

THE SPANISH CONSTITUTION

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THE SPANISH CONSTITUTION

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THE first few pages of this essay have already appeared in an article in *The Political Quarterly* and I am indebted to the editors for their consent to its reproduction.

I wish also to take this opportunity of thanking my friends, Don Luis Jiménez de Asúa and Professor Nicolás Pérez Serrano, for their guidance along a course which none know better than they. I am very grateful as well to Don Fernando de los Ríos, Don Salvador de Madariaga, and Professor Adolfo Posada, each of whom, whether as Minister of Justice, as deputy, or as political philosopher, has left his mark on the constitution of his country, and has been equally ready to help a foreigner who came to learn and stayed to admire.

H. R. G. G.

London School of Economics and
Political Science,
December 29th, 1932.

I

THE REVOLUTION

To the Spanish liberal the events of 1931 represent the final achievement in a long battle for freedom; to the socialist they are but a beginning. There is truth in each view. The struggle for constitutional government dates at least from the first years of the nineteenth century. It has been constant even if of varying success. Its aims have now been achieved and all that remains is to consolidate them. But the socialist has much farther to go. He may well apply to the founding of the second Republic the theory of revolutionary stages which Trotsky has developed in his *History of the Russian Revolution*, seeing in 1931 no more than the second step, the first being the constitutionalist revolution of 1868-76, toward the third and final development, the birth of the already-predicted socialist soviet republic of Spain. There is, of course, much evidence for this interpretation of events in the rapid growth of communism under the dictatorship. And it is clear that the truth of the prophecy must depend on the extent to which the reforms of the Republic are able to satisfy a developing socialism. For the accuracy of Trotsky's reading of events relies upon the incapacity of the successors of each revolutionary stage to base their system on a wide enough popular consent. Once that has been done it may be that an adaptive and evolutionary process will replace that of violent change. The truth or falsity of that hypothesis is the main problem posed by the Spanish Revolution. Being

a problem set in terms of the future a guide to its solution is the most that can be expected. This is to be sought in an understanding of the factors which went to create the revolution itself.

Spain's lack of a middle class throughout the nineteenth century is probably the chief cause of her political instability. She has served as a field of battle between a small group of economically-privileged nobility and clergy on the one hand, and, on the other, the mass of Spaniards prevented by poverty, ignorance, the lack of communications and their intense individualistic pride from learning the meaning of solidarity. Those two elements have provided two political forces, autocracy and anarchism. Were they all, there would still remain a complete justification of the common view of Spain as a house fundamentally and violently divided against itself.

But there is a third, the increasingly-important professional element, and it is this which has been the dominating force in the Republic. It has been fortified by the two consequences of twentieth-century economic development, the growing merchant class and the upthrust of labour. For it is of the utmost significance that the group of intellectuals who have governed Spain since the abdication of the King draw their power from the town workers as well as from the middle and professional class. Their liberal ancestors were such men as Riego, the military politician, who forced the constitution on the King in 1820, and the statesmen Cánovas and Sagasta, who directed affairs before Alfonso XIII was old enough to begin his consistent efforts to destroy the constitution of 1876. Their debt to Giner and Sanz del Rio, the founders of the Institución Libre de Enseñanza, the first liberal university, is inestimable, as it is also to the founders of the Committee for the Promotion of Studies, in 1907, which brought standards of efficiency into Spanish teaching and provided the Spanish universities with a school of men of an ability and independence hitherto painfully lacking. The Spanish defeat in the Spanish-American war also played its part in

promoting a liberal movement, for it had the interesting effect of turning the mind of Spain upon itself. A tragic introspection and almost morbid heart-searching followed. This is particularly visible in the writings of Unamuno. It may be said to have been sowing the seeds of a new Spain just at a time when Alfonso XIII was beginning to destroy the constitution through which it could alone find expression. But both educational movement and reviving interest in politics, despite their vital effect on the growth of liberalism, were less important than the economic development which became so marked in the period following the defeat, and especially from 1914 to 1918. It is to be noted particularly in coal, textiles, electricity, agriculture, and above all in railways, roads and shipping. This period of "intellectual and economic awakening," as Madariaga has well called it, saw the growth not only of an intellectual and liberal movement in the middle class, but of organised labour and socialism among the workmen and peasants.

