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The Origin of the Contemporary Administrative Territorial Organization of Spain. The Case of Municipalities and Provinces

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Abstract

Spanish constitutionalists agree that the contemporary territorial organization of their state requires urgent reforms. The administrative map of the state based on traditional territorial units: municipalities and provinces cannot withstand the impact with modern requirements of the “state of autonomy”, as today’s Spain is usually called. While the autonomous communities are relatively recent entities, both municipalities and provinces date back to the Middle Ages, and even to earlier periods. Hence the attempts to force new administrative units of territorial division, which were not included in the current Constitution, or attempts to revive old units adapted to the contemporary model of the state. This article presents the origin of territorial units, showing how much history and tradition influence the modern administrative division of the state.

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Streszczenie**Rodowód współczesnego administracyjnego podziału terytorialnego Hiszpanii. Sprawa municypiów i prowincji**

Konstytucjonaliści hiszpańscy są zgodni, że współczesna organizacja terytorialna państwa wymaga pilnych reform. Mapa administracyjna państwa oparta na tradycyjnych jednostkach terytorialnych: municypiach i prowincjach nie wytrzymuje zderzenia ze współczesnymi wymaganiami „państwa autonomii”, jak zwykle nazywać się obecnie Hiszpanię. O ile wspólnoty autonomiczne są podmiotami w miarę świeżymi, o tyle zarówno municypia, jak i prowincje sięgają swoimi korzeniami Średniowiecza, a nawet okresów wcześniejszych. Stąd próby forsowania nowych administracyjnych jednostek podziału terytorialnego, które nie zostały uwzględnione we współczesnej Konstytucji lub próby wskrzeszenia dawnych jednostek przystosowanych w większy lub mniejszy sposób do we współczesnym modelu państwa. Niniejszy artykuł przybliży rodowód poszczególnych jednostek terytorialnych, ukazując jak bardzo historia i tradycja wpływa na współczesny podział administracyjny państwa.

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I.

The current Spanish Constitution, adopted in 1978, left the administrative division of the state into municipalities as basic territorial units and provinces as superior units in force since 1833. A novelty was the possibility of creating autonomous communities gathering one or several provinces². While the origin of the autonomous communities is not extraordinarily developed and does not go back to the past centuries, the lower administrative units have a rich tradition in the Spanish system of territorial administration. Various administrative units have been created since Roman times in the Iberian Peninsula, most of which have become extinct over the centuries. Some of them are trying to be renewed every now and then, as was the case in the early 21st century with *veguerías*, traditional supra-municipal units in Cata-

² Art. 137, *Constitución Española*, de 27 de diciembre de 1978, Boletín Oficial del Estado (further: BOE) núm. 311, 29/12/1978 (further: CE).

lonia³. However, only municipalities and provinces are explicitly mentioned in the Constitution. This work is a short attempt to prove the enormous impact of traditional system and administrative solutions on the present shape of territorial units in Spain, focusing on those with the longest tradition: municipalities and provinces. At the same time, attempts were made to answer the question whether the modern organization of the state, based on historical territorial units, not reformed for centuries, has a *raison d'être* and is prepared to face the requirements of the future in a nationally divided state like contemporary Spain.

II.

During the Ancien Régime, the local council (*concejo*) exercised direct administrative power over *vecindades*, the original basic units of territorial division the Iberian Peninsula. It could cover rural, urban or mixed urban-rural areas⁴. In the absence of a clear division, territorial entities were basically divided according to their rights and privileges. The basic division was based on cities (*ciudades*), villages (*villas*) and places (*lugares*). There were also other localities regionally. The most important attribute for a territorial division has become the designation of lands concentrated around one council (*concejo*). They were the smallest institutions of direct democracy, gathering all inhabitants of an area concerned. Those entities were ruled by privileges (*fueros*) received directly from the king and subject only to the sovereignty of the royal authority. From the Middle Ages, the administrative units under the authority of councils began to be called municipalities (*municipios*) and became the basic, smallest units of territorial division on the Iberian Peninsula. This does not mean, however, that the administrative organization has been unified. Quite the opposite, because entities without any administrative system coexisted

³ More about the projects of reforms of the territorial organization of Catalonia in the 21st century, see: M.Z. Dankowski, *Kryzys konstytucyjny w Hiszpanii początku XXI w. Szkice prawnoustrojowe: geneza – rozwój – perspektywy*, Toruń 2021, pp. 189–206.

