

**Álvaro Rodríguez Bereijo - La Constitución fiscal de España -  
Centro de Estudios políticos y constitucionales  
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Professor Rodríguez Bereijo, president emeritus of the Spanish Constitutional Court, deals, in the calm of its residence in Galicia, with the essential questions of Constitutional Tax Law. The Spanish constitution is one of the most recent modern constitutions (1978). It includes articles that can be qualified as economic constitution or also as financial or fiscal constitution. If it recognizes the right to private property and to entrepreneurial freedom, to freedom of establishment and to free movement of goods and persons, it subjects every form of wealth to the general interest and declares, within article 1, that Spain is a welfare and democratic State. As it is written, in 1978 all parliamentarians were Keynesians. These principles were imposed to the central State as well as to the autonomous communities. As long as the latter ones are concerned, a principle of inter-territoriality was explicitly provided (art. 158).

Is the Constitution neutral in terms of political organization? For someone, belonging to minorities, article 38 would be aligned with both a liberal economic system and an interventionist or planned economy. Article 31, which interests tax experts, provides that «all taxpayers contribute to the public expenses by virtue of their ability to pay according to a fair tax system which is inspired to the equality principle and progressivity principle, without in any case producing a confiscation effect». And it adds: «public expenses will realize an equitable attribution of public resources and their

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program and enforcement will match with different criteria of efficiency and cost-effectiveness», addition that managers and politicians could ponder.

Actually the essential question is the conciliation of economic and social rights which are recognized to citizens with the inevitable limitation of public resources that can be consacrated to them, particularly in a context of economic crisis. Hence, the budget is the constitutionally legitimate limit to the satisfaction of citizens' rights. As the argentinian professor Horacio Corti has written, budget was a legal and parliamentary institution but it became a constitutional technique. This is called «reserve of possibility» (Vorbehalt des Möglichen) coming from the German constitutional doctrin.

Hence, the constitutional principles impose to create taxes that are shaped according to the ability to pay of the taxpayer. Is this principle applicable only to big «taxes» that take into account the real or potential wealth, with the exclusion of every fictitious wealth or should it be applied to every tax? We see the difficulty to adapt, for example, a tax on games of hazard, prototype of a fictitious and aleatory wealth, to this criterion.

As to the role of budget, it has been drastically modified by the reform of article 135 of the Constitution, necessitated by the Stability and Growth Pact of the European Union, result of the economic crisis. The approval of the budget ceased to be a purely political act to became, in conformity with European Treaties, an act that depends on the economic climate. Moreover the evolution of Budgetary Law has permitted that a public power cannot oppose to the enforcement of a judgement the absence of a budget item that allows this enforcement itself. According to the author, the harsh criticism of those who see within the criteria of the Stability Pact a destruction of the financial autonomy of States and Communities instead of the socio-economic rights, are not justified. What jeopardizes the socio-economic welfare State, is the bad administration which generates an unreasonably heavy burden of debt and is contrary to Constitutional Law. The organic law of 27 April 2012 concerning budgetary stability and maintained funding does not more than conforming to the primacy of European Law in accordance with the hierarchy of legal rules.

These fiscal thoughts of a great constitutionalist are an important legacy for the new generations of lawyers. Additionally the author dedicates the publication to his young children.

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