Out of these materials liberalism was recast and socialism moulded under the dictatorship. In 1931 the representatives of both political forces stepped into the shoes of a clerico-military governing caste, exhausted by their struggles with a people whose dissatisfaction was fast developing into anarchism.

Nor must the importance of the regionalist movement be overlooked. The Catalans in particular were dissatisfied with the monarchy. They looked back to a period before the dynastic union of the kingdoms of Spain, and saw in the unifying tendencies of the monarchy in Castille the chief enemy of home rule. Republicans were their natural allies. The understanding reached at San Sebastian in the summer of 1930 was, in a sense, the death-knell of the old régime. It envisaged a union of self-governing republics with a strong federal authority in Madrid. By reason of this agreement, the liberal and socialist leaders gained the support of one of the most powerful, and perhaps most regenerative, forces in modern Spain.

It was thus a combination of the intellectual, economic and regionalist movements which gave body and unity to the revolt against privilege. This provided the motive power and the leaders ready to use it. But the opportunity afforded them was not altogether of their own making. When revolution was attempted at the end of 1930 it ended in failure and the imprisonment or exile of its leaders. Yet four months later the ease of their success surprised even themselves. For revolutions to-day are not quite as simple as before the time of the machine-gun and the aeroplane. And there is much, therefore, about this calm and bloodless change which has yet to be explained.

Besides those inveterate allies, the army and the Church, the chief supports of the old régime were the land-owning nobility and the big-moneyed interests. In each, the active loyalty which had greeted the dictatorship gradually melted into apathy. As for the King, he was only the leader of a privileged caste, the link between a clericalist army and a militant Church, the agent, as Don José Ortega y Gasset has called him, of this society. The land-owning nobility were only another facet of this governing class. Big industrialists who played a prominent part in all the towns were anxious only for order, and so long as tradition seemed to give greatest promise of stable government they were behind it. But industrialists shade imperceptibly into a bourgeoisie, and they imply a labour movement to be pacified. It was the recognition that in modern times these must be satisfied which led the dictator in 1927 to acknowledge the need for a constitution, giving powers to economic groups. As soon as this became clear his authority began to crumble. His own followers were not agreed upon such a policy.

The army had made the real Spanish Revolution in September 1923. It was said at the time to be partly a protest against military inefficiency in Morocco, and in the light of this claim, the position of almost incredible corruption and muddle revealed by Sr. Azaña when he took over the Ministry of War nearly eight years later is su-

premely illuminating. It effectively proves the difficulty of a privileged caste of experts, whether a bureaucracy or an army, when faced with the job of reforming itself from within. What the dictator was unable to do in seven years the civil authorities of the Republic did with complete success in as many months. But in fact, of course, the abrogation of the constitution in 1923 was only the final step in a long series of military encroachments on the constitution ably abetted by the King from the very first Cabinet meeting he attended. The army, however, was not united enough to rule. Sectionalism gradually undermined its confidence in its own leaders. Refusal to reform at all might have united the army in self-defence; thoroughgoing reform might even have satisfied military and civilians by its impartiality; half-hearted measures, suspect of sectional dominance, merely aggravated dissensions and showed up abuses. It was this which explained the decay of military support for the dictatorship, particularly after the fall of Primo de Rivera had led to the substitution of royal nominees for a chosen military leader. The merciless shooting of two officers who led a revolt did much to convert apathy into hatred. The army had lost interest in the old order and were ready to accept a new.

The Church was not in this position. Its interest was bound up with the old oppressive system. Possessed of vast untaxed wealth, subsidised by the state, it was even allowed to indulge in industrial production for material profit without paying the contribution to society imposed upon its competitors. Its legal powers over education, marriage and burial, its influence through the Government over universities and publications, brought it into continual conflict with the more intelligent portion of the population. Its *rentier* position, draining the country at a time of growing economic difficulty, combined with its competitive advantages to bring it the enmity both of the producer and of those less well provided with worldly goods. Its opposition to the Republic made by these people was therefore entirely natural. Nor did it refrain

from exploiting superstition in its own interests ; the tales of weeping statues multiplied, and many a crucifix was said to have shown signs of blood on April 14th. But the Church did not act more directly than this. Its influence had been exerted through its tools, King and Dictator, and when they had gone its head beat a hasty retreat to the Vatican, from which—it seems—he was promptly ordered back to his post. It is possible that, with the diminished wealth and power over education, especially of the religious orders, the Church will take up a healthier attitude. The socialists, at least, have not shown undue fear of its influence. Believing that the woman voter, who greatly outnumbers the man, is particularly subject to its authority, they have nevertheless given her complete electoral equality.

