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EMERGENT NEW DEMOCRACIES: THE CASE OF SPAIN

by Santiago Sanchez Gonzalez

Of special concern to scholars during the last two decades has been the transition of governments of concentrated powers to constitutional democracies. Moreover, the recent events in the Soviet Union and the so-called “Popular Democracies” have kindled a renewed interest in the democratization processes. These new developments, on the other hand, seem to confirm the existence of a steady evolution away from dictatorial rule that not only fosters a certain optimism but that suggests a confluent trend, very much in tune with the united history of mankind we have been living since the middle of this century.

One of the most interesting experiments in the access to democracy is doubtless the Spanish one. To be sure, Spain had enjoyed a full-fledged constitutional regime under the Second Republic from 1931 to 1936, and in that sense, one should properly speak of a return to democracy. However, the fact that the democratic regime was followed by a cruel civil war and almost forty years of dictatorship made this experience something exceptional, especially because of its peaceful character.

Experts in comparative politics and social change are still amazed by the absence of violence in the replacement of Franco’s repressive regime. Spain’s political transition and the adoption of the Constitution of 1978 are so unique that they evade any of the traditional and well-entrenched theories of political transformations. The process itself was not the unfolding of a plan elaborated by a group of privileged minds nor the coincidence of a cluster of factors guided by an “invisible hand,” but it had something of both elements. That is why one cannot help wonder how the Spanish transition can reasonably be offered as a model to be followed by other countries whose only common trait with the Francoist Spain is to suffer from a dictatorial form of government. Although everyone wants political transitions to democracy to occur smoothly and without any bloodshed, as it took place in Spain, the geopolitical and historical context of a country conditions, if not determines, the way to constitutional democracy and makes it to a certain extent unexportable.

The future, by its own nature, is subject to all kinds of conjectures and predictions, and this holds particularly true of dictatorships. The fate of any political system based on the concentration of power is always open to question, above all when the regime is inextricably interlocked to a single person. Perspectives of change may vary a lot whenever the main character in the political scene is a consolidated and very well-organized political party, as was the case within the totalitarian communist countries.

The succession of government power is always uncertain in nondemocratic systems. In the democratic countries, by contrast, universal, free, and periodic general elections guarantee the continuity of the system and allow citizens to know who the next political leaders will be and the political direction they will choose. All in all, the form of government does not change in the latter, whereas in the dictatorial regimes, there may take place not only a mere reshuffling of the governing elite, but a qualitative transformation — they might become democracies. The problem is that, in general, such a transformation involves the use of violent means; after all, “nondemocratic systems are

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rigid systems, that is, they dispose of no built-in mechanisms for either changing themselves or responding to demands for change. Rigid systems, therefore, can only be broken; and this means that they ultimately call for a revolutionary overthrow (unless wars happen to achieve the same purpose)." That was what history and the scholars taught and what logical reasoning indicated. No wonder, then, that Nicos Poulantzas would forecast as late as February 1975: "Experience has demonstrated or is about to demonstrate in Spain that dictatorial regimes are unable to change themselves, that is, they are unable to undergo an inner and continuous evolution towards a form of parliamentary-democratic regime, which would replace the previous one by means of a controlled succession."

Certainly, substantial political changes usually unleash critical events: Insurrections, rebellions, civil or external wars, revolutions, and coups d'état act like midwives in the birth of a new regime. If this is the rule, one has to ask what made the Spanish evolution to democracy peaceful. To that question, there is no single answer; a set of factors contributed to the miracle, the main one being the strong desire of the political and social factors to attain democracy once the dictator died. To understand not only the final and successful outcome, but the whole transitional phase, we must briefly examine and characterize the Franco dictatorship, its origins, specific traits, evolution, and conclusion.

I. FRANCO'S REGIME

Franco’s regime was born in 1936 out of the rebellion and subsequent war against the legal Republican government. For three long years, Spaniards fought against one another in an excruciating and terrible civil war, producing wounds which in some cases are still open. Until the end of 1975, political power was monopolized by a single person: Franco himself. He assumed the powers of the state in September 1936 and kept them until his death: head of state, head of government (except during the years 1973-1975), supreme general of the armed forces, and head of the "Movimiento Nacional." He was, by his own words, only "responsible before God and History."  

Franco did not even try to keep up appearances. He did not pay lip service to constitutionalism, division of powers, and the like. By contrast, liberal democracies based on political pluralism and universal suffrage were, in his opinion, unnatural, inappropriate, and inadequate if order, peace, and national unity were to be attained. Following the ideas of José Antonio Primo de Rivera, founder of the Falange and son of the general and dictator who governed Spain between 1923 and 1930, Franco believed that the political structure ought to be built on an organic political representation basis. This meant a representation construed on the main organisms of society: family, municipality, and trade union. Thus, Article VIII of the Law on the Principles of the "Movimiento Nacional"
provided that "[t]he participation of the people in the legislative and other functions of
general interest will be carried out through the family, the municipality, the syndicate, and
other organically representative bodies recognized by law for this purpose. Any political
organization whatsoever outside this representative system shall be deemed illegal." 5

In fact, not even the system of organic representation was really implemented. The
family representatives did not sit in the Spanish legislative body, the Cortes, until
1967; and when they finally did sit, the process was adulterated by mechanisms designed
to ensure that only candidates acceptable to the State apparatus were chosen. The Spanish
Cortes, therefore, amounted to a rubber stamp parliament, an assembly that ratified any
bill introduced by the government without serious discussion.

Under Franco, the separation of powers did not exist. To avoid any possible
doubt, the last of the Fundamental Laws enacted in 1967 clearly stated in Article II that
"the institutional system of the Spanish State obeys the principles of unity of power and
coordination of functions." 6 Obviously, the government was a mere appendix of the head
of state. The judiciary also lacked independence: special, military, and later "public
order" courts dealt with offenses of a purely political nature.

