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## Constitution Making and Democratization

### The Spanish Paradigm<sup>1</sup>

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As a type of political change, a transition from authoritarianism to democracy is on par, in its consequences, with a revolution, civil war, or coup d'état. To understand transitions, one must first understand the nature of the regimes that the transition is evolving away from and toward. Spain in the 1970s was evolving away from an authoritarian regime, which Juan Linz defines as follows:

Authoritarian regimes are political systems with limited, not responsible, political pluralism; without elaborate and guiding ideology (but with distinctive mentalities); without intensive or extensive political mobilization . . . and in which a leader (or occasionally a small group) exercises power within ill-defined limits but actually quite predictable ones.<sup>2</sup>

By utilizing contrasting concepts, one can turn Linz's definition of authoritarian regimes into a useful definition of democratic regimes:

Democratic regimes are political systems with mostly unrestricted and responsible political

pluralism; with a variety of political ideologies and mentalities; with some political mobilization and participation possible through political parties; and in which a leader exercises power within formally well-defined limits (constitutional ones) that are normally quite predictable.<sup>3</sup>

While an authoritarian leader may be characterized as unconstitutional or abusive of constitutional limits (if there are any), a democratic leader usually has well-defined powers limited not only by constitutionally sanctioned powers—the judiciary and the legislature—but also by constitutionally predictable limits.

If an authoritarian regime is the starting point and a democratic regime the end point of a transition, the transition itself may be defined as an evolutionary period of reform coupled with regime change. Such a period of reform and regime change may contain two or more of the following developments: the pluralization and mobilization of society from below; the liberalization of socioeconomic policies; the constitutionalization of

political activity; and the liberalization and possible democratization of the bureaucracy.

This chapter focuses on one aspect of one transition to democracy: the constitution-making period during Spain's transition to democracy in the late 1970s. The constitutionalization of political activity consists of the democratic reordering and restructuring of political rules and institutions. Such democratic mainstays as regular elections, freedom of association, the separation of governmental powers, and guarantees of individual liberties are integrated or reintegrated into the mainstream of the polity. Such reorganization of political rules and institutions requires both an elite decision-making phase and an implementation phase. The decision-making phase is the constitution-making process itself, during which the constitution makers hammer out the shape of the document. The implementation phase follows the approval and adoption of the new constitution and consists of the practical translation of constitutional theory into political action.

## Preconditions to Constitution Making

### *A Brief Review of Franco's Record on Reform<sup>4</sup>*

Francisco Franco y Bahamonde and his ministers first recognized the need to institute economic reforms in the early 1950s, when the consequences of Franco's post-civil war policies of economic autarky and isolationism proved too costly. While such policies recognized the need to improve Spain's then-desperate economic conditions, they were initiated solely at the governmental level and were not prompted by widespread or well-organized sociopolitical pressures.

Over the next decade, from the mid-1950s to the mid-1960s, some pluralization evolved through the formation of illegal labor movements and political, student, and liberal Catholic groups. The authoritarian regime, especially in the area of labor pol-

icy, began to feel increasing social pressure and demands. Its responses throughout the 1960s were a mix of piecemeal policy reform and overall repression.

In the mid-1960s, however, new political factors began to emerge within Spain's authoritarian regime. A limited number of governmental elites became interested in reforming the political system. The extent of this interest neither became clear nor did it translate into regularized effective action. But politicians did emerge from the ranks of the pro-reform Francoists who would compete in post-Franco democratic politics. Among those who would span both authoritarian and democratic politics were Manuel Fraga Iribarne, a minister under Franco and the leader of the Popular Alliance, a right-wing party founded in 1976, and Adolfo Suarez, a Franco bureaucrat and the first democratically elected prime minister of post-Franco Spain.

As Franco grew older, even he realized the need for some reform. His ideas of reform, however, were intended to perpetuate the system he created, not change it. In Linz's terminology, an authoritarian regime is one that has ill-defined limits. Franco's ill-defined limits were embodied in his *Leyes Fundamentales*, or Fundamental Laws. Six of these laws were promulgated over a period of twenty years. Franco tried to impose a quasi-constitutional structure on these unrelated laws in 1967 by passing the Seventh Fundamental Law. He also sought to cloak his system with democratic legitimacy by designating his system one of "organic democracy." The result, as one author has aptly put it, was one of "façade democracy."<sup>5</sup>

Important developments with a profound impact on the demise of the authoritarian system followed Franco's 1967 reforms. When Franco designated Prince Juan Carlos de Borbon y Borbon his successor as head of state and Admiral Luis Carrero Blanco his first head of government in 1973—until then

Franco had held both titles—he did not suspect that he had planted the crucial seeds for a legal transition to democracy. Franco had personally supervised the education and rearing of the prince and trusted him implicitly as an ideal successor. The future king, however, turned out to be the opposite of Franco's dreams: a man profoundly dedicated to democracy. Terrorism thwarted Franco's plans for Carrero Blanco, who was assassinated by the Basque terrorist organization Euzkadi ta Azkatasuna (ETA) in 1973, six months after becoming prime minister. Carrero Blanco's death was a severe blow to Franco's plans; he had been one of Franco's most loyal and hard-line supporters, a man who would have stopped at very little to maintain authoritarianism in Spain. His death left the doors for leadership succession for the post of head of government wide open.

