The Framing of the Spanish Constitution


PART I: HISTORICAL CONTEXT

INTRODUCTION

ON 20 NOVEMBER 1975, General Francisco Franco died. This event marked the end of a long dictatorship and the beginning of a complex transition to democracy. During three extraordinary years, Spain faced the challenge of creating a new political order. On 29 December 1978, a Constitution patterned after democratic and liberal ideas was finally enacted into law. The new charter was the upshot of an agreement among the major political parties over certain basic rules and principles. It obtained the approval of the vast majority of citizens in a referendum.

For more than three decades now, people have endorsed the Constitution as the fundamental norm of the political system. The governmental structure it lays down, and the rights and principles it designates, are broadly supported by political actors and ordinary citizens of different persuasions. This widespread acceptance of the Constitution has ensured its stability. The main issue that remains to be settled, as we will discuss in chapter seven, concerns the so-called ‘territorial problem’. Spain has distributed power between the centre and the
regions in a quasi-federal manner. Significant parts of the population in Catalonia and the Basque Country, however, are increasingly unhappy with the existing institutional arrangements. They would like their regions to be awarded a higher level of self-government than they currently enjoy, or to cut their links with the rest of Spain. Whether or not this sentiment will be shared by large majorities in the coming years is an open question. There are also some concerns, as we will see, about the degree of efficiency with which the two levels of government work together to solve common problems. In spite of the territorial controversy, however, the Constitution has taken root, for it has been able to fix many important matters that have historically divided Spaniards (concerning, for example, the form of government, the role of the Church, the responsibilities of the military, and the economic order).

It is important to highlight the relevance of this success from a historical perspective. We must bear in mind that Spain has had many Constitutions in the past. Unfortunately, the more liberal and democratic charters – those of 1812, 1869 and 1931 – were ephemeral. The Constitutions that were less committed to the principles of democratic liberalism, in contrast, lasted longer. This is especially true of the Constitutions of 1845 and 1876, which were in effect for various decades.

Thus, the first constitutional charter Spain adopted (that of 1812) was an advanced document for its age. Indeed, it became a symbol of liberal democracy in Italy, Germany, Russia, and other European countries. It is interesting to note, incidentally, that the term ‘liberal’ as a political word was first coined in Spain in 1810–12 and began to circulate in Europe in the 1820s to refer to the Spanish rebels of the time. Unfortunately, the Constitution of 1812 was soon repealed by King Ferdinand VII in 1814, and an authoritarian regime was established. Similarly, the Constitution of 1869, a very democratic document, collapsed when King Amadeo I abdicated and a short-lived republic was

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1 For a brief description of Spanish constitutionalism, see J Tomás Villarroya, *Breve historia del constitucionalismo español* (Madrid, Centro de Estudios Constitucionales, 1985).

2 For a classification of Spanish Constitutions along these lines, see F Tomás y Valiente, ‘La Constitución de 1978 y la historia del constitucionalismo español’ in *Códigos y Constituciones* (Madrid, Alianza Universidad, 1989) 125.

proclaimed in 1873. More tragically, the Constitution of 1931, a modern and progressive charter that governed life under the Second Republic, died at a very young age, when a civil war broke out in 1936. As a result of the war, a long military dictatorship was established under General Franco, which lasted until his death in 1975.

It is important to say a few words about the experience of the Second Republic and the legacy of Franco’s regime, in order to understand the background against which the constitutional framers did their work in 1977–78.

A TRAGIC PRECEDENT: THE SECOND REPUBLIC (1931–36)

Many Spanish citizens took to the streets on 14 April 1931, to celebrate the proclamation of the Second Republic. The new regime came into being in a quick and peaceful way. King Alfonso XIII understood that the victory that the republican parties had just obtained in the municipal elections demonstrated that he no longer enjoyed the support of the people, especially in urban areas. The electoral results were not surprising. Some years before, in 1923, the King had encouraged Miguel Primo de Rivera’s dictatorship. The end of that dictatorship in 1930 was bound to mean the downfall of the Spanish monarchy and hence Alfonso XIII had to leave the country in 1931. The popular support that the new republic attracted suggested a promising future. Yet, five years later Spaniards were killing each other in a cruel civil war (1936–39) that was triggered by General Franco’s military coup d’état. The republican forces were defeated, after hundreds of thousands were killed. A protracted dictatorship was established, which lasted until 1975.

