landmark ruling upheld the prerogative of the central government to use 'Basic Laws' to encroach upon devolved competences to promote and protect 'the national interest' of the Spanish state (Muñoz Machado 1983).

The unexpected victory of the PSOE in the 1982 general election opened up a new phase in Spanish politics generally and for the development of the territorial model specifically. Having secured an overall majority, the PSOE's election to office not only signaled an end to the consensual approach that had characterized the transition (at least until 1981), but it also initiated a decade-long strategy that, in the spirit of LOAPA, sought to temper enthusiasm for further territorial decentralization and symmetrize the devolution of competences among all ACs (Verge, 2013: p. 323-324). To do so, the PSOE consistently invoked its responsibility to protect 'the national interest' to pass Basic Laws to set state-wide standards in ambits such as education, health care and tourism (Máiz et al 2010). Moreover, in 1992, just over a decade since the first Autonomic Pact between the PSOE and UCD, the PSOE and Popular Party (PP) signed the second Autonomic Pact designed to further harmonize the territorial model through rolling out the same competences to all 17 ACs. As was the case with LOAPA, the Autonomic Pact was perceived by the historic nationalities as an attempt to counter their claims to ethnonational distinctiveness. The state-wide parties' ambivalence towards further devolution and penchant for symmetriziation, however, was kept in check following the 1993 and 1996 general elections in which both the PSOE and PP relied on the support of Basque and Catalan political parties to stay in power.

At various points between 1993 and 2011, sub-state nationalist parties in Catalonia and the Basque Country have played crucial roles in the formation of government in Madrid (Field 2016).[2] While not part of formal coalitions, the electoral success of parties such as the Basque Nationalist Party (PNV) and Catalan Convergence and Union (CiU) (dissolved in 2015), afforded the parties significant leverage to extract concessions on matters of autonomy in return for supporting the minority governments in Parliament. This 'mutual back scratching' (Field 2014) wrought extensive powers for Catalonia, including, *inter alia,* increased fiscal powers and revenue, control of the regional police force and reform to the finances of the regional health service (Heller, 2002: p. 672). In periods of majority government, however, the Basque and Catalan parties have had little to no leverage in securing further autonomy. In fact, as was the case under the majority governments of the PP (2000-2004; 2011-2015), discussions on territorial reform were replaced with 'a renewed form of Spanish nationalism' and 'a centralizing agenda realigning the party's territorial policy with its traditional centralist and nationalist ideology' (Verge, 2013: p. 330). Akin to the PSOE, the PP continued to introduce Basic Laws which encroached upon devolved competences, including the highly controversial 2013 Spanish Educational Law (Organic Law for the Improvement of Educational Quality-

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[2] Field (2016: p. 49-55) notes that contextual factors, party goals and political institutions have all influenced the preference for minority government over coalition government in Spain. Often, the largest party following an election 'did not fall far short of an absolute majority' (Field, 2016: p. 51), hence a reduced incentive for smaller parties to join a coalition, or for the larger party to seek a coalition partner.

LOMCE), which sought to increase central government control over regional educational systems, including the language of instruction and curriculum content.

While cautious of further territorial reform in the 1980s, by the turn of the new millennium, and a result of the hostile agenda of the PP towards territorial politics, the PSOE, under the leadership of José Luis Rodríguez Zapatero, became much more accommodationist and open to reforming and even enhancing the extant territorial model (Muro 2009). The lynchpin of this strategy was the opportunity for ACs to revise and modernize their Statutes of Autonomy, most notably Catalonia. Under Zapatero, the PSOE was elected to government in 2004 and 2008, albeit without an absolute majority. In 2004, a confidence and supply arrangement was reached between the minority PSOE, the leftist coalition United Left (IU) and the Republican Left of Catalonia (ERC). In the case of the latter, ERC supported the PSOE in crucial votes such as budgets in 2005 and 2006 in return for reform of the Catalan statute. Statue reform, however, proved to be a hostile process and rather than settling long-standing demands over autonomy provisions, precipitated wider dialogue on Catalonia's place within Spain. This topic continues to dominate such discussions more than a decade later.