#### *Sociopolitical Preconditions for Democratization*<sup>6</sup>

In Spain, a phenomenon best described as the pluralization of society had begun under Franco's regime some years before his death. Using Juan Linz's typology of oppositions to and under an authoritarian regime, one can distinguish between opponents within and outside of the system. In doing so, one comes up with a "semiopposition": "groups that are not dominant or represented in the governing group but are willing to participate in power without fundamentally challenging the regime." The monarchist Carlists and the far-right political quasi-party Fuerza Nueva (New Force) were among these groups in Spain. Linz also distinguishes an "a legal opposition which aims at basic change in the regime and its political institutions and to a large extent basic change in the social and economic structure." Many such groups existed in Spain by the early 1970s. Among these were university student groups, liberal clergy, and informal prodemocratic political groups. Finally, Linz also differentiates an "il-

legal opposition," which includes groups that the authoritarian regime officially bans or persecutes and which, in authoritarian Spain, included the communist and socialist parties and their respective labor unions, the Comisiones Obreras (Workers Commissions, or CCOO) and the Union General del Trabajo (General Workers Union, or UGT).<sup>7</sup>

How does an authoritarian regime react to such social and political pluralization? Can it stem the tide of social demand for reform? Or does it try to satisfy some of these demands? The regime has several options. It can refuse to recognize pluralization and choose to suppress it actively. It can also ignore the demands by neither suppressing nor responding to them. The regime may react, however, by liberalizing specific policies without implementing general reform or officially recognizing social or political groups. Finally, the authoritarian regime may do the unexpected and implement an overall policy of reform and democratization. In the latter years of his rule, Franco made a somewhat feeble attempt at the third option of piecemeal reform. Carlos Arias Navarro, the first prime minister of the post-Franco era, tried to maintain this course. King Juan Carlos, however, took the first decisive step toward generalized reform and democratization when he dismissed Arias Navarro and appointed Adolfo Suarez as prime minister.

#### *Post-Franco Reform Attempts, Failures, and Successes*<sup>8</sup>

Franco died in November 1975; Arias announced a program of political reform on January 28, 1976. The reform package included small concessions to allow most political groups, except the communists, to hold private political meetings. He also made some minor changes to the composition of Spain's parliament, the Cortes. He did nothing to change the status of the Sindicato Vertical, the official and only labor union. This reform

**Table 15.1 Results of the 1976 Referendum**

Total electoral census	Number of votes	Votes for	Votes against	Abstentions	Blank ballots	Voided ballots
22.6 million	17.6 million (77.72 percent of electorate)	16.6 million (94.2 percent of voters)	450,102 (2.6 percent of voters)	22,270 or (0.12 percent of voters)	523,457 (3.0 percent of voters)	52,823 (0.3 percent of voters)

Source: Bonime-Blanc, *Spain's Transition*, p. 26.

package was met with general disappointment throughout Spanish political circles. After only a few months of Arias Navarro's halfhearted reform, King Juan Carlos dismissed him and chose Adolfo Suarez, a relative unknown, to succeed him. Together, the king and Suarez would become the major engineers of Spain's transition to democracy.

In September 1976, Suarez presented what would become the first quasi-democratic reform package for Spain. Cleverly disguising it as the Eighth Fundamental Law, he subtitled it "Ley para la Reforma Política" (law for political reform). The law was the result of a broad political discourse between government and opposition politicians over a period of months. Among its most important provisions were changes in authoritarian institutions. The Cortes was to be democratized, becoming a bicameral body with a lower house, or Congress of Deputies, with 350 directly elected members, and an upper house, or Senate, with 207 members, some of them appointed by the king. The monarchy would retain most powers that Franco conferred upon it. The king would nominate the prime minister, appoint one fifth of the Senate, and submit political questions to national referendum; he could also dissolve the Cortes and call for new elections at will. Key provisions of the law also included statements of democratic principles, affirming popular sovereignty, the supremacy of law, the inviolability of fundamental rights, universal suffrage, and implicit recognition of political plural-

ism. This reform package was submitted to a popular referendum in December 1976. The results, as Table 15.1 demonstrates, overwhelmingly favored the new law. The significance of this double-edged law was that it allowed for the beginning of a balanced transitional period, which effectively neutralized the political extremes (see Table 15.1).

In 1977, Suarez undertook further reforms, the most significant of which were the elaboration of an electoral law, the scheduling of elections, the legalization of political parties, a broader amnesty for political prisoners, and a preliminary recognition of some regional demands from the Basque Country and Catalonia. These events culminated in the first free elections in Spain in over four decades, on June 15, 1977.

Suarez, the king, and the political opposition had achieved a new form of political engagement in Spain: They successfully implemented a peaceful turning point toward democratization by dialogue, compromise, principle, and action. They used the old rules to implement radical yet peaceful change. They used—and abused—Franco's framework of fundamental laws to break out of the authoritarian system legally. Simultaneously, they used democratic devices, such as elections and freedom of the press, to usher in democracy. This process of combining the illusion of authoritarian legality with the reality of democratic practice without risking stability may best be described as *autorruptura*.<sup>9</sup>

### *The International Background*

International factors also were crucial in bringing about change. The Spanish population and its leaders, especially in the business community, felt an increasing need and desire to become integrated into European economic structures. For their part, European Economic Community and North Atlantic Treaty Organization nations applied sometimes subtle and other times direct pressure on Spain to integrate into Western economic and military structures. Other foreign influences—more subtle at first, but later fairly blatant—had a cumulative effect on Spain, its youth, and other sectors over a longer period of time. These influences took the various forms of tourism, newspapers, magazines, music, radio, and other media (despite censorship); foreign economic investment; and the return of immigrant workers from northern Europe. Over time, all these influences had a major effect on modernizing aspects of Spanish life as well as creating a set of broader and greater expectations among key sectors of Spanish society, especially among university students, informal political groups, and businesspeople.

