

The construction of a decentralized education system

La construcción de un sistema educativo descentralizado

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Abstract

The work presents the process followed in the construction of a decentralized educational system in Spain from the approval of the 1978 Constitution to the present day. Before delving into the details of this evolution, it mentions the antecedent of the Spanish Second Republic, due to the similarity and influence that the 1931 Constitution model exerted on the 1978 Constitution in this regard. Next, it analyzes the constitutional distribution of competencies in the field of education, which has served as the basis for the development of the subsequent process. Special attention is paid to the two fundamental stages of educational transfers, those of 1978-1994 and 1994-2000, during which, over two decades, the current decentralized model was shaped. Finally, it examines the situation of this model and some features of its evolution from the end of the transfer process to the present, presenting it as an established model, although not without tensions.

Key words: educational decentralization, educational competencies, delegation of powers, Autonomous communities, regional cooperation, Spanish Constitution of 1978, Statutes of autonomy

Resumen

El trabajo presenta el proceso que ha seguido la construcción de un sistema educativo descentralizado en España desde la aprobación de la Constitución de 1978 hasta la actualidad. Antes de descender al detalle de dicha evolución, se menciona el antecedente que supuso la Segunda República española, por la similitud y la influencia que ejerció en este sentido el modelo de la Constitución de 1931 en la de 1978. A continuación, se analiza el

reparto constitucional de las competencias en materia de educación, que ha servido de base para el desarrollo del proceso vivido con posterioridad. Se presta una atención especial a las dos etapas fundamentales de transferencias educativas, las de 1978-1994 y 1994-2000 en las que, a lo largo de dos décadas, se fue configurando el vigente modelo descentralizado. Por último, se analiza la situación de dicho modelo y algunos rasgos de su evolución desde la finalización del proceso de transferencias hasta la actualidad, presentándolo como un modelo asentado, aunque no exento de tensiones.

Palabras clave: descentralización educativa, competencias en educación, transferencia de competencias, comunidades autónomas, cooperación territorial, Constitución española de 1978, Estatutos de autonomía

Some preliminary remarks on a complex issue

As Manuel de Puelles rightly states, “there is possibly no administrative problem that has been the subject of more controversy than that of decentralisation”¹ (Puelles, 1994, p. 13). There is no doubt that it is a complex phenomenon, starting with the polysemy of the term that designates it. Indeed, although at first sight the contrast between centralisation and decentralisation may seem clear, depending on the place in an administration or organisation where decision-making power is concentrated, the reality is rather more complicated.

On the one hand, and speaking of public administrations, a proper distinction must be made between decentralisation and deconcentration. While the former involves the transfer of competences to other different public entities, the latter refers to the delegation of functions within the same entity, and both the transfer and the delegation may be territorial or functional. For example, the transfer of competences from the State to the Autonomous Communities constitutes genuine decentralisation, which includes legislative, regulatory and executive powers, while the territorial organisation of certain public services by means of provincial directorates or local delegations constitutes deconcentration. And although both cases are transfers of services,

¹ Quotes in Spanish have been translated into English specifically for this version. The Spanish version of this article keeps the original quotes in Spanish.

their scope and rank are obviously greater in the first case than in the second.

On the other hand, given that in the case of decentralisation we are talking about the transfer of competences to other different entities, we must distinguish which ones we are referring to specifically. A first area of transfer of competences is that relating to the level which in Spain we call autonomous and which in other countries may be called by a different name, although they are always intermediate territorial entities, of a regional nature, with one configuration or another. A second area is that of local authorities, which may also be the recipients of the transfer of services. For example, in several countries (such as the United Kingdom or the United States), local authorities of this type play an important role in the organisation and provision of education services. A third area of possible transfer of competences is that of the institutions providing the service themselves, such as schools or universities, which are not always in the same situation in terms of the competences attributed to them (the level of transfer of responsibilities to the latter is generally higher).

Decentralisation can therefore take various forms. There are countries such as France or Portugal, with a high degree of state centralisation, but with a wide margin of school autonomy, and others such as Spain or Switzerland, with a high degree of decentralisation to the autonomous communities or cantons, but with limited school autonomy. In general terms, there is a plurality of situations in terms of educational decentralisation, which led Manuel de Puelles, in a now classic study, to distinguish several models of organisation of educational systems: centralised, intermediate decentralisation, federal decentralisation, federal and communal decentralisation, and communal and academic decentralisation (Puelles, 1994).

