

Europeanization and intergovernmental relations in Germany and Switzerland compared with Spain: Signs of convergence?

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Abstract

Europeanization is a phenomenon that is used to explain changes of different kinds on member states. Thus, it is reasonable to think that Europe has an influence on the domestic level. Since Olsen identified five variants of Europeanization processes, the number of studies that look at Europeanization process impacts on domestic patterns has increased significantly. In this article we discuss the effect that the EU might have on the evolution of intergovernmental relations in Spain, and the converse, the effort of Spanish IGR on Europeanization by comparing it with that of Germany and Switzerland, the latter a Europeanizing non-EU state.

Contrary to what has been said in the European studies literature, while intergovernmental relations in (IGR) Spain might have had to somewhat adapt to the European context over time, it did not change from a competitive to a cooperative style due to Europeanization, moving closer to German or Swiss federalism. Spanish IGR followed a more bilateral style of horizontal and vertical relations. Consequently, the European convergence hypothesis is difficult to maintain in this domain since political behavior and institutional arrangements continued a long established historic patterns. Evolution of Spanish IGR is based on IGR theories and takes into account a complex mixture of environmental pressures, polity features and historical institutional context.

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I. Introduction

The federal countries of Europe have all had to adapt their intergovernmental relations to the new realities of Europeanization and to most that of the European Union (EU). However, the very nature of this confederal or supranational body, that possesses more normative than implementive powers, means that domestically laws, rules, standards, directives must go through national and subnational country processes. The basic documents governing the EU leaves large measures of discretion to member states in carrying forth on the principles agreed upon supranationally, within a country's established institutional structures and patterns of behaviors. Within Europe's federal and federalizing countries, including members Germany and Spain, and potential member Switzerland, that means some notable process role for second tier governments given their domestic policy responsibilities. Although not necessarily the same substantial role in each country, the institutional and intergovernmental relations (IGR) base in each helps determine those processes, perhaps even to a greater degree than that of EU process. In this paper we argue that patterns of cooperation and conflict are less an influence of EU processes themselves and more a function of each country's IGR, "The various combinations of interdependencies and influences among public officials – elected and administrative – in all types and levels of governmental units..." (Krane and Wright 1998: 1168).

The evolution of intergovernmental relations is the result of a historic process where political actors act under the constraints imposed by constitutional rules. Some of these processes in EU member countries are influenced by European dynamics that have been tailored along economic and political cooperation patterns. As in other debates on European integration, convergence seems to be the response when intergovernmental relations are considered. Certainly, Europe matters to domestic institutions and political actors but it is less clear that transformations in governance due to European integration are the cause of

significant within-country institutional and political changes in IGR. This is an important issue for European integration theories but also for IGR: Does membership in the EU change a country's intergovernmental relations? Is convergence the inevitable consequence of European integration? Is there a process of convergence towards increased cooperation at the domestic level in federal and regionally decentralized countries? Or are non-EU factors a better explanation of IGR and changes in their dynamics?

European integration theory has debated for a long time the effects of constructing the EU system of governance (Moravcsik, 1994; Sandholtz, 1996, Marks et al. 1996, Kohler-Koch 1996, Kohler Koch and Eising, 2000) Some authors expressed similar concerns under the label of "Europeanization" seen as the phenomenon by which European integration induces changes in domestic institutions and policies (Olsen 2002; Cowles *et al.* 2001; Featherstone and Radaelli 2003; Bulmer and Lequesne 2005, Graziano and Vink 2007). Most of these studies take a top down perspective. They understand the European system of governance more or less in hierarchical terms since they judge transformational processes at the domestic level to adapt to the supranational level. A smaller number of analysts argue the need to also look at mutual influences due to internal intergovernmental traditions, both vertical and horizontal relations, between national governments, regions and other political actors. But their common assumption is that those elements of political systems that are more differential within the European context will transform themselves.

This vision is directly applied to IGR to explain the change from "competitive" regionalism to "cooperative" federalism (Börzel, 1999, 2000 2002). The problem is that seen from the other end, the immense majority of the literature would not agree that there is such a change. Particularly in the case of Spain, there is agreement on the "federalization" (Agranoff, 1993; Agranoff and Ramos, 1997; Moreno, 1999; Maiz *et al.* 2002) but authors agree – and some seem to regret - that federalization is not accompanied by the institutional

development and political practice of cooperation (Aja, 1999-2003; López Aranguren, 2002; García, Montilla and Arbós, 2005). In contrast to the “convergence” hypothesis that is based on a progressive turn towards cooperative IGR, we understand there is an adaptive response to European processes. All member states and their institutions dealing with European affairs, central or sub-central, need to improve the functioning of their political and administrative machinery in order to be more efficient in European matters. The creation or refining of their European machinery, however, does not mean the transformation of the basic nature of IGR. The European integration process creates new opportunities for all, and rational actors within different political systems will try to maximize their outcomes developing new strategies within conditions set by the EU and constitutional norms, rather stable and independent of European processes. But in the nature of such relations, the aims and directions of internal dealings in both European and non-European areas are the result of old patterns of interaction between political actors that can be explained looking at institutional arrangements, domestic rules, political culture and their own rationality.

We demonstrate our argument with a comparative study of the evolution of intergovernmental relations in Germany, Spain and Switzerland. Germany is the prototype of cooperative federalism. Spain, where strong regional identities and national affiliation co-exist, is characterized by weaker and more fluid institutionalization of intergovernmental arrangements (IGAs), politics and governments are highly competitive despite a long period of EU membership. Switzerland, a country with considerable social heterogeneity based on the use of different languages, has much stronger IGAs, a defining feature of its federal system. Indeed, the organization forms chosen to channel Swiss intergovernmental relations are the outcome of a long history of cooperation between the political elites to the point of being considered a model of consensus democracy (Lijphart, 1969, 1999).