The reformed Catalan statute sought to achieve a number of things, including clarification and protection of competences, increased executive, legislative and fiscal powers and recognition of Catalan nationhood (Keating and Wilson 2009). The PSOE, however, in spite of Zapatero's pre-election promise to accept the reformed provisions of the statute and ensure a smooth process of ratification, subjected the draft to a number of modifications; amendments were applied to 144 of the 227 articles (Colino, 2009: p. 273). As per the process of statute reform, the amended statute was subject to votes in both houses of the Spanish Parliament (having already passed in the Catalan legislature) and a subsequent referendum in Catalonia. On the basis of the perceived butchering of the statute, the ERC abstained from voting for the revised amendments in the Spanish parliaments, campaigned against the statute in the Catalan referendum and withdrew from coalition government in Catalonia. A majority of the Catalan electorate voted in favor of the statue in the referendum, but support was not resounding. Legal challenges against the statute were mounted by numerous political actors, including the PP, Spanish Ombudsman and five other ACs. The resultant ruling from the Constitutional Court in 2010 found 14 of the referred articles 'unconstitutional' and narrowed the interpretation of a further 27. Claims of a centralist bias dogged the Court's judgement which was broadly interpreted in Catalonia as 'restrictive and manipulative and even as a step back in the process of territorial decentralization' (Rico, 2012: p. 221). The judgement spurred civil society mobilization in defense of the Catalan statute and precipitated vociferous questioning of the ability and willingness of the Spanish state to accommodate Catalan demands for better recognition and protection within the Spanish territorial framework (Requejo and Sanjaume, 2013: p. 15-17).

In only a few decades, the Spanish territorial model brokered by Spain's main political actors in the late 1970s has come under increasing strain. The open-ended nature of the territorial model provided no definitive path for the evolution of Spain's decentralization project and paradoxically is criticized 'for being both too centralized and too decentralized and simultaneously excessively rigid and overly flexible and fluid' (Colino and Hombrado, 2015: p. 171). Despite some federal features (Moreno 2001), the state of autonomies falls short of a fully-fledged federation (Requejo 2017), not least a plurinational federation with explicit recognition of the state's internal national plurality. Indeed, the only time federation is mentioned in the Spanish Constitution is Article 145 which prohibits the establishment of a federation of the ACs. Since the transition to democracy, Spain has come a long way from

Franco's centralist authoritarianism, but the consensual compromise secured in the early phases of democratization has transmuted into a model anchored in majoritarian principles. While this has been much to the chagrin of nationalist parties in the Basque Country and Catalonia, their focus on building out (that is regional autonomy) as opposed to building in (creating shared rule institutions at the center) contributed to the majoritarian turn. For Mueller (2019: p. 154), 'majoritarianism has impeded broad-coalition building at all levels and fostered a climate hostile to compromise.' The imposition of majoritarian principles, including a monistic interpretation of sovereignty and commitment to political uniformity, runs into difficulties in plurinational contexts (see Anderson 2018; Gagnon 2014), as evidenced in the constitutional clash between the Catalan and Spanish governments.

The Catalan Crisis

The debacle over statute reform signaled a turn in the relationship between Catalan-Spanish relations. On the one hand, the forceful assertion of one-nation Spain in the Constitutional Court's 2010 judgement put an end to the ambiguity that had successfully facilitated multiple interpretations of the Constitution vis-à-vis the national question. This, on the other hand, precipitated a change in approach among pro-autonomy Catalan elites, evidenced in the gradual evolution of the Catalan nationalist movement (albeit not a homogenous group) towards a pro-independence agenda. From 2010, increasing frustration with the mononational, nationalist and unitary approach of the central government (specifically, the PP and PM Rajoy) translated into continuous questioning of the ability of the Spanish state to accommodate Catalonia in Spain and for many, the conclusion that a referendum on independence would be the only viable option to allow Catalans to determine their constitutional future.

The decision of the Court in 2010 as well as the perceived intransigence of the central government sparked a flurry of civil society movement. Pro-independence organizations such as Assemblea Nacional Catalana and Òmnium Cultural have generated significant momentum which has not only seen the mobilization of likeminded Catalan citizens, but has also equally impacted upon Catalan political elites (Anderson 2019). This is most evidenced in the transformation of CiU's territorial policy from a moderate accommodationist stance to a pro-secession agenda (Elias and Mees, 2017: p. 131). Having failed to achieve fiscal autonomy for Catalonia – a commitment in the 2010 election rejected by the Spanish government – CiU adopted a pro-independence lexicon and endorsed a referendum on Catalan independence.

