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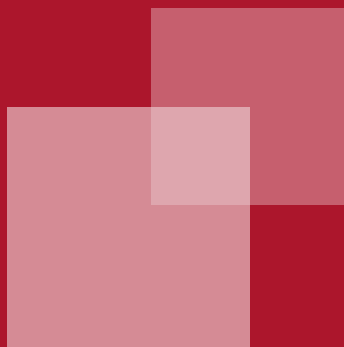
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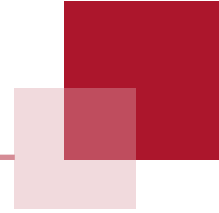
Chapter 8

Equal Representation in Spain: Lessons Learned from Balanced Electoral Lists



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Equal Representation in Spain: Lessons Learned from Balanced Electoral Lists

Introduction

Women's representation in Spain has radically changed in recent decades. Although still far from parity, women make up 35 per cent of the members of the Congress of Deputies, 30 per cent of the national government and 50 per cent of judges (Instituto de la Mujer 2013a, 2014). While social and economic factors can explain some of this progression, the adoption of Law 3/2007 on Effective Equality between Women and Men (the Equality Law) in 2007, which introduced balanced electoral lists, has had a decisive impact on increasing women's empowerment.

This chapter reviews the Spanish experience with regard to fostering equal opportunities. In particular, it provides some background information on the situation of women's political participation and representation in Spain before the 2007 reform. Then it analyses the Equality Law and the impact of balanced lists on the electoral system as a whole. Then the functioning of the system will be explained in more detail. Next, a specific case will be examined to explore the role of electoral commissions, courts of law and the Constitutional Court as principal custodians of equal representation.

The chapter concludes with lessons learned from the Spanish experience that can serve as a helpful guide for electoral reforms aimed at fostering women's equal representation. First, since any modification of the electoral system can affect the presence of women in representative institutions, this impact must always be evaluated before making such decisions. Second, legally requiring

balanced lists entails certain conditions concerning the electoral system and political party behaviour. Finally, the most important factor is not the *kind* of action to be taken (which can include the introduction of balanced or zipper lists), but rather the effective enforcement of compliance with such measures.

Where we were

Before the passage of Spain's new democratic constitution in 1978, the Franco regime was inadequate in terms of protecting women's rights. Civil law subordinated women to men in matrimony and contracts, for example, and public law was also highly discriminatory. During the rare elections that took place under the Franco regime, women could vote or run only if they were married or served as the head of the family.¹ Law 56/1961 on the Political, Professional and Labour Rights of Women still prohibited women from becoming judges or public prosecutors.²

The first free elections were held on 15 June 1977, less than two years after Franco's death. Universal suffrage was recognized and for the first time since 1933, women were able to participate in the polls under equal conditions. However, only 27 women were elected as representatives—21 in the Congress of Deputies and seven in the Senate—less than 5 per cent of the total members (Instituto de la Mujer 2013).

Article 14 of the 1978 Constitution declared that 'Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.' Nevertheless, the situation of women in politics did not improve during the following years. Although Spain's culture, traditions and family constraints were decisive causes of this decline, political parties also played a role.

At the end of the 1970s, not even the political parties that later approved internal quotas had a clear strategy on women's political participation. For example, the issue was not on the agenda of the Extraordinary Congress of the Spanish Socialist Workers Party (*Partido Socialista Obrero Español*, PSOE) of 1979, which elected an Executive Commission of 16 members, only two of whom were women (Ollero 1980: 206–7).



Where we are

After the general elections of 2011, there were 124 women in Congress (36 per cent of the chamber) and 74 in the Senate (33 per cent). Although still far from parity, the improvement in female participation is clear. The most important aspect is perhaps the increase not only in representative institutions, but also in the executive power.

More than 35 per cent of city councillors and more than 43 per cent of the members of regional parliaments are currently women. In the national government, women comprised 50 per cent of the Zapatero governments appointed in 2004 and 2008 (Instituto de la Mujer 2014). Now the percentage is near 30 per cent, which is still higher than in some other European countries. In 2012, the average number of female ministers in EU countries was 26 per cent, and Spain occupied eighth place, behind Sweden and France but ahead of the United Kingdom and Italy (Foundation Robert Schuman 2012). The number of female members is slightly higher in regional governments, near 34 per cent (Instituto de la Mujer 2014).

