**Challenges and Lessons from the Portuguese Experience of Regional Autonomy[[1]](#footnote-1)**

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The concept of autonomy, it is important to bear in mind, was forged in Ancient Greece, first within the context of international relations, to characterize and to define those *poleis* that were neither independent, nor under the yoke of others. From international relations autonomy would find its way into political science, becoming a concept that was used to describe those sections of a *polis* that enjoyed particular liberties within the broad context of the overall whole they integrated and were able to draft for themselves the system of right by which they were to live. In both cases, autonomy represented a *third genus*, expressing a kind of asymmetrical federalism and translating into the integration of individuated communities without amalgamation. In brief words, autonomy was the privilege of an entity that was, simultaneously a community in itself and part of a greater whole. Accordingly, it expressed two fundamental things: firstly, the right of a community, understood as an individuated entity, endowed with a specific identity, to be its own master and, therefore, to adopt its own legal and political system required by its specific identity; secondly, the right of the community, understood as a part of a superior whole, to participate in that whole and to share its singular political and juridical system.

This idea of autonomy, forged by the Greeks, proved to be so successful that it would not only survive the Ancient World but also thrive in the Middle Ages, until being extinguished, that is, by modernity and replaced by the alternative idea of sovereignty.

In the Western world, the idea of autonomy would be recovered in the last century, precisely in order to accommodate for diversity, for plurality and, accordingly, for the sharing of political power within formerly sovereign States. Autonomy was recovered from the shelves of history because it recommended itself as a precious instrument for assuring the integrity of plural States. Allowing parcels of States to hold and to freely exercise the political power adequate to fulfilment of its individuated identity was the price of national unity. Thus the regime of autonomy of the Finish Aaland islands, of the Spanish *historical nationalities*, of the Italian Special Status Regions, of the Danish islands and of the Portuguese archipelagos in the Atlantic.

Looking at the Portuguese and the overall European experience with autonomy, I would argue that it is grounded upon two interrelated fundamental principles. Firstly, of will. Indeed, autonomy requires a double will: of the State to recognize the individuality and the rights of the sub-State entity that is to enjoy it, and, correlatively, of the sub-State entity to be and to remain a part of the State. Secondly of trust, of mutual trust between the State, as a whole, and the autonomous region that is to remain a part of it. It is in this sense that autonomy is grounded upon a will to share a common life and a common destiny with those we trust. And this is also where such values inherent to autonomy, like solidarity and subsidiarity, find their justification.

And, with your permission, I would dwell a bit on these aspects because, to my mind, they are absolutely fundamental – so much so that in their absence, autonomy will remain little more than a mere truce and but open the way to something else, namely to the disintegration of the multiplication of sovereignties, as happened with some of the Danish islands, and as threatens to happen with Scotland, Catalonia, or Flanders, for example.

Will, and trust.

This is an aspect underlined by the Portuguese Constitution when it grounds Azorean and Madeiran autonomy upon “the historical aspirations” of the insular populations. Autonomy worked for the two archipelagos because it corresponded to the will of the respective peoples. And, furthermore, autonomy works when, instead of being imposed, or handed over, it is bargained between the overall State and the entity that is to become autonomous. So much so that when that bargain either does not exist or fades, the same destiny awaits autonomy itself. The Italian, Spanish and Portuguese experiences appear, in this context, to constitute eloquent cases in point. Witness, for example, the constitutional bargain struck around the autonomy of Italy’s special regions, which, in the case of Sicily, preceded the Constitution itself. In Spain, this would appear to lie at the very heart of the Catalonia challenge. Or, in, my country, witness the strong presence of insular political representatives at the overall Portuguese political class. The Constitutional commission established in 1975 to draft the Chapter dealing with the autonomous regions to be created was presided by an Azorean and the two major Portuguese political parties in Parliament represented themselves in that commission by Azoreans. So much so that instead of being perceived to be something offered, or imposed from the outside to the islands, autonomy has always been heralded as a conquest of the islanders themselves. And, to this day, the islanders hold a monopoly over the right of legislative initiative of its revision and reform.

Will of the Azoreans and Madeirans to be autonomous, grounded upon their will to be Portuguese. And trust, mutual trust and recognition. Not always easy, of course, yet always nurtured for it remains essential for the assurance of the unity of the State.

At the institutional level, our present theme of reflection, autonomy, unfolds around two fundamental tiers, at the European level as well as in the Portuguese experience: one external to the autonomous entity, the other internal. By the external level, I mean to refer to two sets of institutions. Firstly, to the array of institutions which allow the autonomous entity to participate in the definition and the implementation of the overall political will of the State of which it is an organic part. Secondly, to the institutions allowing the region to project its will beyond its borders, nationally and internationally. By the internal level, I mean the institutions it counts on to autonomously fix its own will and to implement it.