The debate is still open as to the causes of the Second Republic’s failure. The international context was certainly not favourable. This was the time of the Great Depression, which led to the rise of fascism in Europe. The impact of the economic crisis in Spain, however, was less serious than in other countries. Much of the Spanish economy was recovering by 1935.4

Part of the blame for the downfall of the Second Republic needs to be placed on the constitutional system that political leaders built. The

republican forces behaved in a sectarian way most of the time. They did not work together to find a common ground, in spite of the difficult circumstances they faced. They seemed to underestimate the risks of polarization. In the end, the extreme right embraced fascism, and the anarchists and the left wing of the socialist party resorted to illegal revolutionary activities.

The Constitution, in particular, was not written in a conciliatory spirit. It was a partisan document that did not reflect the political heterogeneity of Spanish society. Conservative interests had remained too uncertain and disoriented to contest the first republican elections of 1931 in an effective manner. As a result, the constituent assembly over-represented the left. The Constitution it produced was ideologically biased, and therefore not well equipped to endure. Thus, when the conservative forces won the general elections in 1933, a tension transpired between their programme and some specific constitutional provisions – concerning, for example, the Church, schools, divorce, and agrarian reform. Life under the Republic would probably have been less polarized if the founding document had been drafted in a different spirit.

The regional problem, moreover, turned out to be intractable. The Constitution established the groundwork for a process of devolution of political power to those regions that wanted to enjoy a measure of self-government. A Statute of Autonomy was first granted to Catalonia in 1932, after a referendum was held in that territory. There was no broad consensus on this move among Spanish political forces, however. The parties on the right were very critical. When the latter won the general elections in November 1933, and the most conservative party (CEDA) eventually entered the government in October 1934, the left reacted in extreme ways. A revolutionary general strike was organized. In Catalonia, Lluis Companys, the President of the Generalitat (the regional government) assumed all powers, and announced the formation of a Catalan State within the Spanish Federal Republic. This illegal action caused the central government to suspend the Catalan Statute of Autonomy, and to arrest Companys – who was later sentenced to prison. When the left won the general elections in February 1936 and came into power again, regional self-government was restored in Catalonia, and the devolution process was extended to the Basque Country and Galicia. A referendum had already been held in the Basque Country in 1933, but it was not

\[\text{Ibid 378.}\]
until October 1936 that the Statute of Autonomy was finally enacted into law. A referendum was also organized in Galicia, but its Statute was sent to the national Parliament just a few days before the Civil War started. Self-government was never introduced in that territory. During all those years, the regional problem was not approached in a constructive manner by some key political figures. The extreme positions tended to prevail over the more moderate ones.

To make matters worse, the electoral system that was established under the Second Republic was not well designed. Too many parties were represented in the national Parliament. This fragmentation caused a high level of governmental instability, which made it difficult for public policies to be defined and implemented consistently.

A LONG DICTATORSHIP

In spite of all its shortcomings, the Republic was still supported by many people when the military rebellion started on 18 July 1936. It is unlikely that General Franco would have won the war without the help he obtained from Mussolini and Hitler.

This does not mean, however, that it was only through brutal repression that the dictatorship was able to maintain itself after the war. The regime was actually sustained by the more conservative sections of Spanish society, who were afraid of the revolutionary left. The Catholic Church, moreover, was an important ally that Franco could rely upon. There had been violent waves of anti-clericalism under the Second Republic, and the Church was grateful for the dictator’s protection. The regional question also played a part: some sections of Spanish public opinion believed that the unity of the country had been broken as a result of the process of regional devolution that had started under the republican Constitution. Franco played to such sentiments when he decided to dismantle the self-government that had been granted to Catalans and Basques during the Second Republic, and to persecute regional languages and cultures.