Under such circumstances, civil liberties like freedom of expression and the rights
of association and of assembly were repressed. There was only one official quasi-political
party, the so-called "Movimiento Nacional," and one all-embracing syndicate organiza-
tion 7 to which every Spanish worker and employer belonged willy-nilly. Any kind of
political expression or activity outside the borders of the official ideology was banned and
punished; trade unions, freemasons, communists, socialists, anarchists, separatists, and
anyone in favor of a public recognition of political parties or class organizations were
guilty of undermining the foundations of the State and, therefore, subject to trial and
prison. The Francoist establishment, however, did not succeed in permeating the social
tissue with an imposed ideology as in totalitarian regimes: "Non-organized individuals
and people not stigmatized with a political past, in fact the majority of the population,
were left alone in their enjoyment of property, the carrying out of private business and
their search for employment." 8 In addition, there were no "restrictions on travel,
emigration, conversation or even censorship comparable to those imposed by totalitarian
regimes elsewhere." 9

Franco’s regime was an autocracy or, to be more precise, an absolutist
monarchy, for there existed no limits to his power. Some attempts to dress up the
dictatorship and to institutionalize it were made, mainly by means of the approval of
several Fundamental Laws, 10 but these norms and the organic democracy facade could
not hide the personal and dictatorial character of the regime. This, however, does not

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5 Ley de Principios del Movimiento Nacional, art. VIII (1958), reprinted in LEYES FUNDAMENTALES
DEL REINO, supra note 3, at 19.

6 Ley Orgánica del Estado, art. 2, § II (1967), reprinted in LEYES FUNDAMENTALES DEL REINO, supra
note 3, at 53.

7 "Syndicate organization" stands for a unique organization of workers and management that cannot
be equated to a genuine trade union.

8 Salvador Giner & Eduardo Sevilla, From Despotism to Parlamentarism: Class Domination and
Political Order in the Spanish State, in THE STATE IN WESTERN EUROPE 205 (1980).

9 DAVID GILMOUR, THE TRANSFORMATION OF SPAIN FROM FRANCO TO THE CONSTITUTIONAL
MONARCHY 17 (1985).

10 The concept of Fundamental Laws, "Leyes Fundamentales," was associated with the idea of very
old principles and customs that stood above the ordinary legislator, and that, therefore, could not be easily
amended. The name was chosen to designate the seven laws aimed at granting the Spaniards a
"constitution." They were the Labour Charter (1938), the Cortes Law (1942), the Charter of the Spaniards
(1945), the Law of National Referendum (1945), the Law of Succession (1947), the Law on the Principles of
the "Movimiento Nacional" (1958), and the Organic Law of the State (1967).
mean that Franco stood alone. At the time of the rebellion, he already counted on the endorsement of those of the old aristocracy with landed and bank interests, the Roman Catholic Church, considerable sectors of the middle class, the army, and especially, the strongly ideologized groups of traditionalists, Carlists, monarchists, and members of the Falange. In the following years, his supporters fluctuated somewhat, like the technocrats coming from the Opus Dei organization who participated in government and its administration, but generally, three institutions remained at Franco’s side: the “Movimiento Nacional,” the armed forces, and the Church. He appeared to hold them together without very much trouble, at least until the early 1970s.

The military had intervened frequently in Spanish politics since the war of independence against Napoleon at the beginning of the nineteenth century. Perhaps it was due to the invertebrate character of Spanish society. Where the civil society is weak, “the army possesses, not merely a monopoly of physical force, but a disciplined cohesion and esprit de corps, which no other social group can rival.” Perhaps it was something rooted in the history of the governmental activities. The fact is that the “pronunciamientos” were really numerous and of different signs: liberal and conservative.

Reaffirming that tradition, the Armed Forces were the pillar of the Francoist state, not only at its inception, but during its life: and this constituted the most serious stumbling block to democracy during the transition years. Military men were present in all cabinets designated by Franco — a total number of forty out of 114 ministers — and in the corporate Cortes, where the armed forces provided 955 deputies or “procuradores.”

A clear idea of the importance assigned to the military under the dictatorship can be drawn by examining Article 37 of the Organic Law of the State that established: “The Armed Forces, comprising the army, the navy, the air force and the forces in charge of keeping the public order, have the task of safeguarding the unity and independence of the Fatherland, her territorial integrity and the national security, and to defend the institutional order (emphasis added).”

Thus, the “Guardia Civil” and the “Policía Armada,” the forces in charge of maintaining law and order, were integrated into the military discipline and commanded by military officers. More importantly, the armed forces protected the “institutions” and, therefore, the political framework set up by the Fundamental Laws. Consequently, the military played the role of watchdog of the internal security, instead of devoting themselves to the mission of other armies: the preparation of national defense. This situation existed from the end of the Civil War until the creation of the Public Order Court in 1963, which dealt at the judiciary level with the repression of political activities.

No less important than the army was the Roman Catholic Church’s support of the regime. As soon as the insurrection began in 1936, the Church, unable to tolerate further attacks and anti-clericalism from the Republican government, sided with the rebels. This decision made the military uprising into a crusade, a sort of holy war against liberals, atheists, freemasons, communists, and “enemies of God and of Spain.” Franco’s victory was the victory of the Church as well, and for the next thirty years, the new State and the Catholic Church walked arm-in-arm, leading the country.

11 “Opus Dei” is a Catholic congregation founded in 1928, made up of lay members, chosen as a rule among middle class relevant professionals. Some of its affiliates held important offices in the Spanish government in the late 50s and early 60s.
12 RAYMOND CARR, MODERN SPAIN 1875-1980 2.
13 “Pronunciamientos” is a word the Spaniards have contributed to the modern political vocabulary and which means military rebellions.
Spain was proclaimed to be a "social, representative and catholic" state holding as seal of honor its obedience to the Law of God, according to the doctrine of the Holy Roman Catholic and Apostolic Church, the one, true and inseparable faith of the national conscience, that will inspire the country's legislation." The church was given political representation in the Cortes and in the Council of the Realm, and was granted powers and advantages in important spheres of Spanish life. The church enjoyed tax exemptions, freedom from state censorship of its publications, public subsidies, and, above all, the monopoly of moral and ethical authority. Consequently, it took over the task of educating and indoctrinating large masses of the population, mainly through compulsory religious teaching in every school and also by an active control of social behavior.

