

REVISITING SPAIN'S TRANSITION TO DEMOCRACY

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INTRODUCTION: THE SPANISH 'MODEL'

With the possible exception of its Civil War (1936-1939), Spain's transition to democracy in the 1970s is undoubtedly the episode in the country's history that has attracted most interest beyond its borders. This is largely because it has long been regarded as one of the most successful of the 'third wave' of transitions that resulted in the establishment of some thirty new democracies worldwide during the years 1974-1991 (Huntington, 1991). However, over the years scholars have disagreed quite substantially as to the origins, nature and significance of the so-called Spanish 'model', a debate which inevitably raises important questions as to its usefulness as a blueprint – or source of inspiration – for democratization elsewhere. The Spanish case first acquired 'model' status in the mid-1980s, when it received very significant attention from the so-called *transitology* (or 'elite agent') school. Hitherto, modernization theorists had largely adhered to Seymour Martin Lipset's notion that before a country could transition to democracy, it had to pass through certain stages of economic and social 'modernization'. This approach assumed that economic development would lead to a broad range of social and cultural changes, which would in turn affect peoples' attitudes and behaviour. However, this failed to explain anomalies such as Germany's political evolution in the 1930s; if industrialization, urbanization and high literacy could produce totalitarianism as well as democracy, the relationship between the latter and modernization was clearly less linear

than had been claimed. It was precisely this critique that led Dankwart Rustow, the founding father of *transitology*, to argue that the relationship between socioeconomic development and democratization was one of probability, not causality (Rustow, 1970, p. 342). This has been borne out by subsequent studies showing very strong correlations between democracy and development at the extreme ends of the economic spectrum, but weaker ones for countries placed in the middle. On the whole, scholars have tended to conclude that socioeconomic development is probably neither a sufficient nor even a necessary condition for democratization; rather, it is a factor that 'facilitates' the development of a democracy.

The *transitology* school was largely a reaction against the overly deterministic and rigid assumptions of modernization theory, which had little to say about the timing of specific processes of democratization. *Transitologists* were particularly taken by the Spanish case because it appeared to support their view that it was the nature of decisions made by elite actors, rather than any structural preconditions, which set the process for a successful democratization in motion (O'Donnell, Schmitter, & Whitehead, 1986). These authors posited that transitions to democracy were generally triggered by a crisis of legitimacy within the authoritarian elite, which split into hard-liners and soft-liners; in turn, this often encouraged the latter to seek negotiations with representatives of the moderate democratic opposition, leading to a new political settlement. In marked contrast to their

dismal performance in the 1930s, in the 1970s Spanish political elites reached a succession of pacts that enabled them to set aside deeply-entrenched ideological differences and antagonisms so as not to endanger the process of democratization. The result was so remarkable (and unexpected) that the process came to be seen as “the very model of the modern elite settlement” (Gunther, 1992, p. 24), and “in many ways the paradigmatic case for the study of pacted democratic transition and rapid democratic consolidation” (Linz & Stepan, 1996, p. 87). Beyond Spain, this ‘elite agency’ model was attractive because it could presumably be applied anywhere in the world, regardless of structural factors; success or failure would largely depend on elites’ ability to ‘craft’ democratic outcomes (Di Palma, 1990).

As students of the Eastern and Central European transitions were quick to point out, the enthusiasm with which *transitologists* embraced the Spanish ‘model’ tended to obscure important aspects of the country’s recent development that had undoubtedly contributed to the success of its transition (Offe, 1991, pp. 508-509). Most importantly, as we will see below, Spain had experienced a period of unprecedented economic growth in the 1960s and early 1970s (prior to democratization), which was to have profound social and cultural implications. The ‘elite agency’ model also underplayed the importance of the state, and in particular, the importance of its relationship with the authoritarian regime: in marked contrast to the Communist block countries, under Franco it was possible to distinguish between the regime and the state, with the result that the dismantling of the former had little impact on the latter; in other words, in Spain the newly-elected democratic authorities were able to inherit a ‘usable’ state apparatus (Linz & Stepan, 1996).

Transitology also came under growing criticism for going too far in assuming that transitions were simply the result of free choices made by rational actors, with some authors objecting that it represented a “retreat into voluntarism” or “barefoot empiricism” (Remmer, 1995, p. 42). This was partly because

transition studies tended to see democracy as a set of procedures for government, negotiated by and between political leaders, thereby separating democracy from its essential meaning (rule by the people), and conceptualizing it mainly as the establishment of a set of governing institutions. This ran the danger of consigning the majority of the population to a mere bystander role in the creation of new regimes, and of underestimating the role of popular struggles in some transitions (Spain’s included).

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Since the turn of the century, academic debate regarding the Spanish transition has largely looked beyond the role of political elites in the process, and has tended to stress the importance of ‘democratization from below’. Some authors have underscored that it was the pressure ‘from below’ exercised by workers, students and neighbourhood and housewife associations that induced elites to undertake reforms and initiate the formal transition process; in other words, “elite decisions were ‘structured’ by the context in which they were made” (Radcliff, 2015, pp. 172-174). Others, however, have objected that this approach tends to exaggerate the strength of Spanish civil society under Franco and its role in undermining authoritarianism (Encarnación, 2003). In turn, this is related to a broader debate about what civil society can contribute to the process of democratization itself; the academic consensus would appear to be that, at best, even a strong civil society can “only be a supporting actor in the transition drama” (Radcliff, 2015, p. 178). All of this is informed by a broader debate about the relationship between civil society and democracy more generally. In the Spanish case,