What the law says

The improvement of the position of women in Spanish politics is, in part, the result of social and economic changes that began in the 1970s. During those years, the number of women with a university education began to increase and eventually reached that of men.³ A change in mentality stimulated by democracy also allowed women's participation in the labour market.⁴ While the feminist movement was weak in those years, the influence of women inside the main political parties began to grow. For example, the PSOE and United Left (*Izquierda Unida*, IU) reformed their statutes in 1997 to limit the number of candidates of the same gender. According to these new provisions, candidates presented to the internal organs of the party or to representative institutions could include no more than 60 per cent (and no less than 40 per cent) of the same gender (Biglino 2000).

These internal norms are the clearest precedent of the 2007 Equality Law, which reformed the previous electoral system and imposed gender-balanced electoral lists. A short explanation of the Spanish electoral system will help explain the changes introduced by this law.

The principal decisions on the Spanish electoral system were taken in the transition period, just after Franco's death but before the passage of the new constitution. In that period, the main goals were to ensure government

stability and strengthen the new political parties. These formations were still weak because they were illegal during the dictatorship.

To fulfil these ends, Royal Law Decree 20/1977 on Electoral Norms made some decisions on constituencies, electoral formulas and monitoring of elections that are still in force. The Spanish Parliament has two chambers: the Congress of Deputies and the Senate. The provinces (territorial units that are deeply rooted in Spanish history) are the constituencies for electing members of parliament. Electoral lists are multi-nominal, and political parties provide the vast majority of candidates, although independent candidates can also run for election.

However, the electoral system is different for each chamber. For the Congress of Deputies, the seats are distributed according to the proportional D'Hondt method. This electoral formula uses closed lists (i.e. voters cannot pick and choose from candidates presented by political forces that run for elections). Lists are also blocked, since electors cannot change the order of the candidates. Thus, the system reinforces the role of political parties and limits the freedom of electors. Voters can choose between the different candidates but cannot modify them.

In the Senate, voters have more freedom of choice. They make up their own list by selecting three candidates from among all the candidates presented by the political parties. Each party can present three candidates, but the constituency is represented by four senators. Senate elections use a majoritarian system in which the first three seats usually go to the main party, and the last one goes to the second party.

After the approval of the constitution, Organic Law 5/1985 on the General Electoral System made no substantial changes to these systems. But in the case of municipal and European Parliament elections, the system preferred by the lawmaker was the D'Hondt method, which is also unanimously used in regional parliament elections (Araujo 2001: 276).

The D'Hondt method and the Senate's majoritarian system are not detrimental to women's representation. Both are multi-nominal systems, and candidates are mainly put forward by political parties. Therefore, if parties decide to place women at the top of their candidate lists, they have a greater chance of being elected. The main problem is that only left-wing parties have committed to nominating women. Other parties have been less sensitive to female representation because they consider electoral quotas to be paternalistic. From their point of view, if a woman has worth, she will succeed (San José Serrán 1995: 60).



Things did not change until 2004, when the PSOE won the general elections. This party, with the support of the IU, had enough votes in both chambers to change the electoral law. Thus, the 2007 Equality Law was passed. The purpose of the law is to foster equality in different areas, such as education, public administration and labour relations. To this end, it introduces the idea of balanced composition, which means that in certain institutions, members of each sex cannot make up more than 60 per cent or less than 40 per cent of the total.

The most relevant effect of the law was its influence on electoral matters. It applied the principle of balanced composition to electoral lists by introducing article 44 into Organic Law 5/1985. The first paragraph of this article establishes that electoral lists ‘shall have a balanced proportion of women and men, so that candidates of either sex make up at least 40 per cent of total membership. Where the number of seats to be covered is fewer than five, the ratio between women and men shall be as close as possible to equal.’ Paragraph 3 of the article states that the lists of substitutes must respect the same rules as for candidates.

These provisions are applicable to elections to the National Congress, municipalities, European Parliament and autonomous community parliaments. However, the same article allows autonomous communities to improve their female representation. Thus, some regions (e.g. Andalusia, Castilla-La Mancha and the Balearic Islands) have established electoral lists in which the number of men and women must be equal in a zipper system.

According to Alnevall (2011: 122), ‘from being a country with little focus on gender issues, Spain has developed to one of the most advanced countries in the world in terms of gender equality’. However, ‘the gender quota law of 2007 failed to increase the number of female representatives. The number of female candidates has increased but there was no or small effects on the number of women elected. Women are systematically placed on less favorable positions on the party lists’ (Alnevall 2011: 130).