⁴ J.M. de Bernardo Ares, *El régimen municipal en la Corona de Castilla*, “*Studia Historica. Historia moderna*” 1996, núm. 15, pp. 51–52.

with those that had the right to send their own representation to the *Cortes*, the Spanish parliament⁵.

The municipality itself, however, dates back to the times of the Roman Empire, when with the incorporation of the Iberian Peninsula, Roman administrative and territorial institutions were adopted⁶. The Roman *municipium* was understood as a society of *cives*, citizens, who as a group hold the sovereignty as *populous* (the people) of the state. The unit disappears with the decadence of the Roman Empire and reappears in the Christian kingdoms of the Reconquista period. Until the 11th century, however, the medieval municipality did not have any political and administrative properties, being only human settlements without legal subjectivity⁷. Only at the end of the Middle Ages, around the 14th century, the new face of the municipality begins to take shape, with a clear emphasis on the royal intervention in the hitherto autonomous affairs of the councils through royal representatives – *corregidores*, who were sent to the most important cities. In addition, the kings at that time usurped the right to nominate municipal council members – *regidores*⁸. Thus, until the 16th and 17th centuries throughout Spain (the latest in the Kingdom of Navarre), local direct democracy was gradually changed into a royal representation, which was usually reserved for the wealthiest and most influential people in every region. This increased corruption and the sale of offices, and the municipalities became merely passive administrative districts with little political significance.

Hence, it was precisely in the smallest administrative units that the political ferment at the beginning of the 19th century was born, when during and after the French invasion the liberals, coming from the urban and rural bourgeoisie, began to gain a voice. Ultimately, this led to the political emancipation of municipalities. We can count the history of modern Spanish con-

⁵ A. Albert i Mas, *El mapa municipal en España: estructura, evolución y problemáticas*, “Geopolítica(s). Revista de estudios sobre espacio y poder” 2019, núm. 10 (1), p. 15.

⁶ See wider: E. Orduña Rebollo, *Historia del municipalismo español*, Madrid 2005, pp. 16–22.

⁷ L.G. de Valdeavellano, *Curso de historia de las instituciones españolas*, Madrid 1973, p. 529.

⁸ J. Acosta Sánchez, *Aproximación a la problemática del municipio. Historia, constituciones y crisis actual*, “Boletín de la Sociedad de Amigos de la Cultura de Vélez-Málaga” 2009, núm. 8, p. 6.

stitutional municipalities from the time of the Cortes deliberations in Cadiz in 1812⁹. At that time, every municipality with more than 1,000 inhabitants was authorized to constitute an administrative authority called *ayuntamiento*. Smaller towns could also use this option, if they only had historical or rational grounds for it. This led to an excessive administrative fragmentation of the state, creating many small administrative units with no real opportunities for independent development. The difficult 19th century, full of political instability in Spain, did not allow the municipalities to become fully independent economically and politically, making them incomplete self-government units.

It was not until the Estatuto Municipal of 1924¹⁰ and the regulations of the Second Republic crowned with the enactment of the Municipal Law in 1935¹¹ that finally Spanish municipalities were given full autonomy in their policy. However, the entity leader called *Presidente del Ayuntamiento*, played a second role at the time, representing the state administration in a municipality concerned. Spain was still struggling with an excessive number of municipalities, which largely influenced the effectiveness and efficiency of local policy.

The times of Franco suspended the role of local government units from municipalities, subordinating their administration directly to the state. The undemocratic centralization of the state, consisting in the indefinite assignment of positions in local administration, became one of the foundations of the state ruled by Franco and was reflected in one of the fundamental laws of the then Spanish system, *Ley de Bases de Régimen Local* of 1945¹². This period in the local administration is called in the literature of the subject as functional regionalism (*regionalismo funcional*)¹³.

The return of democracy brought with it the restoration of universal local elections and the establishment of a new regulation of administration poli-

⁹ Decreto CLXIII, de 23 de mayo de 1812, *Formación de los Ayuntamientos Constitucionales*, [in:] *Colección de los decretos y ordenes que han expedido las Cortes Generales y Extraordinarias*, vol. II, Cádiz 1813, pp. 231–234.