The referendum took place in November 2014, notwithstanding the opposition of the Spanish Government, Parliament and Constitutional Court. Rebranded as a citizen participation process, an overwhelming majority of Catalans supported independence, but low turnout meant this was nothing short of a symbolic victory; there was no official mandate for Catalonia to secede from Spain. In 2015, however, plebiscitary elections were called and framed as a de facto vote on independence (Martí and Cetrà 2016). Pro-independence parties secured a majority of seats in the Catalan Parliament and joined forces to pass a resolution in the Catalan Parliament to initiate a route map to independent statehood, including legislation for a binding referendum on independence.

On 1 October 2017, amid a massive and harsh police operation to prevent the referendum from going ahead, circa 43% of voters participated in the referendum. From this number, over 90% voted in favor of the question 'Do you want Catalonia to become an independent country in the form of a republic?'. Given the concerted state resistance to the vote and the boycott by

anti-independence voters, the referendum resulted in only a 'contentious…mandate for independence' (Cetrà et al, 2018: p. 129). Despite initially suspending the declaration of independence on October 10 in return for negotiations with the central government, President Puigdemont redeclared Catalan independence on October 27. At the same time, the Spanish Senate voted in favor of activating Article 155 of the Spanish Constitution, dismissing the Catalan government and putting Catalonia under direct rule.[3] New elections took place in December 2017. The anti-independence Citizens party won the most seats, but as has been the case since 2012, pro-independence parties once again secured a majority of parliamentarians. After several failed attempts, in May 2018 Quim Torra was sworn in as President of the Generalitat, head of a coalition government of pro-independence politicians.

Despite the rhetoric of the PSOE in supporting dialogue between the Catalan and Spanish governments, the elevation of the PSOE to government in June 2018 did not herald much change in approach. This was compounded by the almost permanent period of election campaigning owing to the inability of the PSOE to form a majority government or secure support for the investiture of party leader Pedro Sánchez. Akin to Catalan politics, politics in the rest of Spain has becoming increasingly polarized. For parties on the right of the ideological spectrum – Citizens, PP and Vox – outbidding on the Catalan issue has provided electoral mileage in strengthening their image as vanguards of the Constitution (Anderson, forthcoming). The emergence of the far-right Vox is symptomatic of this increasing polarization, which in the 2019 elections not only advocated the re-suspension of Catalan autonomy, but the prohibition of pro-secession parties and organizations (Ferreira, 2019: p. 86). For the new PSOE and United We Can coalition government, de-escalation and dialogue are promoted as priorities regarding Catalonia, but no light is yet visible at the end of the tunnel.

In Catalonia, politics remains divided along the constitutional-independence axis, but even within the independence movement there is no common independence front. ERC, the long-standing supporter of independence, has increasingly championed dialogue and accommodation including negotiations with the central government, while other pro-independence parties – Together for Catalonia (JxCat) and Popular Unity Candidature (CUP) – see negotiations as an unachievable and unnecessary goal. This is further compounded by the lengthy sentencing of pro-independence representatives to between nine and 13 years in prison for their role in organizing the 2017 referendum. Despite widespread condemnation from all pro-independence parties, there is no clear common approach in the pro-independence camp on the movement's next steps.[4] In light of this, the next sections of this chapter consider whether a workable alternative to the status quo in the shape of a power-sharing arrangement is possible.

Consociational Compromise at the Centre

To transcend the protracted stalemate between the Catalan and Spanish governments, some form of institutional innovation is crucial, albeit support for the institutionalization of a fully-fledged power-sharing arrangement in Madrid has yet to gain much traction. Appetite for such an arrangement is all but absent from the current discourse on territorial reform as much in

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[3] In response to this, President Puigdemont fled to Brussels to escape arrest. Some pro-independence representatives fled to other European countries, while others, including Vice President Oriol Junqueras, were arrested and remanded in custody on charges of rebellion, sedition and misuse of public funds.

[4] At the time of writing (early 2020), Catalan President, Quim Torra,has vowed to call regional elections to break the deadlock between the pro-independence parties vis-a-vis an agreed independence strategy.