This restricted effectiveness is real in the case of general elections, but it is questionable in other types of elections. In fact, the number of women increased in city councils (5 per cent) and in the European Parliament (3 per cent). As mayors are elected by city councils, the number of women in these offices also increased from 13 per cent in 2003 to 15 per cent in 2007 (Instituto de la Mujer 2014). But the most important achievements of the balanced lists have been more qualitative than quantitative. First, there has been a snowball effect, because the criteria introduced by the law have been applied to other

areas. Women in high administrative offices and constitutional bodies (such as the Council of Judicial Power) are no longer a rarity. Second, no one argues about the content of the law anymore. Even political parties that contested gender-balanced lists before the Constitutional Court (e.g., the Popular Party, *Partido Popular*, PP) now accept them. Although the PP won the elections in 2011, it did not change the law, which is still in force.

How the system works

The main point in favour of the law is the manner in which it works. In the beginning, there were some problems related to the constitutionality of the new norm and the manner in which it had to be applied by candidates and the electoral administration. These difficulties were solved by the Central Electoral Commission and the Constitutional Court. Perhaps the best way to understand the functioning of the balanced electoral lists is by examining a specific case, the most interesting of which might be the Garachico case.⁵

However, before analysing this case, it is useful to describe Spain's system of electoral oversight. Its most important features are the kind of bodies that oversee the elections and the appeals system during the electoral process. Both features show the close relationship between electoral administration and judicial oversight, which, in this case, facilitated the correct implementation of balanced lists.

The supervision of balanced lists

The material organization of elections, which includes everything from printing ballots to setting up polling stations, is the responsibility of the executive power, namely the Ministry of the Interior. But the electoral commissions implement the main electoral acts and oversee the electoral proceedings. According to article 8 of Organic Law 5/1985, they are 'responsible for ensuring the transparency and objectivity of the election process and of the principle of equality'.

Although there are different levels of electoral commissions,⁶ they are all composed of judges and experts. Judges, who always constitute the majority of the members of these bodies, are chosen by lot, and experts are jointly nominated by political parties. Electoral commissions are organized hierarchically: the Central Electoral Commission can repeal decisions taken by provincial and district commissions. In spite of their judicial composition, electoral commissions are defined by article 8.1 of Organic Law 5/1985 as



electoral administration. This means that their decisions can be brought before courts of law and, especially, before the Administrative Court.

If the appeal is related to fundamental rights, the final decision can be taken by the Constitutional Court. In fact, appeals against the registration of candidates and the announcement of results must be lodged before an administrative judge in a very short time, and the judge's decision must be pronounced within only two days. Thus, the applicant has time to appeal to the Constitutional Court, which also has to decide before the publication of the election results. In short, the intervention of the ordinary courts and the Constitutional Court during an election period has been decisive for the efficient guarantee of rights related to political participation throughout the electoral process.

In each election, only a few cases decided by electoral commissions are brought before the ordinary courts, and even fewer appeals are lodged before the Constitutional Court. Over the years, electoral commissions have shown a high degree of independence, and the political parties usually respect their decisions. However, there are some exceptions to this general tendency, one of the most interesting of which is the question of balanced electoral lists.

The consequences of non-compliance: the Garachico case

During the municipal elections of March 2007, when balanced lists were used, the PP presented an electoral list composed only of women. It was in Garachico (Tenerife), a small town of approximately 5,000 inhabitants in the Canary Islands.

The consequences of breaking the exigencies imposed by the law on the nomination and presentation of candidates are severe in the Spanish system. Indeed, electoral commissions cannot proclaim candidatures unless they meet the requirements set out by article 47.4 of the above-mentioned law. Thus, it is not possible to approve electoral lists that do not respect the legally required proportion of women to men.

The law is quite clear regarding balanced electoral lists, but some of its provisions could be interpreted in different ways. At that time, there were certain technical doubts related to the order of candidates and the effects of balanced representation on the substitute lists. The main issue was that the percentage of candidates required by the law could be interpreted either as applying to the combined total of the list (i.e. both candidates and substitutes together) or as applying separately to the list of candidates and the list of substitutes. In the former case, it is conceivable that women could be relegated

to the substitute list, thus fulfilling the legal requirements, but not the intent, of the new law.

Other doubts were related more to the correction of mistakes in the candidate lists submitted to electoral commissions. Also, it must be taken into account that the system was new. Thus, some political parties had serious problems in fulfilling the new requirements.