The cooperation between the ecclesiastical and civil authorities was smooth and intense. What started when Pope Pious XII congratulated Franco on the day of his victory continued with an agreement with the Vatican in 1941, granting Franco the right to present bishops for their nomination and implying several juridical exceptions and economic benefits for the Church. This agreement received its definite formal basis with the signature of the "Concordato" in 1953 between the Holy See and Spain. This treaty served to put an end to the isolation Spain had suffered since the end of the Civil War.

The postwar years were actually very hard because the economy was at the rock bottom, the country had suffered heavy losses, and as soon as the Second World War ended, the Western democratic nations imposed a severe boycott. Spain was excluded from the Marshall Plan and its only alternative was isolationism. Spain adopted a policy of autarky and economic protectionism from the competition of the rest of the world. For a few years, only Portugal and Argentina kept some commercial relationship with Spain. A very slow growth, inefficient industries, and an incompetent bureaucracy, coupled with shortages of food and production resources resulted in an impressive black market. David Gilmour commented that "autarky was a very Spanish solution to the nation's problems . . . a natural policy for a regime that prided itself on its nationalism and spirit of self-sacrifice." Although this is true, it is also true that the United Nations recommended breaking off diplomatic relations with Spain in 1946 because it equated Spain with Nazi Germany and fascist Italy. Ostracism therefore was not a free decision made entirely out of Spanish pride.

That situation changed, however, as a result of the evolution of international affairs. From 1947 onwards, the balance of power in the world underwent a significant transformation due to the emergence of two new imperial nations: the United States and U.S.S.R. The expansion of the latter into eastern Europe and Asia led the United States to establish several hundred military bases around the Soviet bloc and to incorporate them in alliances signed with the countries next to the risks zones.

The Korean war broke out in June 1950, and a period of "cold war" followed. In that atmosphere of clear confrontation, the search for new allies was a logical policy. Spain was immediately considered because of its strategic geographical position and anticommunism. In November 1950, the United Nations revoked its resolution of 1946

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14 Ley de Sucesión en la Jefatura del Estado, art. 1, [hereinafter Law of Succession] reprinted in LEYES FUNDAMENTALES DEL REINO, supra note 3, at 105-06.
16 The Council of the Realm was created in the Law of Succession as a consultative body of 17 members, all of them men of Franco's confidence, to assist him in the adoption in decisions and, what is more interesting, to present a list of three candidates from which the Head of the State would select the President of the Government.
17 GILMOUR, supra note 9, at 41.
18 These alliances were OSA in 1948, NATO in 1949, ANZUS in 1951, and SEATO in 1954.
and authorized the resumption of relations with Spain. In August 1953, Spain signed the "Concordato" with the Vatican, and in September of the same year, the United States agreed to give Spain defense and economic assistance. Soon afterwards, Spain joined other international organizations, eased some of its restrictions in trade, emigration, and tourism, and opened up to the external world. Nevertheless, Spain's economic situation hardly improved.

It became obvious that Spain had to abandon its policy of autarky and to liberalize and stabilize the economy, or else the country would go into bankruptcy. But to begin a capitalist mode of production was difficult for a regime that had rejected capitalism as foreign to the national character. Additionally, the liberalization of the economy could lead to political liberalization as well, a danger that should be avoided. In short, it was not easy to convince the most conservative elements to carry out such a policy. However, the galloping stagflation and commercial deficit combined with the outside pressure in the form of offers of credit from the United States, the International Monetary Fund, and the Organization for European Economic Cooperation, finally persuaded Franco to liberalize.

Among other measures, the government cut the public expenditures, devaluated the peseta, froze wages, liberalized commerce by abolishing import licensing in a considerable number of commodities, fixed higher interest rates, and encouraged foreign investments. By and large, this plan was a success, although it initially increased unemployment by forcing the closing of inefficient companies and sharply reducing the earnings of many people. As a consequence, many people looked for work in the neighboring European countries, and from 1960 to 1970, more than one million Spaniards abandoned their fatherland.

During this period the Spanish economy prospered and grew faster than any other in the Western world: the gross national product and the income per capita doubled; a considerable amount of the working population shifted from agriculture to industry and services, and from the countryside to the main cities; foreign investment increased outstandingly; and there was a remarkable and steady entry of foreign currency coming from tourism and emigrant remittances. Certainly, one consequence of the improved standard of living was that gadgets like the refrigerator, television, washing machine, and small car became accessible to many Spaniards.

From 1964 to 1975, the Spanish administration attempted to stimulate industry and reduce regional differences, but the results did not match the expectations. Rather the economic growth turned out to be anarchic and brought about important social costs. To begin with, the rural exodus produced uprooting and alienation, overcrowding, property speculation, and shanty districts around the urban areas — the proletarization of a large strata of the population. Likewise, the urge for growing at any price overlooked the ecological externalities of the lack of order and control in the processes of house building and of setting up factories and industries.

Economic change implied the transformation of society. Emigration, tourism, and the installment of foreign firms multiplied the contacts with different world views and attitudes, and modified Spanish habits. Traditional values and behavior still survived, especially in the backward areas, but permissiveness, lenience, and tolerance replaced radical stands, conservative outlooks, and religious-oriented conduct. In this sense, the industrial change and its byproducts of liberalization, social mobility, and urbanization broke down most of the family, social, and religious ties which exemplified the characteristics peculiar to Spain. As the economy expanded, the middle class grew substantially as did their expectations of wealth and political liberties. It became apparent to some sectors of the political elite that the authoritarian institutions were ill-suited to the new economic system. The groundwork for a liberal-democracy was laid because the
socioeconomic transition had taken place. As early as February, 1962, the Spanish government petitioned to join the European Common Market; but in June of the same year, the European Movement held a Conference in Munich and passed a resolution put forward by the Spanish delegation — made up of representatives of all the groups that opposed Franco, with the exception of the Spanish communist party — demanding the refusal of the official petition.

The gap between the existing industrial society and the political structure, unable to accommodate itself to the new epoch, was evident. In this context, the first signs of organized opposition appeared. One of the fields that emerged first was the students. Beginning in 1958, a new generation of students who had not experienced the civil war and whose references were not violence and radical attitudes entered the University campus and tried to organize a dynamic anti-Francoist front that found support in a handful of distinguished professors. Demonstrations, strikes, and other means of protest met with arrest, repression, and fear.