The comparison reveals that despite the external pressures of Europeanization, IGR in Germany and Spain do not match the picture of convergence. In order to understand those cases and the case of Switzerland that is not subject to the same external pressure, it is necessary to consider other historical-institutional and polity features. Adaptation to external pressures in Europeanized policy fields responds to intentional elements of political actors. But the political ability to control the Europeanization process is not only affected by polity and structural factors but by the outcome of election results and negotiation processes. Thus, we regard reforms in the European area as the outcome of external pressure, institutional constraints and political strategies.

The article proceeds in three steps. First, we review theories that developed a connection between Europeanization and institutional changes affecting IGR. Second, we contrast the evolution and character of IGR in the three countries with their expected transformation. Third, we discuss the application of an alternative theory based on polity characteristics to explain adaptation to external pressure without a profound transformation of IGAs. Finally, we conclude with some considerations on the impact of the EU and IGR.

II. Europeanization and intergovernmental relations: theories of change

The debates on European integration and European governance are closely related to discussions of Europeanization. According to Bulmer (2007) “Europeanization” is a phenomenon that various theories try to explain. Olson (2002) defines five different variants of Europeanization. Two of them refer to the extension of European policies, models and policy instruments, institutional arrangements, rules and norms, even beyond the EU. Two others are related to building European capacity at the centre and the final one refers to the “penetration of national systems of governance.” That form of Europeanization that is of

course most interesting for this article since it suggests that EU membership may have an effect, not only on policy but on member states politics and polity. The change or transformation of national polities and of sub-national political systems, however, is not one easy to assess, let alone quantify.

With regard to regions in federal or regionalized states, the main problem they have been confronted with for some years is the loss of legislative and administrative competencies resulting from the shift from the domestic to the European arena. Obviously this was a more important problem for those regions that had more to lose in terms of policy making, public finances and management capacity, such as in the case of German Länder and Spanish Autonomous Communities (ACs).

Some authors (Risse et al. 2001) understand that in those cases where there is a “misfit” – an incompatibility between European rules and processes and the institutional structure of the member states – there is pressure to adapt to the new situation and political actors at domestic level will try to rebalance the distribution of competences and resources. That is what Börzel (2002) thought happened in Germany and Spain where sub central governments had to react to the expansion of the EU and the role assumed by federal or central governments as main interpreters of national interests. In the case of Germany, adaptation was less traumatic since a tradition of cooperative federalism provided a culture of multilateral bargaining and consensus building but, in the case of Spain, adaptation was less likely given that IGR were characterized by conflict.

However, Börzel (2002 Ch. 8) understood there was enough evidence to suggest there was an overall shift in Spain from “competitive regionalism” to “cooperative federalism” on the bases of the creation in 1992 of a Conference for European Affairs – CARCE - and the agreement in 1997 - when the central government depended on the votes of the Catalan Minority in the Parliament – for the participation of a representative of the ACs in Spanish

Permanent Representation and of regional representatives in various working groups of the European Commission. According to this author, both the central state and the ACs with a stronger differential identity had chosen an uncompromising behavior in their power struggle to a point where the ACs would have realized that they were wrong and that they could preserve their competencies better through stronger cooperation with the centre.

The increase pressure for cooperation due to EU affairs among intergovernmental actors is evident but it would be difficult to find broader support for Spain to be an example of cooperative federalism. Spain is considerably more intergovernmentalized in all forms of routine transactions than either Germany or Switzerland (Agranoff 2007). Increased relations, inherited due to EU affairs and any push to cooperation need to be placed within the context of the conflict prone nature of relations between the central government, the two more assertive ACs and that of significant other regions. These IGR moves must be combined with participation in EU inspired intergovernmental commissions - when facilitated to pursue their respective goals – along with direct relations with the EU and circumventing strategies when possible.

In order to understand better the evolution of IGR it can be useful to separate the effects of Europe from the effects of endogenous processes for each of the three countries since Germany and Switzerland follow similar historical paths inside and outside the EU with a similar outcome, while Spain has developed more numerous and less collaborative IGA, compared with the two federal countries, despite, as Bolleyer (2006) has cautioned, various institutional factors (weak role of the Senate in territorial matters, fiscal dependency of the ACs, and European pressure) were strong incentives for their development.

III. Intergovernmental models in Germany, Spain and Switzerland

In all three countries, reform efforts have been launched concerning the vertical dimension of IGR over the two last decades to respond to European affairs. Table 1 compares the three systems according to EU institutional features and delivers an initial account of overall intergovernmental institutionalization in the three countries. In the case of Switzerland this effort was due to the cantonal interest in the bargaining processes of the federal government with the EU. The creation of multilateral instances for European affairs is thus a common feature. The extent of cooperation on the horizontal dimension, however, has varied over time and it has had a significant impact on the strength of the vertical dimension. In the cases of Germany and Switzerland, multilateral instances for cross-boundary horizontal cooperation are the base of vertical multilateral instances, while in the case of Spain, such base does not exist and the preference of political actors is for bilateral arrangements. These features are analyzed as each country is taken up separately.

