



NATIONAL

CATALONIA ACCORDING TO THE DRAFT STATUTE: A THREE-DIMENSIONAL NATION

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What would happen if the new Statute of Catalonia should come into force? What would this new nation that suddenly emerges on the European scene be like? What would happen in Spain if it unexpectedly becomes a 'plurinational state'? Would it be correct to refer to Catalonia and Spain as two entities, complete with their own body and soul? And what about the region of Valencia, for example, which has been just another region with limited autonomy up until now? Would it become another nation as a result of the safeguard clause contained in the draft reform of its own statute? Or would we be left with a series of nations such as Catalonia, the Basque Country and Galicia, on the one hand, and a number of 'territorial bodies' on the other that continue to be 'autonomous regions' with limited autonomy? And what about those regions that were formerly autonomous regions? Would they have to simply make do as best they can with what is left of the State? And what about the State? Would it simply become an administrative body for transfers, overseeing a complex web of relations among the new nations and those autonomous regions that decide to stay as they are? Would we have a series of superimposed sovereignty-based systems, that of the parliamentary members 'of the Spanish State' on the one hand (with 'Spain' relegated to the list of the politically incorrect) and that of the members of the Catalan Parliament or the Consellers Generaus or Parliamentary Representatives of Arán on the other? Where would the boundaries be between these superimposed sovereign systems?

Answers to all these questions, some of considerable import, can be found in the Draft Statute of Catalonia throughout its Preamble, 218 Articles, 11 Additional Provisions, 3 Temporary Provisions and 5 Final Provisions.

Like a roller-coaster, the Statute of Catalonia has scaled the heights in its enumeration of universal rights, only to plummet back down to earth in terms of the detail presented by this interventionist piece of legislation. From the moment it is enacted, Catalonia will not only become a nation, but its institutions will impregnate the entire activity of the State, what was formerly the Spanish State.

We are dealing with a statute or constitution that would have to be added as a new category to Loewenstein's classification of normative, nominal and semantic constitutions: it is a cyclothymic constitution that changes from one classification to another without any kind of continuity, exceeding what doctors, especially psychiatrists, call the 'limits of normality'. Vidal-Quadras was right when he stated two months ago at a packed conference in Barcelona that the Statute was not simply a political problem, but essentially a psychiatric problem. Within the history of Europe, the Statute would come under the heading of constitutional anomalies. The Catalans have signed us up to receive a rather sad honour.

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This catalan constitution –which they call a statute– aims to encompass every aspect, to leave no loose ends. This is the first impression you get when you approach the matter in an impartial and dispassionate manner, like Usbek, the Persian character created by the writer Miquel Porta Perales, who discovers the astonishing and exotic city of Barcelona. It is imbued with an exasperating degree of distrust towards the ‘Spanish State’, as if the latter’s ‘tyrannical’ existence has been the cause of a series of imaginary collective ills.

The Preamble begins by jumping from 1714 to 1914, and then on to 1932 and, subsequently, on to 1979, pole-vaulting from one historical moment to the next without any safety mat. There is no space here to recall history as it actually occurred and separate fact from myth. Let us focus on the Statute, which, according to the version passed by the Catalan Parliament, would give the Catalan Government, the Generalitat, exclusive authority over almost everything, even the free time of those who come under its authority: ‘The Generalitat has exclusive authority within the sphere of leisure and free time.’ Not content with this definition, the Statute goes on to state that ‘This encompasses the promotion and regulation of activities carried out in Catalonia and the legal regime that applies to bodies, public or private, whose purpose is to facilitate the practice of free-time activities.’ Not even during Mao’s Cultural Revolution, when all Chinese were obliged to do gymnastics together at the same time, did the authorities attempt to exercise such strict control.

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When the Statute of Catalonia comes into force, the Generalitat will assume the complete and exclusive legislative, regulatory and executive powers that the Spanish Constitution grants to the Spanish State. The ambiguity of the text permits the Generalitat to encroach on all the exclusive powers of the State, i.e. those contained in Article 149.1 of the Constitution. And it invents a Generalitat-State Bilateral Commission whose purpose is to establish a permanent general framework for this relationship. There are 32 powers that exclusively correspond to the State according to the Constitution of 1978, and one by one the draft Statute encroaches upon them all. The following is an attempt to clarify this jungle of legal provisions and attribution of powers.