The Central Electoral Commission issued two binding and general instructions on these matters. The first (Instruction 5/2007) stated that a balanced composition was also applicable to lists of alternates. In this way, it prevented political parties from evading the purpose of the law by placing men in the first posts and women on the substitute lists. The second (Instruction 8/2007) was aimed at facilitating the correction of mistakes. This instruction stipulated that amending the order of candidates, and including or excluding candidates, was only possible if it was done with the sole purpose of correcting irregularities and within 48 hours of the presentation of candidates.

According to these rules, the Electoral Commission of Icod de los Vinos, which was responsible for the Garachico elections, required the PP to amend its all-women list since it did not fulfil the requirements stated by the law.

Since the party did not comply with this requirement, its candidates were not allowed to contest the election. According to the law, the only remedy for such a situation was to appeal to an administrative court and, if the appeal was dismissed, to the Constitutional Court.

Many aspects of the case were merely procedural and not essential in order to understand the workings of the system. Hence, it is important only to highlight the case's impact on the Constitutional Court's interpretation of the principles of equality and freedom of association proclaimed by Spain's supreme law.

The real intention of the applicants was not to stand for election, since it was clear that their claim could not succeed. Neither an administrative court nor the Constitutional Court could grant an appeal without challenging the constitutionality of the law. Thus, the PP did not run for election in Garachico. However, the case resulted in one of the Constitutional Court's most interesting decisions, as described in the next section.⁷



Balanced lists, equality and freedom in the jurisprudence of the Constitutional Court

The issues discussed before the court were, of course, written in legal terms. But, as usually happens in constitutional matters, the points of departure were mainly political. The appeal contained a vision of equality, freedom and political participation separate from the ideas that had guided the lawmaker.

One of the appellants' claims was that Spain had taken a positive action in favour of women without changing the constitution. In their opinion, article 14 of the constitution, which proclaims equality before the law, prohibits taking gender into account when devising electoral lists. Thus, they argued that the Spanish authorities should have changed the constitution before imposing electoral quotas, as France and Italy had done.⁸

The Constitutional Court replied to this challenge by declaring that the balanced lists were gender-neutral. According to the sentence, the provisions of the law do not imply pejorative treatment of either sex since, strictly speaking, they do not express a differentiated treatment of sex. Indeed, the law does not establish an inverse or compensatory discrimination measure, favouring one sex over another. Rather, the stipulated proportion is equally ensured for both sexes (points of law 3, 4). According to the Constitutional Court, the notion that balanced lists infringe upon equality cannot be upheld; on the contrary, 'it is this equality that the measure ensures'. The amendment of Organic Law 5/1985 does not incorporate compensatory formulas in favour of women as a historically disadvantaged group, 'but rather [gives] expression to a criterion that refers indistinctly to candidates of both sexes' (point of law 9).

The appellants' second claim regarding the alleged unconstitutionality of the measure was related to freedom. In their opinion, balanced lists were an imposition on political parties that were against quotas, since they maintain a different idea of equality. The Constitutional Court rejected this claim on the basis of article 9.2 of the Spanish Constitution, which states that 'it is the responsibility of public authorities to promote conditions ensuring that freedom and equality of individuals...are real and effective, to remove obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life'. Thus, the Spanish legal order ensures both formal and substantive equality. This means that public powers not only have to abstain from generating arbitrary differences, but they also have the obligation to promote real and effective equality.

According to the Constitutional Court, political parties enjoy the freedom to function and are free to form and express their ideologies. And, of course, they are also free to elaborate and present their lists of candidates. But this freedom is not absolute. The lawmaker can limit it by imposing conditions, such as exigencies regarding eligibility or closed and blocked lists. Thus, balance between the sexes is just another limitation, the constitutional basis of which is the mandate to foster equality imposed by the supreme law.

The particular case that led to the constitutional conflict was the rejection of a list composed only of women. Thus, another argument made by the appellants was that balanced representation was against feminist ideology. The new law made it impossible to make feminist statements by presenting all-women lists. The Constitutional Court dismissed this criticism, saying that it was true that radical feminism could not be constitutionally prohibited. However, it cannot elude the constitutional mandate of formal equality or the rules pronounced by article 9.2 of the constitution in order to assure effective substantive equality (point of law 6).

The last argument made against balanced lists was connected with the right of political participation, particularly the right to stand for election. In the appellants' opinion, the new law transformed candidates' gender into a cause for ineligibility. Indeed, the norm adds a new exigency for being elected: to belong to the gender required by balanced candidate lists.

The Constitutional Court also dismissed this challenge. On the one hand, the new requirement does not immediately affect an individual's right to stand for election. It is a condition related to political parties and groups of electors, which are not entitled to this fundamental right (point of law 3). On the other hand, the balanced composition is applied before the elections, when candidacies are shaped. And the Spanish constitutional order does not include the right to be presented as a candidate by political parties.