Table 1 Profile of IGR in Germany, Spain and Switzerland

	Germany	Spain	Switzerland
(1) Strength of second chamber in territorial matters	Strong	Weak	Strong
(2) Bilateral, vertical cooperation (Fed-States)	No	Yes	No
(3) Multilateral-Horizontal (States)	Yes	No	Yes
(4) Bilateral, Horizontal (States)	Yes	No	Yes
(5) Multilateral, Vertical (Fed-States)	Yes	Yes	Yes

Source: Own

Germany

German IGR is by institutional framework and practice cooperative. Leonardy (1999: 7) characterizes cooperation as operating at three levels or areas of interaction: 1) the whole state (*Gesamtstaat*), comprised of the federations and its component parts, the Länder are represented in terms of equal status; 2) the “Federal State” (*Bundesstaat*) or the constitutionally organized structure inter-relationships between the Federation and the Länder, based on majority-rule decisions; and 3) the level of horizontal coordination between

the Länder themselves, which strictly speaking are not part of the other two elements, but decisions of the other two levels cannot go forth without horizontal agreement. The entire system, Leonardy concludes, is based on mutual consultation and cooperation, coordination among and between levels, on matters of both legislation and administration (10).

It is a system where the overlapping institutions outlined in Table 1 not only include joint agreement by the two houses of parliament, but at several other critical points: Federal Chancellery and Bundesrat, in the Conference of Minister-Presidents (general and specialized), Länd-based parliamentary groups of the Bundestag, interconnections regarding joint tasks and tasks that divide policy and administrative roles between the Federation and the Länder, and the Federal Constitutional Court as the protector of rights and competencies under the Basic Law (Schnapaoff 2001: 29-31).

This system of institutionalized “cooperative federalism” presents three intergovernmental challenges. First, is that the EU has extended its functional scope in to many areas that are reserved as Länder competencies. Second, EU decision-making, particularly by the Council of Ministers, which in Germany is represented by the federal government, and thus it is directly involved in decisions in fields represented in the Council by the federal government. Third, in as much as implementation is primarily the responsibility of the Länder, they act out of the need to take actions that would hold off federal control in these policy arenas (Hrbek 2002: 154-55).

European integration’s impact on Germany has been a progressive process which was most likely facilitated by the central role that Germany has played in the EU and the opportunities that Germany had to influence the EU level and minimize the differences between the European and the German political and administrative system.

The Bundesrat has played a central role in the German case where Länder participate in central decision making and can force issues that their interests be taken into account through their veto power. This is what happened with regard to European affairs in 1987 and again in 1992 with the ratification of the Single European Act and the Maastricht Treaty (Börzel, 1999, 2002). With a rather confrontational strategy – the threat of a veto in the ratification of those treaties – the Länder progressively obtained codetermination powers:

1. A two-thirds majority of Bundestag and Bundesrat has to ratify any changes in international treaties;
2. Under Article 23 (1992-93) of the Basic Law when Länder interests are affected by an EU decision, the federal government has to take into account the opinion of the Bundesrat;
3. When legislative or administrative Länder competencies are affected by European policies, the Bundesrat has the final decision on the German position in the Council of Ministers;
4. When exclusive legislative competencies of the Länder are affected by European policies, a Länder minister represents Germany in the EU negotiations.
5. The Länder have established and developed their own EU activities, such as Brussels offices and direct lobbying (Hrbek 1999).

But the key to the base level of German IGR are the horizontal conferences of Länder Ministers. Those conferences have a long and historic tradition in the various policy sectors and serve the function of exchange of information on policy and management issues related with the delivery and regulation of public services. Each conference is presided by one Land and has offices in the same Land. Their autonomy from the federation is absolute: they can discuss policies, sign agreements and implement them without any control from the federation. They may decide to invite the federal minister when the Länder wish to include the federation in their discussions or to reach a unified position on a specific issue.

The meeting of the Länder Presidents and the federal chancellor is also an important element of the German cooperation system since it provides opportunities for political leaders

to meet and discuss big issues such as constitutional reforms or developments in Europe and the federal system. The President's conferences are also an opportunity for exchanges of experiences, debate of public policies and agreements to develop concerted efforts to tackle main societal problems.

In addition to constitutional protections like Article 23 of the Basic Law and formalized intergovernmental bodies the Länder participate in the EU through other means. European policy units have been created through and most Länder ministries, including coordination centers to ensure optimal levels of agreement. Since the mid 1980s most western Länder created information offices in Brussels, and while once opposed by the federal government, they involve high levels of cooperation. The Länder are active members, holding the largest member of seats on EU Committee of Regions, with each holding one seat and the five largest a second seat. Länder parliaments occasionally debate and forward resolutions to the EU Court of Justice, for which a Länder must go through the federal government, based on a Law on Cooperation.

Despite its near complete gearing of the German system toward federal cooperation, the system is slowly adapting and changing toward a more "competitive model." According to Jeffery (1999) a less solidaristic IGR is emerging based on diverging economic and social interests, a somewhat more territorial interest in electoral processes and indirectly the conduct of government. Thus, a changing social basis is beginning to erode the old ethos of solidarity and cooperation. This has not only meant a call for differential financing and an increase in some Länder domestic competencies but a reduction of federal control over the solidarity principle, and also extending Länder freedom of maneuver in cross border activities and external relations. The latter refers to the ability to pursue functional needs in relation to EU internal market policy (unified, borderless market) and the "new geographical centrality of

Germany with a large number of neighboring countries in an enlarging EU” (Hrbek 2002: 155).

Notwithstanding the emergence of competition between Länder cooperative federalism is basic. Whether it is through the Bundesrat or the executive’s cooperation, the participation of Länder in central decision making is based on an egalitarian position of the constitutive units and an ability to reach a common position minimizing conflict. The basic idea of compensation of the loss of power through participation is basically accepted as much by all the Länder as for the central state. As Hrbek (1999: 229) concludes:

As both sides confirm, federation and Länder have complied with the principle of federal ‘comity’ (*Bundestreue*), both in their separate activities and in their cooperation with one another. Given that, it can be said that the German federal order has not been damaged in the course of deepening integration, but has rather passed a new litmus test. However, a by-product has been an intensification – through all the negotiation processes involved in double *Politikverflechtung* – of Germany’s characteristic ‘participatory’ variety of federalism.

