

The Constitutional Politics of Language Policy in Catalonia, Spain

By Dr. Thomas Jeffrey Miley¹

By the end of the Franco era (1939-1975), partially in reaction to the unitary nationalist conception of Spain associated with the regime, the democratic opposition came to identify with peripheral nationalist aspirations for recognition of linguistic, cultural, and national differences and even for some degree of self-determination. In the transition to democracy, the drafters of the 1978 Constitution took these aspirations into account. Articles 2, 3.2, and 3.3 of the Constitution of Spain include recognition of linguistic, cultural, and national pluralism; and Title VIII of the Constitution outlines procedural mechanisms for the devolution of powers and creation of regional "autonomies," or self-governing communities. The official recognition of linguistic, cultural and national plurality would be further enshrined with the passing of regional Statutes of Autonomy. Although the Constitutional prescriptions are not explicitly federal, they have allowed for the emergence of a *de facto* asymmetrical federal state.

In Catalonia, a relatively wealthy, industrial region in the north-east of the Spanish state, a nationalist conservative coalition, *Convergència i Unió*, led by Jordi Pujol, ruled continuously from the first elections in 1980 after the passing of the Statute up through 2003. While in power, it used its mandate, with the support of the main parties in the opposition, to enact linguistic and cultural legislation for the purposes of strengthening national identity and for "integrating" the Castilian-speaking half of the population into the linguistic and cultural habits of the indigenous half of the population there. Since 2003, the socialist party, in coalition with the ex-communist *Iniciativa per Catalunya* and the radical nationalist *Esquerra Republicana*, has continued to advance the same linguistic nationalist agenda. Throughout the entire democratic period, perhaps the centerpiece of this legal effort has been the "Catalanization" of the educational system

During the Franco regime, the Catalan language had been prohibited from the educational system, as it had been from other realms of public life. Such prohibition alienated broad segments of the Catalan middle class from the regime. The democratic opposition unanimously denounced Franco's linguistic oppression; and the demand for Catalan to be included in the educational system particularly and in public life generally would constitute a focal point for mobilizing resistance both by nationalists in the center and by socialists and communists on the left.

Even before Pujol's ascent to power, the process of "Catalanizing" the educational system had begun. In the last months of Franco's life, the regime enacted a decree (#1443/75) allowing for "native languages" to be taught as voluntary subject matters in schools. Before the Constitution was complete, a Royal decree (#2092/1978) had authorized the inclusion of Catalan as an obligatory subject matter in all elementary and secondary schools; and it permitted some schools to use Catalan as the language of instruction. In the fall of 1980, Pujol's government would issue its own decrees to the same effect (#142/80 and #153/80).

This arrangement, however, would not last. By 1982, the Catalan executive (known as the *Generalitat*, the institution through which the self-government of Catalonia is organized politically) had passed a decree (#248/82) requiring at least one subject other

¹ Dr. Thomas Jeffrey Miley is a Lecturer at the Department of Political Science, Yale University.

than Catalan to be taught in that language. Article 14.5 of the 1983 Law of Linguistic Normalization (LNL) went further: it prohibited students from being separated in different centers "because of language," and it mandated that Catalan be employed as the language of instruction "progressively, as all students become competent in it." The right for Castilian-speakers to receive first schooling in their mother-tongue was not yet touched, though the ground was being paved for it. Article 14.1 of the LNL declared that all students had to be competent in both languages upon graduation from basic schooling; and the *Generalitat* had already begun to make the case that in order for this goal to be achieved, all primary schooling had to be conducted in Catalan. In February of 1983, it published the study *Quatre anys de català a l'escola* ("Four Years of Catalan in the Schools"), where "scientific justification" was given that allegedly proved that "in order to guarantee satisfactory knowledge in both languages," Catalan needed to be employed as the language of instruction.² With this justification, the government would begin promoting programs of "linguistic immersion" in Castilian-speaking neighborhoods. Over the course of the next nine years, these programs would be gradually extended. The *Servei d'ensenyament del Català* (SEDEC, or "Service for the Teaching of Catalan") put pressure on individual schools to adopt Catalan as the language of instruction. However, the final say was left to each center, at least until 1992, when the *Generalitat* decreed Catalan to be the language of instruction for all primary schools. This decree would be ratified and extended to secondary schools in Article 21.1 of the 1998 "Law of Linguistic Policy," which reads: "Catalan should normally be used as the language of instruction in non-University education."

The "Catalanization" of the educational system has provoked its fair share of political controversy. Critics of the process have maintained that the Catalan government, in its zeal for "linguistic normalization," has infringed upon the allegedly-fundamental right of native Castilian-speakers (who represent approximately half of the population) to receive education in their first-language; and that in so doing, it has violated both the spirit and the letter of the 1978 Constitution.

As far back as 1983, a Castilian-speaking lawyer by the name of Esteban Gómez Rovira had filed a suit before the *Tribunal Superior de Justicia de Catalunya* (TSJC) against the Catalan government over the initial decree (#362/1983) implementing the LNL in the school system. Gómez objected to that decree's mandate for the progressive introduction of minimum requirements for Catalan as both an obligatory subject matter and vehicle of instruction in all primary and secondary schools. He insisted that the Catalan government could neither oblige students to learn the language nor to learn *in* the language. He sued as an individual parent so that his children could be exempted from such obligations.³

Over a decade would pass before Gómez's suit could work its way up through the judicial system and the issue could finally be resolved. In December of 1994, Spain's Constitutional Tribunal (TC) ruled against Gómez and in favor of the constitutionality of the Catalan regional government's language policy in the educational system. In its decision (#337/1994), the TC would argue that the mandate provided by Article 3 of the 1978 Constitution empowers the public authorities to promote the knowledge of both the

² *Quatre anys del català a l'escola* (Barcelona: Departament d'Ensenyament, 1983).