some have argued that the civil society organizations that emerged in the 1960s helped revive a tradition of interest representation and a pluralist associational culture that made a significant contribution to democratization; others, however, claim that it is a functioning and legitimate democratic state, not civil society, that generates 'social capital' and trust (Torcal, 2007, pp. 195-198). Scholars' views in this debate largely reflect different perspectives as to whether the state or society is at the heart of the democratizing process: for *transitologists*, "democratization is located firmly in the state, and its completion is marked by the construction of governmental institutions," while from a civil society perspective, "democratization is a participatory process, defined not by institutions but by broader social legitimation" (Radcliff, 2015, p. 175). The preceding pages will hopefully lead readers to conclude that Spain's transition was a highly complex, multifaceted phenomenon. As we have seen, much of the debate about this process has turned on whether the mass or the elite contribution to it should be emphasized; in future, our attention should perhaps centre on how mass and elite actions interacted and fed into each other. In the pages that follow, however, greater attention will be paid to elite actions, because it is this aspect of the Spanish transition that has generally interested students of the so-called 'Arab Spring' most. More specifically, they will describe and analyse the actors, procedures and outcomes of the Spanish constituent process in some detail. Before doing so, however, a brief overview of Spain's prior experience with democracy and authoritarianism should prove useful in placing the events of the 1970s in their historical context.

THE PAST AS PRELUDE

Spain's chequered political history has given rise to the notion of 'Spanish exceptionalism', a concept often associated with an allegedly structural inability to develop stable democratic institutions. However, this

obscures the fact that its political development was not unlike that of many other (particularly southern) European states. Admittedly, the 19th and early 20th centuries saw considerable turmoil, including severe dynastic disputes, which led to armed confrontation, frequent military uprisings, and extreme social and political polarization.¹

The Second Republic, Spain's first attempt at democracy, did not succumb of its own accord, as it was violently overthrown by a military coup led by General Francisco Franco.

However, the parliamentary monarchy established in 1874 presided over several decades of stability and prosperity, though its efforts at democratization were finally cut short by a bloodless military coup in 1923. The ensuing Primo de Rivera dictatorship, which initially enjoyed the support of King Alfonso XIII, failed to solve major deep-rooted problems, and collapsed without resistance. It was replaced by the Second Republic (1931-1936), Spain's first attempt at democracy, which was plagued by chronic cabinet instability, party-system fragmentation and ideological polarization. Additionally, it promised far-reaching socioeconomic reforms that it largely failed to deliver. Nevertheless, the Second Republic did not succumb of its own accord; it was violently overthrown by an only partially successful military coup led by General Francisco Franco, which plunged Spain into a bloody three year-long Civil War (1936-1939) that claimed some 400,000 lives. A further 30,000 to 50,000 people were executed on political grounds in the aftermath of the Civil War by the winning side.

Following the defeat of the Republican armies in April 1939, Franco established a political regime that was authoritarian, extremely confessional, half-heartedly corporatist, deeply conservative, and

1. Remarkably, during these years four prime ministers were assassinated by political opponents: Juan Prim (1870); Antonio Cánovas del Castillo (1897); José Canalejas (1912); and Eduardo Dato (1927).

Spanish nationalist. Franco exercised supreme authority as Head of State, commander-in-chief ('Generalissimo') of the Armed Forces, and head of the artificial single party (Falange Española Tradicionalista y de las JONS) he had created by decree in 1937. This organization, which later came to be known as the 'Movement', gradually lost much of its early influence, to the extent that Franco's political system has been described as a 'no-party state' (Gunther, 1980). The Catholic Church, whose leaders saw the Civil War as a 'crusade' against Marxists and atheists, was initially amongst Franco's staunchest allies, and was rewarded for its support in 1953 with a very generous Concordat. However, in the wake of the Second Vatican Council (1962-65), the Church gradually distanced itself from the regime. Abroad, Franco's major ally was the United States, which offered considerable military and economic assistance in return for access to Spanish bases as of 1953. Due to both its association with the Axis powers in World War II and its subsequent authoritarianism, the Franco regime was initially excluded from the European integration process, though the European Community finally granted it a preferential trade agreement in 1970. Indeed, the EC's policy of 'democratic conditionality' was to prove a major incentive for democratization throughout the 1970s and beyond (Powell, 2009, pp. 51-53).

Franco's regime constitutes a rare example of limited institutionalization combined with relatively elaborate constitutionalization. Although its institutions never really acquired a life of their own, its constitutional provisions were taken seriously, and some would play a crucial role during the transition. Most importantly, the 1947 Law of Succession declared Spain to be a kingdom, with Franco as regent for life with the power to name his successor. (It was this provision that allowed him to appoint Juan Carlos his successor in July 1969.) Similarly, although the 1958 Law of Fundamental Principles declared these to be "permanent and immutable", the Law of Succession stated that all fundamental laws could be reformed as long as they met the approval of two thirds of the Cortes

(parliament) and were later put to a referendum, a clause that was put to good use during the transition.

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In spite of its conservatism, the regime proved compatible with very significant social and economic change. Much of this took place after a Stabilization Plan (1959) was adopted in response to the failure of the regime's former autarchic economic policy. Over the next decade and a half, Spain experienced unprecedented economic growth (averaging 6.9% per annum during 1960-1974), with GDP per capita rising from \$300 to \$3,260. Between 1950 and 1975 the share of the labour force engaged in agriculture declined from 48% to 22%, while that employed in industry and the service sector rose to 38% and 40%, respectively. These changes brought with them a significant expansion of the middle class, which grew from 14% to 43% of the population. Prosperity also brought widespread access to consumer goods: while only 1% of households owned TVs in 1960, by 1975 this had risen to 90%. Spaniards also became better educated: adult illiteracy rates, still at 44% in 1930, had dropped to 5% by 1975.