The Länder priority has been on developing internal channels of participation rather than on being co-determiners of European policy. External pressure does not change IGR but reinforces them.

Spain

Considered federal in all but name (Aja 2003), Spanish IGR is considerably more individualistic and competitive than that of Germany. Although the Constitution of 1978 creates a three tiered system including the state, ACs and two levels of local governments – provinces and municipalities – the system is eminently more complex. Well over 10,000 forms/units of government exist, not including some 3200 submunicipal governments: including 17 ACs; 50 provinces, with 43 non-AC consolidated *diputaciones*; 8107 municipalities; almost 1,000 special districts or *mancomunidades*; and, over 900 consortia or

vertical structures of cooperation (Agranoff 2007: 29). Autonomy is constitutionally granted to each of the three basic levels. The ACs are subject to some forms of basic national legislation even in their areas of dedicated competencies, whereas local governments are “dually subordinated” to both the state and their AC governments (Agranoff, MS, Ch 3). In actual practice, like a number of federal countries, e.g. Australia, Brazil, and the United States, power division is complex in Spain: exclusive federal power, federal basic normative power/second tier all other powers, shared normative powers, second-tier exclusive power, and special joint or asymmetric arrangements (Agranoff 2004). Within this scheme of diverse power allocation and multiple units of government IGR is more “free wheeling” and open to independent action than is the case of in Germany.

More individualistic IGR and IGA exist for several institutional and political reasons. First, while Spain possesses a notable number of IGR consultation mechanisms (below) they are neither constitutionally guaranteed nor politically as important as that of other intergovernmental forces, nor of other IGAs. The political character of IGR is highly individualistic, leading to a more competitive system. Spain has always had a corporatist tradition in politics, meaning that forms of bilateral and trilateral bargaining are important means of decision-making. For example, labor management relations are normally between the state, large companies and the two major labor federations. Intergovernmental interest groups such as the Spanish Federation of Municipalities and Provinces (FEMP) and their AC affiliates (there is no AC counterpart) are used to bilateral negotiations and agreements with Madrid and with their AC governments (Wiarda 1993). Second, while the two major, statewide political parties are federated, they tend to be strongly controlled from the top. National, EU, AC and local elections are linked, with results following similar patterns from one election to the next (Carillo y Diaz 2003). Next to the prime minister and cabinet national or AC political parties in control of their respective parliaments are important objects of

lobbying and decision influence. The latter, in particular the majority party, are important IGAs to target on a host of individual issues. Third, as a country of multiple loyalties and identities of varying intensity, the intensity and dual loyalty is particularly high, the subnational push is for resources, privileges and power regarding individual ethnic national interests rather than solidarity. As a result, Basque, Catalan, Galician and to considerable degree Andalucían, Canarián, Navarran, Valencian and other loyalties are manifested primarily in IGR for the home ACs best interests (Moreno 2001). This places focus on bilateral IGR strategies, for example Barcelona-Madrid, rather than inter AC concerns. Fourth, and related, the system of governmental unit of contact is very personalized and individualistic, where contacting whom you know in well placed positions, party or interparty, is more important than any form of cooperative bargaining (Agranoff 1993; Agranoff and Ramos 1997; Jimenez 1999; Moreno 2001; Subirats y Gallego 2002).

Based on these aspects of political culture, IGR is advanced through a variety of means beyond formal bodies of consultation (Agranoff 1999: 105-107). First and foremost are bilateral agreements, where the power of key regional interests is used to forge the best deal possible through direct negotiations with the party in power in Madrid. Where a party is in power in a minority government coalition that includes one or more of the non-state nationalist parties the latter's power is magnified, as the Catalan party CIU has leveraged new resources and concessions around working and/or through on two occasions during the 1990s. This two party agreement route has been the primary IGR strategy for the Basques and Catalans, who lead the battle with Madrid, over transfers of power, financing, and for a role in the European scene.

A second mode is through the forging of major multiparty agreements. With the government in power taking the lead role, it has enlisted the major minority party and then the larger non-state parties in reaching agreements on principles of federal operation in state-

AC relations. Dating back to the pre-constitutional period, and too numerous to list in full (see Agranoff MS), they lasted until a 2002 agreement on AC tax sharing and financing. An attempt to reach an accord on dealing with ETA violence broke down in 2006 when the minority PP party refused to join with the majority PSOE, despite the agreement of many other small parties. These multilateral agreements are cooperative in nature, but they come very slowly and most important, they by no means are negotiated with a unified AC front. There is rarely a pre-agreement based on unified AC agreement processes, let alone corresponding outcomes. To the contrary, they are entered in to in a very AC individualistic fashion, with the Basques and Catalans often pushing well beyond political reality on a bilateral basis. The federal government has had the upper hand in most of these sessions, in as much as it is their power that is normally conceded with no real upper chamber of parliament that holds the kind of concurrent power as that of Germany (Agranoff 1996).

A third pattern is the thousands of routines of IGR that define the system. Early in the AC developmental period were the bilateral (ruled so by the Constitutional Court) commissions that transferred power individually to the 17 ACs, competency by competency, state to AC on an individual basis. This process of haggling over costs and services regulations extended over different competencies from 1981 to 2004, reinforcing IGR individualism. Additionally, hundreds of thousands of transactions of a financial, program and project basis are negotiated yearly between the individual ACs and the government in Madrid, reinforcing individualism (Agranoff 2004).