More problems for the regime came unexpectedly from the changing stance of the Roman Catholic Church. State and Church became estranged at the very moment the documents approved by the Second Vatican Council (1962-1965), in particular the declaration “Dignitatis humanae” and the constitution “Gaudium et Spes,” were implemented; a policy guided by a social compromise with human rights necessarily had to confront the dictatorship. The irony was that two sections of “Acción Católica,” a Vatican-inspired lay organization, especially authorized to function because of its religious links and connotations, became politicized and sided with the workers in the labor conflicts.19

One of the events that contributed to the cooling of the relationship between civil and ecclesiastical authorities was the letter addressed by Pope Paul VI to Franco April 29, 1968, asking him to renounce the privilege of presentation of the bishops. Though gradually, the Church withdrew its support for the regime in an irreversible way: in 1971, the joint assembly of priests and bishops passed a resolution apologizing for endorsing the reconciliation between the two parties in the civil war; in 1973, the bishops’ conference called for the review of the Concordato signed in 1953, and its disestablishment. To summarize, from the mid-1960s, the Spanish clergy evolved significantly and adopted progressive political and social stands. Many Catholics joined the class trade unions and the opposition groups, and acquired a compromise with those sectors of the population in need of social programs and services.

In the Basque country, a small group of the clergy showed its hostility to the dictatorship by sheltering the emergent “Euskadi ta Askatasuna” (ETA), Basque Homeland and Liberty, fighting separatism on many occasions. This group was born in July 1959 as a nationalist movement and found sympathizers in the popular masses during its early years of existence. Later, support dropped off as the organization became increasingly violent. This terrorist group still counts on a considerable social base in the Basque country.

The strongest opposition front to Francoism was to appear in the world of labor. Despite the physical elimination of the vast majority of members of the country’s traditional trade unions — the anarcho CNT, “Confederación Nacional de Trabajadores,” and the socialist UGT, “Unión General de Trabajadores” — during the Civil War and its aftermath, and despite the official recognition of a single union that legally represented both workers and management, there were already in the 1960s quite a few strikes and

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19 The two branches of “Acción Católica” were HOAC (“Hermandades Obreras de Acción Católica”) and JOC (“Juventud Obrera Católica”).
protests, particularly in the industrial regions. Fostered by the Communist Party, and with the support of some Christian militants, new organizations of workers were created and soon gained a reputation for efficiency in the struggle for better conditions. One, the Workers Commissions, or "Comisiones Obreras," quickly stood out, and not only paralleled the official "Sindicato Vertical," but even infiltrated it. Obviously, such a rebirth of trade-unionism under the dictatorship was made possible, because from April 1958, working conditions were established through collective bargaining and not by the government as it had been before.\(^2\) A certain degree of permissiveness on the part of the apparatuses of political repression also contributed to that phenomenon, though it did not last. As soon as the Ministry of Interior realized the politization of the workers, repression increased to the level of declaring a state of emergency. In 1972, the leaders of "Comisiones Obreras" were arrested while having a meeting somewhere near Madrid, and there began a process (the famous summary 1001), the main act of which would occur in a moment of open crisis of the regime — directly after the assassination in December 1973 of Admiral Carrero Blanco, who had been appointed Head of Government just a few months before. The death of Carrero Blanco was a serious blow to the plan designed for the continuity of the dictatorship. But, what was that plan all about?

The Law of Succession of 1947 proclaimed Spain a kingdom, ratified Franco as Head of the State, and gave him the power to designate a successor either as a King or as a Regent and to change his mind eventually and choose another person of royal lineage. The last Spanish King had been Alfonso XIII who left Spain in 1931 with the proclamation of the Republic and died in exile. His son, D. Juan, showed his disagreement with the course of the political events early in the postwar years and was thereby passed over; he, however, agreed with Franco that his heir Juan Carlos could be groomed for the task of embodying the restoration of the Monarchy. As a consequence, Juan Carlos was sent to Spain where he attended high school and later went to the military academies and University. Finally, he was designated successor to the throne on July 22, 1969 and swore loyalty to the principles of the "Movimiento Nacional." The new Monarchy would signify the continuity of Francoism without Franco.

For that purpose to be carried out, Franco relied on Admiral Carrero Blanco, who believed that democracy did not fit the Spanish character and that a regime of authority could bring peace and prosperity by means of avoiding internecine struggles and repressing individualism. Carrero Blanco, moreover, considered himself as a man totally identified with the political work of Franco. With his murder on December 20, 1973, a period of uncertainty opened.

The last two years of dictatorship were not especially agitated, but there was a climate of uneasiness all over. The international economic crisis caused by the OPEC price increases remarkably affected Spain. Spain's lack of energy resources, the contraction of demand, its inability to compete in a tough market, would bring about a

\(^2\) In the 1960s, the Francoist government radically changed its labor laws. The first step was the introduction of collective bargaining in 1958. The second step was the relaxation of its prohibition on collective action, particularly strikes. In 1962, the _Decreto del Ministerio de Trabajo, Numero 2354_, allowed for "collective conflicts" (a euphemism for strikes) to be resolved by the Ministry of Labor through conciliation or alternatively through public, compulsory and binding arbitration. By 1965, strikes were tolerated by the regime, provided that they were not political or independent. However, independent trade union action was still illegal, and trade union organizers remained subject to imprisonment under Section 222 of the Penal Code. The introduction of collective bargaining was a radical step, and represented a major change in the Francoist labor policy. It allowed for collective bargaining to take place within any level of the [Syndical Organization] which represented more than 100 workers. STEPHEN H. JACOBSON, Comment: _Collective Bargaining in Undemocratic Regimes: Francoist Spain and Contemporary South Africa_, 12 COMP. LAB. L.J. 214, 218-19 (1991) (citations omitted).
serious drop in the rate of growth of the gross national product accompanied by inflationary pressures and a downfall in foreign investments. As a result of that, unemployment rose steadily during the following decade, from 400,000 to three million people. Certainly other elements contributed: the return of emigrants and the access to the labor market of the young people born in the late 1950s. Labor disputes followed, though in some cases the unleashing factor was a political one, like the demand of free trade unions or the establishment of a constitutional democracy.