### *Conflict and Conflict Resolution*

In Spain at the time of Franco's death and the beginning of the country's transition to democracy, conflict or potential conflict centered on the following issues: regional autonomy; regional secessionism; military disaffection; the role of the Catholic Church; left-wing disaffection (communists, socialists, trade unions); and right-wing disaffection (Francoists, Falangists, monarchists). How did these issues fare under the political change taking place? Except for a very small yet vocal minority, the vast majority of people concerned with these issues chose to play ball and participate in the process rather than abstain from or throw up obstacles to it. All parties appeared to be willing gen-

erally to move closer to the center to make the political changes that were taking place evolve into a more democratic and free societal paradigm.

Thus, the coming together of various key factors over time—long-term pluralization, foreign influence, piecemeal authoritarian reforms, and the potential for serious and perhaps violent civil conflicts—provided compelling reasons for the authoritarian elite to consider and even embrace dramatic political change. If certain key authoritarian leaders had not favored democratization in and of itself, other, perhaps more violent, forms of political change could have followed Franco's death. The elite might have attempted to continue authoritarianism. Mounting social tensions would be met by severe repression, which, in turn, could fuel a military coup, revolution, or civil war. The results in Spain, however, were a peaceful transition to democracy, albeit with a very elaborate, intense, and prolonged constitution-making process.

### **The Constitution-Making Process: Theory, Participants, and Phases**

#### *Theory*<sup>10</sup>

A constitution-making process is one of the most intense undertakings of a transition to democracy. No political group, party, or figure can fully avoid personal or ideological involvement in the issues raised during such a period. Everyone—politicians and the public—knows that a constitution legitimizes a democracy. It is the democratic prerequisite without which no democracy fully exists.

Constitution making is at once the most varied and the most concentrated form of political activity during a regime transition. In it, political maneuvering, bargaining, and negotiating take place, and the political positions, agreements, and disagreements of groups and leaders come to the fore. How the constitution makers handle these issues

may tell us crucial things about the transition and the regime it leads up to. The discrepancy between the words agreed to in the constitution and the political reality that emerges may point to potentially serious future conflicts. The general character of both the process and the outcome may reveal clues about the regime's potential for stability or instability.

If a constitution is a set of norms and principles limiting political power and protecting individual rights, what is constitution making? It is a policy-making process in which political elites decide on the limits and practices of the new government and regime (the political formula) and on the rights and duties of its citizens (the sociogovernmental formula). Constitution making at its best is a comprehensive attempt at social and political problem solving and conflict resolution. During a transition to democracy, it consists of a momentous set of decisions that may very well affect the viability of the emerging regime. The form that constitution making takes may also reveal the shape of future domestic political relations.

Three types of constitution making may be distinguished: the consensual, the dissensual, and the stillborn. Consensual constitution making takes place when most if not all major political groups participate in drafting the constitution. Agreements are reached through compromise, avoiding dogmatic solutions, and upholding the notion of political responsibility throughout the process. Because of this compromise, the constitutional text often contains ambiguity. While this ambiguity often irritates one or more political parties, none of them fully opposes the entire text and most of them support it. Spain in the 1970s is a prime example of this kind of constitution-making process.

Dissensual constitution making is a process in which not all political actors participate, dogmatic solutions prevail, and prob-

lems are often left unresolved or resolved irresponsibly. Agreements are difficult to reach, and if reached, frequently exclude the views of one or more major political parties. The resulting constitutional text potentially threatens the stability of the new political system. Such a dissensually created constitution contains solutions satisfactory only to the dominant political force. Spain in the 1930s exemplified this type of constitution-making process.

Stillborn constitution making fails even before approval and implementation of the document. An example of such a case was the stillborn French constitution rejected by the French electorate on May 5, 1946. Polarized political coalitions contributed to the unacceptable constitutional results of that process. The French constitution makers regrouped and drafted a second constitution, which the electorate accepted on October 13, 1946.<sup>11</sup>

Immediately preceding a constitution-making process, existing political elites must consider and perhaps agree upon an agenda for political action. Setting such an agenda means recognizing and addressing the crucial national problems of the day and then including some of them in constitutional talks. It also means prioritizing these issues properly, giving the most urgent ones precedence over the less critical ones. If it is inappropriate to include a particular issue in the constitutional talks or in the resulting constitution, suitable arrangements must be made for the extra- or postconstitutional handling of the issue.

### *The Participants: From One Party to Hundreds<sup>12</sup>*

Although there was a wide variety of illegal and extralegal political groups in Spain at the time of Franco's death, the only legal party in the country was Franco's official party, the forty-year old Movimiento Nacional (National Movement). The authoritarian rather

**Table 15.2 Spanish National Elections, 1977**

Party or coalition	Percentage of votes	Number of seats
Union del Centro Democratico	34.7	165
Partido Socialista Espanol Obrero	29.2	118
Partido Comunista Espanol	9.2	20
Alianza Popular	8.4	16
Convergencia Catalana	4.0	13
Partido Nacional Vasco	2.0	8
Other parties	13.0	10

*Note:* Information from various periodical sources and the Central Electoral Board as reported in *El Pais* and ABC, June and July 1977.

than totalitarian quality of Franco's rule had allowed for a semblance of semipluralism within that party, with moderate elite conflict taking place within its ranks.