A fourth and final IGR dynamic is the actions of the ACs themselves as they carryout the original constitutionally enumerated thirty-two and additional competencies that they have normative and program control over. In some arenas, for example urban planning, agriculture, forestry, virtually all local government contact is between local and AC governments. In areas of shared competencies—housing, transportation, environmental

protection, social services and economic development—individual contacts tend to be both up and down the line, but focused at the AC level on an issue by issue basis. All of these AC actions also tend to individualize IGR in Spain, as situational negotiations and bargaining prevail (Argullol, et. al. 2004).

The integration of Spain in Europe took place at the same moment Spain was thus developing ties with the EU almost without any forceful cooperation mechanisms. The progressive transference of services and resources to the ACs required some coordination given the high level of concurrent legislation and obvious material needs for a smooth transition in the management of services. But this coordination was, as mentioned, channeled through bilateral agreements.

Two of the historic nationalities, Catalonia and the Basque Country, as mentioned set the path for the relations with the state in negotiating the transfer of the legislative and administrative competences they could assume according to the Constitution. In the negotiations, the two “pioneers” followed a strategy to maximize their powers and the valuation of the costs of the services while the state followed the same strategy in the opposite direction, trying to avoid new transferences and any increase in the financing. The other ACs followed the same pattern asking for the same powers and resources that the two first ACs could get from the State. This procedure consolidated an essentially bilateral system that is still prevalent at present.

In the Spanish system, the Table 1 suggests that the Senate does not play a significant role. The Senate is clearly inferior to the first chamber in terms of competencies and it is only used by political parties in the government and the opposition to have a second chance to discuss legislative proposals. The other element that distinguishes IGR in Spain is the lack of horizontal IGR between ACs, implied earlier. There are several reasons for this. First, it has been demonstrated that historically, the state and ACs always preferred to negotiate directly.

Bilateral relations was also reinforced by the search for solutions through the political parties, whether it was through the two major ones, PSOE and PP when they had both the central and the regional government, or through nationalist political parties in Catalonia and the Basque Country when the central government needed their support in the Parliament - in 1993, the PSOE and in 1996, the PP. Third, any formal agreement between ACs is subject to the scrutiny and control of the central government. Fourth, and finally, the Constitution prohibits the horizontal “federation of regions,” a historical artifact dating back to the chaos that ensued under the first Republic in the nineteenth century.

Spain developed a federal system that is similar to the German in institutional appearance but without a horizontal base. The central government, both under the control of PSOE and PP, has tried to break with the unequal development of the ACs as a consequence of the bilateral dynamics but was never successful. In 2000, the PP proposed a general law of autonomic cooperation which was not approved. Before that, in 1982, a law that tried to “harmonize the autonomic process” was declared mostly unconstitutional by the Constitutional Court. In 1992, an agreement between PSOE and PP to equalize the powers of the ACs was applied to the ten ACs with fewer competencies.

The involvement of the ACs and their constituent governments has, for the most part, been most contentious with regard to European Union (EU) participation and representation. To numerous AC politicians EU membership has negatively affected sub-national (particularly AC) competencies in agriculture, fisheries, industrial policy, environment, regional planning, transport, energy policy, and culture, by reducing the autonomy of original governments either directly or else through the fact that the central government has exclusive rights to final decisions on these issues within EU bodies (Colino 2001). Spanish EU membership has also enhanced AC interests in some ways, supporting their role with regard to their domestic competencies.

The Constitutional Tribunal has gradually approved increased AC international activity, so long as it does not compromise the unity of Spanish foreign policy and its exclusive treaty powers under Article 149.1.3 (along with Articles 56.1, 63.2, 94.1 and 97). For example, the Constitutional Tribunal upheld Catalonia's right to promote its cultural practices and values outside Spain, so long as these efforts did not compromise national sovereignty nor generated state responsibilities with other parties. In a 1995 case upholding Basque representation and an EU office in Brussels, the court concluded that a rigid and expansive concept of exclusive jurisdiction in Article 149.1.3 meant denying ACs any possibility of carrying out activities that, despite some international dimension, did not imply exercising sovereignty; nor did they create international obligations, generate responsibilities of the state to others, or affect the state's foreign policy (Garcia 1995: 126). In effect, the court was saying that to deny such activity would prevent ACs from carrying out those activities necessary to achieve their objectives within the framework of power devolved to them. On the other hand, the Spanish Constitutional Tribunal has maintained that EU law lacks constitutional standing, but does recognize the supremacy of Community law over domestic law at an "infra-constitutional level" (Closa and Heywood 2004: 79).

In the most important manner of policy and program issues EU affairs are regional affairs through the AC governments. At one time it was felt that central governments were the most active "upstream" representatives with regard to policymaking and regions where the "downstream" actors in implementation. Time has eroded this distinction in many countries but in particular that of Spain. While at an earlier point in Spain's development the central government played the upperhand in making policy and then in informing the regions, by the mid-1990s the AC began taking more of a proactive role. Rachel Jones (1997: 20) concludes that since the opening of discussions regarding structural funds reform in the late 1980s and early 1990s "direct dialogue between regional authorities and EU institutions and a

greater regional input into the policy process” has made policy development a two-level game.

Closa and Heywood’s (2004: Ch. 4) study of Spain’s role in the EU identify several important AC responses to EU involvement. First, almost all ACs have adopted organization models that include subdirectorates with a focus on EU affairs, interdepartmental bodies dedicated to formulating EU policy and orientation, and interministerial coordination mechanisms to promote regional responses. Second, because of limited legislative influence, only a few AC parliaments have standing EU committees or regularly debate EU related development plans. Third, and more important, virtually all of the 17 ACs have lobbying offices in Brussels that: exchange information, promote regional interests and concerns, support regional activities (most important, attending Committee of Regions), support and advise EU institutions on regional matters and participate in Consultative committees, and a larger press regional identity. Also, these regional representatives (offices can have up to 40 staff and spend one-half million euros) participate in those Spanish EU projects (around one-fourth) that are submitted by regions. Fourth, is regional and local representation on the committee of Regions, 21 elected officials, 17 of whom are AC and four nominated by FEMP. While a consultative body, the committee has circumvented its lack of formal powers by allying itself with the executive or the European Commission in that the latter recognizes the former as most important in policy implementation (Sariqi 2005: 7). Fifth, is involvement of ACs in inter-regional associations, particularly the Association of European Regions, and specialized associations such as the High-technology Route that includes Catalonia and Valencia and the *Arco-Atlántico* that unites coastal regions, including four in Spain. Many of these bodies are said to have exceeded EU Commission hopes in promoting trans-frontier cooperation (Closa and Heywood 2004: 91).