The ETA increased its terrorist actions — murders of policemen, military officers and even civilians, kidnappings, explosions, and so on — in a clear attempt to exacerbate the contradictions of the Francoist State, and to join with the workers’ movement in order to articulate the armed and the social struggles. But understanding the ETA’s terrorism against the dictatorship did not lead the political and trade union organizations of socialist and communist ideology to share that strategy.

Arias Navarro, the President of Government designated after Carrero Blanco’s death, had to cope with those problems plus the announced succession of General Franco. In a celebrated speech on February 12, 1974, Navarro promised to undertake a certain liberalization that amounted to the election of mayors (an office designated since 1939), the creation of political “associations,” and greater freedom in the field of labor. The next months undoubtedly saw relief above all in the “control,” or censorship, of the mass media and a leniency toward the sparse activities of the opposition. Some darker clouds appeared at the same time. For instance, the bishop of Bilbao, Añoveros, issued a homily arguing for the right of ethnic minorities to preserve their identities. The police reacted by placing him under house arrest and aggravated the already damaged relations between Church and State. In a different area, the execution of Heinz Chez, murderer of a “guardia civil,” and of Salvador Puig Antich, a Catalan anarchist, stirred up a widespread protest in Spain and Europe. On the other hand, the April 25th “Carnations” Revolution overthrew Caetano’s government in Portugal putting an end to forty years of authoritarian dictatorship.

The atmosphere of change drove parts of the opposition to forget their differences and join forces in a coalition called “Junta Democrática,” which included the Communist Party, Workers Commissions, Popular Socialist Party (formerly the Socialist Party of the Interior established in 1968 under the direction of Tierno Galván), and some other minor groups and independent radical individuals.

The “Junta Democrática” was the first organized opposition force to advocate democratization on the following bases:

1. The overriding principle was the reconciliation of all Spaniards.

2. Accordingly, the Democratic Junta defined itself as open to all social classes because its only purpose was to set up a democratic regime.

3. Any idea of the continuation or reform of the dictatorship was rejected. The nature of the system would not allow any transition to a constitutional democracy to begin; from this point of view, the accession of Prince Juan Carlos to the throne represented the natural descent of Franco’s regime.

4. Finally, it was absolutely necessary to break the legal and institutional continuity of the regime by means of a general mobilization promoted by the social and political forces in favor of democracy.

The winds of change, change that came closer and closer with an old and seriously ill Franco, blew as well within the power elites and soon many members of the administration abandoned ship. Very much the same happened in the economic sphere where the capitalist right had decided a few years ago that its interests would be better served within the context of a European-style representative democracy. In fact, the seeds for the political transformation of Spain were spreading over the civil service, the
judiciary, and even the armed forces; in other words, even the traditionally conservative bodies advocated change.

Under those circumstances, those in positions of power remaining loyal to Franco and the most reactionary sectors (denominated the "Bunker"), became more and more isolated and less supported by the public. The final weeks of the dictator in 1975 were a corroborative token of what the autocracy amounted to: the state of emergency during three months in the Basque country, and the death penalty for five members of ETA and FRAP\textsuperscript{21} sentenced in a quick trial and denied reprieve in spite of the international pressure. In short, there was repression until the very end. Franco died on November 20, 1975, and, although he tried to leave everything well "tied up," his regime could not survive much longer.

II. THE TRANSITION

Was the authoritarian Spanish regime to break down with Franco’s death? Would the logical secessions among the families of the regime contribute to it? Would Juan Carlos hold them together and continue the policy of personal rule under the pretext of maintaining the peace, order, and prosperity "achieved" with Franco? What about the military? Would they allow an experiment in liberal democracy? What was going to be the attitude of the opposition? These and many other questions haunted the public mind on November 22, 1975, when Juan Carlos was proclaimed King of Spain.

Now, in hindsight, it is very easy to interpret the behavior of the actors involved in the plot and assign a role to each of them so that the comedy turns out well and everything fits together. The reality is instead something that escapes us, and we can only recount the public facts to build the scenery and story.

It has been said that Juan Carlos was an unknown quantity, but who was not? Adolfo Suárez, the main character in the transition? Torcuato Fernández Miranda, the supporting actor of both the King and Suárez? Were not all of them men closely linked for years to Franco or the "Movimiento Nacional"? How long had Juan Carlos spent by the dictator's side? How many official posts had Suárez held before becoming President of a democratic government?

It has been written that Juan Carlos' "first action — as a king — was scarcely an indication of any democratic intent. He appointed Arias Navarro as his first Prime Minister, with a new government that included representative figures from the ranks of the loyal Francoists."\textsuperscript{22} But, could Juan Carlos do otherwise? By contrast, a highly esteemed Spanish historian also wrote that: "In any case, the guidelines given by the young king on the 22nd of November constituted an authentic political program that pointed unmistakably at the democratic recovery by means of the "onsenso."\textsuperscript{23} Should we rely on assumed democratic intentions?

On the other hand, to try to explain the transition in Spain in terms of particular persons or celebrities and their relationships and skills might be misleading, especially if the other circumstances are simply ignored. Think, for instance, of the international environment, the cultural transformations that had taken place, the kind of society Spain had become, and the decisive changes in the economic infrastructure. These are the

\textsuperscript{21} FRAP is an acronym that stands for "Frente Revolucionario Antifascista y Patriótico," an organization made up of several Marxist-Leninist groups in 1974. It engaged in terrorist actions in 1975 against police and "Guardia Civil" forces.

\textsuperscript{22} CARR, supra note 12, at 173.

objective factors that make up the wider context where the political updating carried out by the political elites should be inserted.

The fact that I refer to concrete actions of specific agents at the political level must not be interpreted as my having taken an individual explanatory standpoint. Certainly, democratization was taken up by specific members of the old Francoist apparatus, and without their initiative, it is likely that the final goal would have been attained, at least at such minimal social cost. The point, instead, is whether without the prerequisites of a considerable middle class, a fairly acceptable economic development stage, and large amounts of moderation on all the parts involved — all of these are new factors in Spanish history — the transition would have been possible. Political change in Spain between the years 1975 and 1982 (it would be too bold to situate the consolidation date in 1978 when the Constitution was approved) was the intended outcome of individual actions inside a system that strongly favored it. Thus, what “ab origine” began as a mere change of image that did not satisfy anyone — remember the tepid and unenthusiastic Arias Navarro’s intent of 1974 — was followed, as we shall see next, by a limited reform that the majority of the Spanish society considered insufficient by any standard, and concluded successfully with the overwhelming referendum of the Constitution on December 6, 1978.