By the 1970s Spain was a relatively modern, urbanized, and prosperous society, with a political culture substantially different to that of the 1930s. This transformation fed a growing demand for democracy: according to one study, between 1966 and 1976 support for democratic institutions rose from 35% to 78%. Attitudes favourable to democracy were

particularly strong among the working class, which largely turned its back on revolutionary ideologies. Modernization did not make the advent of democracy a foregone conclusion, however; indeed, economic growth may have delayed it by making the regime more acceptable to an increasingly prosperous and consumer-driven population.

These changes also had a significant impact on the role and nature of the state and its relation to the regime. As economic modernization progressed, the state administration became increasingly professional and meritocratic, and also predominantly apolitical, which largely explains why most civil servants did not later oppose democratization.² Equally importantly, although military officers initially occupied important positions in the state bureaucracy, by the late 1960s they had been displaced from all but the military ministries. In short, by the time of his demise, Franco's was a civilian-led authoritarian regime, a feature that would greatly facilitate the subsequent democratizing process (Linz & Stepan, 1996, pp. 66-69). As a result of these trends, after his death in 1975 there was no need to extricate the military from the political arena it had already abandoned, nor was it necessary to purge the bureaucracy (or the judiciary) during the democratizing process itself.

The socioeconomic transformations outlined above had complex political consequences, most of them unintended by the regime. The expansion of university education (which accelerated after the adoption of the 1970 Education Law) led to the emergence of a new student movement that was predominantly hostile to Franco. Rapid industrialization favoured the emergence of a new, increasingly self-confident labour movement, led by Comisiones Obreras (workers' committees), which had emerged in the late 1950s and were outlawed in 1967. Though theoretically illegal, the number of strikes increased

sharply, from 500 in 1969 to 931 in 1973 and 2,290 in 1974; some were met with significant police brutality, resulting in eleven deaths in 1969-1974. In Catalonia and the Basque country, the arrival of hundreds of thousands of immigrants from poorer parts of Spain and unprecedented economic prosperity combined to foster a renewed interest in their autochthonous languages and cultures, often with the active support of the local Catholic clergy. This revival also partly explains the radicalization of the university students who founded ETA in 1959, which soon became a sophisticated urban terrorist organization capable of claiming 45 victims in 1960-1975.³ The regime's twilight years also witnessed a significant increase in opposition activity. The largest and best organized group was the Communist Party (PCE), which was particularly strong in the labour and student movements, in the new neighbourhood associations that had emerged in the 1960s, and amongst the cultural elite. The PCE had been advocating a policy of national reconciliation since 1956, and in 1970 – under the leadership of Santiago Carrillo – it formally embraced the goal of a multi-class 'pact for freedom'. When such a pact finally materialized in 1974 as the Junta Democrática, however, it fell far short of the intended goal of uniting the entire democratic opposition. The Socialist Party (PSOE), by far the largest left-wing organization under the Second Republic, had almost disappeared under the dictatorship, but it began to recover its former standing after Felipe González's election as party leader in October 1974. The PSOE deeply resented the PCE's efforts to dominate the Spanish left, just as its sister trade union, the UGT, was suspicious of communist influence in Comisiones Obreras. González did not share the PCE's faith in a 'ruptura democrática' (democratic break), a process whereby large-scale popular mobilizations would somehow result in the peaceful overthrow

2. A survey carried out in 1983 among civil servants largely recruited during the Franco years revealed that 89% of them believed that democracy was preferable to any other form of government (Aguilar, 2002, p. 39).

3. During this period, the police killed 17 members of ETA; two more were condemned to death and executed in September 1975.

of the Franco regime and its replacement by a representative provisional government that would call elections to a constituent assembly. Instead, he favoured a gradualist approach resulting in the conquest of 'parcelas de libertad' (or 'plots of freedom'). González's refusal to join the Junta Democrática and his decision to sponsor an alternative Plataforma de Convergencia Democrática in mid-1975 turned out to be crucial in guaranteeing the PSOE's autonomy during the transition.

The immediate crisis of the Franco regime was due to a number of factors. The economic boom of the 1960s came to an end with the 1973 oil crisis, resulting in 'stagflation' and an increasingly active labour movement. The assassination by ETA of Franco's alter ego, admiral Luis Carrero Blanco, in December 1973, only six months after his appointment as prime minister, raised fresh doubts about the regime's continuity. His successor, Carlos Arias Navarro, presented a modest blueprint for liberalization ('apertura') in February 1974, but this only deepened the growing rift between 'hard-liners', who believed the regime's continuity should be guaranteed by an authoritarian monarchy under Juan Carlos, and 'soft-liners' who assumed the future monarch would need to bring Spain's political system in line with those of its European neighbours. This conflict intensified after the overthrow of the Portuguese dictatorship in April 1974, which was read by many as an indication of what might happen in Spain unless significant reforms were implemented immediately. Finally, in September 1975 the execution of five anti-regime militants (as a result of the draconian anti-terrorist legislation introduced after Carrero Blanco's assassination) led to an unprecedented international outcry, which highlighted the extent to which it had become a European anomaly.⁴ However, it was ultimately Franco's death on 20 November 1975 and the appoint-

ment of Juan Carlos as head of state that triggered the transition process proper.