Inside Spain several mechanisms also attend to sub-national affairs. First, is the Conference for EU Affairs (CARCE), established after years of protracted negotiations. Chaired by the Minister of Public Administration, and includes the Secretaries of State for EU and for Territorial Administration and one representative nominated by each AC president. CARCE tries to reinforce the state role in EU policy-making and its oversight in implementation but recognizes the role of subnational governments regarding their arenas of competency. It has attempted to become a venue for exchange of information and joint discussions, EU matters, coordinating the outcomes of sectoral conferences, and for dealing with any issues not under the purview of the sectoral conferences. It also strives for horizontal coordination but this proved elusive, given to territorial diversity. A second domestic vehicle are the 17 EU related sectoral conferences themselves. Set up in key policy areas, they have no power or ability to enforce policies or regulations. They are heavily dependent on State power, and most have no real fixed pattern of operation, despite regularly scheduled meetings. A number have met less than five times since 1987. Many of them are reported as poorly attended by the ACs, (ten of the 17 average less than one representative per AC for each meeting). Non-attendance is particularly high by Basque and Catalan representatives (Gonzalez, 2006: 108-109). Third, the more aggressive regions have, particularly the Basque Country and Catalonia, have set up bilateral commissions, reinforcing the competitive nature of IGR. They, in effect, by pass CARCE and the sectoral conferences, and contain many high-level state and AC *committee* officials. They are generally designed to avoid conflict in implementation, and in the case of Catalonia is part of their broader strategy at supporting unilateral initiatives, bargaining with the central government, and promoting interregional cooperation.

Fourth, since 1996, the central government agreed to two additional measures: the appointment of AC representatives to Spain's Permanent Representation (REPER) and to EU

Commission committees and working groups. This representation function is in close relation to AC offices in Brussels. AC representatives were subsequently added to over 50 EU committees, most importantly those involved in the various fund allocations.

Fifth, and finally, the Spanish Senate's General Commission for the Autonomous Communities is a standing committee of 62, half nominated by AC parliaments. It receives information from the central government on EU rules with regional implications, develops criteria for Spanish representation on international bodies that involve ACs (e.g. Committee of Regions) and monitors the receipt and distribution of EU structural funds. Through its subcommittees, it has generated many reports on the existing and future roles of the ACs within the EU (Closa and Heywood 93-97). As mentioned, it does not have the same kind of power as the Bundestag in negotiations and is a very weak body of AC representation.

In conclusion, the issues between AC and Madrid become complex where the state level sets policy and the AC implements. This is the case with regard to environmental policy: "What emerges is a form of 'territorial complexity defined by the interaction of four levels of government (EU, national, regional, or local): which of these levels is dominant at any given moment depends on the policy stage (such as formulation, regulation or implementation) and policy sector in question" (Closa and Haywood 2004: 86). The newer arenas of EU policy development, such as gender equality, telecommunications, immigration and work force roles exhibit the greatest levels of multigovernmental complexity of involvement. It is in these areas of AC involvement that ordinary, that is competitive IGR prevails.

A final issue is that in Spain vertical multilateral relations have also been weak. At any moment, the central minister can call for a "sectorial conference" with the corresponding regional ministers but it is him or her who decides the topics that will be discussed and the central ministry is the one in charge of organizing the meeting. All the observers agree that

“sectorial conferences” have not been an effective mean to channel cooperation (Colomer, 1998; Aja 1999, López Aranguren 2002, Maiz et. al. 2002; Gonzalez 2006, García Montilla y Arbós 2006). There are also a number of councils in matters where the function of coordination is given to the state by the Constitution – economic planning, research, health...- Some of the conferences and councils meet more regularly and may be useful to exchange information but they do not work as joint decision making instances. In this general context, the progressive institutionalization of a “Conference for European Affairs” was seen as an advance in terms of cooperation. Created in 1988 to provide information to the ACs on EU issues, in 1994 the central government recognized the right of ACs to participate in the formation of the Spanish position with regard to European issues affecting the ACs. In 1997, new legislation was approved to fix its structure and functions as the central hub for European matters. The 1997 agreements also provided that ACs could have a representative within the Spanish permanent representation in Brussels as well as on fifty-five EU committees and working groups. In 2004 the central government under Mr. Zapatero accepted the ACs participation in a list of sector EU council meetings on the basis of a rotation between the 17 ACs. This same government was also the first to call a meeting of regional presidents with the president of the central government. But the meeting, which has taken place once a year since 2004, has been despised by the PP regional and Basque presidents. In the case of the latter, participation has been a mere formality to have the picture taken with the Spanish president.

Overall, neither the horizontal or vertical dynamic that can be found in Germany exists in Spain, not even to discuss obvious cross-boundary issues such as forest fires and regional television. On the vertical dimension, important plans are passed without consulting ACs even if they relate to matters where they have significant implementation responsibilities such as in immigration. Regional representation in Brussels has forced some cooperation and

information exchange between regional offices in Brussels and between regional governments with regard to their representation in the Council but contacts are restricted to the inevitable and often in a top-down fashion.