Business, like the army, became rapidly a less reliable support for the dictatorship in the year preceding the revolution. The disastrous finances of the Government, leading to the rapid depreciation of the peseta, conflicted with the business interests of the community. Unbalanced budgets undermined their confidence. An inefficient and overstaffed military and civil service resigned them to change. Besides, so constant were the revolts and strikes that stability itself seemed to have less to hope for from the maintenance of unconstitutional government than from the return to constitutionalism which now even the Dictator had recognised to be desirable.

II

THE ORIGINS OF THE CONSTITUTION

To regard the coming of this constitution as an isolated event is to make a profound mistake. It is the culmination of a long development, the last stage in a struggle for democratic institutions which the Spanish people have carried on since the beginning of the nineteenth century. Four times in that period they have won a measure of greater freedom ; in each case it has been wrested from them by the forces of reaction before it has had time to take root. The Constitution of Cadiz of 1812 was lost by 1814 through the perfidy of Ferdinand VII. After being imposed again in 1820, it was destroyed in the same way, but with the help of the French, in 1823. The Estatuto Real, granted freely by the new Queen Regent, Maria Cristina, in 1834, was oligarchic rather than democratic, corresponding to the French Constitution of 1830, but it lasted until, in 1837, a new constitution was drafted. The end of this came with the dissolution of the Cortes in 1846, and autocracy again triumphed until the Revolution of 1868 and the declaration of the first Republic. But this reform was anti-autocratic as much as democratic, ending with the restoration of the royal House in the person, not of the deposed Queen, but of her son, Alfonso XII, as "By the Grace of God Constitutional King." The Constitution of 1876, being less liberal than that of the Republic of 1869, proved acceptable to the new King, who had learnt something from adversity, and after him to the

Queen Regent, who had peculiar difficulties to overcome. But it was never sincerely accepted by her son.

It was against this historical background, and with the text of these constitutions before it, that the Government of the second Republic set about its work of creating in 1931 a new system of constitutional government.

The first necessity was to call Constituent Cortes so that a constitution might be officially framed by the freely-elected representatives of the people as a whole. Because it had been claimed that in some instances provincial elections had been improperly conducted, the Government instituted a preliminary inquiry into these, which elicited the fact that in five per cent. of the cases the claims were justified. The Government decided thereupon to have new elections in the provinces. These proved that even the monarchist areas of April had now joined the revolutionary tide. Subsequently, by decree of May 8th, 1931, the Provincial Government authorised certain modifications of the electoral law of 1907 to 1923 solely for the election to the Constituent Cortes. It lowered to twenty-three years (the year in Spanish law of attaining majority) the age for voting, and, among other changes, it removed the inability of women, priests, and those holding state appointments to be elected, though it did not give women the vote. But it also set up a peculiar and complicated system of proportional representation, the purpose of which was to ensure that the minority group in each province should be adequately represented in the deliberations.

The elections were held on June 28th, secondary ones where necessary on July 5th, and the Cortes assembled on July 14th, the socialists being the largest single group, but not with an independent majority.

In the meanwhile the first step had been taken toward drafting the constitution. The Minister of Justice, Don Fernando de los Ríos, issued a decree on May 6th, appointing an Advisory Committee of legal experts to assist the Ministry of Justice in its work. The purpose of this was to

give the necessary technical advice to the Minister and to make for co-ordination and continuity in the activities of the department. This body was to draw up a preliminary draft which should be considered by the Government with a view to submitting it to the Cortes as a basis of discussion.