As we shall see in more detail in the following pages, the Spanish case is characterised by a wide decentralisation in education towards the Autonomous Communities, very restricted towards the local entities and limited towards the educational institutions (much wider towards the universities than towards the schools and centres of other educational levels). Furthermore, it should be stressed that the choice between centralised or decentralised organisation of education is a response to a plurality of factors, among which the historical tradition and forms of political organisation stand out, which serve as a substratum and foundation for one or other model (which are never pure but adapted to national idiosyncrasies). Moreover, it must be borne in mind that existing models are not static, but dynamic, and

change over time. In this dynamic of change, tensions between centripetal and centrifugal tendencies, which are also changing, play a major role. And to complete this complex picture, decentralisation is never an abstract question, something that is chosen by weighing up the pros and cons beforehand but is fundamentally a political choice made at a particular moment in time and for particular motivations.

Thus, after having presented this complex panorama, we can move on to an analysis of the process of educational decentralisation in Spain over the last half century. As we shall see, the transfer of powers to the Autonomous Communities occupies a prominent place in this process, but it is not the only one, so some mention, however brief and specific, will have to be made of the other dimensions mentioned.

The frustrated antecedent of the Second Republic

As is well known, Spain has had a long history of regional conflicts. The persistent (albeit often minority) demands for political decentralisation were even reflected in the establishment (albeit ephemeral) of the federal republic in 1873 and 1874. Focusing our attention on more recent times, the influence exerted by the Second Republic, whose 1931 Constitution served as inspiration for the 1978 Constitution, is particularly noteworthy.

José Luis de la Granja deals very accurately with the question when he states that “the Monarchy of Alfonso XIII was incapable of solving regional problems by means of political autonomy [... since this question ...] could only be solved within the framework of a democratic regime, as was the Second Spanish Republic” (Granja Sainz, 2022, pp. 371-372). The path adopted to solve the historical problem of the regions and nationalities was that of autonomy, as a result of a political agreement between the Catalanist and Republican forces, which took shape in the Pact of San Sebastián (1930), and which would later be generally recognised in the 1931 Constitution. Moreover, on 21 April 1931, just a week after the proclamation of the Republic, the old institution of the Generalitat was restored as a pre-autonomous body, which began the drafting and processing of the Statute of Catalonia, finally approved by the Cortes in 1932. The situation was very different in the Basque Country, due to the division and polarisation between its political forces, with a strong

Catholic and conservative presence. Although the 1931 Constitution opened the general way for the drafting and approval of the statutes of autonomy of the various regions, the Basque Country's statute only reached the Cortes in July 1936, when the Galician draft was also submitted to the Cortes after having been the subject of a popular plebiscite². Those statutes that were then just getting under way for Andalusia, Aragon, Valencia and Castile came to nothing. If this process, which was interrupted by the military coup d'état, had continued, we could have come closer to the model that almost half a century later would have been outlined in the 1978 Constitution.

Some of the debates generated by the territorial question in the Republican period had to do with the model of State that was defended from different points of the parliamentary spectrum, opposing autonomy and federalism. As José Luis de la Granja states, "after the religious problem [...] the question of the form of the State and its territorial organisation was the most difficult one in the constitutional debate of 1931" (Granja Sainz, 2022, p. 377).

The solution that was found to resolve that controversy consisted of seeking an intermediate and novel path between the unitary State and the federal State, which was given the name of "integral State", according to the formulation included in Article 1 of the 1931 Constitution: "The Republic constitutes an integral State, compatible with the autonomy of the Municipalities and Regions". This concept of a "regionalisable" integral State was the result of a compromise between the Republican-Socialist majority and the Catalan minority, and was harshly criticised by the less autonomist sectors, as well as by such distinguished deputies as José Ortega y Gasset and Miguel de Unamuno. In fact, as José Luis de la Granja assumes, "if there had not been the urgency of finding a solution to the Catalan question, which had been raised since 14 April 1931, it is possible that the Second Republic would have been unitary. [...] the integral state was much closer to the unitary than to the federal" (Granja Sainz, 2022, p. 381).

The debate on the territorial question was immediately reflected in the discussion of the articles on education, where other issues such as secular education or the unified school also occupied several parliamentary sessions (Tiana Ferrer, 2022). In this specific area, the discussion focused mainly on

² The three Autonomous Communities that had plebiscized statutes before 18 July 1936 were considered "historical" for the purposes of the decentralisation process promoted in the 1978 Constitution.

two complementary aspects: state or regional responsibility for education and the use of Castilian and regional languages in education. As can be seen, these are two issues that have generated recent debates and that occupied their own place in the constitutional text of 1978, to which I will refer later.