Switzerland

Switzerland is a case apart since it does not belong to the EU. But it is a relevant case since horizontal coordination is more prevalent in Switzerland than in any other federal polity (and the 26 Swiss cantons also pressed the federal institutions to participate in decision making that may affect them in order to compensate for a loss of competences from negotiations of the federal government with the EU.

Swiss IGR follows a federal model that includes “legal rights and the defacto power of the constituent units to influence and shape and to participate in the decision-making processes at the higher level of government (Thürer 1996: 29. The Constitution of 1999 reinforces the idea that its cantons are partners with whom the federal government deals directly, with the latter holding reserve power and the cantons subsidiary power. Both vertical and horizontal IGR are marked by “duty to cooperate” or *Bundestruue* of faithfulness to the federal state (Schwerzer 2002: 13). The Constitution contains notable rights for the cantons to participate in the development of federal policies, including the obligation to inform cantons and the guaranteed right of cantons in developing federal policies, not to speak of virtual complete control over implementation. It is in many ways a bottom-up system of IGR (Bächtinger and Hitz 2007).

Foreign and European integration policy binds the cantons to federal policy, although they participate in its formulation, and the cantons conduct implementation. They are considered to be partners with the federal government and thus co-responsible for such policy. In the event of Switzerland joining the EU, some cantonal jurisdictions in education, culture, health, infrastructure, regional planning, criminal justice, industrial health and safety

and other areas would be affected. Their ability to operate in these areas, and in some cases new areas of enforcement would be in order. Most important, according to Schweizer (2002: 14), European policy in the form of regulations, guidelines or decisions can be issued without concomitant country approval, bypassing the Swiss method of cantonal consultation and cooperation. Cantons would have to be involved early in the process, as in the German model, which could include new consultation procedures, formulation of cantonal mandates, cantonal representation in negotiations, and cantonal involvement in the EU Council of Ministers. (Pfisterer 2002 quoted in Schweizer 2002) believes that Switzerland must be proactive with regard to the potential EU membership by extending the process to maintain existing consultation to foreign relations and EU affairs.

In the Swiss case, the second chamber is strong but does not represent cantonal executives. Each canton is represented by two senators elected directly like in the American senate and each law needs the agreement of both houses. That gives a strong veto power to canton representatives in federal decision making and a say with regard to the negotiation of European treaties.

The main characteristic of IGR in Switzerland is the high number of horizontal-multilateral IGAs both at the level of cantons and communities. The long tradition of horizontal exchanges and the consociational nature of canton and local governments explain the ability of Swiss institutions to share power without conflict.

As a result IGA reinforce these cooperative links. The generalist Conference of Cantonal Executives and the institutionalized conferences of Cantonal directors cover dedicated policy fields. Swiss IGR is said to be dominated by executives, which reduces the number of IGAs that operate horizontally and facilitates the formulation and presentation of a singular cantonal position. Moreover, rather large multiple coalitions neutralize the impact of party ideology on IGR because cantonal positions represent intracoalitional compromises.

These bodies tend to operate by consensus and majority rule. Moreover, in recent years Switzerland has instituted a “Federalism Dialogue,” a committee composed of Bundesrat delegates and four or five delegates from the Conference of Cantonal Executives. These IGAs are judged to be strong and “facilitate interaction because it is easier for the federal government to have one interaction partner only and it is advantageous for the cantons to have IGAs that facilitate generating one coherent voice” (Bolleyer 2006: 490).

Whereas the Swiss second chamber does not represent canton executives since 2001 Bundesrat delegates meet with a delegation of the Conference of Cantonal Executives in order to facilitate the participation of Cantons in federal decision making which may affect them. This institutional adaptation through the second chamber would not have been possible in Spain given the weak role of the senate. At the same time, no vertical-multilateral IGA has appeared in the Swiss case where cantons have traditionally worked together without any interference from the federal government (Bolleyer 2006).

The dynamic of cantons is similar to the one of German Länder. External pressure from the EU brought cantons to strengthen their horizontal relations in order to increase their capacity to influence federal decision making through the Bundesrat. It reinforced rather than changed their IGAs. Unlike the Spanish case, there are not any vertical multilateral IGA where the central state calls for the meetings and controls the agenda. Political parties in Switzerland are much more fragmented. Their high level of decentralization also helps to facilitate a cantonal dynamic of cooperation that it is difficult to find in Spain where there is a tendency to look for solutions through the political party - whether it is one of the two big ones or a nationalist party with power to negotiate with the central government.

IV. Evolution of domestic IGR: history, power relations and transmission of rules The comparison of the three countries reveals rather striking differences, something which is not a

surprise from an IGR perspective. In Germany and Switzerland, Länder and cantons promote cross-boundary cooperation, there are fewer issues of asymmetry between them, and they tend to work in search of consensus with the central state. In Spain, on the contrary, relations tend to be bilateral between regions and the central government, historic nationalities try to avoid homogenization and there is both horizontal indifference and political conflict between the central state, historic nationalities and a few regions with leaders from the two big political parties that control the central government.

How do we explain then the Spanish lack of cooperation in the management of European affairs? These reforms are best explained in terms of a complex mixture of environmental pressures, polity features and historical institutional context. In the first place, external pressure for similar organizational changes can be explained by the role of isomorphic elements in public administration reform. Although there are differences between the German and the Spanish reforms with regard to EU policy making due to the role of the Bundesrat, several authors consider that Spain followed a German model as it had done with other features in developing its system of ACs. Bulmer (2007: 3) calls the export from one EU member state to another, a “horizontal, intra-EU Europeanization”. The isomorphic transmission of ideas or rules within Europe should not be confused, however, with a deeper effect on political relations between actors or with a change of attitudes towards their involvement on multilateral IGAs, whether horizontal or vertical.