Shortly after Franco's death in November 1975, more than two hundred groups came out of the woodwork claiming to be political parties. Among these were associations historically recognized as parties—such as the communists (Partido Comunista Español, or PCE) and socialists (Partido Socialista Obrero Español, or PSOE)—and embryonic party forms that would compete as real parties for the first time in June 1977. Among the newly born parties were the Alianza Popular (AP) and Union del Centro Democratico (UCD).

The Spanish political picture was very diverse, with parties on the far right, right, center-right, center, center-left, left, and far left. Emerging at this time were also key new democratic leaders, among them Felipe Gonzalez, new leader of the PSOE and future prime minister of Spain in the 1980s and 1990s, and Santiago Carrillo, seasoned leader of the communists in exile and the newly legalized PCE.

The June 15, 1977, elections were preceded by a short three-week campaign. The UCD's appeal increased over this period, while other parties had little time to organize or get exposure on television or radio, still controlled

by the government. While blatant abuses of their relative position of power were not evident, clearly the prime minister's party, the UCD, had greater access and influence than did the other parties.

Table 15.2 shows the election results. To no one's surprise, the UCD received most of the votes (35 percent of the total popular vote) and seats in the Cortes (165 out of 350). Although not a majority, the result allowed Suarez to form a minority government through a coalition with other centrist and regional parties. Closely trailing the UCD with 29 percent of the popular vote was the PSOE, which received 118 seats in the Cortes. Both parties on the extremes—the rightist AP and the leftist PCE—had disappointing results. The AP received 8 percent of the vote and 16 seats, and the PCE received 9 percent of the vote and 20 seats (see Table 15.2).

Although the results were not unexpected and no major improprieties were evident, one of the major issues emerging from the election was the fairness of the electoral system—mainly, the dubious proportionality of the new system, tailored after the d'Hondt system. Several technicalities favored the party with both the most votes and the most centrist or moderate position, that is, the UCD. Among these favorable technicalities was that each province (50) received two senators regardless of proportionality.

This allowed for equal representation from both rural and urban centers, the latter being more densely populated and liberal. Members of the lower house were chosen through proportional representation. Each province, however, no matter how small or sparsely populated, received a minimum of three representatives. Thus representation once again favored the inland, rural, and conservative Castilian provinces.<sup>13</sup> The electoral bottom line spoke for itself. With 34.7 percent of the vote, the UCD received 47.1 percent of the seats; with 29.2 percent of the vote, the PSOE received 33.7 percent of the seats; with 8.4 percent of the vote, the AP received 4.6 percent of the seats; and with 9.2 percent of the vote, the PCE received 5.7 percent of the seats.

#### *The Formal Phases of Constitution Making*<sup>14</sup>

A handful of critical decisions need to be made before a constitution-making process can begin. Among the most important are: How do the transitional elites decide which constitution-making route to take? What entity initiates the first draft? Should the body be elected or appointed? Should it be elected as part of a general election or as a constituent assembly strictly tasked to draft a constitution?

There are three basic routes that can be taken to constitution making. The caretaker government, under the aegis of the executive branch, can appoint a commission of experts to draft the constitution. Once written, the document can be submitted to a national referendum. Another option involves electing a body, such as a constituent assembly, with the sole mandate of writing a constitution. Finally, the caretaker government can call for general elections (governed by temporary electoral laws) for a new legislature that, in addition to its general duties, will draft a constitution. Arguably the most democratic

form of constitution making is through the creation of a constituent assembly. In Spain, it was not clear at the outset which of these paths would be taken. In the period leading up to the June 15, 1977, elections, it was unclear to the electorate whether the election results would yield a regularly elected Cortes or an extraordinarily created constituent assembly. There was division over this issue among the political parties, with liberal and left-leaning parties favoring the constituent assembly option and the center-right and right favoring a regularly elected Cortes. The latter view prevailed.

The next important question involved who would write the first draft of the constitution. Would the government initiate the draft or would this job be the exclusive domain of the legislature? After some pressure from the PSOE, the government agreed to allow for a parliamentary process. This promise was later broken, but the decision allowed for the momentum of the process to proceed uninterrupted and peacefully. By late July 1977, it was clear that the winning coalition's strength in the Cortes would dictate the shape of the process; it also translated directly into committee representation throughout the process.

Shortly before the beginning of the constitution-making process, the parties all announced constitutional platforms or positions. Felipe Gonzalez of the PSOE urged the need for a "compact constitution." Santiago Carrillo of the PCE suggested a "government of national democratic concentration." Leopoldo Calvo Sotelo of the UCD emphasized the three immediate objectives of "a constitution, autonomies and economic measures." Fraga Iribarne of the AP was not shy in professing his "loyalty to the past." The Catalan representative, Jordi Pujol, emphasized the paramount importance of regional autonomies. Finally, Xabier Arzallus, the Basque spokesman, stressed the need for

the “Basque Country [to] recover its political personality.”<sup>15</sup> After these initial declarations were made, the parties worked out a timetable and a set of rules for elaborating the constitution. After much haggling and maneuvering, the parliamentarians finally agreed that the constitution making should occur in seven phases.