The fact that article 46 of the constitutional project (later number 48 in the final text) began by stating that “the service of culture is an essential attribution of the State” gave rise to some positions which inferred from this formulation that it was an “indeclinable” function, which could not be delegated to the autonomous regions. Consequently, there should be a duplication of educational establishments in these regions, some dependent on the State government and others on the regional authorities. This principle would be particularly applicable in the university field, with many of the debates focusing on the place of the University of Barcelona in the new situation. Against this position, the Constitutional Commission, through Fernando Valera, replied that the fact that education was an essential function of the State did not imply “that it could not share the exercise of this function with other private and public bodies and entities that could collaborate with the State” (DSCCRE, nº 59, 20 October 1931, p. 1811), since the autonomous regions were also part of the State.

The other issue debated concerned the languages of instruction. The advocates of a centralised system proposed making education in Castilian compulsory and obliging the State to maintain the educational establishments it had in regions with another language. Other, more conciliatory Members of Parliament called for the autonomous regions to provide education in Castilian to those pupils who so requested, without there being any duplication of schools. With the aim of intervening in this discussion, Claudio Sánchez Albornoz defended an amendment presented by several Castilian and Catalan deputies proposing to combine teaching in regional languages with the study of the Castilian language and its use as a teaching tool in all educational establishments, as they considered that “only by granting the maximum freedoms and the maximum respect for regional languages can we all feel at ease within this State that we are building together” (DSCCRE, no. 61, 22 October 1931, p. 1887), which would be accepted by the Constitutional Commission and incorporated into its opinion.

As can be seen, some of the issues that have survived to the present day concerning the decentralisation of education were already raised in the

republican period. It was then that the first steps were taken to organise an education system with a certain degree of decentralisation, which could well have opened a path that would have led us more quickly and peacefully to our recent times. But the coup d'état of 18 July 1936, the war that resulted from its initial failure and Franco's harsh repression left that project as a precedent, interesting, of course, but ultimately frustrated.

The distribution of educational competences in the 1978 Constitution

After the political setback of Franco's regime in terms of the decentralised organisation of the State, the period of the Transition saw a rapid recovery of territorial demands, of different signs and intensity. In both Catalonia and the Basque Country, nationalist, autonomist and pro-independence political groups regained presence and strength, as did Galicia, Andalusia and even the Canary Islands, albeit with less intensity. Consequently, the territorial question occupied a prominent place in the process of drafting the new constitutional text, and even decentralisation came before the approval of the Constitution, with the constitution of several pre-autonomies in 1977 and 1978. Although it is not the purpose of these pages to analyse the way in which this process developed, it should be remembered that Title VIII (Territorial Organisation of the State) of the 1978 Constitution had a rather open, unfinished wording, which drew a picture of a State that some historians have also called "regionalisable" (which connected with the experience of the Second Republic), with many questions still to be specified in subsequent decisions and regulations.

The 1978 Constitution laid the foundations for the distribution of competences in various areas, including education. Articles 148 and 149 set the limits of this distribution by establishing the competences that could be assumed by the Autonomous Communities and those that correspond exclusively to the State. With regard to the former, it should be pointed out that education does not appear among those set out in Article 148. The

only competence that bears any relation to education is “the promotion of culture, research and, where appropriate, the teaching of the language of the Autonomous Community” (CE, Art. 148.1.17). However, Article 149 establishes that “matters not expressly attributed to the State by this Constitution may correspond to the Autonomous Communities, by virtue of their respective Statutes”, while affirming that “competence over matters which have not been assumed by the Statutes of Autonomy shall correspond to the State, whose regulations shall prevail, in the event of conflict, over those of the Autonomous Communities in all matters which are not attributed to the exclusive competence of the latter” (CE, Art. 149.3).

For its part, Article 149, among the exclusive competences of the State, includes a generic one, consisting of “the regulation of the basic conditions that guarantee the equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties” (CE, Art. 149.1.1), and another specific one on education, consisting of the “regulation of the conditions for obtaining, issuing and homologation of academic and professional qualifications and basic rules for the development of Article 27 of the Constitution, in order to guarantee compliance with the obligations of the public authorities in this area” (CE, Art. 149.1.30). In addition, the State is also attributed the determination of the bases of the statutory regime of civil servants, which affects teaching civil servants (CE, Art. 149.1.19) and statistics for State purposes, which includes those relating to education (CE, Art. 149.1.31). This is the general framework from which the new distribution of competences in education was developed.