Spain as in Catalonia. As discussed supra, a consensual approach to politics, as was evident in the transition, is not alien to Spanish political life, but a mandatory power-sharing scheme that sought to prize relations with Catalonia – notwithstanding its status as a 'historic nationality' – is outside the realms of feasible solutions to the constitutional impasse, even among the most radical of constitutional reformers.[5] Indeed, this is a primary reason as to why a consociational model was not developed in the wake of the Spanish transition. Such an arrangement would have been considered unacceptable to other regional groups, such as Andalusians and Valencians (Lecours, 2014: p. 60). For Catalan nationalists, a power-sharing arrangement, while it would increase Catalan influence at the center and fulfil some of the demands of independence supporters, would be seen as an integrationist approach to the Catalan issue, designed to contain rather than empower the nation's self-determination aspirations. For power-sharing institutions to work effectively, much depends on political elites' willingness to work together, a requisite that is currently absent in Spain and Catalonia.

Some elements of consociational democracy, particularly the philosophy underpinning it, would go a long way in developing a more accommodationist approach to center-periphery relations and to temper the majoritarian thrust of Spanish democracy. For some Catalans, any institutional tinkering short of full independence may well be seen as too little too late, but a workable alternative to the status quo, including constitutional renegotiation, reform and thus (for both sides) compromise, would go a long way in satisfying a significant proportion of Catalan voters.[6] In the resolution of self-determination disputes, power-sharing and autonomy arrangements, while considered crucial, are often not enough to placate the demands of would-be secessionists and often require additional arrangements such as 'inter-state or inter-regional and transborder institutions and … symbolic and functional recognition of other nationalities' languages and identities in the constitution and public institutions' (McGarry and O'Leary, 2010: p. 55). In the case of Spain, this requires some insightful thinking on the parts of Catalan and Spanish elites to move beyond the incumbent hierarchical model of territorial decentralization and develop a more coherent, accommodative and empowering territorial arrangement. This would include, *inter alia*, (constitutional) recognition of Catalan nationhood, competence shielding to prevent central government encroachment on sub-national jurisdictions, reform of extant fiscal arrangements, and a more open, deliberative and consociational approach to politics, including parity of esteem in intergovernmental relations, such as an institutionalized mechanism for formal bilateral relations (Anderson 2018).

The debate between federalism and consociationalism is well-established in the academic literature (Elazar 1985; Lijphart 1985) and has been further developed by other scholars as relates to plurinational polities (Gagnon 2010; Requejo 2013; Seymour and Gagnon 2012). Plurinational federations involve a division of sovereignty among sub-state and central governments, constitutional protection of competences and sub-state entities, constitutional and/or legal recognition and protection of different identities, and a consensual approach to decision-making at the center (Gagnon, 2010: p. 1-3). Integral to the institutionalization of a plurinational federation is a commitment to asymmetrical autonomy arrangements, allowing the possibility for one or more of the self-governing units to enjoy more competences than others. In Spain, the evolution of a truly federal system has been impeded by successive Spanish governments, but the development of a plurinational federation would significantly

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[5] Successive studies by the *Centro de Investigaciones Sociológicas* have recorded growing support for the devolution of fewer rather than more powers to ACs.

[6] In a recent survey asking Catalans their preferred end result of the Catalan sovereignty process, 45.7% supported the devolution of more powers of self-government for Catalonia (33.9% supported independence) (ICPS 2019). 71.9% of Catalans supported a revision of the 1978 Constitution to give more autonomy to the autonomous communities as an avenue to solve ongoing territorial tensions. In the rest of Spain, support for this option was markedly lower at 40.5% (CEO 2019).

alter the course of territorial politics, bolstering political stability and thus enhancing democracy, that is, a more accommodative, non-majoritarian style of democracy as befits a plurinational state.

In plurinational polities, asymmetry is oft-considered crucial by scholars and practitioners as demonstrative proof of the state's commitment to a politics of recognition, and thus its respect for the different peoples, languages, cultures and religions that exist within the state (Requejo 2015). In Spain, despite the asymmetrical evolution of the territorial model at the inception of the transition, successive central governments of both conservative and socialist political hues have sought to engineer the trajectory of the territorial model towards a more centralized and symmetrical territorial model. In this vein, an avenue out of the ongoing impasse between the Catalan and Spanish governments would include a commitment to and development of distinctive autonomy for Catalonia. This would involve the devolution of further powers for Catalonia, including changes to fiscal arrangements, as well as further statute reform. A further round of statute reform has already been offered by the PSOE, but unsurprisingly, many Catalans are suspicious of such promises. The paucity of trust between both sides of the debate is an indisputable challenge to the resetting of relations but is also a primary motive behind a more consociational approach to politics.