*Phase One: Congressional Constitutional Subcommittee*

The initial phase was perhaps the most important. In it, the framework of the new constitution was created, and seven of the most prominent political leaders participated. The congressional constitutional subcommittee was comprised of three UCD representatives and one representative each from the PSOE, AP, PCE, and Catalan Coalition. This group worked in strict secrecy, but several months into their labors, press leaks occurred, followed by intense public debate. The subcommittee produced the Ante-Proyecto, or first draft of the constitution, on April 10, 1978.

*Phase Two: Congressional Constitutional Committee*

During this phase, which ran from May to June 1978, the thirty-six members of the Congressional Committee on Constitutional Affairs and Public Liberties studied the preliminary draft, reviewed countless proposed amendments, and came up with their version of the new text: the Proyecto Constitucional.

*Phase Three: The Congressional Approval Phase*

In early July 1978, the Proyecto Constitucional was presented to the full Congress of Deputies. Another month of speeches and debates followed, culminating in an overwhelming vote in favor of the draft: 258

deputies voted for it, 2 against it, and 14 abstained.

*Phase Four: Senate Constitutional Committee*

From August to September 1978, an intense review took place within the Senate constitutional committee, the first senatorial body to deal with the constitutional draft. Over 1,250 amendments were considered. Their work ended in September when they turned over the draft to the full senate.

*Phase Five: Senate Approval*

Lasting less than two weeks, this formal phase encountered some difficulties but ended with an approved Senate version of the constitutional draft on October 5, 1978.

*Phase Six: Joint Constitutional Committee*

A sixth phase was necessary to reconcile the congressional and senatorial versions of the constitutional draft. Composed of a group of eleven members drawn from both houses, their talks were conducted in secret and efficiently. After two intense weeks, their approved text became the Spanish constitution of 1978.

*Phase Seven: National Approval*

Both houses overwhelmingly approved the constitution on October 31, 1978. After an intense political campaign, dominated by proconstitutional forces but not entirely free of anticonstitutional and proabstention interests, the Spanish people enthusiastically approved the constitution in a national referendum held on December 6, 1978 (see Table 15.3).

Of a total electorate of approximately 26 million, almost 18 million, or 67 percent, cast a vote. Of those who voted, an overwhelming

**Table 15.3 Results of Spain's Constitutional Referendum, December 6, 1978**

Voted	Number of votes	Percentage of votes cast	Percentage of electorate
Yes	15,706,078	87.87	58.97
No	1,400,505	7.83	5.25
Blank	632,902	3.55	2.37
Void	133,786	0.75	0.50

Source: Bonime-Blanc, *Spain's Transition*, p. 42. The total electorate in Spain at the time consisted of over 26 million voters, with 67 percent casting a vote at the referendum.

majority—87 percent—voted in favor of the constitution, while 8 percent rejected it and the remainder cast blank or voided ballots.<sup>16</sup> King Juan Carlos ratified and sanctioned the new fundamental democratic law of the land on December 27, 1978, in a joint session of the Cortes. The Spanish constitution-making process had lasted a total of eighteen months and resulted in a text containing more than 160 hotly debated articles. The Spanish constitution-making process had become one of the lengthiest, most elaborate, and ultimately successful of the twentieth century up until that point.

#### *The Political Phases of Constitution Making: Coalitional Strategies and Political Tactics*<sup>17</sup>

By examining the relative political strength of each political party and the various coalitional strategies and tactics deployed during the constitution-making process, a somewhat more analytical and useful view of the process emerges. Unlike analyzing the prescribed technical phases of constitution making, examining the political phases of constitution making captures the distinct coalitional maneuvers that took place. By examining the political phases, one gleans insights into the overall nature of the process and why it succeeded in Spain. The factors to be considered in this analysis of political phases are the fol-

lowing: the relative openness or secrecy of the process; the parliamentary or extraparliamentary nature of discussions (i.e., including nonparliamentary elites); the accommodating versus confrontational nature of debates; the protracted or swift nature of discussions; and the breadth or narrowness of particular issues. When several of these factors change discernibly, it is possible to distinguish a new phase emerging (see Table 15.4).

Thus, the following six political phases of constitution making can be distinguished in Spain's example.

#### *Phase One: Consensual Agenda Setting*

This phase lasted from August to November 1977. It was characterized by largely secret parliamentary discussions, carried out in a deliberate, painstaking, but largely consensual manner. The principal task was to identify and prioritize the most crucial issues that the constitution should address and hopefully resolve. The core issues for the constitution makers included the parameters of the new political system, the territorial organization of Spain, the guarantee of fundamental political freedoms, and the elimination or apoliticization of Franco's political institutions.

The dominant coalition of this period—and the entire constitution-making process—emerged at this time. The coalition included

**Table 15.4** Coalitional Strategies in the Cortes during the Constitution-Making Process

Political phase	Dominant coalition	Other unsuccessful coalition(s)	Noncoalesced parties
Consensual agenda-setting phase and publicizing and mobilizing phase	Consensual Coalition UCD/AP	PSOE/MC/PCE	PNV
Dissensual precongressional phase	UCD/AP UCD/MC/PCE		PNV PSOE
Consensual parliamentary phase	Consensual Coalition UCD/AP	PSOE/MC/PCE (+ PNV)	PNV AP
Constrained parliamentary phase	Consensual Coalition PSOE/PCE/MC/PNV and three senators appointed by the king	PSOE/MC/PCE (+ PNV)	PNV AP

Note: The Consensual Coalition consisted of the UCD, PSOE, PCE, and MC.