¹⁰ Real decreto-ley, de 8 de marzo de 1924, *que aprueba el Estatuto municipal*, “Gaceta de Madrid” núm. 69, 09/03/1924 (BOE-A-1924–2607).

¹¹ *Ley Municipal*, de 31 de octubre de 1935, “Gaceta de Madrid” núm. 305, 01/11/1935 (BOE-A-1935–10051).

¹² Ley de 17 de julio de 1945, *de Bases de Régimen Local*, BOE núm. 199, 18/07/1945.

¹³ L. Rebollo Delgado, *España y su organización territorial. Antecedentes, surgimiento, evolución, problemas y propuestas*, Madrid 2018, pp. 57–59.

cy at the local level¹⁴. Currently, Spain has 8,131 municipalities, which is over 10% less than after the end of the Civil War (1936–1939)¹⁵, but still far from the desired number that would allow efficient development of all units. The Constitution provides municipalities with autonomy at the local level, making them the basic, smallest universal territorial unit¹⁶. The municipalities became basic entities of the territorial organization of the State, being defined by its territory, its population, and its organization¹⁷. However, serious dysfunctions (persistence of municipalities sparsely populated and small in area; problematic enclaves and limits; oversized attributions), product of a tradition that refuses to change are emphasized¹⁸. Reducing the number of municipalities and changing the limits of many of them are essential today for the sustainable development of regions.

III.

The rich tradition of provincial institutions on the Iberian Peninsula dates back to the days of ancient Rome, when in 197 BC two provinces were created in areas where Roman legions were stationed: Hispania Citerior and Hispania Ulterior. From that moment on, their number gradually increased. Over the centuries, the scope of the essence itself, as well as the territory of this administrative unit, changed¹⁹. In the early Modern Era, they were characteristic only in the Crown of Castile. Thus, until the end of the Habsburg period (1517–1700), the provinces were merely tax districts, with the number of 21 at the end of the 17th century²⁰.

¹⁴ Ley 7/1985, de 02 de abril, *Ley reguladora de las Bases del Régimen Local*, BOE núm. 80, 03/04/1985 (further: BRL).

¹⁵ A. Albert i Mas, op.cit., p. 13.

¹⁶ Art. 140, CE.

¹⁷ Art. 11, BRL.

¹⁸ A. Albert i Mas, op.cit., pp. 28–34.

¹⁹ More on the historical development and evolution of provinces from the Roman times to the Early Modern era see: J.I. Cebreiro Núñez, *Los orígenes de la división provincial en España*, Madrid 2012, pp. 13–86.

²⁰ G. Martínez Díez, *Genesis histórica de las provincias españolas*, “Anuario de historia del derecho español” 1981, núm. 51, pp. 534 & n.

Nueva Planta decrees at the beginning of the 18th century reduced the so far autonomous kingdoms of the Crown of Aragon (Aragon, Catalonia, Valencia, Mallorca) to the role of provinces. Thus, after the end of the Spanish Succession War, Iberian Spain had 25 provinces. At their head a new office called *intendente* was established as the main representative of the administrative state system. *Intendentes* in the eastern provinces were endowed with greater powers over the Castilian ones. In this way, the areas of the former Crown of Aragon became the prototype for the introduction of similar solutions throughout Spain, making the province the basic supra-municipal territorial unit of the state. However, provinces did not cover the entire territory of Spain, as they coexisted with other entities of territorial administration, which were the legacy of the feudal system, such as church (*Señoríos eclesiásticos*) and nobility (*Señoríos nobiliarios*) properties, as well as the lands of knightly orders (*Órdenes militares*)²¹.

The full unification of the system of territorial units of Castile and Aragon lasted practically until the end of the Ancien Régime and took place only in the 19th century. There were project of administrative reorganization of the state at the turn of the 18th and 19th centuries, but the turbulent international situation caused by the French Revolution and then the operations of Napoleon Bonaparte caused the reform to be suspended. During the French occupation (1807–1814), a revolutionary reform of the territorial administration was carried out, transplanting French solutions to Spain. However, the departments and prefectures were never actually established. On the other hand, the Cortes established in Cadiz at the same time took the initiative to reform the existing administration of the Ancien Régime by abolishing the former non-uniform administrative units and introducing regular provinces throughout the country. The new entities supposed to be concentrated in regions and rationalized in their shape and scope of political competences²².