The dictatorship was a long one, however, and it had to evolve through the years. Historians usually distinguish two main periods. The first period starts at the end of the Civil War and reaches the late-1950s. During this time, Franco’s dictatorship exercised extreme brutality against anyone believed to be an ‘enemy of Spain’. Indeed, large
numbers of people went into exile, while others were executed or imprisoned. These were very hard times. This was also the period of Spain’s isolation from the rest of the world. The dictatorship became an anomaly after the victory of the Allies in the Second World War. Restoring democracy was the order of the day in Western Europe.

The second period, from the late-1950s to 1975, was milder in comparison. In 1953, in the context of the Cold War, the Spanish Government signed various economic and military agreements with the United States. It also renewed its relationship with the Vatican, through a new Concordat. The economy, moreover, gradually opened itself to the international markets. The gross domestic product grew dramatically in the 1960s, causing a substantial expansion of the middle classes. The regime also carved out some spaces for individuals and groups to exercise limited freedoms. A new law enacted in 1966, for example, abolished the prior censorship of the press. Political parties, however, were still illegal.

In spite of the progress made during this second period, the dictatorship was a regressive step in Spanish history, all things considered. The country suffered a great loss during the first years. It was not until 1952, for example, that the level of industrial production that had been achieved in 1930 was finally recovered, in *per capita* terms.\(^6\) The degree of misery was staggering for a long time. The country went backwards, breaking the trend towards modernization that had started at the end of the nineteenth century. It was not until the 1960s that the regime abandoned the failed policies of ‘economic autarky’ that were initially adopted. By opening its doors to outside markets, the country finally benefited from the great economic performance of post-war Western Europe. But if Spain had been a democracy, it would have been better off. It would have received funds, for example, from the Marshall Plan launched by the United States to help reconstruct Europe. And it could have entered the European Community: Franco’s application for membership in 1962 was rejected on account of the authoritarian nature of the regime.\(^7\)

The dictatorship, moreover, was not sustainable in the long run. It created the conditions for its own gradual decline. The economic mod-

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ernization in the 1960s led to a great expansion of the middle classes, as has already been noted. Once the years of misery were over, citizens were less eager to accept severe restrictions on their liberties. The floods of tourists that started to come to Spain every summer, in particular, helped change prevailing moral attitudes. The influence of the Catholic Church began to diminish as a result of modernization. In the 1960s, moreover, a generation that had been born after the Civil War came of age. Young citizens looked to the future, not to the past that the dictatorship always invoked in its official discourse.

In reality, even the Catholic Church started to distance itself from the regime. Since the Second Vatican Council (1962–65) had embraced human rights and liberties, Franco’s dictatorship found itself in an embarrassing position. Cardinal Vicente Enrique Tarancón, a liberal Catholic who had participated in the Vatican Council, became President of the Spanish Episcopal Conference in 1971. He sought to disentangle the Church from the State, in order to foster the reconciliation of all Spaniards. In Catalonia and the Basque Country, moreover, some relevant members of the Church sympathized with nationalist sentiments. The Bishop of Bilbao, for example, was put under arrest for publishing a pastoral defending the use of the Basque language. And the Abbot of Montserrat — a monastery that symbolizes Catalan culture — publicly denounced Franco’s dictatorship in *Le Monde*. There were also criticisms from the outside. The Archbishop of Milan (who was later to become Pope Paul VI), for instance, protested against the government’s execution of Julián Grimau, a Communist leader, in 1963.

In Catalonia and the Basque Country, the opposition to the dictatorship was reinforced by nationalist discontent. Franco had dismantled the institutions of self-government that the Second Republic had created in those regions, as has already been noted. The local languages were marginalized from public life. The struggle against the regime adopted a violent form in the Basque Country. A terrorist group was founded in 1959: ETA (Euskadi ta Askatasuna, which means Basque Homeland and Liberty). Its criminal activities posed serious problems to the dictatorship. In 1973, for example, ETA killed the President of the Government, Luis Carrero Blanco, whom Franco had recently appointed to guarantee the maintenance of the regime in the future.