Given this wide margin of uncertainty regarding the attribution and distribution of educational competences and bearing in mind that those not attributed to the Autonomous Communities correspond to the State, it should not be surprising that the drafting of the Statutes of Autonomy, starting with the first to be processed (those of the Basque Country and Catalonia), involved intense negotiation. As a result, a compromise was reached, which seems reasonable, between the central power’s claim to extend its sphere of action as far as possible and the desire of the autonomous administrations to exercise the broadest possible powers in the field of education. The formula that would finally be incorporated in almost all the Statutes, and not only in the first ones approved, consisted in attributing to the Autonomous Communities the regulation and administration of education in all its extension, levels and grades, modalities and specialities, without prejudice to the provisions

of Article 27 of the Constitution and the organic laws that develop it, as well as the powers attributed to the State by Article 149.1.30, and the high inspectorate necessary for its fulfilment and guarantee (Embid Irujo, 1999, p. 34). With slight nuances, this is the formula that appeared in the first Statutes of Autonomy and was replicated in subsequent ones, and which demarcates the respective competences of the State and the Autonomous Communities.

After 1978, the Organic Law regulating the Right to Education (LODE, 1985) attributed to the State the following competences in the field of education: a) the general organisation of the education system; b) the general programming of education in the terms established in the law itself; c) the establishment of minimum curricula (“enseñanzas mínimas”) and the regulation of the conditions for obtaining, issuing and homologation of academic and professional qualifications with state validity; d) high inspectorate and other powers to ensure compliance with the obligations of the public authorities (LODE, first additional provision, point 2)³. As various constitutionalists have stressed, some of the competences attributed exclusively to the State do not entail an unlimited capacity for regulation and management but are limited to the approval of basic regulations which must subsequently be developed and implemented by the regional administrations. It can therefore be said that these are to a large extent concurrent or shared competences, since they are not exercised by the State or by the Autonomous Communities to the full extent.

Thus, the provisions included in the 1978 Constitution, in the various Statutes of Autonomy and in the LODE defined the Spanish model for the distribution of competences in the field of education. It is a model that is still basically in force, based on a redistribution of the territorial structure of the State and a constitutionally based political decentralisation.

³ This provision had previously appeared, albeit in a narrower formulation, in the Organic Law regulating the Statute of Schools (LOECE, 1980). It was subsequently repealed from the LODE and incorporated into the Organic Law on Education (LOE, 2006) as Article 6 bis by the Organic Law for the Improvement of the Quality of Education (LOMCE, 2013) and subsequently reworded by the Organic Law amending the Organic Law on Education (LOMLOE, 2020).

The first period of education transfers (1978-1994)

Between 1979 and 1983, the Statutes of Autonomy were approved for all the Autonomous Communities, although not all of them received education transfers during this period, but only the seven mentioned below. The first to receive them were the Basque Country and Catalonia. These two, as well as the others that were to follow the “fast track” (CE, art. 151), i.e. Galicia and finally Andalusia after their referendum on autonomy, had a broad initial autonomy and could aspire to higher levels of self-government and more quickly. They immediately began the transfer of their educational competences, the beginnings of which the then Minister José Antonio Ortega Díaz-Ambrona recounts with grace (Ortega Díaz-Ambrona, 2020, pp. 264 ff.). And this was also the case of the Canary Islands and the Valencian Community, two communities with simple initial autonomy that should have followed the “slow path” (CE, art. 143) and received fewer competences, but for which organic laws were passed in 1983, as provided for in article 150.2 CE, which allowed them to reach a similar situation to the previous ones. Navarre approved its Statute of Autonomy applying the provisions of the 1st additional provision of the CE for the foral regime and received its competences in 1990.

The beginning of the transfer process generated some competence disputes that on several occasions reached the Constitutional Court. The rulings of this high body were decisive in adjusting the initial distribution of competences, especially in those areas where there was a lack of definition or potential overlapping. Without attempting a systematic study, which can be found in the work of some authors (Gámez Mejías, 2010, pp. 179-192), it is worth mentioning that some rulings contributed decisively to establishing the constitutional doctrine on the distribution of competences in the field of education. For example, an early judgment determined that there are some state competences that are indeclinable, but others that are transferable (STC 6/1982, 22 February). The former are “the basic conditions that guarantee the equality of Spaniards in the exercise of rights and the fulfilment of constitutional duties [...] as well as the specific one that concerns the conditions for obtaining, issuing and validation of qualifications”, which does not prevent “the normative competence for the development of Article 27, also within the framework of basic State legislation, can be transferred to the autonomous powers” (legal basis 2). From this derives the possibility of

transferring to the Autonomous Communities the complete management and execution in the field of education (as was done in practice). That ruling and a subsequent one clearly established that most state powers are of a regulatory nature, not executive or management (STC 6/1982, 22 February, STC 48/1985, 28 March), with only the basic rules for the development of Art. 27 CE “being those that mark the insurmountable limit for the autonomous provisions” (STC 137/1986, 6 November). This means, in fact, a very broad freedom of organisation for the autonomous communities in matters of education. And we can also cite a series of rulings that considered the State’s competence in matters of academic qualifications and diplomas to be indisputable, which applies unequivocally to “qualified professions”, i.e. those whose exercise requires a specific qualification (STC 42/1981, 22 December), although “not all work activities, trades or professions in the broadest sense are or constitute qualified professions” (STC 82/1986), and the decision as to whether or not a profession is qualified is a matter for the State legislator (STC 83/1984).