THE TRANSITION TO DEMOCRACY

Spain's democratizing process has been described as a paradigmatic case of a 'transition through transaction' (Share, 1986), characterized by the following features: the (paradoxical) use of the former regime's institutions and constitutional procedures to initiate the democratizing process, which resulted in some striking continuities (most notably, the monarchy); negotiations between 'soft-liners' in the outgoing authoritarian regime and representatives of major opposition groups; the inclusion of representatives of all key political forces in the decision-making process; and private, face-to-face deliberations at crucial stages, involving a relatively small number of participants. Some authors have argued that 'transitions through transaction' are also characterized by relatively low levels of popular mobilization, but the Spanish experience suggests they are compatible with relatively high levels of pressure 'from below' if political actors are willing and able to modulate this in response to concessions made 'from above'. It has also been claimed that 'transitions through transaction' can only succeed in the absence of political violence, but Spain witnessed 453 deaths from political violence in 1975-1980;⁵ indeed, it was partly the fear that this violence might derail the transition process that encouraged political elites to negotiate in the first place. Memories of the fratricidal violence that marked the Civil War were still very much alive in Spain in the 1970s, and the determination not to repeat the errors of the past undoubtedly had a sobering impact on both elites and society at large (Colomer, 1995, p. 3). Indeed the unwritten slogan that best captures this mood (and the spirit of the transition as a whole) is perhaps 'never again'. Ironi-

4. Nevertheless, it should be noted that less than one person per year was executed by the dictatorship for political reasons during its last 15 years (Malefakis, 1982, pp. 223-224).

5. The Basque terrorist organization ETA was responsible for 270 of these deaths; the police for 82; the extreme left-wing terrorist organization GRAPO for 58; and an assortment of extreme right-wing groups, for 43 (Encarnación, 2014, p. 65).

cally, political violence was more widespread in Spain than in 'revolutionary' Portugal (Bermeo, 1997, p. 39). Spain's relatively brief transition to democracy (1975-1978) was launched 'from above', but it accelerated in response to mounting pressure 'from below'. It was essentially driven by domestic forces, though the European Community and some of its member states actively supported democratization. This was particularly true of Germany, which made good use of the transnational influence exercised by its political parties, trade unions and political foundations. (Powell, 2001, pp. 293-309). Overall, there can be no doubt that the Western European context in which the Spanish transition took place provided a congenial environment for democratization. The United States, on the other hand, played a relatively modest role, largely on account of its reluctance to antagonize Franco and his successors out of fear of compromising its access to military bases on Spanish soil (Powell, 2007, pp. 234-235).

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The immediate genesis of the transition largely reflects the political dilemmas facing King Juan Carlos, who needed to acquire a new democratic legitimacy for the monarchy in order to guarantee both his survival as head of state and the continuity of his dynasty. (The fate of his brother-in-law Constantine, who had lost the Greek throne in 1967, provided

a salutary warning.) The monarchy he inherited in late 1975 was not the institution embodied by his grandfather Alfonso XIII until 1931, but rather an entirely artificial, authoritarian monarchy designed to perpetuate the Franco regime. However, Juan Carlos did not inherit the general's powers: the Organic Law of the State (1967) had designed a monarchy in which the king's role was severely curtailed by the combined authority of the prime minister and the president of the Cortes, who shared effective control over the political system. Paradoxically, this meant that from the outset the king had a vested interest in a far-reaching constitutional reform that would free him from the tutelage of unelected officials (Powell, 1996, pp. 85-86).

In the first stage of the transition, prime minister Arias Navarro, who moved closer to the regime's 'hard-liners' following his confirmation after Franco's death, advanced a blueprint for limited reform that would have led to the election of a semi-democratic Cortes and the legalization of some parties (such as the PSOE) but not others (above all, the PCE). This was rejected outright by an increasingly active and outspoken opposition, mass mobilizations (which sometimes resulted in loss of life),⁶ new media outlets, the European parliament, and the Council of Europe. Furthermore, it failed to satisfy Juan Carlos, who feared this growing polarization would endanger the monarchy itself.

The king's decision to replace Arias Navarro in July 1976 with Adolfo Suárez, a 44 year-old *apparatchik* of the former regime, known for his ambition and audacity, was a crucial turning-point in the process. Suárez quickly produced a Law for Political Reform, which called for the election of a two-chamber Cortes by universal suffrage: a Congress of Deputies elected according to principles of proportional representation and a majoritarian Senate. In keeping with the procedure envisaged in the Francoist fundamental laws, the bill was first approved by the existing Cortes

6. The number of strikes registered rose sharply from 3,156 in 1975 to a record 17,731 in 1976. Furthermore, about a dozen people were killed in demonstrations and clashes with the police (or right-wing thugs acting with police connivance) during the first half of 1976 alone.

in November by 425 votes in favour and 59 against. In December, it was ratified by a referendum that registered a 77% turn-out (with 94% of votes in favour), in spite of the opposition's decision to abstain on the grounds that it had been excluded from the entire process. Secret talks between Suárez and González, however, enabled the PSOE to hold its first party congress since the Civil War immediately after the referendum, paving the way for its legalization in February 1977.

The referendum considerably strengthened Suárez's hand, and it was only after it was held that he engaged in formal talks with the opposition's 'Committee of Nine', which represented all shades of democratic opinion. Paradoxically, political violence helped to bring government and opposition closer together. In late January 1977, during the transition's so-called 'black week', two left-wing demonstrators were killed by the police, five PCE activists were murdered in cold blood by extreme right-wing thugs, and three policemen were shot dead by extreme left-wing terrorists. This mindless violence rekindled fears of a fratricidal confrontation, which Suárez and opposition leaders alike sought to head off by presenting a united front.