³ "El posible recurso contra la ley de Normalización Lingüística no afectaría al fondo del articulado." *El País*, Barcelona edition. July 15, 1983. Also see Voltas, *La guerra de la llengua*, op. cit., pp. 165-166.

Catalan and the Castilian languages; and obviously, one especially effective way to do this is through the use of both languages as vehicles of instruction in the educational system.⁴ According to the TC, no alleged “right to receive education only and exclusively in Castilian” can be invoked to limit this goal – simply because this right does not exist. In effect, the TC would deny the claim that such a right can be deduced from the parents’ right to choose the type of education their children receive. It would focus instead on the right to receive an education as such; and it would insist that this right is constantly being regulated by the public authorities – when they determine the schedules, the curriculum, the obligatory subject matters, etc. For the court, the determination of the language of instruction “after the period of first schooling” is just another such regulation. In no way can it be conceived as an impediment to the fundamental right to receive education.

Indeed, the court would go even further. It would argue that it is not only perfectly legitimate for the public authorities to prescribe that Catalan be employed as a language of instruction in the educational system; but that in fact, it is even legitimate for the public authorities to prescribe that Catalan occupy “the center of gravity” in that system (so long as Castilian is not completely excluded). The court made this argument for two reasons: first, because the model of “linguistic conjunction” is intended to achieve the noble goals of “integration” and “social cohesion”; and second, because this model allows for the correction of “historically inherited imbalances” between the two languages.

To what extent did political factors, in addition to merely juridical ones, help determine the content of the TC’s decision? Jordi Pujol, for one, has a definite opinion. As Eduard Voltas has reported: “Slyly in public, and more clearly in internal meetings of *Convergència* and at the *Generalitat*, Jordi Pujol has ranked the TC’s ruling in favor of the LNL [or “Law for Linguistic Normalization”] as his coalition’s principal gain from the period of collaboration with the PSOE [the then-ruling socialist party] in Madrid.” Nor is it likely that Pujol is deceiving himself on this point. One of the justices on the TC would come close to admitting as much, though he did so only under conditions of anonymity: “We members of the Tribunal were perfectly aware of what was at stake in this sentence, and we took it into account.”⁵

It would take us well beyond the scope of this paper to attempt to prove in any definitive sense that it was “political,” more than “juridical,” factors that determined the content of the TC’s decision. But it is safe to say that had the decision been different, the legitimacy of the constitutional order would have been strained. Virtually the entire Catalan political establishment would have objected, and a sizeable majority might even have agitated for constitutional reform. The TC was not willing to risk provoking such a crisis. It chose instead to secure the legitimacy of the Spanish constitution and of the Spanish State.

However, regardless of whether the TC’s decision was motivated by primarily “political” rather than “juridical” factors, how should this decision be evaluated as a piece of constitutional jurisprudence? In particular, is the TC’s claim that the Catalan language

⁴ Article 3.1 of the 1978 Constitution reads: “Castilian is the official Spanish language of the State.” Article 3.2 reads: “The other languages of Spain shall also be official in the respective self-governing communities in accordance with their statutes.” And Article 3.3 reads: “The wealth of the different language variations of Spain is a cultural heritage which shall be the object of special respect and protection.”

⁵ Eduard Voltas, *La Guerra de la llengua* (Barcelona: Editorial Empúries, 1996), p. 173.

can legitimately “occupy the center of gravity” in the educational system problematic? Not necessarily, since it does seem to be an effective way of guaranteeing the vitality of a language which, in general terms, is far weaker than Castilian. Given the *de facto* disparities between the strength of the two languages, a true commitment to linguistic diversity as a *substantive* value might in fact require such a measure of “special protection.”

Even so, there is nevertheless a serious problem with the TC's ruling. The problem, though, lies not in what the TC *does* say, but rather, in it what it does *not* say. What it does not say is that since the passing of Decree #75/1992, where it was declared that “Catalan will be used *normally* as the vehicle of instruction (*llengua vehicular*)” (article 3.1), the public authorities have gone beyond their constitutional limits. In effect, they have pushed to *exclude* Castilian as a language of instruction from classrooms in Catalonia altogether. By the 1995-96 school year, the Catalan *Direcció General de Política Lingüística* (“Office of General Direction of Linguistic Policy”) would report that fully 68% of all primary schools were using the Catalan language exclusively.⁶ Of the rest, the great majority were using *mostly* Catalan. Since then, the numbers have consistently increased.

Given that this process was well underway by the end of 1994 (when the ruling was issued), the TC should not have remained silent. It should have clarified that the interpretation of linguistic policy that the *Generalitat* had been employing in the schools at least since 1993 was clearly unconstitutional. But it did not; and because it did not, its decision was rightly interpreted as a green light for the nationalists. Simply put, the court chose to look the other way. Even though it did not give a constitutional seal of approval to the policies by which Castilian was being virtually excluded from Catalan schools, it did not raise its voice to object either. The TC thus managed to fend off a crisis for the stability of the Spanish State of the Autonomies; however, it did so by being less than vigilant in its defense of the use of Castilian in the public sphere.

⁶ *La llengua catalana en l'actualitat* (Barcelona: Direcció General de Política Lingüística, 1996), p. 43.