One of the members of this commission was Professor Adolfo Posada, Dean of the Faculty of Law in the University of Madrid. In the book which he had just published, written during the dictatorship, *La Reforma Constitucional*, is to be found an outline of a possible constitution. In some features this outline resembles the *Anteproyecto*, which the committee finally produced. For example, it suggests the creation of a Court of Constitutional Guarantees, gives power to the Cortes to assemble without summons if the legal time limit for calling them has expired, confers equal civil and educational rights on all, regardless of legitimacy or parentage. But in many ways also it is much less liberal than either of the subsequent projects of the constitution, and more like the nineteenth-century constitutions of Spain.

The report of the Advisory Committee was presented to the Minister of Justice on July 6th. This contained not only a draft constitution, but also several alternative amendments submitted by members or sections of the Committee. It immediately became clear that the Government could not accept it as it stood. With one part or another of the *Anteproyecto* every Minister disagreed. To have attempted to discuss it in the Cabinet with a view to submitting a Government project to the Cortes would, as the preliminary consideration by the Cabinet proved, have split the Government there and then. The decision was taken, therefore, to leave the matter entirely to the Cortes, the *Anteproyecto* being no more than a document for their guidance, if they desired to make it so. Events were, of course, to prove very soon that even with these precautions the Government could not remain intact. Ministers being left free to speak or vote as deputies in the way they pleased, they

naturally took different sides, and the success of the anti-clerical clauses, which were sponsored by Azaña and one or two of the other Ministers, led to the resignation of the Prime Minister, Don Niceto Alcalá-Zamora and of Don Miguel Maura on October 13th.

According to the terms on which the election was fought, the main, if not the only, task of the Cortes Constituyentes was to be the framing of a new constitution. Later events were to show that the meaning of this mandate was not as unambiguous as might be supposed. Did drawing up a constitution, for example, include the drafting of complementary laws, such as those relating to the Regions, to the electoral and judicial systems, to labour, agriculture, or to divorce? The view accepted has allowed for their inclusion. Meanwhile, during the five months which intervened between their first meeting and the promulgation of the constitution, the Cortes spent much the greater part of their time on the constitution.

After having organised their own internal procedure, creating a committee to deal with the affairs of each ministry; after voting confidence in the Provisional Government in a debate in which the Prime Minister and Don José Ortega y Gasset made the outstanding speeches; and after deciding the methods of determining the responsibilities of the dictatorship, the Cortes set up a committee of its members to draw up a new project. This was composed of twenty-one deputies drawn from the parties in proportion to their strength, among them being five socialists, four radicals, and three radical-socialists.¹ The

¹ The membership was as follows: Luis Jiménez de Asúa, Luis Araquistain, Trifón Gómez San José, Jerónimo Bugada, Enrique de Francisco (*socialistas*); Emiliano Iglesias Ambrosio, Ricardo Samper, Clara Campoamor, Justo Villanueva (*radicales*); Leopoldo Alas, Juan Botella Asensi, Fernando Valera (*radical-socialistas*); Gabriel Alomar Villalonga, Antonio Xirau Palau (*de la minoría catalana*); Mariano Ruiz Funes (*de Acción Republicana*); Antonio Rodríguez Pérez (*de la Organización republicana gallega autónoma*); Bernardino Valle Gracia (*federal*); Juan Castrillo Santos (*progressista*); Alfonso García Valdecasas (*de la Agrupación al servicio de la República*); José María de Leizaola (*de la minoría vasconavarra*); José María Gil Robles (*del grupo agrario*).

chairman chosen unanimously by the committee was the distinguished socialist lawyer, Don Luis Jiménez de Asúa.

The committee met for the first time on the day it was nominated, July 18th, and completed its report to the Cortes on August 18th.

It became clear from the start that the committee was not likely to be content with the *Anteproyecto*. This was not advanced enough for it. Even within the Advisory Committee of Jurists, there had been many differences of opinion and several of the alternatives had been expressed in amendments presented together with the *Anteproyecto*. There were, for example, the alternative votes of Matilde Huici, Manuel Pedroso and others proposing the creation of technical councils and omitting the Senate. For this reason the committee decided to discuss not merely on the basis of the *Anteproyecto*, but on the amendments already proposed by or to the Advisory Committee. In several cases it accepted the amendments.