The talks centred on the conditions the opposition demanded be met if it was to take part in future elections, which included the legalization of all political parties and trade unions, the disbanding of the 'Movement' and the political neutrality of public employees, a generous amnesty, the negotiation of an electoral law, and the acknowledgement of regional political identities. As several participants have acknowledged, these talks did not constitute formal negotiations; rather, it was a case of Suárez listening to the opposition's demands and skilfully translating them into legislation. A good example of this was the March 1977 Electoral Law, which effectively ensured that Spain would have the most majoritarian proportional system in Europe. It should be noted, in this regard, that "choosing the electoral system is one of the most important decisions – if not the single most important decision – of all the con-

stitutional decisions facing democracies" (Lijphart, 1992, p. 207). This is partly because the first freely-elected parliaments often function as constituent assemblies as well as legislatures (as happened in Spain), and the choice of an electoral system may therefore have important consequences for the legitimacy of the new constitution. Suárez's main concern was to avoid the excessive fragmentation of the party system, which he associated with the instability and polarization that had done so much to undermine the Second Republic in the 1930s. (Montero & Lago, 2001, p. 55). By decreeing that the 52 provincial constituencies should elect at least two representatives and fixing a threshold of 3% of the vote, the system was only truly proportional in large urban areas and operated like a majoritarian one in more sparsely populated regions, a bias that favoured the larger party formations. Government-opposition talks also led to the legalization of the Communist Party in April 1977, whose exclusion would have rendered the process illegitimate in the eyes of many Spaniards; in return for this, Carrillo had already secretly agreed to recognize the monarchy and Spanish national symbols. The only significant opposition demand Suárez did not meet was the recognition of regional political identities, essentially because this was a matter best left to the future democratic parliament.

Government-opposition talks thus paved the way for the first democratic elections, held in June 1977, which produced a highly positive outcome: the high turnout (79%) confirmed their legitimacy, and the strong showing by Suárez's newly-established Unión de Centro Democrático (UCD), a loose and hastily-formed coalition of regime reformists and representatives of the moderate opposition, which obtained 34% of the vote and 165 out of 350 seats, allowed him to remain in office. At the same time, the PSOE emerged as the leading opposition party with 29% of the vote and 118 seats, well ahead of the PCE, which obtained a mere 9% of the vote and 20 seats. Significantly, the neo-Francoist Alianza Popular (AP) – the only party to oppose the opening of a constituent process –, secured a paltry 8% of the vote and only

16 seats. It has often gone unnoticed that although these were the first democratic elections held in Spain since February 1936, under the supervision of provincial and local authorities largely appointed by the previous regime and without the presence of international observers, nobody seriously questioned their fairness.

SETTING THE STAGE FOR THE CONSTITUTION: THE POLITICS OF CONSENSUS

The new Suárez government appointed after the June 1977 elections faced a broad array of challenges it could not deal with on its own. Very little had been done in the preceding years to tackle the economic crisis triggered by the 1974 oil shock, with the result that inflation had risen to 26%, prompting a fresh wave of labour unrest. In Catalonia and the Basque country, mass mobilizations in favour of regional autonomy and a general amnesty continued unabated. Disconcertingly, the promise of democracy had done nothing to persuade ETA to lay down its arms, which in turn prompted increased sabre-rattling among certain sectors of the military.

Whenever possible, Suárez sought to overcome these challenges in collaboration with other political parties. His first move was to seek a formal reconciliation with Josep Tarradellas, president of the Catalan government-in-exile, who was able to return to Barcelona in October 1977 as head of a provisional regional government after the granting of a pre-autonomy statute to that region. Though largely symbolic, this show of respect for Catalan political identity was aimed at securing the full participation of the region's political parties in the ensuing constituent process.

In order to buy time (and a degree of 'social peace') for the constituent process, Suárez also explored the possibility of reaching a broad agreement with trade unions and employers' organizations with a view to tackling the major challenges facing the Spanish economy. To his frustration, neither were willing to share the burden of such an agreement with his government, largely because, having been legalized

only recently, they were still in the process of drawing up their respective platforms. In view of this, he turned to the leaders of the parties recently elected to parliament, only to discover that, while the PCE was anxious to strike a deal in order to gain some badly-needed credibility, the PSOE remained aloof, if not downright hostile. However, the threat of a UCD-PCE deal that would inevitably strengthen their historic rivals soon convinced the PSOE to join the multi-party talks that eventually led to the famous Moncloa Pacts of October 1977.

The Moncloa Pacts, named after the prime minister's official residence in Madrid, represented an ambitious attempt to deal with the major disequilibria afflicting the Spanish economy. The measures adopted included a 20% devaluation of the national currency, extensive price and wage controls, and a limited relaxation of job-protection legislation, which the left-wing parties accepted on the understanding that the introduction of a new system of direct taxation would lead to greater public spending in education, health and public housing. These measures proved effective in controlling inflation, which fell to 16% in 1978, but did not prevent the Spanish economy from experiencing another recession after the 1979 oil shock. The longer-term structural reforms were more substantial, though many were not implemented until the PSOE came to power in 1982. The Moncloa Pacts were also important in that they introduced new legislation recognizing basic political freedoms that could not wait for the new constitution to be adopted. More generally, the pacts were significant in that they encouraged politicians to regard their opponents as adversaries rather than enemies, and enabled them to show their voters that they were capable of setting aside their ideological differences in the interest of the democratizing process. Although the pacts were negotiated outside parliament, it was agreed that they be put to the vote so as not to undermine its role in the transition process only months after the first democratic elections.