The restoration of the Bourbons on the Spanish throne thwarted the plans to reorganize the state, which were temporarily returned to during the so-called liberal three years (*trienio liberal*), when a very modern, by the standards of the time, division of the state into 52 provinces grouped into 15 re-

²¹ R. Pérez-Bustamante, *Historia de las instituciones públicas de España*, Madrid 1995, p. 154.

²² L. Rebollo Delgado, *op.cit.*, pp. 26–27.

gions was established²³. Although this division lasted only a few months and was abolished after the restoration of the absolute power of King Ferdinand VII, it became the basis for a new project of the administrative territorial organization of the state, which became a fact after the king's death.

The administrative reform of 1833, also known as the Javier de Burgos reform²⁴, made it possible to unify the territorial administration of Spain, completing the process initiated by the reforms of Nueva Planta, consisting in the final transformation from a feudal state into a modern centralized monarchy. The reform of 1833 divided Spain into 49 provinces, in 15 regions, ultimately covering the territory of the entire state. The Burgos model was based mainly on the liberal project from over a decade ago, also using solutions adopted in the departments of the French occupation period²⁵. In addition to the historical and geographical criteria of the new division, rationalism was also followed in relation to the area (a journey from the farthest point of the province to its capital should not take longer than one day) and the number of inhabitants (between 100,000 and 400,000), although there are voices in recent historiography that indicate that some provinces were created artificially and unnecessarily, calling them outright "imaginaries"²⁶. The greatest opponents of the imposed provinces were the representatives of peripheral nationalisms. Their doctrine maintains that the division of Spain into provinces is artificial and does not correspond to the historical and cultural aspirations of individual regions²⁷.

The provinces are named after their capital city. The exceptions were the three Basque provinces (Álava, Vizcaya and Guipúzcoa) and Navarre, as well

²³ Decreto LIX de 27 de enero de 1822. *División provisional del territorio español* [in:] *Legislación administrativa española del siglo XIX*, ed. T. Ramón Fernández, J. Alfonso Santamaría, Madrid 1977, pp. 511–534.

²⁴ *Real Decreto sobre la división civil de territorio español en la Península e islas adyacentes en 49 provincias y estableciendo los subdelegados de Fomento en las provincias del reino*, "Gaceta de Madrid" núm. 154, 03/12/1833 (BOE-A-1833-1241).

²⁵ For more on the genesis of the administrative reform of 1833, see. M. Morán, *La división territorial en España: 1825–1833*, "Revista de Estudios de la Administración Local y Autonómica" 1990, núm. 247, pp. 567–599.

²⁶ J. Burgueño, *La invención de las provincias*, Madrid 2011, p. 10.

²⁷ J. Mir y Bagó, *La regulación de las veguerías en el nuevo Estatuto de Autonomía de Cataluña*, "Anuario de Gobierno Local" 2006, núm. 1, p. 103.

as the island provinces of the Balearic Islands and the Canary Islands, despite the fact that representatives of at least a few other provinces insisted on keeping their historical names²⁸. The provinces became constituencies almost immediately, and remain so to this day under the current Constitution²⁹. The provinces also became the jurisdictional districts of local civil governments (*Gobierno Civil*) and deputies (*diputaciones*), or local representative assemblies.

Initially, the provinces were only local centers of state government administration, although they had independent local authorities (*diputaciones*) whose competences were mainly limited to the issues of interactions related to municipalities. It was only under the successive reforms of 1870³⁰ and 1925³¹ that the provinces also became units of local self-government, caring for the interests of a province concerned. Ultimately, since the entry into force of the Provincial Statute, these units have a dual character as regional centers of government administration and autonomous units of local self-government³².