Source: Bonime-Blanc, *Spain's Transition*, pp. 52–53.

such diverse interests as those representing the left (the PSOE), the center-right (the UCD), the far left (the PCE), and the regions (the MC). It came to be known as the Consensual Coalition, and while it did not prevail at all stages of the constitution-making process, it did become the dominant political force behind the constitution-making process and outcome in Spain.

#### *Phase Two: Publicizing and Mobilizing*

This phase began with the leaking to the press of the first draft constitution, which blew the cover under which the constitution makers had been secretly operating. An intense public debate followed in all quarters. Even such lower-profile actors as the Catholic Church and the military began to speak up. Other disturbing extraconstitutional events took place during this period: large-scale rioting and vandalism, regional demonstrations throughout Spain, and virulent political debates in the Cortes between the two extremes of the political spectrum, the AP

and the communists. Toward the end of this period—March 1978—the debate became even more antagonistic, although it had not yet succumbed to full-scale dissensual discourse. However, that was about to change.

#### *Phase Three: Dissensual Precongressional*

What seemed to be a trend toward consensus abruptly changed. A prominent member of the PSOE, Gregorio Peces-Barba, noisily withdrew from the proceedings, accusing the UCD of breaking a number of key compromises. Simultaneously, a large segment of Suarez's cabinet resigned and a new, distinctly more conservative group of ministers was appointed. The press construed these changes as a turn to the right. Suarez and Felipe Gonzalez held a summit to restore discussion on the draft constitution. Further disarray developed within the membership of the congressional constitutional subcommittee. As one prominent member of the committee said at the time, "the only consensus that exists is that we must finish the work."<sup>18</sup>

The largest thorn in everyone's side was the topic of regionalism. Even with the absence of the socialists and with further objections from the right-wing AP, the remainder of the constitutional committee hammered out a tenuous compromise draft. Surprisingly and still under protest, all members of the committee, including Peces-Barba, signed the proposed draft constitution. The third political phase of the process was the first purely dissensual one. In it, a key player—the PSOE—removed itself from participation, and the specter of a purely right-wing coalition (AP/UCD) emerged but did not fully realize itself. If it had, it could have been the harbinger of a right-leaning constitution.

*Phase Four: Consensual Parliamentary*

All thirty-six members of the congressional constitutional committee made public and conscious efforts to return to consensus-seeking debate. By early May, they had reached a new plateau of mutual accommodation and deliberation. Almost simultaneously, Felipe Gonzalez declared that the PSOE was a social democratic party rather than a Marxist socialist one. While the UCD often threatened to take the discussions back to a more right-leaning slant, it stopped short of that and conducted a rapprochement with the PSOE. Concomitant with this emerging better understanding between the UCD and PSOE was the increasing marginalization of the extremes, namely, the AP and the Basques, both of which continued to espouse more radical (although very different) views. The AP's inflexible conservatism and the Basques' extreme regionalism increasingly distanced them from the process. Their self-marginalization also antagonized the consensual partners, who often expressed views that were sympathetic to these groups. With some notable exceptions, the UCD, PSOE, PCE, and MC formed a tenuous but steady coalition of views.

*Phase Five: Constrained Parliamentary*

The key ingredients to the changed atmosphere had to do with the Basque problem and the reawakening of the tensions between the PSOE and UCD in the Senate. While the Consensual Coalition never quite broke down during this period, its endurance was seriously tested, though at the end of the phase, the coalition was at its peak. The main tensions stemmed from regional issues. The UCD introduced broad new proposals to limit regional autonomy as set forth in the congressional draft of the constitution. This set off a major outcry from the regional and PSOE forces. The logjam was cleared with the unexpected help of royally appointed senators, who sided with regionalists and socialists to win the day. Tensions shifted between the PSOE and regional parties shortly thereafter when Basques accused the socialists of abandoning them. A fortuitous side effect of the spat was to strengthen the PSOE/UCD coalition at a time when it was weak. But this was an important phase, as it led up to the approval of the entire new constitution.

*Phase Five: Consensual Approval*

Almost entirely dominated by accommodations and expressions of goodwill, the approval phase consisted of four stages. The first stage took place within the joint committee of the houses, where eleven representatives swiftly, secretly, and consensually put the final touches on the constitutional draft. The second stage took place on October 31, 1978, when each house separately voted on the adoption of the new constitution; both overwhelmingly supported it. The distribution of the vote clearly reflected the diversity of the consensual coalition: UCD, PSOE, PCE, and MC members voted in favor of the constitution, while members of the AP and Basque parties voted against or abstained. The third stage of approval consisted of an intense political campaign geared toward

the anticipated constitutional referendum scheduled for December 6, 1978. Again, the divisions between the consensual coalition partners, on the one hand, and the AP and certain more extreme regional interests, on the other hand, were clear. The fourth and final stage of approval culminated in the actual referendum on the constitution held on December 6, 1978. A little over 67 percent of the eligible electorate voted, with more than 87 percent of those favoring the adoption of the constitution (see Table 15.3). The entire constitution-making process thus ended on a high note. The king signed the Spanish constitution of 1978 on December 27, making Spain finally and officially a democracy.

By tracking the phases of the coalitional dynamics in the constitution-making process, one can obtain a useful analytical overview of the process. This history, in turn, yields lessons on how constitution making may succeed. In this examination of the Spanish case, several important points emerge.

