Condominiums And Shared Sovereignty

Abstract

As the United Kingdom (UK) voted to leave the European Union (EU), the future of Gibraltar, appears to be in peril. Like Northern Ireland, Gibraltar borders with EU territory and strongly relies on its ties with Spain for its economic stability, transports and energy supplies. Although the Gibraltarian government is struggling to preserve both its autonomy with British sovereignty and accession to the European Union, the Spanish government states that only a form of joint-sovereignty would save Gibraltar from the same destiny as the rest of UK in case of complete withdrawal from the EU, without any accession to the European Economic Area (Hard Brexit). The purpose of this paper is to present the concept of Condominium as a federal political system based on joint-sovereignty and, by presenting the existing case of Condominiums (i.e. Andorra). The paper will assess if there are margins for applying a Condominium solution to Gibraltar.

Condominium in History and Political Theory

The Latin word condominium comes from the union of the Latin prefix con (from cum, with) and the word dominium (rule). Watts (2008: 11) mentioned condominiums among one of the forms of federal political systems. As the word suggests, it is a form of shared sovereignty involving two or more external parts exercising a joint form of sovereignty over the same area, sometimes in the form of direct control, and sometimes while conceding or maintaining forms of self-government on the subject area, occasionally in a relationship of suzerainty (Shepheard, 1899).

Condominiums date back to the Middle Ages as an ancient form to settle rivalries and conflicts between states vying for supremacy over the same territories. According to historical reports, the condominium was a Byzantine invention. In the seventh century, Emperor Justinian II proposed a new form of shared sovereignty to Caliph Muawiyah I over Cyprus and its tax revenues (Zavagno, 2011). This arrangement lasted for almost three centuries, before the Byzantines won the island back.

In British colonial history, the case of Anglo-Egyptian Sudan is one of the clearest examples of a condominium between a colonial power and a regional territory, with the latter under the influence of the former. This agreement provided mutual assistance over a disputed territory, and shared responsibilities on security over an extended territory. Although called a condominium, which implies a form of equality of parts, in this form of [imposed] agreement, the British played a hegemonic role by frustrating the Egyptians' demands in the area, as well as indigenous Sudanese demands for independence and self-rule. The Vanuatu Islands and Togoland (1916-1922) are other examples, whereby both were colonial condominiums under shared sovereignty between France and Great Britain.

Because of their nature, Condominiums are a fragile form of federal political system. Their success as a peaceful solution to inter-state conflicts relies on the agreement and good will of the parts to respect such an arrangement. With the sole exception of Andorra, which has lasted for centuries and still exists (see below), condominiums are not permanent arrangements. Although condominiums are often created because of immediate peace-making circumstances, most of the time they have been superseded by new settlements favouring one of the external parts or determining the full independence of the condominium. The partition of Togoland between France and Great Britain in 1922, the partition of Samoa between Germany and the USA in 1899 and the transfer of Krakow under full Austrian sovereignty in 1846, are cases in point.

Andorra: A Quintessential Condominium

Andorra is a microstate which conserves some elements of ancient political systems that have managed to survive and adapt to new and evolving circumstances. Whereby San Marino is the last surviving example of a medieval Italian comune, and Liechtenstein the last surviving principality from the Holy Roman Empire, Andorra is the last surviving example of a feudal agreement (Fernsworth, 1934).

Andorra represents a condominium which has been established since the Middle Ages. Legends report that Charlemagne himself, because of the area's imperviousness and strategic position, founded the settlement after securing the Pyrenean Mountains from the Moors. Louis the Pious, Charlemagne's son and successor, gave control of the settlement to the counts of Urgell and their successors. The status of Co-principality, i.e. having two heads of states sharing the same role over Andorra, is a consequence of this decision. Much conflict ensued between the Counts of Foix, heirs of the local secular lords in charge of Andorra military control and security and the Bishops of Urgell, in charge of its civil and religious administration. This conflict was solved through the so called *Andorran Paréage.* 'Contracts of Paréage' (literally: agreements between peers) (Delcambre & Gallet, 1937) represented a way to settle territorial disputes between two parts by sharing sovereignty over a contested territory. With the Andorran Pareage, in a framework of mutual recognition and parity, the Counts of Foix

and the Bishops of Urgell both became sovereign over Andorra. At the same time, they continued developing some form of self-rule.
The Parishes (small towns organised around a church) emerged as political units, in which the wealthiest family was the main political player as representatives of their own Parish. With the end of Francoist regime in Spain and its transition to democracy, Andorra also underwent a long phase of political reforms and modernisation during the 1970s and the 1980s, when the co-princes agreed on the necessity of new democratic governance for the Pyrenean condominium. This was agreed through mediation with the Council of Europe, which demanded a formal modernisation of the Andorran system according to liberal-democratic standards. An executive branch, with a head of government and a council of ministers, was first established in 1981 and, after several years of constitutional wrangling and negotiations as well as public consultations, Andorra ratified its new constitution in 1993 (Butletí Oficial del Principat d'Andorra, 1993). Under the new constitution, the role of the two Head of States (co-princes, namely the president of France and the Bishop of Urgell) is mainly ceremonial, but nonetheless, they retain a veto-power in the case that one of them does not ratify laws. In all the other features, Andorra is an independent country, with its own system of government and specificities.