Following these rulings and some others of the same tenor, the question of the distribution of responsibilities in the field of education was considerably clarified. As Manuel Gámez summarises the situation: “In short, the role of the state administrative organisation is reduced to the drafting of basic regulations, the recognition and validation of academic qualifications and high inspectorate” (Gámez Mejías, 2010, p. 203).

In this first period of transfers, the first mechanisms of coordination and territorial cooperation were also articulated and implemented. These mechanisms quickly became necessary, given that the new organisation should combine the equality of all citizens in the full exercise of the right to education, regardless of their place of residence, with the existence of two successive levels of political decision-making.

A first mechanism consists of the High State Inspectorate, which was already mentioned in the first Statutes of Autonomy, as we have seen. Although the existence of a common basic regulation constitutes a fundamental element of coordination of State education policy, it could be insufficient if there were no mechanism capable of ensuring compliance with it. This, and no other, is the purpose of the High Inspectorate. In the first regulation of its functioning (Royal Decree 480/1981), which was appealed by the Basque Country, the Constitutional Court ruled affirming the constitutionality of this new figure (STC 6/1982, 22 February), which from then on found its proper

place among the mechanisms of coordination and territorial cooperation. However, it should be remembered that Royal Decree 480/1981 did not grant the High Inspectorate any capacity for initiative or resolution proposals that would allow it to effectively monitor compliance with State competences in educational matters by regional legislation, and the figure of High Inspector was not attributed the appropriate rank to be able to assume this responsibility for effective monitoring. The result has been that, in practice, the only function of the High Inspectorate consists of analysing the educational regulations developed by the Autonomous Communities and, consequently, its work is reduced to alerting the Ministry to any alleged breach of the distribution of competences between the State and the Autonomous Communities.

It should also be pointed out that the High Inspectorate is an often-misunderstood body, given its name, which is so close to the traditional educational inspection services, which supervise aspects such as the functioning of schools, teaching practice or the management function, and which are the responsibility of the Autonomous Community authorities. As stated in the current education regulations, the aim of the high inspectorate is to “guarantee compliance with the powers attributed to [the State] in matters of education and the observance of the applicable constitutional principles and rules and other basic rules which develop Article 27 of the Constitution” (LOE, Art. 149). Among its functions are those of verifying compliance with the requirements established by the State in the general organisation of the education system, compliance with the conditions for obtaining qualifications and diplomas and the inclusion of minimum common curricula (“enseñanzas mínimas”) in the regional ones, as well as ensuring compliance with the basic conditions that guarantee the equality of all Spaniards in the exercise of their rights and duties in the field of education and verifying the adequacy of the granting of subsidies and scholarships to State criteria (LOE, art. 150.1). The High Inspectorate is reserved for the control of compliance with state regulations, but it does not function as a kind of supracommunity educational inspectorate, in the style of the former Central Inspectorate of the Ministry of Education and Science. Although there may be calls for its direct intervention in schools, it does not have the competence to carry out such a task. An important part of its work consists of analysing the educational regulations developed by the Autonomous Communities in order to ensure that they are in line with basic state regulations, and to provide the means

to demand compliance when non-compliance is observed. In addition, the High Inspectorate services carry out the functions of representing the State's educational interests in their respective territories.

A second element of coordination that was also implemented in this first period of transfers was the Sectoral Conference on Education, which brings together the heads of the Ministry and the regional ministries responsible for this area in the Government and in the various Autonomous Communities. It is a body that exists in all sectoral areas and which, over time, has become the main forum for deliberation and coordination of education policies.

The functioning of the Sectoral Conference on Education was already established in the LODE, with the aim of debating the general programming of education and prior to the deliberation to be carried out by the State School Council on this issue. It also provided, in fairly general terms, that "the Conference shall meet as often as necessary to ensure the coordination of educational policy and the exchange of information" (LODE, art. 28). Subsequently, these initial, very generic provisions have been extended and refined to form the complex body with multiple tasks that it is today. As an example of this broadening of tasks, suffice it to point out that the LOE provides that "the reference in the articles of this Law to prior consultation with the Autonomous Communities is understood to be made within the Sectoral Conference" (LOE, 18th additional provision), making it in fact the fundamental forum for inter-territorial consultation and debate.