First, by the standards of the time, the process was lengthy and sometimes torturous, often characterized by protracted negotiations and the possibility of a breakdown. Second, secret negotiations were used often to get the talks back on track: Off-the-record discussions took place during some of the most critical political phases of the process. These discussions, far from the limelight, helped the often feuding parties to blow off steam concerning their major disagreements and forge closer positions on some of the most hotly debated topics of the day, such as the shape of territorial regionalization, the relationship of church and state, and the role of the military, to name a few.

Third, nonparliamentary elites were included in certain secret negotiations frequently and successfully. Especially during the difficult dissensual phases mentioned above, while the constitution-making elites were secretly discussing solutions away from media attention, they sought out (and were

sought out by) a broad variety of academic, religious, military, regional, and even illegal political groups in their efforts to forge the compromise positions that eventually became part of the new constitution.

Fourth, participants who were unwilling or unable to compromise on constitutional issues—some of the far-right Francoist parties and some of the more extreme nationalistic regional groups, for example—were marginalized and eventually ignored. The pressure to achieve consensus seemed to overwhelm and eventually diffuse the forces on the political extremes. Even those who could have been construed as possible extremists—for example, the PCE—were centripetal rather than centrifugal forces, contributing to the achievement of consensual solutions.

Fifth, while popular participation in the process was never direct, the Spanish political atmosphere was charged and often affected the process. Demonstrations and public expressions of opinion on the issues being debated in the constitutional talks were frequent, sometimes daily, and were voiced by a broad variety of political, regional, and other more issue-specific groups—religious, moral, or rights-related. The public participation, as well as media attention given to such public expressions, helped to pressure the constitution makers to move forward on achieving solutions and compromises that would allow for a new constitution to be adopted sooner rather than later.

Sixth, the foresight and political steady hand of most constitution makers in the face of adverse circumstances—some political, some involving terrorism—were perhaps the greatest assets in the process. The single most important development of the constitution-making process in Spain may have been the emergence of a heterogeneous yet pragmatic coalition: the Consensual Coalition, which represented the nation's *consenso* (consensus) on a broadly based democracy, with a constitution containing solutions

for a nation filled with social, economic, and regional diversity.

### **Constitution Making and Democratization: Some Conclusions**

Comparing the Spanish case to others, one can derive several overall conclusions concerning constitution making within a transition to democracy.<sup>19</sup>

#### *Turning Points toward Democratization*

The Spanish case illustrates that there are four possible turning points toward democratization from authoritarianism: *ruptura*, reform, *autoruptura*, and external defeat. The key factors determining how that turning point occurs are whether there is an authoritarian decline preceding such a period and whether there is short-term or long-term sociopolitical pluralization taking place in society. The turning points are defined according to the strengths or weaknesses of these factors.

*Ruptura* occurs when the opposition elite is able to replace the authoritarian elite with a clean, relatively quick, and potentially violent break with the past. Portugal in the early 1970s and Spain in the 1930s are examples.

Reform occurs when, in the face of growing opposition, the authoritarian elite chooses gradual liberalization. The beginning of the long Brazilian transition to democracy, beginning in the 1970s and culminating over a decade later, is a good example of this type of turning point.

In *autoruptura*, the authoritarian elite causes a liberalization crisis by choosing to break with the past in the face of mounting sociopolitical pluralization. This is the type of turning point Spain exhibited in the mid 1970s.

Finally, an authoritarian elite's military defeat or inept handling of a military crisis may bring about an external defeat-turning point. Germany and Italy after World War II

are classic examples of this type of turning point.

#### *The Preconstitutional Period*

Spain's experience also shows that another key factor in the process of democratization is understanding what happened, if anything, during the period immediately preceding the constitution-making period—namely, whether there was limited or comprehensive preconstitutional reform. The latter took place in Spain and involved the implementation by transitional elites of political and sociogovernmental reforms necessary for the proper preliminary democratic functioning of the state. Among the key trends that need to occur to attain comprehensive preconstitutional reform are three processes: first, a process of sociopolitical legalization, in which authoritarian controls on fundamental freedoms—such as freedom of the press, association, and speech—are lifted; second, a process of authoritarian illegalization, in which, at a minimum, certain constraints and prohibitions are placed upon the most potentially threatening authoritarian sectors, such as special police forces and the military; and third, the democratization of essential preconstitutional practices, such as legalizing a broad spectrum of political parties, drafting a temporary but fair electoral law, allowing open campaigning, and holding nationwide legislative elections.

#### *The Constitution-Making Process and Outcome*

Based on a comparison of several constitution-making processes, including the Spanish case of the late 1970s,<sup>20</sup> four types of processes may be distinguished. The two key factors in determining these processes are the type of coalitional strategies pursued by the constitution makers (nonideological and multilateral versus ideological and unilateral) and the mode of negotiation used in the process

(accommodating versus confrontational). A matrix accounting for these two factors yields the following results.

In a consensual constitution-making process, nonideological and multilateral coalitional strategies prevail among the constitution makers who pursue mostly accommodating negotiating tactics. Germany and Italy in the postwar period as well as Spain in the 1970s exhibited this type of constitution making.

A passively dissensual constitution-making process consists of ideological and unilateral coalitional strategies with fairly accommodating behavior. Portugal in the early 1970s exhibited this type of process.