Starting with the **external level**, I would argue that insofar as the autonomous regions are understood to be parts of the State, they must be allowed to participate, as such, in the definition of its sovereign will. In the Portuguese case, this is done through a variety of instruments. As national citizens, of course, the citizens of the autonomous regions participate in the national legislative. In the Portuguese case, besides, the Autonomous Regions integrate, domestically, in the Council of State and in the Superior Council of National Defence. Externally, they also integrate the COREPER,[[3]](#footnote-3) sending, each one, an element to the national delegation in Brussels charged with the representation of the Portuguese State near the European Union (EU) Council. And, they also enjoy the constitutional right to participate in the negotiations of international agreements dealing with matters that are of their interest, as well as in the benefits ensuing from them. This means that before Portugal negotiates with a foreign country, or with the EU, on matters that are of interest to its autonomous regions, it must, previously, negotiate with its autonomous regions and integrate its members in the national delegations. One could point to three or four paradigmatic cases in which the Portuguese Autonomous Regions were thus represented: the negotiations, at the United Nations (UN), of the Convention on the Law of the Seas, the negotiations by Portugal with the United States and with France regarding the concessions of strategic bases in the Azores and the negotiations with the EU, starting with the drafting of the Treaty of Accession and, in it, of the specific regimes for the archipelagos, and, afterwards, of Portugal’s policy towards the EU on matters that are of interest to its regions.

Beyond this indirect access of the Azores and Madeira to European affairs and to international relations, in general, in indirect shape, so to speak, through their integration of the national delegations, the Portuguese Autonomous Regions also enjoy a significant gamut of instruments of direct access to international affairs. This is the case particularly in two domains, as recognized in the Portuguese Constitution: European affairs and regional cooperation. Portugal remains far from the renowned Belgian principle, *in foro externo ex foro interno*, prescribing to the Autonomous Regions and Communities the right to accede to International Relations and develop the diplomatic activity they may see fit in those domains which, domestically, are consigned to their competency and on which they are able to legislate. Yet, the Portuguese regional executives, and legislatives, have been able to develop foreign relations, particularly with the archipelagic State of Cape Verde (with which they are at present drafting a renewed sense of community together with the Canary islands in the macro region of Macaronesia), and the States in which, because of centuries of immigration, they hold important diasporas, in particular, the United States, Canada and Brazil. Spread throughout them we can find a series of *houses of the Azores*, and *houses of Madeira*, which function as embryonary foreign delegations. All of this, of course, besides the constitutional right that is recognized to them to hold direct contacts and to adopt agreements, directly negotiated, both with the European institutions themselves and with other foreign entities of a similar nature, other regions.

Unlike the regime foreseen in Italy, for example, or in Moldova, in Portugal, whereas the autonomous regions of the Azores and Madeira acceded to the national parliament, they have no formal access to the national executive. The regional presidents have no access to the Council of Ministers, although contact and cooperation between the national and the regional executives remain frequent – even if implemented in an *ad hoc* manner and the Portuguese experience has no parallel to the formal national/regional conferences typical of federal and States, like Germany and Austria, or regionalized States, like Italy or Spain.

At the legislative level, European integration has entailed closer cooperation between the regional and the national legislatives. Autonomy originally translated into a division of competencies between the overall State and the Regions. No specific cooperation between the regional and the national legislatives was required insofar as they legislated over different things. So much so that autonomy entailed nothing less than the transfer of competencies from the national Parliament, and Government, to their regional counterparts. Yet, the moment that European integration translates into the transfer of competencies from both nation and region to the EU, understandings and cooperation between the regional and national institutions – including Parliament – become a necessity. And the Treaty of Lisbon underlined this requirement with the introduction of mechanism of association of the national and regional parliaments to the European decision-making mechanisms, including the regional capacity to assure the transposition of directives and the mechanisms of verification of subsidiarity and proportionality of European policies.

Furthermore, regional access to the EU is further assured by the systematic presence of Azorean and Madeiran Members of the European Parliament and by the Office that both regions jointly have near the European institutions, besides their integration of the national Portuguese mission to the EU.

In a word, whereas autonomy was understood as an instrument for detaching those domains that were understood to constitute a *specific interest* of each of the archipelagos from the Portuguese nation and, therefore, to withdraw them from the national institutions and organs of power in order to reserve them to the regions themselves and to have them freely determined by their own institutions – legislative and executive –, it quickly became evident that autonomy also required close participation and cooperation among national and regional organs and institutions, and European ones too. It quickly became clear that just about not single one of the domains that were constitutionally reserved to the Autonomous Regions, could be handled effectively by the Regions alone, requiring, instead, close legislative, executive and administrative cooperation between the regional, national and European levels and institutions. And this is not to say that there are no disputes or controversies. And, to my mind, the ocean, the property of its waters, fish and seabed mineral resources stands out as the one promising more and more intensive conflict in the near future.