1° The regulation of the conditions that guarantee the equality of all Spaniards with regard to the exercise of their rights and the fulfilment of constitutional duties is violated by the enumeration of rights different to those that are established in the Spanish Constitution (some as exotic as ‘enjoyment of the landscape in equal conditions’) which effectively means that citizens’ enjoyment of these rights will depend on their place of birth. However, this is not the most serious development. For example, conditions of access to a career as a judge or a public prosecutor will depend on whether the applicant has Catalan or Spanish nationality, given that the Statute demands that any individual who aims to practice as a judge or public prosecutor in Catalonia must have a sufficient knowledge of the Catalan language. The same applies in the case of notaries, registrars and any other civil servant who wishes to perform his professional duties in Catalonia.

2° Within the field of education, it is the principle of intervention that predominates, given that the Generalitat regulates the model as a whole, whilst the parents, in a subsidiary manner, are granted the right to decide whether their children receive a religious education or not, as well as the type of centre they would like them to study at. It is within this field, perhaps, that the Statute distances itself most from the Spanish Constitution and the laws that regulate educational matters, establishing an interventionist model that is more typical of a socialist dictatorship than a free society. We can understand how Batasuna or the republican Left in Catalonia (represented by Esquerra Republicana de Catalunya) might be satisfied with this new model. However, it is more difficult to understand the satisfaction of certain Catholic groups, in spite of the changes introduced to the original text, apparently on their behest, given that their objections have not led to any substantial changes at all to the new proposal. And it is even more difficult to understand how the Catholics of Catalonia have failed to fight tooth and nail against the legalization on abortion, euthanasia, homosexual marriage and the regulation of ‘other forms of cohabitation’. Article 41.5 of the Statute of Catalonia states the following: “The public authorities must ensure that women’s freedom to decide is guaranteed [...] especially in relation to their own bodies and their reproductive and sexual health.’ This effectively legalizes abortion through a distortion of language. What is known as ‘the right to a dignified death’, established in Article 20.2 of the Statute of Catalonia, legalizes mercy killing, given that it authorizes euthanasia in certain circumstances when the patient ‘is not in a condition to personally express his will’. And, finally, the regulation of ‘other forms of cohabitation’ (Article 40.7 of the Statute of Catalonia) opens the legal door to the future extension of marriage to polygamous unions such as those authorized by the Islamic religion.

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3° The exclusive authority of the State in matters such as nationality, immigration, emigration, laws concerning foreign persons and the right to asylum, is essentially modified. By stating that Catalonia is a nation, the jurisdiction over all these fundamental aspects that formerly corresponded to the State now passes to the Generalitat.

However, the long arm of the Generalitat also extends to other areas. The Statute claims that Spain is a ‘plurinational State’. And it defines Arán, the valley where so many Spaniards go skiing, as ‘an Occitanian national reality’. It establishes the relations that should exist between the Generalitat and the territories ‘with historical, linguistic and cultural ties with Catalonia’, and regulates the ‘Catalan communities abroad’. The Statute is imbued with a kind of longing for a lost medieval imperialism, one that was revived in the Romantic Wagnerian dream of the second half of the 19th century. In this respect Maragall, having carried out a biased reading of his grandfather’s works and forgotten his father’s socialist and internationalist roots, now presents his new project as the ‘Catalan dream’.

4° Since the Statute establishes that Catalonia is a nation, the Generalitat now has the exclusive authority to issue official documents, including passports and identity documents –that’s right, documents, in the plural!–. We assume that there will be a specific national identity document (DNI) for citizens of Catalonia and another Spanish national ID for all Spaniards in general. When it comes to immigration the Statute goes even further, since the Generalitat assumes the authority to select even the race of applicants. The unusual Article 138.3. a) states that ‘Within the framework of the Generalitat-State Bilateral Commission, decisions must be taken regarding: a) The number, place of origin and professional qualifications of immigrant quotas destined for Catalonia.’

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5° Spain’s international relations will also be seriously affected if the Statute comes into force. Least important will be the obligation to ‘implement measures to promote peace throughout the world’, or policies to promote Catalan, not only throughout the Spanish State as a whole, but ‘within the European Union (EU) and the rest of the world’. Spain’s scope for action in international relations will be seriously curtailed by the Generalitat. For example, it will be the responsibility of the Generalitat ‘to develop, apply and implement EU legislation when this affects areas that fall under its jurisdiction’.