This reasoning is not new in comparative law, since the Spanish Constitutional Court follows the precedent of the Italian Constitutional Court some years before. In Judgement No 49 of 13 February 2003, the Italian Constitutional Court stated that the duty to present male and female candidates was not a limitation of the right to stand for election. It only binds parties and groups lists, imposing a gender balance. Thus, the requirement applies to the earlier candidacy stage of the election, and therefore constitutes a technical criterion established for the selection of candidates.⁹



Balanced lists vs. zipper lists

Judgment 12/2008 is not the Spanish Constitutional Court's only decision on female representation. The court has also upheld norms that were more advantageous for women, such as laws that were passed by the assemblies of autonomous communities.¹⁰ Some of them established zipper lists, in which male and female candidates alternate.¹¹

Spain is a regional state that grants autonomy to its territorial communities. The degree of autonomy described in article 147 of the constitution allows regional parliaments to establish their electoral systems under the basic principles established by the state in Organic Law 5/1985. Many of these regional laws were passed before the national parliament approved balanced gender lists.¹²

In theory, zipper lists are more advantageous to women's representation than balanced lists, since they oblige political parties to alternate men and women. For this reason, women have a greater likelihood of being elected. Balanced lists are more flexible, since the proportion between women and men must be respected only in brackets of five seats. Therefore, women are rather frequently placed at the bottom of such lists.

In the Spanish case, however, both models have had similar results. Furthermore, the percentage of women in the regional parliaments that use zipper systems is still lower than that of regions that have balanced lists. In 2012, for example, the Andalusia Assembly, which introduced the zipper system in 2005, had 43 per cent women. In the same year, the Castile and León Parliament, which only has balanced lists, had 67 per cent women (Instituto de la Mujer 2014). This paradox is perhaps the most interesting result of the Spanish experience. For this reason, it will be analysed in detail in the following conclusions.

On balanced lists

Balanced lists have been used in Spain for at least seven years. The results for women's representation have not been drastic, but they have been regular and incremental. The number of women in parliament has remained constant regardless of the political forces running the country. Moreover, the issue is no longer controversial, since all the political forces in the country have accepted and comply with the 2007 amendment. It is true that some political parties (such as the PP) have not explicitly accepted balanced lists or zipper lists; they are more sensitive to the parity principle and informally incorporate

women into their electoral lists. Although the PP does not accept quotas,¹³ it has increased the number of women in the party's internal organs and in the executive branch. For example, the regional branch of Andalusia recently elected a new executive board, which is composed of six women and six men.¹⁴

The Spanish experience can be deemed a positive one, and drawing some lessons from it can be useful, especially in regard to countries that are trying to foster women's empowerment. These concluding remarks will focus on three specific lessons learned from the Spanish experience: (1) the advantages of establishing balanced electoral lists; (2) the conditions that have facilitated the establishment and functioning of balanced electoral lists, with the goal of focusing on equality in political representation; and (3) sanctions and how they have influenced political parties in their acceptance of, and compliance with, the 2007 amendment.

Advantages of balanced lists

The impact of balanced electoral lists on the composition of representative institutions has been analysed above. Perhaps the increase in the percentage of female representatives has not been significant (and balanced representation may be less effective than other measures that can be taken in favour of women), but the advantages of the measure are not strictly quantitative. Some of the benefits of balanced lists are related to their compatibility with the idea of political representation that is inherent to contemporary democracy. Indeed, balanced lists are gender-neutral. Their true goal is to improve the ratio of women in politics, but they achieve this end by treating men and women equally. This impartiality is convenient for two reasons.

First, it helps avoid constitutional problems, because balanced lists are compatible with formal equality. As mentioned before, the Spanish Constitutional Court has determined that this model does not discriminate in favour of women because it can also benefit men.

Second, neutrality is not only a legal fiction, but something deeper that affects the nature of balanced lists. Balanced lists are not quotas since they do not require the special treatment of women. This is perhaps their most positive aspect. Indeed, quotas for women imply that political participation is a right naturally reserved for men, which must be shared with women as an exception to the general rule (i.e. that power belongs to men). In contrast, balanced representation means that men and women have the same right to be elected, although balanced lists establish guarantees for the under-represented sex.



The impartiality of balanced lists has constitutional advantages as well as political rewards. Since they are flexible, they can be better tolerated by parties that are against positive actions. They also have a greater chance of succeeding because they are less aggressive for those who do not believe in compensatory methods.