Another major initiative requiring a broad political consensus was the Amnesty Law, also passed in

October 1977. The demand for political amnesty had been one of the causes that had done most to galvanize anti-Francoist opinion since the late 1960s, particularly in Catalonia and the Basque country. Before the elections, the king had issued a modest pardon in November 1975 and a limited amnesty in June 1976, but these were deemed insufficient by left-wing and regional nationalist parties. The 1977 law went much further, for it covered “all acts of a political purpose, whatever their outcome may have been”, thus benefiting all those tried for political crimes committed against the Franco regime prior to the 1977 elections, including ETA terrorists who had been convicted of murder. It also guaranteed that former servants of the regime would not be investigated or prosecuted for the “crimes and misdemeanours that may have been committed by state authorities against the rights of others,” thereby ruling out the possibility of purging the Armed Forces, the police or the judiciary. As one author has noted, this clause was possible because Spain “underwent the transition to democracy without calls for justice against the old regime from the democratic opposition – not even a formal condemnation of its evils was demanded”; if the law ruled out the possibility of any form of transitional justice, it was because no significant political actor demanded it at the time. Overall, the Amnesty Law was generally seen as a significant contribution to national reconciliation; in the words of one Basque nationalist leader, it offered “forgiveness from everybody to everybody” (Encarnación, 2014, pp. 55, 71-72).

THE 1978 CONSTITUTION: PROCESS, ACTORS AND OUTCOMES

Transitions to democracy almost invariably result in the adoption of a democratic constitution. By and large, those participating in such a process must choose between three possible courses of action: they may (i) seek to restore a previously-existing democratic constitution that has served the country well in the not-too-distant past; (ii) adapt an already-existing text to the country’s new circumstances; or (iii) set about writing an entirely new document. In the

Spanish case, only the third of these options was ever on the table. The six constitutions produced in the 19th century (in 1812, 1834, 1837, 1845, 1869 and 1876) prove the existence of a rich tradition in this field, but were also the expression of a winner-takes-all mentality that had prevented the adoption of texts capable of withstanding the test of time. More recently, the Second Republic had adopted a constitution in 1931 that was undoubtedly modern in outlook, but had alienated conservative (and in particular, Catholic) sectors of Spanish society to such an extent that not even the left-wing parties that felt emotionally committed to the republican regime (such as PCE and PSOE) liked to identify with it publicly. Furthermore, this was a republican text, and therefore unsuited to the circumstances of 1977, since it was generally assumed that, in return for facilitating the democratizing process, Juan Carlos and the monarchy would be enshrined in the new constitution. Writing a new constitution offers a society immersed in a complex transition to democracy both advantages and drawbacks. The main advantage is that, if the constituent process is reasonably successful, it will facilitate ‘ownership’ of the final product by the political actors (and their constituencies) that participate in it. Furthermore, a constituent process provides the media and civil society organizations with an opportunity to acquaint themselves – and others – with the key features of the new political system, in what can become a unique collective learning experience. In the Spanish case, the constituent process had an additional, extremely powerful symbolic meaning. In the eyes of the major left-wing parties at least, the adoption of a new constitution transformed the negotiated reform (‘*reforma pactada*’) initiated by the monarch and his government into a break with the Francoist past negotiated by the former representatives of the democratic opposition (‘*ruptura pactada*’). Producing an entirely new constitution can also have significant drawbacks, however. Transitions to democracy are generally periods in which vulnerable, newly-elected democratic governments face a vast array of challenges, such as dealing with severe

economic difficulties and their social consequences, redefining civil-military relations, modernizing the bureaucracy, handling territorial tensions, and even rethinking foreign policy. Writing a constitution inevitably requires those in office to invest significant time, energy, and political capital that might be better spent tackling these urgent tasks. Furthermore, constituent debates will often exacerbate existing cleavages within society, reopen old wounds, and possibly inflict new ones. Finally, a lively constituent process will often raise expectations of rapid, far-reaching change that are not always met, resulting in frustration, apathy and even disaffection. This was partly the case in Spain, where the immediate post-constituent period (1979-80) was marked by considerable public disenchantment ('desencanto') with the new political system.

On the whole, the Spanish constituent process was remarkably successful. This has largely been attributed to the manner in which it unfolded, which was characterized by the following features: (i) the tactical demobilization of street protests and unnecessary strike activity in order to avoid potentially polarizing street confrontations and to give elite negotiations a chance to succeed (with the significant exception of the Basque country); (ii) the inclusion of representatives of all politically significant parties in face-to-face negotiations; (iii) while, at the same time, keeping the number of participants in these negotiations down to a manageable number; (iv) deliberation behind closed doors; (v) restraint, cordiality and mutual respect among elites; and (vi) a modified version of the 'mutual veto'⁷ (Gunther, 2011, p. 24).

The success of the process was by no means a foregone conclusion, however. Suárez had initially intended a group of legal experts to draft a first version of the constitution, which would then be submitted to parliament. In theory, this would have

shortened the constituent process, while allowing the government greater control of the outcome. The PSOE, however, was adamant that the newly-elected parliamentarians should be responsible for drafting the text throughout, a demand that was quickly endorsed by other parties. Anxious to avoid a conflict that might undermine the multiparty consensus he had so carefully crafted thus far, Suárez acquiesced. As a result, the task of producing a draft constitution was assigned to a subcommittee of seven parliamentarians, consisting of three representatives of the governing UCD, and one each from PSOE, PCE, AP and the Catalan nationalists (who supposedly represented Basque nationalists as well). The subcommittee worked behind closed doors from August to November 1977, when a draft copy of the constitution was leaked to the press. The official version was published in January 1978, resulting in more than three thousand amendments being presented by political groups and individual parliamentarians, often at the instigation of civil society organizations. The subcommittee then produced a new version of the draft constitution, which was published in April, though not before the PSOE representative, Gregorio Peces-Barba, walked out in protest at a number of changes introduced by UCD with the support of AP. In May, the new version was submitted to a 36-member constitutional committee, where the emergence of a *de facto* coalition between UCD and AP led the PSOE to threaten to abandon the process altogether. Alarmed, Suárez instructed his deputy prime minister, Fernando Abril Martorell, to negotiate a new deal with González's alter ego, Alfonso Guerra, so as to allow the process to move forward. As of 22 May, this gradually took shape in a succession of secret late-night meetings held in restaurants and private offices. In due course, representatives of the other