For almost two centuries, the administrative division into provinces, with few exceptions, has remained inviolable. The largest of the changes was the division of the Canary Islands into two provinces in 1927, since then increasing the number of provinces to a total of 50³³. The other changes concerned minor border adjustments of individual provinces, usually related to the transition of a municipality to another province, and after the democratization of the state with a change of names to historical (La Rioja, Asturias) or in regional languages under the decree of 1986 (in Catalonia, The Balearic Islands, Galicia and the Basque Country)³⁴.

²⁸ J. Burgueño, *op.cit.*, p. 130.

²⁹ Art. 68, CE.

³⁰ *Ley Provincial*, "Gaceta de Madrid" núm. 233, 21/08/1870 (BOE-A-1870-40002).

³¹ *Real decreto aprobando el Estatuto provincial*, "Gacet de Madrid" núm. 80, 21/03/1925 (BOE-A-1925-2713).

³² M. Rebollo Puig, *Artículo 141*, [in:] *Comentarios a la Constitución Española*, ed. M. Rodríguez-Piñero y Bravo Ferrer, M.E. Casas Baamonde, vol. II, Madrid 2018, p. 1053.

³³ *Real decreto relativo a la división en dos provincias del territorio nacional que constituye el Archipiélago canario*, "Gaceta de Madrid" núm. 266, 23/09/1927 (BOE-A-1927-9045). More on the genesis of the division of provinces, see: J.M. Pérez García, *La organización político-administrativa de Canarias. Un balance histórico*, "Anales de Historia Contemporánea" 2004, núm. 20, pp. 407–418.

³⁴ Art. 25.2, Real Decreto Legislativo 781/1986, de 18 de abril, *por el que se aprueba el Texto Refundido de las disposiciones legales vigentes en materia de Régimen Local*, BOE núm. 96, 22/04/1986.

In addition, in the 20th century, there were temporary Spanish non-Iberian provinces, known as overseas provinces (*provincia de ultramar*). In 1958–1959, the following provinces were established on Spain's African: Spanish Sahara (administered jointly with Morocco and Mauritania), existing until 1976, Ifni (until 1969), Fernando Poo and Río Muni which merged in 1963 under the name Equatorial Guinea to become an Autonomous Region that gained independence in 1968³⁵.

IV.

As shown above, the present territorial organization of Spain is heavily based on traditional divisions that date back to very distant times and have a well-established history. The authors of the Constitution of 1978 tried to meet the expectations of individual regions, not forgetting, however, about the pre-existing territorial regulations. The growing movements of peripheral nationalism, however, make us re-examine the division of the territorial administration of the state and revise some of the arrangements made so far, adapting them to the needs of modern society in the 21st century. The need for reforms in the territorial organization of the state is emphasized by many Spanish constitutionalists³⁶. Further decentralization of Spain seems inevitable. While there is no doubt that the organization of the system of the largest and the youngest administrative units – autonomous communities – requires the greatest changes, the very important issue of the need to reform lower territorial units – provinces and municipalities is often overlooked. One of its most important milestones was the reform of the Law on the Constitutional Court of 1999, enabling municipalities and provinces to appear before this institution in cases concerning the defence of local autonomy against the state and autonomous communities³⁷. A reform of the territorial regime

³⁵ J.B. Vilar, *Franquismo y descolonización española en África*, "Historia Contemporánea" 2005, núm. 30, pp. 129–158.

³⁶ L. Rebollo Delgado, op.cit., pp. 240–244.

³⁷ Art. 59.2, Ley Orgánica 2/1979, de 3 de octubre, *del Tribunal Constitucional*, BOE núm. 239, 05/10/1979, reformed by Ley Orgánica 7/1999, de 21 de abril, *de modificación de la Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional*, BOE núm. 96, 22/04/1999.

in Spain must be done, abandoning the fossilized traditions of the territorial organization, inadequate to today's needs of a modern democratic state of law with a highly developed awareness of local identity. However, it does not seem that the solutions recently proposed by Catalan separatists, such as the discredited independent attempt to introduce *veguerías*, are the right path. An alternative may be a greater independence of the autonomous authorities at provincial and municipal level in shaping the policy concerning their territorial borders in order to meet the most elemental requirements of the local community, while maintaining the uniformity of the administrative division of the entire state. Respect for the traditional boundaries of individual administrative units and the attachment to some outdated forms of their regime cannot stand in the way of their multi-faceted development and growth.

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