In an actively dissensual constitution-making process, ideological and unilateralist constitution makers either negotiate confrontationally most of the time, or if they do not, they are unable to pursue a successful process. A variant of this type of process is the abovementioned stillborn process, in which no constitutional results are produced. The constitution rejected by the French electorate on May 5, 1946, is an example of such a stillborn constitution. In that case, polarized political groupings could not forge lasting or valid coalitions or consensus on the main issues of the day, resulting in another attempt that succeeded six months later.

### *The Constitutional Outcome*

Depending on whether the constitution resulting from the process contains mostly dogmatic or ideological language, on the one hand, or compromise, consensual language, on the other hand, and whether the language itself is mostly ambiguous or relatively clear and pragmatic, it is possible to distinguish four types of constitutional outcome: a dogmatic guideline constitution (Spain 1931), containing clear but ideological provisions; a dogmatic ambiguous constitution (Portugal), containing vague and ideological

language; a compromise guideline constitution (Germany) with clear and nonideological provisions; and a compromise ambiguous constitution (Spain 1978 and Italy), containing nonideological provisions but ambiguous language.

In Spain in 1978, a highly negotiated constitution contained mostly nonideological language, but also ambiguity in many cases. Such ambiguity made implementing some of the constitution's provisions difficult in some instances, as such implementation required further political negotiation and the adoption of further amendments and clarifying legislation.

### **The Constitution-Making Process in Spain in the Late 1970s: Final Thoughts**

Spain in the late 1970s represents a shining example of a political process leading a country from an authoritarian past into a solidly democratic future. Spain exhibited a constitution-making pattern that is best described as a consensual compromise, in which consensus politics and coalitional strategies dominated the process and the outcome—the constitution itself—exhibited a compromising, nonideological quality. The significance of what came to be known as *el consenso* during Spain's constitution-making process cannot be underestimated, especially in a country with the potential to open serious and potentially violent old wounds. *Consenso* was not merely a form of negotiation; it represented the coming together of very diverse political forces of the center-right, left, far left, and regional. Given Spain's sociopolitical and regional composition at the time, no other coalitional force could have carried the weight and legitimacy that the consensual coalition carried.

Spain in the 1970s is an extraordinary example of how the political will of responsible elites, influenced strongly by the sociopolitical climate in the nation, can drive most of those

elites to behave broadly and responsibly instead of ideologically and narrow-mindedly to produce a constitution that is widely accepted and adaptable; it has now weathered the test of more than thirty years. The way the Spanish constitution makers and political elites of the late 1970s conducted themselves through the constitution-making process provided a microcosmic look into what the future of democracy would look like, in what has become one of the world's most vibrant democracies.

### Glossary of Terms

AP — Popular Alliance/*Alianza Popular*  
 CC — Catalan Convergence/*Convergencia Catalana*  
 CCOO — Workers Commissions/*Comisiones Obreras*  
 EE — Basque Left/*Euskadi Esquerra/Euzkadiko Ezkerra*  
 ETA — *Euzkadi ta Azkatasuna*  
 MC — Catalan Minority/*Minoria Catalana*  
 PCE — Spanish Communist Party/*Partido Comunista Español*  
 PNV — Basque National Party/*Partido Nacional Vasco*  
 PSOE — Spanish Socialist Workers Party/*Partido Socialista Obrero Espanol*  
 UCD — Union of the Democratic Center/*Union del Centro Democratico*  
 UGT — General Workers Union/*Union General del Trabajo*

### Notes

1. This chapter draws heavily on the author's book, Andrea Bonime-Blanc, *Spain's Transition to Democracy: The Politics of Constitution Making* (Boulder, CO: Westview Press, 1987), and makes

extensive use and quotation of several sections and chapters of that book.

2. Juan J. Linz, "An Authoritarian Regime: Spain," in *Mass Politics*, ed., Erik Allardt and Stein Rokkan (New York: Free Press, 1970), p. 255.

3. Bonime-Blanc, *Spain's Transition*, p. 6.

4. *Ibid.*, pp. 18–20.

5. Jose Amodia, *Franco's Political Legacy: From Dictatorship to Façade Democracy* (London: Allen Lane, 1977), pp. 92–96.

6. Bonime-Blanc, *Spain's Transition*, pp. 17–18.

7. Juan J. Linz, "Opposition in and under an Authoritarian Regime: The Case of Spain," in *Regimes and Oppositions*, ed. Robert A. Dahl (New Haven, CT: Yale University Press, 1973), pp. 171–259.

8. Bonime-Blanc, *Spain's Transition*, pp. 22–26.

9. See discussion in this chapter.

10. Bonime-Blanc, *Spain's Transition*, pp. 11–14.

11. *Ibid.*, p. 14.

12. *Ibid.*, pp. 27–31.

13. See Bonime-Blanc, *Spain's Transition*, pp. 30–31 for more information concerning the electoral system.

14. *Ibid.*, pp. 36–40.

15. See *El Pais* and ABC, July 28, 1977, author's translation.

16. *El Pais*, December 22, 1978.

17. Bonime-Blanc, *Spain's Transition*, pp. 53–64.

18. Miguel Roca Junyent, the representative from MC. Bonime-Blanc, *Spain's Transition*, p. 57.

19. This section draws on the research and information in chapters 7 and 8 of Bonime-Blanc, *Spain's Transition*, in which a comparative theory of transitions from authoritarianism to democracy is set forth including the cases of Spain in the 1930s, Germany and Italy in the postwar period, and Portugal in the early 1970s. Bonime-Blanc, *Spain's Transition*, pp. 113–61.

20. *Ibid.*, pp. 113–61.