7. One of the key elements of consociational politics (Lijphart, 1969) is the 'mutual veto', whereby each group participating in this type of consensual politics can block any proposal that threatens its vital interests. In the Spanish case, this took a somewhat modified form of a general norm that majoritarian winner-takes-all politics should be avoided in crafting the constitution. As described by Peces-Barba, the aim of the founding fathers was not to be "in agreement with everything, but that the constitution should not contain any aspect which would be absolutely unacceptable to any political group" (Gunther, 2011, p. 27).

parties (with the significant exception of AP) were also brought into the process. On 21 July, the resulting text was passed by the Congress of Deputies with 258 votes in favour, two against and 14 abstentions. It was then sent to the Senate, where over one thousand fresh amendments were debated during September-October. After eighteen months of negotiations, the final text was put to the vote in both houses on 21 October: in the lower house, it was adopted with 325 votes in favour, six against, and 14 abstentions; in the upper house, the result was 226 in favour, five against, and eight abstentions. Finally, the text was put to a referendum on 6 December 1978, and was passed with 87% of votes in favour and 7% against, though 32% of potential voters chose to abstain.

The debates that dominated the constituent process largely centred on the same issues that had plagued the Second Republic, but on this occasion they were dealt with far more pragmatically. Most remarkably, perhaps, the PSOE initially put forward an amendment that would have made Spain a republic, but once it was defeated by the other major parties (including the PCE, which had agreed to recognize Juan Carlos in return for its legalization), it quickly accepted the new parliamentary monarchy, though not without first ensuring that the king's future role would be largely symbolic.

Compromise also characterized the text's handling of church-state relations. The constitution boldly stated that "there shall be no state religion", thereby disestablishing the Catholic Church, and freedom of religion and worship were duly recognized. However, the same article acknowledged that the authorities "shall take the religious beliefs of Spanish society into account and shall in consequence maintain appropriate cooperation with the Catholic Church and other confessions." In effect, this would later allow the church to continue to receive generous funding from the state for its religious, cultural and educational activities; most controversially, it has also been interpreted to uphold the right of all children to receive religious instruction in public schools, as well

as the state's obligation to support Catholic schools financially (Brasloff, 1998, p. 95).

In its treatment of economic issues, the new text also sought to balance the preferences of the right with those of the left. On the one hand, it explicitly acknowledged the market economy and protected private property and inheritance rights against unlawful confiscation. At the same time, article 128 recognized "public initiative in economic activity," and stated that "essential resources or services may be restricted by law to the public sector, especially in the case of monopolies," and "intervention in companies may be decided upon when the public interest so demands." More remarkably, article 129 claimed that the authorities would "establish means to facilitate access by the workers to ownership of the means of production." Additionally, the constitution also contained guarantees of the right to strike and commitments to provide a broad range of social services, including social security, health, education, disability and unemployment benefits, as well as the promise of a more egalitarian distribution of income. Finally, the new text also contained echoes of the neo-corporatist philosophy still in vogue in much of continental Europe in the 1970s, as evidenced in article 131, which urged the government to "draft planning projects" in collaboration with trade unions and employers' organizations.

The most controversial constitutional compromise struck by Spain's political elites was undoubtedly that which sought to define a new territorial settlement. On the one hand, the founding fathers found it necessary to assert "the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards," while at the same time recognizing the "right to autonomy of the nationalities and regions of which it is composed." (The term 'nationalities' was introduced at the suggestion of the Catalan nationalists, who would nevertheless have preferred the text to recognize the existence of a Catalan 'nation'.) Most importantly, the constitution included provisions regulating the devolution of powers from the central government to the so-called autonomous

communities, paving the way for the future development of a semi-federal State of Autonomies. However, this proved insufficient to win over the Basque nationalist party (PNV), which resented the fact that the region's ancient political traditions and fiscal privileges ('fueros') were to be updated "within the framework of the constitution" since in their view these were primordial rights that could neither be granted nor taken away by any Spanish constitution. As a result, the PNV refused to vote in favour of the constitution and recommended abstention in the December referendum, though its leaders clarified that they would nevertheless abide by it (Gunther, 2011, p. 29).

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The attitude of the PNV has been attributed to their non-participation in the subcommittee that produced the first draft of the future constitution, which represented a significant exception to the inclusiveness principle mentioned above. Although government representatives did their utmost to accommodate its demands later in the process, the PNV's exclusion from the early stages of the process – which many believe was self-inflicted – may well have given it an incentive to reject the final text. Whatever the case, the semi-loyalty of the PNV – and the blatant hostility of more radical Basque nationalist groups – inevitably undermined the legitimacy of Spanish democracy, a situation that was only slightly ameliorated by the granting of a generous statute of autonomy in October 1979, as discussed below.