But there were further factors of change. The most important was the group of socialists who formed themselves into a sort of sub-committee which met every morning before the committee sat and which even carried its discussions into the country retreat of Sr. Luis Jiménez de Asúa over the week-ends. As a result of these discussions the committee was presented with further amendments ready drafted and agreed by the largest group of its members. Besides the chairman, another socialist, Don Luis Araquistain, was particularly important in these preliminary discussions. Several of the international clauses of the constitution were due to him, and through him to Don Salvador de Madariaga, who was not, however, a member of the committee. Dona Clara Campoamor, the only woman member of the committee, was also an originator of some of the international clauses.

In the interesting speech made by Sr. Luis Jiménez de Asúa¹ on presenting the report of the committee to the

¹ See *Diario de sesiones de las Cortes Constituyentes*, August 27th, 1931, page 642.

Cortes is to be found the only existing explanation of the motives which actuated the committee, the description of their activities and the influences by which they were guided.¹

The so-called dogmatic part of the constitution derives from the old declaration of rights in France of 1789, America of 1776, Switzerland of 1634, and England of 1215 and 1688. But it differs in being more specific, and therefore more effective, in recognising the rights of collectivities such as the family or trade unions, in providing more in terms of duties of the state than of sacred individual rights, and above all in creating a Court of Constitutional Guarantees to see to their enforcement.

The ideas of the Parliamentary Committee and their origin are seen again very clearly in the statement of Sr. Jiménez de Asúa,² that "the constitutions of Mexico of 1917, of Russia of 1918, and of Germany of 1919, include in their text, each in its own style, a whole theory of rights and popular provisions which before did not belong to the pure constitutional concept of the individualist era. The struggle for rights has extended into the field of political codes, and new human rights—or rather duties of the state—are proclaimed in the realm of the family and of economic and social affairs."

The ways in which the *Proyecto*, drafted by the Parliamentary Committee, differs from the *Anteproyecto*, are several and of vital importance. For the most part the amendments appear in the final text, but they also were modified or extended in the Cortes.

The discussions on the floor of the Cortes lasted from August 27th to December 9th, when the constitution became law. Three hundred and sixty-eight deputies voted in favour and none against, but 102 abstained. In general it cannot be said that these three months of debate were as fruitful as the three weeks in the Parlia-

¹ The committee did not publish minutes, and did not even permit officials to hear its debates.

² In his book, page 47.

mentary Committee. The paucity of the alterations made by the Cortes is proof enough that the committee performed its task well. It has been regretted, with some cause, that the earlier stage was not longer and the later one shorter. But if the technical work might have been less hurried it was inevitable that the divergent political forces should demand full time for expressing themselves and attempting to mould the constitution to their desires.

The last day of discussion in the Cortes saw the addition to the main text of two articles of transitory effect. The first of these provided for election by the Constituent Cortes of the first President of the Republic. The second conferred constitutional status on the Committee to determine responsibilities for the dictatorship, and gave constitutional force to the Law for the Defence of the Republic for the lifetime of the Constituent Cortes. This last clause has placed important emergency powers in the hands of the Government during the transition period.

III

THE CONSTITUTION

If world society has not yet its Parliament, it has at least its by-elections. Already when one country holds a general election it is scanned from outside, not only to find what will be its effects on one government and one foreign policy, but to detect in it signs of the movement of world opinion. This applies all the more to the creation of a constitution. That even more, serves as an index of current political forces and ideas. For a written constitution does not merely set up the machinery of government ; it is occupied with rights. But rights imply duties. The more, as now, they deal with economic and social conditions, such as the right to work, subsistence, education, medical service, the more complicated—and significant—are the corresponding duties of the state. The more they set down ideals not already achieved, the closer is the resemblance of a constitution to a political programme. Both these modern tendencies to stress the importance of economic conditions and to take a dynamic and evolutionary rather than a static and ultimate view of rights—are clearly seen in the Spanish Constitution. Like the constitution of Weimar, its provisions are both more specific and more programmatic than the earlier declarations of rights.