In the same vein as further devolution of powers, equal consideration to protecting the competences of sub-state entities from central government encroachment is also crucial. As discussed earlier, this has been a controversial component of the Spanish territorial model for decades and the previous attempt by the Catalan government to create a typology of competence jurisdiction in the 2003 statute reform was rejected by the Constitutional Court. As Gagnon (2014: p. 16) attests, such protection is important to guarantee 'that the national majority is prevented from unilaterally imposing its will on minority populations'. Important, therefore, is the regulated use of Basic Laws to temper the ability of central government from reasserting its authority in devolved competences under the guise of the national interest. Such an approach would bring Spain more in line with a plurinational federal tradition, and most importantly would demonstrate the willingness of state authorities and the national majority to accommodate and protect the state's national minorities. What is more, the development of a veto power 'regarding decisions made by state bodies that affect Catalonia' would potentially serve to bolster Catalan confidence as a political entity within the confines of the Spanish state and thus potentially help rebuild trust between the Catalan and Spanish governments (Requejo et al, 2019: p. 48). Unlike other sub-national entities such as Quebec, calls in Catalonia for an absolute right of veto have been rather muted, albeit were mooted in the 1998 Declaration of Barcelona[7] and already exist in the Spanish system with regards to the Basque economic model and its five-yearly quota laws concerning the Basque contribution to the Spanish state.[8] Calls for a minority veto power for Catalonia are likely to go unheeded by state elites, but the plurinational reality of the Spanish state and protracted territorial tensions between the Catalan and Spanish governments demonstrate that irrespective of opinion that considers such mechanisms a step to far in accommodating sub-state diversity, they are proven tools (albeit with variable effects) to check the majoritarian tendencies of central governments while putting minority nations on a more equal and equitable footing (McEvoy 2013).

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[7] The *Declaration of Barcelona*,was a joint declaration signed on 16 July 1998 by the main Catalan (CiU), Basque (PNV) and Galician (Galician Nationalist Bloc– BNG) parties. It complained that after 20 years of democracy, Spain had yet to establish any official juridical or political recognition vis-à-vis the historical nationalities and called for a radical reform of the Spanish Constitution to recognise Spain as a multilingual, multicultural and multinational state

[8] The negotiations involved in the renewal of the agreement necessitate mutual agreement between both the Basque and Spanish governments and in essence 'gives both Spanish and Basque delegations equal veto power' (Gray, 2016: 126).

In addition to providing enhanced self-government in line with federal and consociational thinking, energy should also be spent on the reform of state institutions, that is, providing mechanisms to bolster the power of Catalonia in informing, influencing and participating in the shared governance of the state. A number of forums has been developed in Spain to facilitate intergovernmental relations between the central government and ACs, such as Sectoral Conferences or the Conference of the Presidents (Colino and Parrado 2009; Requejo et al 2019). To date, however, these have served as opportunities to exchange information rather than as mechanisms to ensure the influence of sub-state entities on central government decisions. An overhaul of intergovernmental machinery is urgently required to help rebuild trust in a spirit of shared self-interest between the Catalan and Spanish governments, including bilateral formulas. Similarly, this would require reform of the Spanish Senate to formally become – as the constitution proclaims – a 'chamber of territorial representation'. Hitherto, the Senate is organized along provincial as opposed to regional lines. Federalisation of the Senate would likely boost the legitimacy of the chamber, particularly among ACs like Catalonia, as well as ensure an inclusive and better representative institution that operates in line with rather than separate to the sub-national units.The same principle ought to be applied to judicial bodies, namely the Constitutional Court. Unlike constitutional courts in other plurinational states – such as Belgium and Canada – there is no sub-national representation in the Spanish Constitutional Court, which remains a highly politicized body as a consequence of its nomination process (Casanas Adams 2017). In line with the consociational principle of proportionality, therefore, reform of the judiciary to include permanent Catalan representation and a role for ACs to nominate constitutional justices would help bolster the perception of the court as an independent impartial umpire as opposed to an extended organ of the central government.

Shared rule, evidently, would be no panacea to the grievances of many Catalans, but the development of inclusive institutions at the center would arguably constrain central government dominance and thus keep in check the dominant hierarchical approach to territorial politics. Compared to current arrangements, this is antithetical to the traditional approach of Spanish elites, but necessary if state elites wish to foster loyalty to state institutions and eschew disintegration.