In the second place, policy features refer to the effect of political and administrative structures and to the strategies of political actors within a certain form of government and decision-making structure. With regard to the strategies of the main political actors, we can distinguish between two main positions. On one side, Catalan and Basque, both right and left, view the EU as the arena that erodes the power of the nation states and, at the same time, opens up opportunities of cooperation with other European regions. Direct access to EU is

their main goal. Thus, they viewed the dependency of the central government on their parliamentary support in 1993 with the PSOE and in 1996 with the PP as an opportunity window to gain access to the decision making bodies of the EU. At the same time, it is not rational for them to support horizontal-multilateral arrangements because they would lose key bilateral bargaining power if they had to accept a majority decision making rule in a conference of 17. This explains how, despite the creation of the multilateral conference for EU affairs, the Basque country in 1994 and Catalonia in 1998 reached agreements with the central government to create new bilateral commissions for EU matters. The reforms of autonomy statutes initiated in 2006 have also included the institutionalization of bilateral commissions.

On the other hand, the central government has been protective of its role and thus was always a strong resistant to ACs demands for an institutional presence in the EU and maneuvered against regional ambitions on a number of occasions: inclusion of regional representatives in the EU Council in the Maastricht Treaty, application of the subsidiarity principle to regions in the Amsterdam Treaty, regions in the Laeken Declaration on the Future of Europe, regional representatives at the European Convention to discuss the European constitution. The central state did not cease to control horizontal relations and agreements between ACs, a position which was supported by other regions under the leadership of PSOE (Extremadura, Castilla la Mancha) and PP barons (Valencia, Madrid). Those regions have common goals with the central government with regard to the symmetry of the system and they prefer to have a mediating role by the state. The consequent divide and competition between ACs makes it increasingly more difficult for them to form a common goal against the central government and, on the opposite, it is an incentive for some to unify against the positions of Catalan and Basque regional governments.

A third conclusion is that reforms are “path dependent” and need to be culturally compatible. This argument refers to the endogenous evolution in the domestic IGR. In the case of Spain, most of the ACs and not just historic nationalities, politicians and academics expressed quite early their concern with the impact on regional competencies due to European policies and practices. The intergovernmental channels used were the same ones they were playing on domestic policies and issues. Some regional leaders both in the PSOE and the PP participated in the debate with ideas on the line of a closer cooperation with the state, but they were locked in more competitive IGR games and IGAs. The horizontal conference for European Affairs already existed and political agreements in 1994 and 1997 reinforced the model of multilateral-vertical IGA with a higher degree of institutionalization. Historic nationalities accepted higher involvement in this central organization as a compensation for exercising their own strategies by the regional access to key positions in Brussels, both on the Spanish representation and in the EU committees.

Fourth, since European laws, regulations, orders, standards are implemented through member states crucial stages in the policy processes, namely implementation, are conducted through member states institutions, policy processes and, of course, IGR. Whereas in Germany this means Länder consultation and cooperative federalism by second chamber and other mechanisms of agreement they do not work the same way in Spain. Implementation of issues that are of AC competency like land use/urban planning are subject to the most rudimentary central government template legislation, often with the limited or no consultation through the established channels, only to be turned over to the individual ACs and local governments. Consequently there is less policy convergence. Where the central government holds a responsibility like immigration policy, EU-national legislation is adopted with little or no consultation, the ACs are encouraged to develop voluntary plans, and municipalities receive the unfunded mandate of registering new immigrants and providing integrative

services. No bottom-up process ensues. To the degree that implementation is a most critical EU policy phase, in Spain it experiences perhaps the least amount of cooperative relations. In short, it goes through normal IGR process, normally undistinguished from domestic policy.

Compared with the Spanish regions, German Länder and Swiss cantons have a much stronger power base through their veto power in the Bundesrat. German Länder which faced stronger pressure from the EU actually forced a constitutional reform. But Swiss cantons also reinforced their position vis a vis the federation with better coordination between canton executives and canton representatives in the second chamber. In both cases, they followed pathways which were coherent with their political culture of horizontal interlocking and joint decision-making. Spanish regions also followed pathways which were coherent with their culture of bilateralism and open political bargaining through political parties.

V. Conclusions

Contrary to the prevailing the European studies literature, membership in the EU needs to be thought of as serving to reinforce existing domestic tendencies in IGR. External pressures account for the increase in relations and the institutionalization of new IGAs but their dynamics are based on historic patterns of political interchange. Europeanization understood as “penetration of national systems of governance” means an overall shift which did not really take place in any of the three studied cases. The responses should be categorized as an adjustment within the conception of IGR theory rather than a substantial change in the IGR model. This should not be a huge surprise, given the relative failure of the Assembly of European Regions and the Committee of Regions to be forceful substantial IGAs on a European scale.

Looking at federal or quasi federal systems in Europe - like those of Austria, Germany, Belgium and Spain – they present similarities that make them a class apart within

the whole EU. They share similar problems of territorial balance of powers and their responses to the changes induced by the EU have common elements. There is “horizontal” or “intra-EU” Europeanization in the sense that one country adopts the institutional solution of another. However it is much less evident that the transmission of rules and institutional arrangement is the cause of a change in the domestic polity. On the contrary, it is more likely that domestic related politics will extend to the new domestic arenas of European affairs. The comparison between Germany, Spain and Switzerland shows that the external pressure brought Swiss cantons to work together and exert influence through the second chamber, very much like it happened in Germany. In Spain, in contrast, it contributed to make the divide between Spanish regions deeper and encouraged more assertive regions to continue with their bilateral or small group strategies to competitively look for a direct access to the core of European decision making.

VI. Bibliographic notes

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