The ‘State Government’ will have to inform the Generalitat of reform initiatives relating to all EU treaties, with the Generalitat’s ‘observations’ regarding its exclu-

sive powers –which, as we see, encompass virtually every area of life– being ‘decisive’. State delegations will include representatives from the Generalitat, and the Catalan Government will also participate in formulating ‘State positions’, ‘especially vis-à-vis the Cabinet of the State Government’. The Statute then goes into greater detail regarding this participation in European institutions and bodies, the monitoring of the principles of subsidiarity and proportionality, the development and implementation of EU law, and the management of European funds. In the latter case, these funds ‘cannot be territorialized and the State shall enshrine this right in law, whilst the Generalitat shall participate in distribution bodies or procedures’.

In order to tie up every loose end, the Generalitat will set up a delegation to the EU, possessing a statute similar to that of the State representations, and, to top it all, the territory of Catalonia, either on its own or accompanied by other territories, will become the sole constituency for elections to the European Parliament.

As far as the rest of the world is concerned, we might recall that the Generalitat has the obligation to ‘promote Catalonia abroad and promote its interests within this field’ and that it will be able to ‘establish delegations or representative offices abroad’, whose members of staff (and the Statute is mysteriously vague on this point) will have ‘the required statute to enable them to perform their functions’. In the same way as in relations with the EU, the State Government must inform the Generalitat ‘regarding negotiation processes for international treaties and agreements if these affect the powers or interests of Catalonia’.

“If the Catalan Parliament should decide to adopt a different foreign policy to that of the State, then why should Catalonia still contribute to the military costs of a policy it does not agree with?”

6° Spain’s national defence and security will also be affected as a result of the Generalitat’s obligation, in accordance with the above-mentioned Article 51 of the Statute of Catalonia, to promote a culture of peace and carry out measures to enhance peace throughout the world. If the Catalan Parliament should decide to adopt a different foreign policy to that of the State, then why should Catalonia still contribute to the military costs of a policy it does not agree with?

7° However, it is in relation to the State’s exclusive authority within the field of Justice that the most radical changes are proposed. The entire system is turned upside down. These proposals take us back to a situation that existed three hundred years ago, reviving an idea of justice that is subject to political power and, therefore, susceptible to corruption.

The High Court of Justice of Catalonia appears as ‘the jurisdictional body which is the supreme judicial organization of Catalonia’, leaving the Spanish Supreme Court with a role in unifying doctrine; but only a partial role, since when it comes to interpreting the law of Catalonia, this also comes under the jurisdiction of the High Court of Justice of Catalonia and not the Supreme Court. In short, since the ‘law of Catalonia’ extends to all branches of national and international law, the jurisdiction of the High Court of Justice of Catalonia is extended to all matters. The Statute even creates a Catalan Constitutional Court, with a Special Section of the High Court assuming the procedural role of providing a statutory guarantee for acts that may

contravene constitutional rights. This section also ensures the preservation of the linguistic purity of Catalan, a language that is obligatory in all legal proceedings.

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In short, these changes represent a violation of all existing constitutional principles of justice. Justice now derives from two different peoples, Spaniards and Catalans, and is administered by judges and magistrates working in a judicial system other than that of Spain, to the detriment of judicial independence and the jurisdictional unity of Spain.

In an article in the Spanish newspaper *ABC*, Professor Jiménez de Parga, the former Head of the Constitutional Court, has revealed the most disturbing aspect of this question. The Statute has hidden, almost unnoticed, clauses such as Provision 9^a, which indicates that some 20 Statutory provisions will require the modification of Acts of Parliament such as those governing the judiciary, the Constitutional Court, the Statute of the Finance Ministry, the General Electoral System, the organization and operation of the General State Administration, the law regulating the various forms of referendum, the legislation that governs the security bodies and security forces and all ‘laws of a general or sectoral character that regulate a body or entity in cases in which the Statute grants the Generalitat the power to appoint representatives to sit on the governing boards of these bodies and entities’. Professor Ollero Tassara, in another article for *ABC*, has warned about the proposed modification of the Act regulating the General Council of the Judiciary. This threatens to create ‘specific’ councils for the still non-existent autonomous judiciaries that the Statute aims to establish in Catalonia.

8^o The Statute of Catalonia also has an impact on mercantile, penal and prison legislation, not to mention procedural legislation. Given that the Generalitat is to have authority over all mercantile activity that takes place in Catalonia, legislation of this kind is seriously affected by the specific provisions proposed: for example, it will affect ‘share markets and contracting centres’, as well as the ‘planning, regulation and promotion of economic activity’.