Shifting now to the **internal level**, it is important to underline the institutional framework designed for the effective implementation of regional autonomy of the Portuguese archipelagos. Resorting to the traditional Western configuration of political power in three tiers, legislative, executive and judiciary, I would argue that the Portuguese option was for a conception of the Region understood as substantially different from the local authorities (dealt with in a different chapter of the Constitution) and as a kind of insipient or incomplete State: an entity that shares some, although not all, of the prerogatives of statehood. Of the three powers of the State, the autonomous regions share only the first two, legislative and executive, but not the third, judiciary. And, although bound to the national constitution, the autonomous regime cannot be altered, except upon the initiative of the Regions themselves. So much so that autonomy integrates the limits of constitutional revision.

In Portugal, the judicial system remains unitary, crowned by a single Constitutional Court that functions as the Court of final instance for the entire country. Each of the regions, however, has its own legislative and its own executive. The Constitution has no place for *Azoreans* or *Madeiran citizenship*, or for *Azorean* or *Madeiran citizens –* although it clearly allows the Azores and Madeira to adopt a system of rights of their own. Azoreans and Madeirans are understood simply as Portuguese residing in one or the other of the archipelagos. And it is with full normality that a Portuguese from the mainland settling in one or the other archipelago becomes a full citizen upon arrival, inclusively with the full rights of passive and active regional citizenship.

Each Region elects, by universal suffrage, its own Legislative Assembly, which functions as a true Regional Parliament, entrusted with the definition of Regional policies, which are framed as laws. In strictly traditional parliamentary fashion, from the regional elections emerge the regional executives which, appointed by the Representative of the Republic, a figure that is named by the President of the Republic, of whom I should like to say a few additional words in a minute, answer politically, to the respective Regional Parliament alone.

In a few words, autonomy translates into a double phenomenon. Firstly, the separation of a specific set of domains, identified in the national Constitution and in the Regional Statutes (that have become true regional constitutions) from the national institutions of power (legislative and executive). Secondly, the effective transfer of these competencies to the Regions. And it is precisely with a view to their concrete exercise that the Constitution foresees the creation of regional autonomous institutions: legislatives and executives.

In conclusion, and, judging from the Portuguese experience of close to half a century, because of their relevance, allow me to point to two additional aspects that have proved to be particularly challenging and contested in the Portuguese experience of regional autonomy: the institutional representation of the State in the Regions and the form of the Portuguese State as a whole.

Upon the adoption of the system, the figure of the Minister of the Republic was adopted for each of the Regions, charged with five major functions: firstly, the representation of national sovereignty over the respective Region; secondly, to be the formal vehicle of contact between the regional autonomous institutions and organs of authority and their national counterparts, particularly at the executive level; thirdly, tutelage, political and legal, of the regional legislation; fourthly, the empowerment of the regional executives before the regional parliamentary assembly, taking in consideration the results of the legislative elections, and the signature of the regional diplomas; fifthly, the care for those services that were not transferred to the region and, therefore, remained a national responsibility, ensuring that the national executive did not fail to assure them properly.

This figure proved to be particularly acrimonious, and has been systematically contested. Accordingly, in successive constitutional revisions held since the adoption of the Constitution in 1976, its competencies have been systematically trimmed, and it was renamed Representative of the Republic. At present he is basically a representative figure, without real power. His competencies are limited to the empowerment of the regional executive before the Regional Assembly and although he continues to sign the regional diplomas and to be able, should he so choose, to return them to the Regional Assembly for re-appreciation or forward them to the Constitutional Court, his veto power has fundamentally evaporated. And In Portugal, the question now is how to do away with it entirely, leaving the representation of the State entirely to the regional authorities, as is the case throughout the rest of Europe. If, in the early days of the autonomous regime, this figure was justified as a kind of balance of regionalist demands and threats of separatism, these justifications have long vanished.

A final word regarding the form of the State. The Portuguese Constitution continues to identify Portugal as unitary State, even though latter revisions have added the qualification: “with autonomous regions”. The point is that the concepts of *autonomy* and *unitary State* are contradictory, pointing to alternative scenarios. In a nutshell, whereas the idea of the unitary State allows for but a single system of right within the State, autonomy requires the sharing of political power and the coexistence, within the territory of the State of differentiated systems of right. And, in Portugal, this classification of the country as a unitary state has been utilized, in more or less systematic fashion by the Constitutional Court to thwart the regional legislative capacity. To my mind the solution is simple: the constitutional reclassification of Portugal as an asymmetrical regional State: asymmetric, because the solution adopted for the archipelagos of the Azores and Madeira seems to have little or no hold of the imaginary of the populations of the mainland; regional, because Portuguese is indeed organized in two politically and administratively autonomous regions, besides, the mainland.

1. Presented to the International Academic Conference *Models of territorial Autonomy: Convergences ad Differences*, Dakhla, 2-3 July 2018 [↑](#footnote-ref-1)
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3. Committee of Permanent Representatives of European Union (EU) Member States to the EU Council. [↑](#footnote-ref-3)