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8 Ibid 150–56.
A NEGOTIATED TRANSITION TO DEMOCRACY

So the dictatorial regime that was in place when Franco died in 1975 lacked legitimacy in the eyes of an increasing number of people. The transition to democracy was not an easy process, however. The leaders of the political groups that had defended the Republic were in exile, distant from the new realities in Spain. The leaders that were emerging in Spain, in turn, were scarcely known by the people. It was difficult, moreover, for the democratic opposition to organize itself effectively in a common front and citizens were not intensely mobilized. To a large extent, this was a legacy of the dictatorship, which had instilled political apathy among the people.

In such circumstances, the opposition realized that it was too weak to destroy the dictatorship. It needed the complicity of those players within the regime that were in favour of a democratic transformation. Only a gradual and negotiated transition to democracy was feasible.

An important figure came to perform a surprising role in this process: King Juan Carlos. Few people expected he would serve the democratic cause. We should bear in mind that Juan Carlos was crowned in 1975 by virtue of the laws of the dictatorship. It was Franco himself who had chosen Juan Carlos in 1969 as the future head of state. The dictator disliked Don Juan de Borbón, Juan Carlos’ father, who had been critical of the regime. So when Franco died, Prince Juan Carlos was proclaimed King, after taking an oath of allegiance to the fundamental laws of Franco’s regime.

The President of the Government at that time was Carlos Arias Navarro, a member of the establishment with a terrible authoritarian past who was unwilling to propose any real political reforms. In April 1976, Newsweek attributed to the King certain statements that were very critical of the President. Arias finally resigned, and the King decided to appoint Adolfo Suárez, a relatively unknown figure who had worked

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10 Santiago Carrillo, the leader of the Communist Party, was aware of the weakness of the democratic forces. He believed that the only path to democracy was a negotiated reform – what he called a *ruptura pactada* (negotiated break with the past). See his *Memorias* (Barcelona, Planeta, 1993) 622–23.
within the apparatus of the dictatorship. President Suárez soon expressed his resolution to make important changes, and he turned out to be the engine of Spain's successful transition to democracy.

The King thus played a democratic role that the opposition had never anticipated. Santiago Carrillo, who was then the leader of the Communist Party, has written:

Within the democratic opposition, at least amongst the men with whom I had talked so far, there was no trust in the Prince, and there was even a very negative impression of his intellectual capacity. We were still looking for the hinge that would facilitate the transition from dictatorship to democracy, ignoring that the hinge was already there in the proper place and that it had been placed there by the last person we would have expected: Franco himself.\(^\text{11}\)

As soon as Suárez started to give signals that he was earnest in his plans to establish a democratic order, the political opposition became eager to negotiate. Suárez knew that the illegal parties in the opposition expressed the democratic legitimacy that the regime lacked, and that for any transformation to be successful he had to come to an agreement with them. Meanwhile, some sections of society were mobilizing themselves. Workers, for example, were striking extensively.\(^\text{12}\)

Suárez was in a difficult position, though. He had to reach agreements not only with the democratic groups in the opposition, but also with the most recalcitrant representatives of the status quo. For his proposed reform to be approved, in particular, he needed to obtain the consent of the Cortes, the undemocratic Parliament that Franco had created in order to give his regime some appearance of constitutional legality. The members of this legislative assembly—the so-called procuradores—were loyal to the dictator.

**The Ley para la Reforma Política (Law for Political Reform)**

The reform launched by President Suárez was articulated in 1976 in a *Proyecto de Ley para la Reforma Política* (Project of Law for Political Reform), which sought to amend the fundamental laws of Franco’s regime. For the valid amendment of such laws, it was necessary to

\(^\text{11}\) Ibid 613.