Labour legislation is turned on its head, with the Generalitat being granted executive authority over employment and labour relations, extending it to a ‘right to determine its own labour relations framework’, which goes beyond the powers attributed to the Spanish regions by the Constitution when it comes to implementing State labour legislation. This ‘executive’ authority is described in 14 detailed sections and, in fact, could change all the State legislation as it now stands in this area.

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9° The ‘legal slight of hand’ involved in stating that the Generalitat is simply assuming the exercise of its authority and then introducing substantial changes to this authority, is used again when it comes to dealing with intellectual and industrial property rights legislation. A register is established for rights generated in Catalonia or for rights holders whose habitual residence is in Catalonia.

10° Article 126 of the Statute of Catalonia regulates the Generalitat’s authority regarding ‘credit, banking, insurance and mutual benefit societies that are not integrated within the social security system’, and the degree of interference in this exclusive State jurisdiction is such as that the Minister for Economic Affairs has stated that it would affect the unity of the market. The Generalitat would even have control over weights and measures (the Generalitat would have exclusive executive authority ‘in matters of contrasting metals’) and foreign trade, areas that correspond exclusively to the State. The Generalitat would also participate in ‘establishing the calendar of international fairs’.

11° In short, according to Article 152 of the Statute of Catalonia, the Generalitat’s authority within the field of economic planning, whilst remaining within the boundaries of State control, would enable Catalonia’s regional authorities to manage this activity in a different manner to the rest of Spain. And as if this were not enough, the Generalitat’s participation in State planning is still guaranteed through the Bilateral Commission. The same occurs in the case of the social security system, the promotion and coordination of scientific and technical research and all the other areas of exclusive State responsibility over economic matters.

“With regard to the areas of exclusive State responsibility over economic matters, Catalonia would be able to manage this activity in a different manner to the rest of Spain. However, the Generalitat’s participation in State planning is still guaranteed through the Bilateral Commission”

12° The legislative frenzy reaches its peak when it comes to regulating the savings banks domiciled in Catalonia, such as La Caixa. The simple jurisdiction established in the Statute of 1979 becomes a detailed enumeration of the powers that now correspond to the Generalitat: governing bodies, representation of social interests, legal constitution, mergers, liquidation and registration, foundations and associations among savings banks, shareholdings, distribution of surpluses for social work, disciplinary framework and inspection and sanctioning activities.

These bodies are bound to become instruments of political power. This is an unprecedented situation in Western mercantile and banking legislation. Who would decide, for example, whether a takeover bid by Gas Natural (which is controlled by La Caixa) over Endesa should take place? Does Catalonia’s business community want it to happen?

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13° Special attention should be paid to the matter of referendums. The section ‘Consultations with the People’ grants the Generalitat exclusive authority over ‘the establishment of the legal regime, methods, procedures and the implementation and announcement of surveys, public hearings, participative forums and any instrument for popular consultation on the part of the Generalitat itself or local bodies’. A referendum on self-determination or independence could be staged immediately.

14° Nothing escapes the Statute. It is impossible to comment upon each and every one of the more than one hundred powers attributed to the Generalitat: emergencies and civil protection, energy and mines, sports, statistics, housing, arts and crafts, games and shows and that curious ‘exclusive authority over youth affairs which encompasses all policies affecting the lives of young people’ –which is followed by a long and exhaustive list– or authority over natural areas and meteorology. In this way this unusual Carta Magna extends to some 218 articles.

In short, the Statute creates an independent nation, Catalonia, within another nation, Spain, and acknowledges the uniqueness of a hypothetical national community, Arán. It is a cyclothymic Constitution, an entirely new model of State organization, a ‘three-dimensional nation’. Anybody who is honest will have to admit that they cannot make head or tail of it. It is complete constitutional nonsense. The legal approach is absurd, and the founding principles of modern and progressive political doctrines - freedom, equality and solidarity - are in effect destroyed.

The Spanish Nation, which has provided a framework for freedom, equality and solidarity among all Spaniards without distinction since 1978, would disappear. Do Catalan leaders and the Catalan political class really want this Statute?

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The possibility of a part of Spanish territory breaking away by peaceful means might well be raised. Whether it is feasible or not is a different matter. But it certainly is not feasible to create a territory ‘as if it were a nation’. The Statute breaks away from the constitutional model of 1978, declaring independence by the back door and, without consulting anyone else, imposes a model on the rest of Spain.

We are now faced with a new and hitherto unseen period of constitutional change that could lead the country in almost any direction. ‘Let’s not get over-alarmed about this’, we hear sensible people tell us, and of course we agree with them. However, we would be naive if we were to ignore the way things really are by simply focusing on the way we would like them to be.