Arias’ second government, already with Juan Carlos at the headship of the state, was unable to push through the “Cortes” all the necessary bills of the reformist program; the law of assembly passed, perhaps because of the restrictions it implied. The law on associations also passed, but for it to be effective, it was indispensable to revise the Penal Code that made establishing or belonging to a political party a criminal offense. But Arias could not — and would not — overcome the Bunker’s resistance. On the other extreme of the political spectrum, the oppositional forces “Junta Democrática” and “Plataforma de Convergencia Democrática,” an organization created in July 1975 that was comprised mainly of socialists and Christian-democrats, got together in “Coordinación Democrática” and quickly criticized the way Juan Carlos acceded to the office of head of state and refused to accept any process of change without the previous recognition of the political liberties and the participation of the parties in the opposition.

Arias’ failure, mistakes, and hesitancy that alienated his friends and foes was due, in my opinion, to his reluctance to betray his convictions; after all, he was from top to toe a Francoist. He could not stand the pressure of the circumstances and finally resigned; six months had hardly elapsed during his service from December 11, 1975 to July 1, 1976.

According to the legal procedures, the Council of the Realm met the following day to elaborate a list of three names from which the King could choose the next Prime Minister, and soon afterwards Adolfo Suárez, a relatively young product of the “Movimiento Nacional” who had held several important offices, was designated.

Suárez’s appointment did not please anyone. It was considered a “formidable mistake,” taking into account his origins and political past. Moreover, he was not a brilliant man and few admired him; Fraga and Areilza, two prominent eggheads who had served in the Francoist administration and who were thought of as the most suitable candidates for the headship of government, refused to accept any post under Suárez. Paradoxically, the reputed flaws of the new Prime Minister were to be made into his trumps.

His first declaration stated clearly the intention of his government to establish a democratic system based on the guarantee of rights and civil liberties, on equality of political opportunity for all democratic groups, and on the acceptance of real pluralism. After the words came the facts: the reform of the Penal Code (a move defeated a couple of months before) repealing the ban on political parties with the exception of those “that subject to international discipline intend to set up a totalitarian regime;” the grant of
amnesty to all political prisoners innocent of violent crimes; and the first contacts with leaders of parties and trade unions of the opposition.

The reform had to be carried out without hurry but also without pause. One of the main obstacles in the path to democracy would be the military:

The Army was the institution which was at the same time tied by its nature and structure to the previous regime, and the one having the greatest reservations when confronted with the democratic change, and which, in sum, held greatest power, i.e., the monopoly of the arms, to move the balance one way or the other.24

No wonder then, that Suárez, before proceeding with the reform measures, would summon the high rank of the military to try to obtain their endorsement. Suárez had little difficulty obtaining acceptance for the political reform bill that a committee was elaborating on the basis of the ideas publicly announced beforehand; popular sovereignty, universal suffrage, a legislature with two chambers, and so on. But it would appear, as well, that at least a tacit understanding was reached to exclude the Spanish communist party from legalization. This agreement, and Suárez's slight of it, had extraordinary repercussions over the transitional period and afterwards.

With reluctance and, before long, with lieutenant general De Santiago y Díaz de Mendivil's resignation from the vice-presidency of the government, the military backed the political reform. In November 1976, the Bill for Political Reform was sent to the Cortes for debate. The arguments for its approval could not hide the fact that the Francoist "procuradores" were being asked to commit political suicide; the only two elements that seemed acceptable from their position were the formal legality of the procedure, and that the sponsor of the reform was a man of the "Movimiento Nacional." Be that what it may, the law passed. There were 425 ayes, 59 nays, and 13 abstentions.25

Though self-defined as a "Fundamental" law, it was actually an "instrumental" one to promote the transition from the autocratic system to democracy. No preamble explained the reason for its adoption, nor did a statement abolish or repeal previous laws; there was fear that the most reactionary elements in the Cortes would wreck the experiment just for the sake of bringing out explicit mention of the change of political regime.

The Law for Political Reform signified the disappearance of the organic Cortes and of the principle of unity of power. Its first section recognized that "democracy in the Spanish State is based on the supremacy of the law, expression of popular sovereignty." Likewise, the law declared the inviolability of the fundamental rights of the person and put an end to the corporatist character of the political representation by providing for universal suffrage in the election of the legislature (except for those senators designated for the King). The law implied a revolutionary break of the whole Francoist structure and simultaneously pointed to a subsequent constitutional stage to be implemented by the would-be democratic Cortes. The Law for Political Reform was ratified in a referendum on December 15, 1976 and finally published in January, 1977.

Fifteen years after the event, we do not know accurately the reasons of the hari-kiri of the Francoist institution. Raúl Morodo, one of the opposition leaders of the time, suggests five hints that might help to understand it:


25 The law was enacted on January 4, 1977 as "Ley para la Reforma," hereinafter referred to as the Law for Political Reform.
(1) The active position of the Monarch. His endorsement of the process and the fact of his being designated by Franco as Franco’s successor, although it may have caused more than one schizophrenic crisis among some of the military men, made the democratization plan feasible.

(2) The pressure of public opinion. Opposition groups, mass media, and the Spanish people at large were looking forward to a political change. Everyone felt the need to set up new rules and take part in the political game.

(3) The Francoist political class’ own belief in the exhaustion of the system; a belief that somehow was shared by large sectors of the administration, the Church, and other public entities.

(4) The Western international climate. There is no doubt that the Western powers observed the democratization process with interest and favored it; despite that some of them, the United States and Germany in particular, were preoccupied with the strength of the communist party and the way the government would deal with it.