The Sectoral Conference on Education has gradually developed an operational structure that enables it to deal in depth and in detail with the issues that fall within its remit or that are submitted to it. Thus, it has several committees: the General Education Commission, which brings together the Deputy Ministers of Education or equivalent positions and acts in practice as a permanent forum for debate and cooperation between the Ministry and the Autonomous Communities; and other committees, dedicated to issues such as personnel and human resources, academic organisation, vocational training, European educational programmes or educational statistics, which bring together the ministerial and Autonomous Community heads in each of these fields. The regular functioning of these commissions has been very beneficial for the development of the education system. Perhaps the only drawback is that their functioning, regularity and dynamics depend to a large extent on the willingness to coordinate expressed by the Ministry of Education itself, which

is the secretariat of the body.

The second period of transfers in education (1994-2000)

The transfer of competences for education to the remaining ten Communities had to wait a few more years. This was influenced by the process of educational reform taking place in Spain, which began with the publication in 1987 of the *Proyecto para la reforma de la enseñanza* (MEC, 1987) and ended in 1990 with the approval of the Ley orgánica para la Ordenación General del Sistema Educativo (LOGSE, 1990). Once the timetable for the implementation of the new law was approved in 1991, the process was resumed.

The political circumstances were favourable to accelerate the transfers from then on, since in 1992 the PSOE (socialist party) and the PP (conservative party) signed autonomous pacts aimed at raising the level of competences of the autonomous regions in the slow lane. That same year, Organic Law 9/1992 was passed on the transfer of competences regulated in Article 150.2 CE, and on 24 March 1994 a set of organic laws were passed to reform the Statutes of Autonomy of the “slow track” autonomous communities. Following this operation, the decentralisation process, which had been at a standstill for almost a decade, was once again given impetus.

The main consequence of the Autonomy Pacts of 1994 was the end of the existence of two types of autonomous communities in terms of the extent of their competences in education. From that moment on, the differences between the first seven and the remaining ten disappeared, which was a very significant turning point in the decentralisation process. The influence of the 1996 elections and the constitution of a PP government without an absolute majority made it easier to maintain the pace of the transfer process, which was completed in 2000. From this point onwards, all the Autonomous Communities had broad and fairly similar competences in the field of education, a situation which is still in force today. In total, as can be seen, the process of decentralisation was spread over two decades, so it can be said that it was not rushed.

There were also some conflicts of competence during this period that

ultimately reached the Constitutional Court. One of the most notorious and complex, which has yet to be applied in practice, was the one concerning study grants and aids, whose ruling, as relevant as it was complicated (as it had three dissenting votes), established that there is a clear difference between the basic regulation of this type of service, which is the competence of the State and includes elements such as the amounts and requirements, and the management of such services, which is the responsibility of the regional administrations (STC 188/2001, 20 September). As Manuel Gámez points out, “the reference to the principles of cooperation between administrations in the Judgment is legally unimpeachable, but very complicated to put into practice, which has made its implementation extremely difficult” (Gámez Mejías, 2010, p. 190). This judgement serves as an example of the complexity and difficulty of articulating in practice some of the fundamental principles of the decentralisation system, even though they are inalienable. It is also a good example of the evolution of the dialectic between centralisation and decentralisation over time.

In this second period, a third instrument for coordination and territorial cooperation was put in place, consisting of the adoption of a system of general evaluation of the education system. This was a novel mechanism for the time, similar to that of other nearby countries and to the model for establishing indicators and reference levels that the European Union would adopt from the beginning of the 21st century onwards. Although there had been some previous national evaluations, such as the one promoted by the Centre for Educational Research and Documentation (CIDE) of the Ministry of Education and Science on the Experimental Reform of Secondary Education, and participation in international studies, such as the International Assessment of Educational Progress (IAEP), the implementation of the new evaluation system was carried out by the National Institute for Quality and Evaluation (INCE), created by the LOGSE and which began its work in 1993 (Tiana Ferrer, 1995). The INCE had, among other governing and working bodies, a Governing Council on which the seven Autonomous Communities that had received the transfer of competences in education at that time were represented. INCE’s work would later be continued by its successors, the National Institute for the Evaluation and Quality of the Education System (INECSE), the Evaluation Institute (IE) and the National Institute for Educational Evaluation (INEE), although its trajectory and work programme have fluctuated in terms

of orientation and intensity, making it difficult to achieve its ultimate objective (Tiana Ferrer, 2014). In the period following the completion of the education transfer process, a fourth coordination instrument was adopted, the so-called territorial cooperation programmes, which will be referred to in the following section.