The Spanish experience also demonstrates that balanced lists help change the vision of power. In Spain, women have fully joined the labour market and share similar positions in society with men, but there are still clear differences in salaries and levels of responsibility. Indeed, a glass ceiling persists and excludes women from higher positions in both the public and private sectors. The idea of balanced composition helps address this problem because it creates a model that can be imitated in the composition of non-representative bodies. The judiciary is an interesting example of the 'contagious' effects of a balanced composition. In Spain, although women make up 57 per cent of public prosecutors, judges and court clerks, they make up only 12 per cent of the judges on the Supreme Court. Nonetheless, women currently constitute 33 per cent of the General Council of the Judicial Power (up from 7 per cent in 2007): its members are elected by the Senate and the Congress of Deputies, which recently introduced a standard similar to balanced composition for selecting members.

Article 16 of Organic Law 3/2007 states that public powers should respect balanced composition in the appointment of public offices albeit prescribed in terms of making a best effort. Thus, it is possible to conclude that in Spain, balanced electoral lists have had a snowball effect. They have opened the way toward a more equal composition of legislative institutions and other bodies.

Conditions for establishing balanced lists

Balanced electoral lists are just one element of elections, which are complex processes composed of many pieces that must fit together. Thus, the effects of balanced lists depend on other elements, the nature of which may vary. The first condition for setting up balanced lists is connected with the electoral system—particularly the electoral formula, the size of the constituency and the type of list.

The Spanish case shows that balanced lists have better results when seats are allotted proportionally, constituencies have more than one representative and electoral lists are closed and blocked. In Spain, these are the main features of the Congress of Deputies, city council and regional parliament elections, in which balanced lists have had a notable impact, as mentioned above. Balanced lists are also used in Senate elections, which employ a majoritarian

method: each constituency elects only four seats, and the lists are open. Under these conditions, it is possible to impose balanced lists, but the results are less effective. Indeed, after the first time the law was applied, in the general elections of 2008, women made up 29 per cent of the Senate, whereas they constituted 36 per cent of the Congress of Deputies (Instituto de la Mujer 2014).

Changes in the electoral system can indirectly affect women's representation. This influence has to be evaluated, especially when such changes are the result of popular pressures. Political forces have tried, from time to time, to improve the stability of the executive power by proposing that constituencies only have one representative or that the first-past-the-post system be introduced. Or citizen groups have sometimes demanded the use of open electoral lists in order to have more freedom in selecting candidates. While these reforms could certainly achieve the mentioned goals, they could also be very negative for women's representation: in the first case, because women still encounter more obstacles than men in being nominated as candidates; in the second case, because electoral campaigns are also a central element of the electoral system, and the media differentiate between male and female candidates in their coverage (Khan 1994: 154).

The second condition for establishing the use of balanced lists relates to political parties, which have been defined as the 'gatekeepers to gender balance in political decision making' (Dahlerup and Freidenvall 2011: 24). Currently, political parties are the main actors in elections since they are the ones that nominate candidates. While the law can force them to present female candidates in the proportion required, ensuring equality is only possible if parties are inclined to change the nomination process to foster women's representation.

Conclusions

As mentioned above, there have been positive, though not spectacular, results when balanced lists have been used in Spain. According to Alnevall (2011: 126), the reason for this limited effect may be that the major political parties had already incorporated women into their candidate lists. On the one hand, the left-wing parties (PSOE and IU) had previously changed their nomination processes to include percentages of women that were close to the ratio later required by law. On the other hand, the PP was formally against quotas but, *de facto*, had included women on its candidate lists in a percentage similar to the proportion imposed by the law.



Thus, the Spanish experience shows that balanced representation can be achieved without passing laws if the main political parties agree on strengthening women's representation. However, this commitment does not always exist, and, when it does exist, it cannot be taken for granted. New political parties that are unconcerned about equal representation may appear and gain public support. Furthermore, traditional political parties can change their interests and remove women's empowerment from their agenda.

The most effective method for increasing gender equality in politics is to impose zipper lists, since they oblige political parties to alternate men and women on candidate lists. In Spain, autonomous communities that use this type of list have achieved positive results for women.

