

The Constitutional Reform and the Civil-military Relations in Spain

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Workshop on Comparative Constitutional
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Conditions for the Spanish Transition

- Previous positive conditions for the Spanish democratic transition:
 - Franco's dictatorship was an authoritarian regime, not a military regime or a unique-party regime.
 - Free Market Economy and External Trade Liberalization since 1960.
 - Existence of Middle Class → Role of moderators.
 - Development of a Public Administration system and a fair taxation policy.
 - The figure of King Juan Carlos I.
 - The memories of the Civil War and the political will to heal the wounds of the past.
- Previous negative conditions for the Spanish democratic transition:
 - The lack of respect for linguistic and cultural diversity within Spain
 - ETA Terrorism.
 - Economic Crisis – 1973 Oil Crisis.



The Spanish Transition to Democracy

- **Democratic Transition:** From General Franco's Death (November 1975) to the first General and Municipal Elections (Spring 1979).

Some relevant moments:

- The appointment of Adolfo Suárez as President of the Government (July 1976)
- The referendum on the Law for Political Reform (December 1976)
- The legalization of the Spanish Communist Party (April 1977)
- The Moncloa Pacts between enterprises, trade unions and political parties (October 1977)
- The approval by referendum of the Spanish Constitution (December 1978)

Two phases of conflict in the Democratic Transition period:

- Conflict between those who wished to perpetuate Francoism (*Continuistas*) and those who wanted to make a smooth transition from dictatorship to democracy (*Reformistas*)
 - Conflict between *Reformistas* and those who preferred building political institutions from scratch (*Rupturistas*)
- **Democratic Consolidation:** From the general and local elections and the Basque and Catalan referendums on regional autonomy (October 1979) to the resolution of some of the partial regimes in the last 80s.

Some relevant partial regimes:

- The transformation from a unitary state to a more decentralized structure (*Comunidades Autónomas* – Regions)
- Welfare State: education, health, pensions
- The Military Reform

The Spanish Military Reform

- **Democratic Transition:** From the appointment of General Manuel Gutiérrez Mellado as VicePresident of the Government (September 1976) to the victory of the Spanish Socialist Party (PSOE) in the 1982 General Elections.
- **Democratic Consolidation:** From the first Socialist Government (December 1982) to the end of the integration of Spanish security policy into the Western System (1989).
Some relevant achievements:
 - Redefinition of the Spanish membership in NATO
 - Accession to the WEU
 - Signature of new agreements with the United States
 - Participation of Spanish troops in international missions



The Spanish Transition and the Constitution

- A completely new Constitution (1931) was needed. The Constitution of the Second Republic was not the solution.
 - Too much time had passed (1939-1978).
 - The Republic was not an option.
- The hardest issue to be resolved in the Constitution was the demands of self-government by certain regions and, hence, the creation of a system of regional autonomous governments.
- It is a good example of a “*ruptura pactada*”, more than a reform but agreed by a large consensus.



The Armed Forces in the Drawing up the Constitution

Three dangers in the initial steps:

1. The risk of locating the armed forces in the Preliminary Section devoted to the institutions of the State, in direct connection with the Crown.
2. The risk of differentiating the line of military command from the political-administrative line.
3. The risk of keeping the police and *Guardia Civil* integrated with the armed forces.

The final wording was a result of a political compromise:

Article 8.1, Preliminary Section

“The mission of the Armed Forces, comprising the Army, the Navy and the Air Force, is to guarantee the sovereignty and independence of Spain and to defend its territorial integrity and the constitutional order”

- It was not located in the Government and Administration Section.
- It avoided granting constitutional validity to the ‘Joint Chiefs of Staff’ as a collective organ of command.
- The armed forces were not considered part of the forces of public order and security bodies.
- The sentence “defending the unity of Spain” was finally omitted from the Constitution.



Conflict Issues with the Armed Forces (1)

- Death Penalty
 - Transition: “Death penalty is hereby abolished, except for the situations covered by military criminal law for wartime” (article 15 of the Constitution)
 - Consolidation: The Military Penal Code stated that no court was obliged to impose the death penalty because it was the only sentence available. In 1995, the death penalty was removed from the Military Penal Code.
- Military Courts of Honour
 - Transition: Abolition of the Courts of Honour in the area of civil administration and professional organizations.
 - Consolidation: Abolition of the military Courts of Honour when reforming the Military Justice.
- Conscientious Objection to Military Service
 - Transition: Recognition of the right of conscientious objection (article 30.2 of the Constitution).
 - Consolidation: The 1984 Law on Conscientious Objection established an alternative social service compatible with the reasons for conscientious objection.
- The Separation of the Armed Forces from the Police
 - Transition: There was the proposal of creating a unique body of forces of security order with the armed forces and the police and Guardia Civil.
 - Consolidation: De-militarization of the National Police and introduction of the possibility of a civilian Director General of the Guardia Civil.