(5) Lastly, Suárez’s ability to negotiate with forces of the regime and the strategy he devised for the legislative procedure and the debate of the law itself.26

With the approval of the Law for Political Reform, the first decisive step toward political change had been taken; the main institutional resistance within the regime itself had been overcome in an inconceivable manner, and the way ahead was now open for further measures. The possibility of a break with the regime, always envisioned by the leftist forces, disappeared altogether; a point had been reached whence no political force, either on the right or on the left side of the spectrum, could stand by itself in the transformation process, not even the reformists of Suárez. All in all, the most reasonable thing to do was to admit the privileged position Suárez had attained and to negotiate the next political measures with him. These measures seemed quite obvious; the re-establishment of the political freedoms of speech, assembly, and association.

In a very short time, during the months of February and March 1977, Suárez’s government succeeded in passing several legal dispositions concerning the legalization of the political and social forces, and the electoral system that should preside over the first free general elections to be held in forty years. The adoption of these liberalizing laws already showed the course the decision-making process would take — talks between the government representatives and the principal opposition parties, mutual concessions, avoidance of public scrutiny during the conversations, and absolute priority of the political over social and economic issues.

There remained to be solved, however, the problem of the Spanish communist party. Suspected to have a “totalitarian” character, its petition for legalization had been passed on to the Supreme Court, which was in charge of determining whether or not the party was proscribed by the Criminal Code after the reform introduced in 1976. The Supreme Court declared itself unable to make the decision, and the issue therefore went back to the government, which found itself in a difficult position. To allow the participation of the communist party in the transition process was an idea absolutely rejected by the rightist forces, the majority of the members of Suárez’s cabinet, and Spain’s most powerful foreign allies — the United States and the Federal Republic of Germany. It also apparently jeopardized the whole experiment. A controlled reform, it was believed, could not be carried out successfully with a communist party — what would be

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26 RAÚL MORODO, LA TRANSICIÓN POLÍTICA 110-16 (1988).
the reaction of the hardliners within the regime? How could a communist party accept the
rules of a "bourgeois" liberal democracy?

On April 9, 1977, the government unexpectedly announced the legalization of the
communist party and caught the country by surprise. Immediately afterwards, the Navy
minister, an admiral, resigned in protest, and the Supreme Army Council condemned the
decision, although it accepted it "out of the armed forces's sense of discipline and
patriotism."

We have become aware later that Suárez and Carrillo — the general secretary
to the communist party — had several contacts in the previous weeks and even held a
long meeting during which Carrillo agreed not to oppose the Monarchy or the unity of
Spain, and to accept the Spanish flag as it has been modified by Franco. Moreover, the
behavior of the communist party before and after its legalization helped avoid confronta-
tion and facilitated the peaceful change to democracy.

The legalization of the communist party was in the short term a crucial decision
in the democratic reform strategy and in the long term, an indispensable measure for the
consolidation of the new regime. However, it pushed Suárez away from the right —
which began to consider him a traitor — and closer to the leftist forces. Suárez thus found
himself in a privileged position to proceed with the reform.

The further implementation of the transition required free general elections to
take place, so that Spain could finally have a democratically-elected government.
Spaniards had always had a reputation for being very individualistic in political matters;
each citizen would establish his own political party if he were given the opportunity to
do so. The Spanish people were believed to be very difficult to govern under a democratic
pattern; the widespread official opinion was that the parties would tear the country apart
by following their particular interests, instead of caring for the common interest and the
welfare of the nation.

Now, the appearance of around 200 political groups after Franco's death made
many think that the governance of Spain was going to be almost impossible. It was not
at all strange, therefore, that the electoral decree-law,27 enacted on March 18, 1977,
following the scheme already designed in the Law for Political Reform, provided
mechanisms to reduce the number of the would-be actual political parties and to avoid
excessive fragmentation in the representative chambers. Later on, the Constitution would
introduce new devices to favor the formation of large parties and government stability.
Those measures required each party to poll at least three percent of the overall vote to
return members to the Cortes, and adopted the D'Hondt rule28 to count the votes and
assign the corresponding seats.

When the electoral campaign began, the political spectrum was ideologically rich
and structurally uneven. From the far right to the extreme left, groups of different entity,
age, and ideology competed for places in the parliamentary arena — including traditional
political parties, like the communist or the socialist; pro-Francoist coalitions, like AP
(Popular Alliance); a large array of Christian democrats; liberal and social democrats; tiny
groups; regional parties with exclusively local appeal; parties opposed to democracy; and
other rare formations.

Against that background, Suárez decided to participate in the contest and soon
formed a coalition called the "Unión de Centro Democrático" that introduced itself as
the party that would supposedly avert the danger of a renewed conflict between right and

27 By "decree-law," I mean an executive-made act, issued in cases of extraordinary and urgent need.
28 The D'Hondt rule is a system whose object is "to secure that, when all the seats have been allotted,
the average number of votes required to win one seat shall be as nearly as possible the same for each
left. Even if the message was an oversimplification, no one could deny that Suárez had been a prominent character within the Francoist political machine and had conducted the reform of the regime. The rightists could to some degree rely on him, and, simultaneously, the leftists had to trust him. If one links this perception with the fact that the electoral campaign was very much centered around the leaders of the different parties — television played a large part in the drama — the outcome cannot be a surprise.

The Democratic Center Union (UCD) — Suárez’s party — and the Spanish Worker’s Socialist Party emerged from the June 1977 elections as the leading political forces. A number of political parties did not attain parliamentary representation at all. UCD got 165 of the lower chamber’s 350 seats and 34.7% of the vote; the Socialist party (PSOE), 118 seats and 29.2% of the vote. The remaining seats went to the Communist Party (20), the rightist AP (16), another Socialist party (6), the main nationalist parties of Catalonia and the Basque country (11 and 8 respectively), and some other regional and independents groups (a total of 6 seats). The elections for the Senate or upper chamber reflected a similar trend, though the difference between the UCD and the PSOE was bigger.

The most important lesson to be drawn from the general election was that no party had won an overall majority in the Congress of Deputies, and that, therefore, some sort of compromise had to be struck to keep the political reform alive. Suárez’s first democratic government had to face two important issues. One was the regional problem, for there was some urgency to care for the Catalan and Basque claims. The other was the economic crisis that required attention, given the alarming signs transmitted by the economic indicators.