The Spanish case also shows, however, that it is possible to achieve similar effects using balanced lists, although balanced lists only force the incorporation of a certain percentage of women in five-post brackets. This means that major political parties can evade the effects of the law by reducing the ratio of women to 40 per cent and presenting women only in the last positions in each bracket. In such cases, if the constituency has few seats, only men will be elected. This is what happened in a number of small constituencies in the general elections of 2011. Provinces like Avila, Soria, Segovia and Alava had fewer than four seats, and they were all won by men. There can be similar results in bigger constituencies as well. In Tarragona, for example, there were eight seats available in the same election, and only men were elected (Instituto de la Mujer 2013: 2). Thus, balanced lists only improve women's representation if political parties take the presence of women on electoral lists seriously.

Requirements for implementing balanced lists: sanctions for non-compliance

The conditions analysed above are related more to politics than constitutional law. They refer to contests in which the benefits of balanced lists can be maximized. However, there must also be requirements for guaranteeing their observance. The Spanish case can also provide some interesting data on this issue.

There are different means of ensuring that electoral lists respect a balanced composition. One of them is to finance—or increase the financing of—political parties that meet the requirement. This method is mainly persuasive, and it is recommended when there are doubts about the constitutionality of balanced representation or when some of the major political parties are against positive actions.

Although funding is one of the main worries of political parties during the electoral period, this manner of enforcing balanced composition is too soft. Some political forces have fewer problems than others in obtaining private funding, and perhaps they prefer to give up public money rather than achieve a balanced composition.

Spain has followed a different system to ensure balanced electoral lists. Electoral commissions cannot accept candidate lists that do not respect the proportion of men and women stated by the law. The rejection of the list is a strong penalty that seriously limits a party's right to run for election. For this reason, Organic Law 5/1985 provides many guarantees in order to avoid disproportionate consequences that could endanger the fundamental right of political participation.

The Spanish experience shows that, in most cases, legal infringements can be caused by simple mistakes. That is what happened in the municipal elections of 2007, the first time balanced lists were used. Several lists put forward by independent candidates and political parties miscalculated the number of women. The most common mistake affected lists composed of 13 candidates, because only five women (instead of at least six) were included.

Many of the problems were solved by the electoral commissions, since it was their duty to notify parties of any irregularities, which had to be corrected within 48 hours. Other problems were solved by administrative judges, who allowed the correction of lists previously rejected by the electoral commissions.

Finally, the Constitutional Court intervened. Only the Garachico case was polemical since what was at stake was the constitutionality of balanced representation. The rest of the appeals were again related to mistakes¹⁵ and easily resolved by the courts, which also gave parties the opportunity to make corrections before voting day¹⁶ (Biglino 2008a and 2008b).

Since upholding the constitutionality of the law in the Garachico case, and up until now, balanced lists have not caused major problems in Spain, and they have been respected by the political forces that run for elections. Since 2007, no candidate list has been excluded for not respecting the percentages imposed by the law. Thus, it is possible to conclude that the law has been properly implemented.

Several factors can explain the lack of judicial conflicts. Except for the Garachico case, no political party has been seriously opposed to balanced representation. The features of Spain's system of electoral oversight can also explain the acceptance of balanced lists. The close collaboration between

electoral commissions, ordinary judges and the Constitutional Court during electoral periods has proven to be critical for ensuring women's representation.

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Notes

- ¹ Law 26/1967 on Family Representation in Parliament, article 4.
- ² The first female judge was appointed in 1971, after the reform of the law in 1966 (Law 96/1966 Abrogating the Limitation Established in article 3.2.c of Law 23 of July of 1961 on Women's Rights). See Espuny et al. 2010: 113.
- ³ From 1956 to 1960, women represented 19 per cent of all university students. In 1960, the percentage of women with tertiary education was 0.1 per cent of the total population; the percentage for men was three times higher. In 1980–1, women comprised 44 per cent of total university students (Instituto Nacional de Estadística, INE <<http://www.ine.es>>). In 1986–7, they reached 50 per cent (García de León 1992: 101).
- ⁴ In 1970, only 23.3 per cent of women were employed, while the figure was 79.6 per cent for men. In 2002, the percentage of employed women increased to 42.3 per cent (INE <<http://www.ine.es>>).
- ⁵ There was also another controversial case that the Constitutional Court resolved without questioning the constitutionality of the law. It was the *Falange Española y de las Jons* electoral list presented in Brunete, a town near Madrid. In this case, the list was made up of ten women and only three men. In the first appeal, the Constitutional Court recognized the right to amend the gender imbalance, but the party representative insisted on maintaining the composition of the list, claiming that there were not enough men in the constituency. The Constitutional Court rejected this second appeal by stating that the female candidates were not residents of the constituency. Thus, the party could have also included male residents from other towns. According to the Constitutional Court, the only reason for the appeal was to call into question the law in force (Judgments 108 and 115/2007).