Conflict Issues with the Armed Forces (2)

- Direct connection to the Crown
 - Transition: The Constitution makes the King as the Commander-in-Chief of the Armed Forces
 - Consolidation: The 1984 National Defence Law assigned to the President of the Government direct and effective leadership by ensuring he is responsible for defence policy and exercises his authority in order to phase, coordinate and lead the activities of the Armed Forces.
- The Armed Forces seen as ‘rather more’ than the Public Administration
 - Transition: The Constitution does not clarify if the Armed Forces are ‘more than’ a part of the administration of the State or not.
 - Consolidation: Integration of the armed forces within the organic structure of the ministry.
- Role of the Minister of Defence
 - Transition: The creation of a single Ministry and the appointment of the first civilian minister of defence.
 - Consolidation: The Minister is responsible for military and defence policies, delegated by the president of the government, and exercises the capacity to enforce regulations and discipline as assigned by law.
- Autonomy of the Military Justice
 - Transition: Independence of the military system of justice.
 - Consolidation: Abolition of the military justice system as a power-centre independent of a single unified judiciary power.



The Constitutional Debate on the Role of the Joint Chiefs of Staff (JUJEM)

- In 1976, General Gutiérrez Mellado, Vicepresident of the Government, created the Joint Chief of Staff, an instrument for joint action that was indispensable for making efficient use of military capabilities.
- In 1978, the JUJEM fought hard for it to be included in the Constitution. They presented a proposal to the drafting commission of the Constitution to include a reference to them as the “supreme collegiate organ of the military command of the Armed Forces”.
- Gutiérrez Mellado was against this proposal and drew up an official letter stating his own position. He wrote to the President of the Government: “no reference is made ... to the paragraph relating to the said Junta, because we understand this is not a matter for the Constitution but should be object of a Law regulating the Defence of the Nation”
- The need to avoid granting constitutional validity to the JUJEM as a collective organ of command became of vital importance for the subsequent military reform. If the Constitution had included a definition of the JUJEM as a collegiate command, it would have encouraged the military in their desire to create an autonomous space in relation to government and it would have prevented the 1984 Reform Law from becoming a reality.

The Debates over the Constitution in the Parliament

The debates in the Spanish Parliament did not directly address the issues or dangers on the civil-military relations:

- The separation of the armed forces and security forces:
Alianza Popular and military senators defended the idea of re-establishing Francoist parameters for the armed forces, or at least no separating out the *guardia civil*.
They also wanted to include the defence of the unity of the Fatherland as appropriate missions for the armed forces.
- The idea that the armed forces were above political parties:
A Socialist spokesman affirmed that “the armed forces are subordinate to civil power, but their mission is quite above vying political opinions”.
A military senator affirmed that “the nature of the military’s mission locates the armed forces above political options, makes them neutral in terms of political parties and subordinate to civil powers, within a profile safeguarding permanent values”.
- The link of the armed forces to the Crown, and not as a part of the public administration. The armed forces seen as the backbone of the state:
Manuel Fraga (AP) said that “the armed forces, as obedient as they must be, are not the same as a section of the Home Ministry or some other department of local administration”.
Raúl Morodo (PSOE) wanted the armed forces to be described as agencies of state.

Conclusions

- The military reform has to be understood as a part of the overall process of transition to democracy, together with other reforms such as the police and judicial sectors.
- The Constitution cannot become the final answer to all the issues on debate. The Constitution should allow problems to be solved at the right time.
- The Constitution must be a set of guidelines.
The military reforms must be done by specific laws.
- The increase in professionalism for the armed forces also implies the acceptance by every soldier that his/her duty is to embrace loyalty and subordination to the democratic civil authorities.
- The democratic civil control of the armed forces must be accepted by the military. In fact, this reform must be done with their participation. They have to understand that the civil control is the best and unique way to be accepted by the society.
- The debates in the parliament do not always reflect the importance of the issues in the military reform.

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