A Condominium Solution for Gibraltar?

Gibraltar has been and remains a contentious issue in relations between the United Kingdom (UK) and Spain since the Treaty of Utrecht (1713), which forced Spain to accept British sovereignty over Gibraltar and Menorca as a result of the War of Spanish Succession (1701-1714). While Spain managed to reconquer Menorca in subsequent wars in the 18th century, it failed in reconquer 'the Rock'. Despite the evolution of good relations between post-Franco Spain and the UK, in addition to the involvement of both countries in the wider European integration project, Spain has never completely abandoned its claim over Gibraltar.
In the early 2000s, UK Foreign Secretary Jack Straw and Spanish Minister for Foreign Affairs Ana Palacio proposed a form of joint sovereignty and condominium status for Gibraltar. Although the negotiations were supported by the Foreign and Commonwealth Office, the Gibraltar Parliament unilaterally called a referendum to stop any option involving joint sovereignty. Voters unanimously rejected the negotiations (98.48% voted against, with a turnout of 87.9%) and any plan for joint sovereignty. Gibraltarian hostility towards this project was linked to Spanish proposals that the condominium would not be permanent, but a preliminary phase before being placed under full Spanish sovereignty.
In light of the referendum, the Spanish and the British governments started, along with the Gibraltarian government, a tripartite forum of dialogue. Established in 2006, the forum sought to manage many concrete issues, but did not provide a framework for resolving the issue of Gibraltar's sovereignty (Gold, 2009). That forum, supported by the Spanish Zapatero government, faced harsh opposition from the subsequent Rajoy led administration, which essentially boycotted it. This 'boycott', in place since 2011 led to a de facto dismissal of the forum. The reason for this disagreement can be found in the Spanish attitude towards Gibraltar's status; while Spain would support a condominium solution and shared sovereignty with the UK, it concomitantly refuses to accept Gibraltar as an autonomous or semi-sovereign counterpart in the negotiation.
The results of the 2016 referendum on the UK's membership of the EU has caused a further rift between Spain and the UK. On the 23rd of June, Gibraltar almost unanimously rejected leaving the EU (96% on a turnout of 83.7%). Although its status could to some extent be compared to Scotland and Northern Ireland, which both voted for remain, both the overwhelming percentage in favour of remaining and the high turnout in the referendum represent a strong case for Gibraltar to remain part of the EU. As a British oversea territory and Special Member State Territory with the EU, Gibraltar is outside the Common External Tariff and the obligation to levy Value Added Tax but, more importantly it has its own autonomy in complying with EU directives. Despite this status, the UK is legally responsible for Gibraltar's external relations and consequently for Gibraltar's EU membership. Thus, Gibraltar, alongside the rest of the UK (Scotland and Northern Ireland included), is expected to leave the EU. Under these circumstances, could a form of joint sovereignty with Spain be a solution to this puzzle?

Although Gibraltar is strongly opposed to joint sovereignty, such an agreement could embed Gibraltar in the EU. Gibraltar would become a co-principality (by having two heads of states like Andorra), and would retain its self-government, while being linked to both the EU and the UK after the latter's withdrawal. The Spanish government stated immediately after the referendum that Gibraltar was a step closer to joining Spain. Nonetheless, Gibraltarians have remained very sceptical about this solution; Gibraltarian Chief Minister Mr. Fabian Picardo dismissed any Spanish demand for joint sovereignty and stated that Gibraltar would find other ways to preserve its status in the EU. The fear of Spanish centralism and the will to maintain the political and fiscal autonomy granted by being a British overseas territory remains a major issue between Spain and Gibraltar. Just after the referendum, Mr. Picardo stated that joint-sovereignty is a price that Gibraltar is not willing to pay.
A solution to the status of Gibraltar relies partly on the will of Spain and the UK to negotiate the status of condominium and partly on the citizens of Gibraltar. In the case of Hard Brexit and a negative outcome of the negotiations between the EU and the UK, Gibraltar would have to look for a solution that does not imply separation from the Single Market and the economic cooperation with Spain. Additionally, despite Mr. Picardo's hostility, it is not clear how a possible "joint-sovereignty solution" could affect Gibraltar's autonomy so significantly. In fact, should the UK and Spain negotiate an "Andorra solution" for Gibraltar, with the monarchs of the two countries acting as co-monarchs, Spanish sovereignty over Gibraltar would be mainly ceremonial and would not actually affect Gibraltar's autonomy. Other solutions involving a more consistent role for the Spanish government, as much as for the British government, would represent a model of condominium with more limited self-rule for Gibraltar, but currently this appears unpopular amongst inhabitants of the Rock. Should Gibraltar keep refusing this option, the only path it can follow is to lobby the UK government for a soft Brexit ot a possible special status for Gibraltar.

Conclusion

While it remains unclear how the future of Gibraltar will develop as the negotiations between the EU and UK unfold, condominiums represent a model for federal political systems that has the advantage to mitigate conflicts and accommodate more actors. It has the advantage to be a flexible model, which has been applicable in colonial and post-colonial realities, as well as in very different cases. Andorra, for instance, remains the prototypical example of a condominium. In this case, an Andorra-style condominium solution for Gibraltar could provide some possibilities to accommodate the demands of all parties in the future of the Rock, yet until a solution is found, the future of Gibraltar remains at stake.

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