A well-established model although not free of tensions

After the completion of the transfer process in the year 2000, we can consider the model of distribution of competences designed in the 1978 Constitution to be established⁴. Since then, there have been 17 Autonomous Communities that are in full use of their competences in the field of education, which, as we have seen, are quite wide-ranging. Despite this decentralised organisation, the generalisation of which has taken place over two decades, it is a mistake to speak of seventeen different education systems. As Antonio Embid states, “despite the profound competences of the Autonomous Communities in matters of education, those of the State are by no means forgotten [...] and there are [...] possibilities of State intervention which [...] are by no means negligible in our legal system. There are not and cannot be, therefore, seventeen autonomous education systems but a single national education system, which has obvious legal consequences from the point of view of State intervention and its forms” (Embid Irujo, 1999, p. 41). Therefore, we should rather speak of a single education system (given that it has the same structure throughout the Spanish territory stages, minimum common curricula, common basic regulations and state coordination bodies), although with different autonomous specifications.

And speaking of autonomous specifications, reference should be made to the period of approval of autonomous education laws that would open up after the approval of the LOE in 2006. Indeed, this legislative milestone served as an incentive for the drafting of regional laws aimed at organising the education system in various autonomous communities, within the framework set by state regulations. Previously, the Autonomous Communities had passed laws regulating their school councils, and some of them had also passed laws on other matters, such as public schools (Basque Country), adult education

4 For a full list of the regulations and dates on which education transfers took place, see Bonal, Rambla, Calderón and Pros (2005, p. 45).

(Galicia, Valencian Community, Balearic Islands, Aragon and Castile and Leon) and artistic education (Aragon). However, from 2006 onwards, a process of approval of regional laws began, aimed at regulating the whole of the education system in their territory. Andalusia was a pioneer in this process, passing its education law in 2007. It was followed by Cantabria in 2008, Catalonia in 2009, Castilla-La Mancha in 2010, Extremadura in 2011, the Canary Islands in 2014, the Balearic Islands in 2022 and the Basque Country in 2023. In addition to these comprehensive laws, other regional laws have been passed which regulate partial aspects, but which are of less interest than the previous ones, although some of them, such as the so-called Madrid Master Law of 2022, have been the subject of strong political controversy. The drafting of some of these regulations has been related to the new wave of reform of the Statutes of Autonomy that we have been experiencing in recent years. A good part of them have been the object of broad consensus, although there has been no lack of controversy in some cases.

At least in passing, it should be pointed out that decentralisation in the field of education has not reached all the administrations or all the agents involved in education in the same way. Thus, while relevant competences have been transferred to the Autonomous Communities, the same cannot be said of the provinces or town councils, nor of the schools themselves. In comparison with other countries, the limited competences of local authorities in education and even more so the limited degree of autonomy of schools are striking, especially considering that this is a factor that all international studies relate to the quality of education (Sancho Gargallo, 2015). Although some have argued that, at this point in the transfer process, it would be time to proceed with a progressive decentralisation of part of the educational competences to local governments (Bas Adam, 2005), the reality is that we are far from achieving this. The experience of the LOE and the LOMLOE allows us to affirm that it is the Autonomous Communities and the nationalist political parties who are most opposed to such decentralisation. As Antonio Viñao considers, the Spanish education system has gone from being centralised to polycentric (Viñao Frago, 1994). Consequently, it can be said that the Spanish education system is indeed decentralised, but mainly in terms of the responsibility that the Autonomous Communities have in its development and management, and not so much in terms of the participation of other administrative levels or at the school level.

As indicated in the previous section, it is worth noting that a new instrument for territorial coordination and cooperation has recently been introduced and is being widely used. These are the so-called territorial cooperation programmes, which began to be developed in 2005 and were included in the LOE: “the State shall promote territorial cooperation programmes with the aim of achieving general educational objectives, reinforcing students’ basic competences, encouraging pupils’ knowledge and appreciation of the cultural and linguistic wealth of the different Autonomous Communities, as well as contributing to inter-territorial solidarity and territorial balance in the compensation of inequalities” (LOE, art. 9.1). The procedure for initiating them is relatively simple: the Ministry of Education designs an initial proposal for an action programme, which is discussed, refined and finally approved by the Sectoral Conference on Education. Participation is voluntary for each Autonomous Community and funding is shared under the terms established. The participation of each Autonomous Community in each programme is set out in an agreement signed with the Ministry of Education and monitored by a joint commission. The important financial report drawn up for the LOE served as the budgetary basis for the development of the first programmes, some of which, such as the Programa de Refuerzo, Orientación y Apoyo (PROA), have continued to exist to the present day, albeit with various modifications and updates. The implementation of the Recovery, Transformation and Resilience Plan (Next Generation EU), approved by the European Union in 2020 to react to the impact of the COVID 19 pandemic, has boosted the development of new and important territorial cooperation programmes in the field of education.