Writing of majority groups in plurinational states, Burgess (2009: p. 179), posited '[t]hey must consciously, deliberately and purposely organize relations in the state to facilitate autonomy and self-determination for minority nations and nationalities.' In Spain, autonomy has been developed, but in contradistinction to a consociational or plurinational federalist approach, has been undergirded by a unitary and at times neo-unitary philosophy rather than 'a mindset that is sensitive to rival conceptions, visions and understandings of the political community' (Burgess, 2009: p. 179). In this vein, rethinking Catalonia-Spain relations is not just about tinkering with institutional apparatus but resetting the overarching approach to majority-minority relations. In the case of Catalonia-Spain, a more consensual and non-majoritarian approach may not ultimately solve any intractable constitutional conundrum, but an open-ended dialogue, underpinned by consociational values such as compromise, respect and trust – to name just a few – is an indisputable requisite to engendering constructive engagement between central government and sub-state entities, including discussion on controversial topics such as a referendum on independence. As Keil and Anderson (2018: p. 96) note, 'most multinational states live in the shadow of secession', thus such states must be prepared to manage secessionist claims within a democratic framework, engaging rather than eschewing difficult dialogue. In the case of Spain, continued failure to do so is likely to hasten rather than impede the breakup of the state.

Notwithstanding the reforms discussed above, there is very little prospect of serious change in the central state's approach to politics, both at the center and the periphery. The weaponization of the Catalan constitutional crisis by parties such as Citizens, PP and Vox renders the opportunity for reform a difficult process and impedes any concessions to or compromise with pro-independence representatives. The institutionalization of a consociational power-sharing regime may well seem an impossible task in Spain, but the development of a more plurinationally sensitive political culture, in the spirit of compromise and negotiation, is far from a utopian ideal and a necessary requisite if Spanish elites wish to keep the state together.

Consociational Compromise at the Periphery

Given the reticence of the central state to embark on a consociational exercise, an alternative way to look at the development of a power-sharing approach to the Catalonia-Spain debacle would be to institutionalize a regional power-sharing arrangement in Catalonia as opposed to power-sharing for the entire state. Such a power-sharing approach would be most suitably organized along the parameters of liberal consociationalism whereby the power-sharing arrangement is organized around 'whatever salient political identities emerge in democratic elections, whether these are based on ethnic or religious groups, or on subgroup or transgroup identities' (McGarry and O'Leary, 2007: p. 675). Much like in Spain overall, debate on a power-sharing regime in Catalonia organized along ethnonational lines, is all but absent. Support for such an arrangement would likely be tempered by the fact that most Catalans endorse a dual identity (both Catalan and Spanish) and thus any power-sharing agreement organized along ethnonational lines would run into issues, not least because 'these ethnic groups are neither homogenous nor exclusive' (Barrio and Rodríguez-Teruel, 2017: p. 1781). In a similar vein, power-sharing may also increase and exacerbate existing ethnic polarization in Catalonia, fueling rather than dampening disagreements and freezing as opposed to thawing relations between different groups. As pointed out by McGarry and O'Leary (2010: p. 55), however, liberal (as opposed to corporate) consociational arrangements are designed to 'accommodate the parties that win elections rather than any predetermined demographic quota of national collectivity' and thus are much more suited for polities divided by self-determination disputes. Complete dismissal of a consociational approach to politics in Catalonia is therefore unwarranted.

As is the case in a state-wide consociational system, regional consociational regimes also play a key role in terms of conflict-resolution, providing institutional structures and guidelines for a more cooperative and consensual approach to politics (Wolff 2004). As in Spain as a whole, a formal consociational regime is unlikely to flourish in Catalonia any time soon, but a more consensual and deliberative approach to doing politics may be a useful mechanism to bolster and rebuild trust between different groups, at both elite and societal level (O'Flynn 2006). This has been the case in other divided places such as South Tyrol, a classic case of regional consociationalism organized along linguistic lines (see Alber, this volume). The territory's recent experience with an autonomy convention to revise its regional statute may provide some important lessons for Catalonia, particularly in the context of further statute reform and notwithstanding the absence of formal moves towards a mandatory power-sharing regime. South Tyrol's autonomy convention took a participatory approach to dialogue on statute reform, including open meetings with members of the public, follow-up workshops with civil society organizations and a citizens' assembly (Larin and Röggla 2019). The latter, for instance, facilitated dialogue between the different linguistic groups in the territory, including on controversial issues such as secession, and in all but one of the eight working groups within