The nationalist question was provisionally settled by the attainment of pre-autonomy formulas, sanctioned by several decree-laws passed by the government in September 1977 and January 1978 that already implied some degree of devolution of the central power and of self-government. As to the state of the Spanish economy, the outlook was gloomy. Even before Franco’s death, the question of political reform had occupied the forefront, and neither Arias Navarro’s nor Suárez’s governments had come to grips with the economic crisis and its aftermath. Urgent and unpopular measures were adopted to cope with the recession that had began in 1973 with the rise in oil prices, and was about to reach its climax: high rates of inflation and unemployment, deficit, low productivity, bankruptcy of many firms, and declining foreign investment, with no improvement expected in the near future.

The measures proposed by the economic affairs authorities could not be welcomed, because they meant a substantial loss of buying capacity, mainly for the more depleted sectors of the population. Moreover, the disappearance of the conditions that made possible the affluence of the 1960s had uncovered the structural flaws of the Spanish economy and added extra inconveniences to any rational plan for its reorganization. The program, indeed, included not only monetarist measures like the limitation of wages or the devaluation of the peseta, but proposals to reform the tax system which supposed a revolutionary and necessary change that would meet strong opposition in the business and financial circles.

In order to ensure that the program of economic reform would not be opposed by the representative of the working class parties, Suárez decided to invite the leaders of practically all major political forces to his official residence at the Moncloa palace to discuss his economic proposal. Apparently, previous confidential talks had been going on in the earlier summer months, mostly between Suárez and Felipe Gonzalez, the Secretary

29 PSOE is an acronym for ‘‘Partido Socialista Obrero Español,’’ the Spanish Socialist Party.
General to the PSOE, where the urgent need to address the economic and social issues was expressed, lest the political experiment would fail.

The Moncloa Pacts were signed on October 24, 1977 by the representatives of all the main political parties. They amounted to a cooperation agreement between right and left in order to improve the economic situation and thereby avoid a political backslide. Although the reforms, particularly in the social field, promised by the government in exchange for the opposition’s peaceful acceptance of the austere measures were not completely fulfilled, the Moncloa Pacts were temporarily successful in the economic sphere and prevented a regression in the transitional process.

The relevance of the Moncloa Pacts in the context of Spanish history has not been sufficiently recognized, despite that:

1. they evinced a unique instance in which all the political forces — and the social ones that backed them up — primarily considered the general interest and gave up some of their individual claims, demands, and expectations in order to reach a climate of social peace, indispensable for other political developments;

2. they stood out as the start of a new method in the handling of national economic and social problems based on the close cooperation of the political apparatus and political and social organizations. This method would persist until 1985. The new way of proceeding was characterized as corporatist due to the part played by trade unions — and later, business organizations — in the process of policy-making; and last but not least,

3. they showed Suárez the way to build up the politico-legal framework appropriate for the future democracy. The involvement of the majority of the political forces was essential to the completion of a constitution that by and large would be acceptable by all, that would put an end to the confrontation between right and left, centralism and separatism, clericals and anti-clericals, liberals and Marxists. In this sense, Suárez’s government was surely aware not only of the Spanish constitutional history, but of the fact that UCD’s triumph in the election had not been a landslide victory and, consequently, it could not try to impose a constitutional text which would immediately be challenged by large social sectors.

The spirit of compromise that presided over the negotiations leading to the Moncloa Pacts persisted in the months to come, when the constitution was elaborated. It was undoubtedly a difficult time; the world economic crisis, the reiterate ETA terrorist attacks that targeted armed forces officers and police members, and the sharp ideological conflicts that plagued daily the debates threatened to destabilize the process.

The Spanish Constitution, finally approved and submitted to referendum on the December 6, 1978, has been called a consensual constitution, because it was agreed upon by the majority of the political parties through their representatives. In the eyes of its drafters, the consensus was reflected in the comprehensive quality of the Constitution that allowed the government to follow either a conservative or a socialist political orientation without going against its spirit. It was an open text.

What “consensus” meant is still an open question. Andrea Bonine-Blanc pointed out that “Consenso [a Spanish term meaning consensus] was indeed a novel form of political negotiation in Spain, conducive to broadly based coalitions and solutions. It involved the use of whatever means necessary — secret and public, parliamentary and extra-parliamentary — to achieve political compromise.”

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If consensus amounts to sharing something, in my opinion, there is little doubt that the constitutional framers did not share the same values and beliefs; they lacked a homogeneous political culture that could serve as a foundation of a democratic system. They did not even have the same ideas regarding the rules that should be adopted for the political game. There was, certainly, in the mind of the framers a common understanding of the need to set down as soon as possible a constitutional device that would put an end to the political vacuum and would incorporate the political change that the new circumstances demanded. There was, admittedly, a logrolling effort, more out of the personal relationship the “founding fathers” developed during the long discussion sessions than coming from previous attitudes. Lastly, there was, of course, a transaction or trading-off process among the political actors which in the long term (and it is presumable that some of them were able to predict this), would turn out to be very beneficial for all.

However, the “consociational” mode of decision-making adopted, which was demanded by Spanish history and dictated by the fragmentation of Spanish society and politics, did not lead to a definite constitutional settlement of the differences, nor to a joint renouncement of the respective tenets. The Spanish Constitution is somehow a drawn contest that mirrors the deep cleavages that crosscut Spanish civil society, and adjourns solving the problems raised thereby until the dynamics of political life bring them to the fore.

31 By “trade-off” I understand: A decision, or an action resulting from a decision, by an individual or a collectivity as between two things both of which are desired (positively or negatively) but which are seen, or believed, to be after a certain point incompatible with each other. If the two desires are indeed incompatible alternatives, a choice must be made: so much of one against so much of the other. C.B. MACPHERSON, THE RISE AND FALL OF ECONOMIC JUSTICE 45 (1987).

32 The term “consociational” seems to have been introduced in modern times in the field of political science by Arend Lijphart and Gerhard Lehmburgh at the World Congress of the International Political Science Association held in 1967, to refer to a way of political decision making proper of segmented or polarized societies. Both authors developed later the consociational theory in several works. An application of the consociational analysis to the Spanish case was made by Carlos Huneeus under the title, “La Transición a la Democracia en España: Dimensiones de una Política Consociacional,” TRANSICIÓN A LA DEMOCRACIA EN EL SUR DE EUROPA Y AMÉRICA LATINA 243-86 (1982).