On the other hand, in the years that have elapsed in the 21st century, some controversies have been noted in Spain derived from the parallel rise of recentralising positions and the parallel expansion of other more decentralising ones, which propose the extension of autonomous competences in education (Bonafant, Rambla, Calderón and Pros, 2005, p.227) or even new configurations of the territorial structure of the State following a federal or confederal type model (Tiana Ferrer, 2016). Among the former, we find demands from political sectors, generally conservative, who consider that the autonomy process has gone too far and would like to correct this course. This controversy has been felt in several areas, two of which are worth highlighting. Firstly, the attribution to the State of the competence to set minimum teaching standards

(including minimum timetables for the different subjects, according to STC 87/1983, 27 October), which had been interpreted as minimum elements that the Autonomous Communities had to incorporate into their own curricula, was reinterpreted. Thus, the Organic Law on the Quality of Education (LOCE) of 2002 preferred to speak of “common teachings (enseñanzas comunes)” (González Vila, 2004), whose aim would be to “guarantee a common education for all students and the validity of the corresponding qualifications” (LOCE, art. 8.2), a change that had already been advanced in the controversial *Dictamen sobre la enseñanza de las humanidades en la educación secundaria* promoted in 1998 by the Minister Esperanza Aguirre. Further on, the LOMCE would organise a distribution of subjects with some of them, the so-called core subjects, which would have a curriculum set by the central government, while others would be configured by the autonomous regions. In these moves, there was an express desire to recentralise the curriculum, which continues to be present in some political sectors. Secondly, the question of the language used in education has been raised on several occasions, an issue which is linked to the aforementioned debates of the Republican period. From the approval of the LOMCE to that of the LOMLOE, the debate has focused on several occasions on the question of the vehicular language, which has caused rivers of ink to flow, heated speeches and frontal attacks, and which has been the subject of the recent STC 34/2023, of 18 April, on the LOMLOE, which endorses the position held by the LOMLOE, although it continues to be frequently criticised by conservative political sectors.

One last aspect worth mentioning refers to another cliché that is frequently heard about the effect of decentralisation carried out in this long period. There is no shortage of those who consider that the transfers in education have produced a divergence effect in Spanish education, a progressive distancing of the situation from each other. However, the data do not support this impression, however widespread it may be. Indeed, when the indicators included in one of the chapters of this monograph are broken down by autonomous community and their evolution over time between 2000 and 2025 is analysed, it can be seen that the trend towards convergence is stronger than towards divergence. In other words, when the Autonomous Communities have assumed their competences, they have generally strengthened the education system in their territories, which has led to greater equality of

conditions, processes and results⁵.

It is true, however, that there are still notable inequalities between the Autonomous Communities in several respects, especially in terms of educational outcomes. But we should not forget that some of the current territorial differences in the results obtained in PISA correspond to those that existed 150 years ago in literacy or schooling rates (Martínez García, 2018), which obliges us to be cautious in the analysis of this reality and not to make false attributions (such as blaming them simply on the decentralisation of education). In any case, this is an evolution that must be followed closely in order to understand its predominant trends, and it must also be acknowledged that convergence has not been achieved in all aspects, although it has been achieved in most of them. It seems, therefore, that this is good news, even if the political debate tends to obscure its outlines. It is true that behind this debate on the convergence or divergence of education in the Autonomous Communities lies the question of the financing of education in the Spanish decentralised political model, which is associated with notable differences in education spending and investment per student. However, this is an issue that requires a singularised analysis, which goes beyond the limits of this article.

By way of conclusion

As we come to the end of these pages, it must be concluded that the process of decentralisation has occupied a good part of the history of Spanish education in the last quarter of the 20th century. And this reality continues to be current, generating debates and sometimes controversies. This is logical, since it is a process that has been part of a broader and deeper process of transformation of the territorial structure of the State, which is not a minor task. We are well aware that these transformations are dynamic, experience advances and setbacks, provoke discussions and force many situations to be rearranged and many inertias to be broken. Education is no exception to this general rule, as we have seen in these pages. But over and above these complex dynamics, I believe it

⁵ The studies carried out in this respect at the Ministry of Education and Vocational Training, promoted by Miguel Recio, whose valuable unpublished work entitled *Desigualdad territorial en educación y gestión de las competencias educativas por las CC.AA.* (latest version dated April 2025) I have had the opportunity to consult, confirm this trend of convergence, which contradicts many clichéd ideas and not a few prejudices (in the textual sense of the word).

is justified to point out that the Spanish model of educational decentralisation has been applied gradually and cautiously and has finally proved to work quite efficiently, even if it will require further adjustments in the near future. Even if the formal process of decentralisation can be considered completed, its consolidation will require more time and adjustments, which can certainly help to consolidate it. This is a task that lies ahead.

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