the citizens' assembly, decisions were informed by a consensus approach (Alber, Röggla and Ohnewein, 2018: p. 215). In the event of a further reform of the Catalan Statute of Autonomy, a more participatory model styled on the deliberative South Tyrolean approach would not only help to facilitate relations among the different groups in Catalonia, but would also reinforce some of the important principles undergirding a power-sharing approach, specifically mutual trust, cooperation and consensus decision-making. Trust and (forced) cooperation have been and still are key to the success of South Tyrol's autonomy that developed as it did because of the institutionalization of various deliberative bodies (Alber 2017). As is the case with the institutionalization of a fully-fledged power-sharing regime in Spain, while reform of institutional structures along power-sharing lines may take some time to develop, an informal approach to power-sharing could be developed, not least in the approach elites take to practicing politics.

As discussed above, there is no guarantee that further ethnic and/or ideological polarization would not ensue as a result of a mandatory power-sharing scheme. At the same time, however, a more consensual and deliberative model of politics, which would reinforce a sense of equality between the antagonistic population segments in Catalonia, would help facilitate cooperation between these groups. An overhaul to how politics is practiced in Catalonia may move many politicians beyond their ideological comfort zones, but some degree of innovation is necessary to transcend the protracted stalemate that has characterized inter-party relations for over a decade.

Conclusion

The constitutional clash between the Catalan and Spanish governments is rooted in competing visions of the state. While these competing visions are not new, and as discussed supra framed the debate on the drafting of the constitution in the late 1970s, the radicalization of the Catalan nationalist agenda vis-à-vis autonomy and secession illustrates the widening gap between the role Catalonia currently plays and the role it wants to play. As discussed by Gagnon (2014), this is not unique to Catalonia, but the territorial crisis underlines the need for some sort of institutional innovation to resolve the deadlock that has characterized Catalan-Spanish relations for the last decade. This is no mean feat and while it will require elites in Barcelona and Madrid to move beyond their political comfort zones, failure to do so may further damage the peaceful co-existence of Catalan society and hasten the disintegration of the Spanish state in less happy ways.

It is not the argument of this chapter that a mandatory power-sharing system either in Madrid or Barcelona would solve the protracted stalemate between the Catalan and Spanish governments, as well as pro- and anti-independence elites in Catalonia itself. This, however, does not mean that neither Catalan nor Spanish elites have nothing to learn from the consociational approach. The philosophy undergirding consociationalism, particularly the commitments to protect and promote diversity, safeguard minorities and foster a consensual approach to political decision-making, would clearly go a long way in rebuilding trust between the Catalan and Spanish governments and thus restoring some constitutional stability in the political system. The evolution of Spanish politics from a consensual to a strongly majoritarian democracy has entailed significant implications for the plurinational Spanish state. Hence, some form of consensual decision-making, combined with a plurinationally sensitive political culture, informed by what Burgess (2012: p. 22) termed 'federal values and principles' is of crucial importance, particularly if the long-term goal of the state is to keep its internationally

recognized borders intact. The development of a plurinational federal model in Spain with a commitment to institutional asymmetry and constitutional and juridical recognition, would indisputably relieve some of the tensions in the extant territorial model, albeit reform short of an official referendum on Catalan independence seems unlikely to fully placate pro-independence supporters. The celebration of a referendum risks an affirmative vote for secession, but attempting to kick the issue into the long grass or, as has been the dominant approach in Spain, invoke the constitution as a legal bulwark to dialogue on the issue, could continue to potentially embolden rather than arrest support for independent statehood.

Spain's first coalition government following the 2019 election represents a break in four years of political deadlock, but increasing polarization in the Spanish state and continuing tensions in Catalonia demonstrate the urgent need for some imaginative thinking to rebuild the bonds of the negotiated constitutional pact that succeeded in reconciling diametrically opposing views in the late 1970s. The recent resurgence of Spanish nationalism, personified in parties such as Citizens and Vox, illuminates the view that a fiercely uni-national and unitary approach to Spanish politics is as much a risk to the state's territorial integrity as is a pro-independent Catalan government. As was the case in the early stages of the transition, a negotiated solution in the spirit of open dialogue and compromise is crucial to attempt to alleviate the engrained inimicality that has come to characterize Catalan-Spanish relations. After all, the future integrity of Spanish and Catalan democracy is at stake.

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