- ⁶ According to article 8 of Organic Law 5/1985, there are electoral commissions of judiciary districts (*juntas electorales de zona*), provincial electoral commissions (*juntas electorales provinciales*), electoral commissions of autonomous communities (*juntas electorales de Comunidades Autónomas*) and the Central Electoral Commission (*Junta Electoral Central*). Each type of commission has a different territorial competence, and their jurisdictions vary according to the kind of election. For example, the commissions of judiciary districts mainly act in municipal elections. The principal functions in general elections are the responsibility of provincial electoral commissions. The Central Electoral Commission is competent in elections to the European Parliament, and can revoke decisions taken by inferior commissions and issue binding instructions in other elections (Organic Law 5/1985, article 19).
- ⁷ To read more about Constitutional Court Judgement 12/2008 of 29 January 2008, please see <<http://www.tribunalconstitucional.es/es/jurisprudencia/restrad/Paginas/JCC122008en.aspx>>.
- ⁸ After the French Council of State decisions of 18 November 1982 (82–146) and 14 January 1999 (98–407), in which the reforms of the electoral and municipal codes were declared unconstitutional, the French Constitution was amended on 8 July 1999. A new paragraph was added to article 1, declaring that ‘Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility’. Article 3 was also modified, since a new paragraph obliges political parties to contribute to the implementation of the principle of equal access stated in article 1. In Italy, after the Constitutional Court decision of 12 December 1995, the first step was the reform of article 117 of the constitution. The new paragraph declares that ‘Regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women’ (Constitutional Law of 18 October 2001 No 3). Later, article 51 of the constitution was modified. This article recognizes the right of access to elected positions and public offices on equal terms. Constitutional Law No 1 of 30 May 2003 added a new sentence that declares ‘To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men’.
- ⁹ Point of law 3.1. The challenged articles (2.1 and 7.1) were introduced by the Val D’Aosta Regional Law of 13 November 2002. According to article 2.1, lists presented for regional council elections should include candidates of both sexes. Article 7.1 states that the electoral office should declare void electoral lists that do not fulfil that requirement. For more information on this, see <<http://www.cortecostituzionale.it/actionPronuncia.do>>.
- ¹⁰ Law 4/2005 on Equality between Women and Men was passed by the Parliament of the Basque Country. The fourth and fifth provisions of the law established that electoral lists had to consist of at least 50 per cent women. The ratio had to be applied to the entire list of candidates and to each bracket of six posts. The PP challenged this law before the Constitutional Court, and Judgment 13/2009 upheld the constitutionality of the law on grounds that were very similar to those previously stated by the court in Judgment 12/2008. The full text of the decision can be read here (in Spanish only): <<http://www.boe.es/boe/dias/2009/02/13/pdfs/BOE-A-2009-2502.pdf>>.
- ¹¹ This was the case for Law 11/2002 of Castilla-La Mancha, Law 5/2005 of Andalusia and Law 6/2002 of the Balearic Islands. The only one that was contested by the PP before the Constitutional Court was the Law of Andalusia: again, the Constitutional Court rejected the appeal (Judgment 40/2011). The court’s central argument was the duty to foster equality, imposed by article 9.2 of the constitution on public powers. The full text of Judgment 40/2011 (in Spanish only) can be found here: <<http://www.boe.es/boe/dias/2011/04/28/pdfs/BOE-A-2011-7629.pdf>>.
- ¹² A discussion of the problems of the allocation of power between national law and autonomous community law is beyond the scope of this chapter, which instead focuses on the effectiveness of regional laws.
- ¹³ Point 3.4 of the programme presented by the Popular Party for the 2011 general elections proposes that effective equality between men and women be ensured by improving the position of women in the labour market, through education, family life, etc. The programme also includes new measures

to fight against gender-based violence. However, there are no references related to women's presence in representative institutions or in other public powers (Partido Popular 2001: 118–20).

¹⁴ See press coverage of results of elections in Andalusia: <<http://www.rtve.es/noticias/20140301/juan-manuel-moreno-elegido-presidente-del-pp-andaluz-9854-votos/888621.shtml>>.

¹⁵ With the exception of the *Falange Española y de las Jons* case, which was decided by the Constitutional Court as described above.

¹⁶ Constitutional Court Judgments 96/2007, 97/2007, 98/2007, 99/2007, 100/2007, 101/2007, 102/2007, 103/2007, 104/2007, 105/2007, 107/2007, 111/2007, 113/2007, 114/2007.