THE POLITICS OF CONSENSUS AND ITS POSSIBLE CONSEQUENCES

The transition literature tends to underplay the fact that the period of consensus politics was relatively short-lived. As soon as the new constitution was adopted, Suárez decided to hold general and local elections in March 1979, in order to complete the democratization of the political system. In effect, this put an end to consensus politics at the national level. His new government spent much of that year negotiating statutes of autonomy for the Basque country and Catalonia, which were put to the vote in their respective regions in October 1979. In the Basque case, the statute was essentially the product of negotiations between the government and the PNV, which had emerged as the largest Basque party in the June 1977 elections. Most importantly, in spite of having refused to vote for the constitution, the PNV did support the statute, which the former had made possible. In the Catalan case, negotiations proved slightly more complex because they were multilateral, since the government had to engage with the regional branch of the PSOE – which had won most votes in the Catalan provinces in the general election – as well as the nationalists. Characteristically, Suárez refused to take credit for his efforts, with the result that UCD performed poorly in the first Catalan and Basque elections held in March 1980, with the nationalists emerging as clear front-runners in both contests. Spanish democracy might have been better served if the politics of consensus had been cultivated a little longer. The 1979 oil shock triggered another economic downturn, which generated fresh social unrest. The Catholic Church and employers' organizations became increasingly critical of Suárez, who was accused of "governing on the left with the votes of the right." In turn, this encouraged critics within his own party to question his leadership, with the result that UCD soon began to unravel. As democratization and Basque autonomy progressed, ETA upped the ante, claiming 64 victims in 1978, 67 in 1979 and a staggering 96 in 1980, a significant number of whom were police and military personnel. As intended, this led to

fresh sabre-rattling among the ultra right-wing sectors of the armed forces, which planned an unsuccessful coup in November 1978 and carried out a far more serious attempt in February 1981, which was aborted by the timely intervention of King Juan Carlos.

Given the difficulties experienced by Spanish democracy in 1979-81, it is ironic that critics have sometimes blamed consensus politics and the negotiated nature of the transition for many of its future shortcomings, real or imagined. Some have argued that, largely due to the absence of a 'ruptura democrática' (democratic break with the past), Spain's democracy has been 'contaminated' by the survival of institutions, values and attitudes which hail from the Franco era. Critics of the monarchy, for example, often claim that it was imposed on Spaniards as a result of the balance of power that existed in 1977-78, even though – as discussed above – it was put to the vote during the constituent process in May 1978. (These same critics conveniently forget that the republican form of government was adopted in 1931 without a referendum.) Similarly, the negotiated nature of the democratizing process has also been blamed for the absence of 'transitional justice' or the alleged failure to deal with Spain's political past in a manner acceptable to the victims of Francoist repression.

More importantly, perhaps, it has been claimed that negotiated transitions that use secret intra-elite negotiations and political pacts may result in 'frozen democracies'. Karl has suggested that, because pacts are intended to limit the uncertainty of the transition process, they tend to demobilize new social forces, circumscribe the participation of certain actors in the future, and "may hinder future self-transformation of the society, economy, or polity, thereby producing a sort of frozen democracy." In other words, pacts that may be positive during the transition may also compromise the future quality of the resulting system of government by (i) stifling political competition by concentrating power in the hands of a few elite actors; (ii) hindering democratization by retarding the development of civil rights and political liberties; and (iii) undermining popular

support for democracy by fuelling cynicism among the citizenry (Karl, 1987, p. 88).

The fact that Spanish democracy has undertaken – or at the very least, been fully compatible with – some very profound political, economic and social transformations should suffice to question the relevance of the 'frozen democracy' thesis. To name but a few, these have included the most far-reaching process of political and administrative decentralization experienced in post-war Europe; the development of a welfare state that provides universal healthcare, education, pensions and significant unemployment benefits; and the legalization of divorce, abortion and same-sex marriages, which in turn partly reflects the rapid secularization of Spanish society. Furthermore, recent research suggests that the relationship between the nature of a transition to democracy and the type of political system resulting from it is not as linear as the 'frozen democracy' thesis would suggest. For example, there is no obvious connection between the level of interest in politics (which has always been low in Spain) and whether or not the transition to democracy was negotiated or not (Encarnación, 2008, p. 48). Indeed, one of the most surprising lessons of the Spanish experience may well be the fact that the establishment of a new political system through consensual means does not necessarily result in a consensual democracy (Gunther, 2011, pp. 35-36).

POSTSCRIPT: WHITHER SPAIN?

Largely as a consequence of an unusually severe and prolonged double-dip recession (2008-2014), during which unemployment rose to 26% and social inequality reached alarming levels, in recent years the Spanish political system has come under unprecedented stress. In June 2014, public criticism of King Juan Carlos – hitherto regarded as a key protagonist of the transition settlement – forced his abdication. Partly as a result of their involvement in a succession of corruption scandals, traditional political parties have lost much of their credibility, generating considerable public disaffection. Additionally, the crisis has fuelled

doubts about the economic sustainability of the State of Autonomies, while the Catalan government's unexpected unilateral drive for independence has raised new questions about its political viability.

Unsurprisingly, this situation has led some to blame the transition settlement for Spanish democracy's current shortcomings, with a small minority claiming that only by overthrowing the political system designed in the 1970s will Spain be able to overcome the crisis. Admittedly, some aspects of the original transition settlement – such as the rigidity of the constitution,

which requires very large majorities to push through significant reforms –, may have contributed indirectly to the current impasse. However, the emergence of new political parties and the remarkable popularity of the new monarch, among other developments, suggest that the system is considerably more resilient (and flexible) than is often realised. In short, much of this recent criticism is both unfair and misleading, assuming as it does that the transition settlement was written in stone, as if subsequent generations of Spaniards had remained frozen in time.

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