The modern constitutional tendency is to go farther than the old declarations of individual rights. They must be asserted, it is true, but the function of the state is not limited to securing them. It has other, and in some ways

more important, duties to perform. To some extent, as in the creation of an educational service, these merely give fuller meaning to the old rights. But such a development does not merely alter the emphasis on rights ; it detects in the old declaration incompatibilities which make it necessary to destroy one right purely out of allegiance to another. We to-day, for instance, are less optimistic about the rationalism of humanity. We know that an association, religious or otherwise, is apt to establish its influence less through the divinity of the truth it preaches than through the opportunities afforded it by the possession of wealth and the technique of advertisement. And the result is a different attitude toward association of this kind. It means a different view of the freedom of the Press. It explains anti-clericalism. But to pretend that these views are incompatible with the earlier doctrine of liberty is entirely to miss the point. The truth is simply that liberty is not an absolute. It is relative to such factors as property and education. Political equality is linked with economic equality. If the one denies the other, then the choice between them is unavoidable. Consciously or not, the past assured and established one alternative, property, the denial of economic equality of opportunity, without which liberty is meaningless. The present is largely a struggle for what the past denied. But the vague principle of liberty is assured in both cases. It is only the application that has become more clearly defined through the bitter lesson of a million experiences.

Both the original principles and their newer interpretation are to be found in the Spanish Constitution. The old liberal principles of liberty and equality are inserted. Military courts are made illegal and soldiers are subjected to civil law. Articles 25 and 40, further, provide for equal rights of citizenship, the former destroying general privileges based on birth and class, the latter giving equal rights for public employment without regard even to sex. The original rights of freedom of opinion (Article 27), movement (Article 31), expression (Article 34), are proclaimed.

Article 29 corresponds to the British principle of habeas corpus. Arrest must be authorised within twenty-four hours and just cause proved before the courts within three days. Retrogressive legislation, if it creates penalties, is made unconstitutional. Then again, freedom of meeting (Article 38), and the inviolability of correspondence (Article 32), are secured. Spaniards may associate freely (Articles 39, 41), and may not be exiled for political or social reasons, nor may the Government conclude treaties with other countries for extradition for the same causes (Article 30). Also, the normal right of all citizens of civilised countries to present petitions to the authorities is recognised in Article 36. Finally there is in Article 41 an important provision for maintaining the independence of the civil service, members of which may not be molested and may not suffer in any way for their political, social or religious views. But it is important to realise that these assertions of rights are limited severely by the terms of Article 42, which provides for the suspension of constitutional guarantees. However, there are contained in that Article some restrictions upon the exercise of such emergency powers. If in session the Cortes must approve; if in recess they must be summoned within eight days; if dissolved their functions devolve upon the Permanent Committee. Guarantees, moreover, may only be suspended for thirty days, and any extension of the period must again be accepted by the Cortes or the Permanent Committee.

There are certain aspects of the dogmatic part of the constitution which are remarkably modern in character and are traceable to a more recent experience. Those so far discussed are derived almost entirely from similar provisions contained in the constitution of 1869. These others belong to the twentieth century. The laicism of education is ordained. Article 26 contains a measure of anti-clericalism. It provides for a future law, not of constitutional character, which shall regulate the conditions of existence of religious communities, but it decides upon the expulsion of the Jesuits and sets down fairly

advanced principles which limit the activities of the other orders. These may not possess more property than is necessary to carry on their activities, and in order to ensure the application of this principle all religious orders must be registered at the Ministry of Justice and render annual account to the state of the use to which they put their property. Further, their activities are themselves severely limited. They are forbidden to carry on industry or commerce, and they may not teach. Finally, any religious orders whose work menaces the state must be dissolved.

This represents a fairly violent reversal of the previous position in which freedom was so unrestricted that it was even possible for a religious sect to carry on manufacture without submitting to taxation.

Article 26 was the most controversial of the constitution. On it centred much of the debate and most of the friction in the Cortes. Its only rivals in this respect were the measures dealing with the formation of regions. To the liberal the special restrictions imposed upon one type of society, and indeed the recognition of it as a type, seemed a betrayal of the right to freedom of association elsewhere in this, as in all modern constitutions, proclaimed as a fundamental principle. On the other hand, such was the hatred which the Jesuits had aroused in their day of authority, that the elections had resulted in a movement to destroy them in common with the other symbols of privilege. While Señor Ortega y Gasset voiced the more traditional attitude, Professor de los Ríos, the socialist Minister of Justice, led the attack, the success of which brought about the resignation of Zamora and his replacement as Prime Minister by the playwright and ex-Civil Servant Azaña.

The constitution makes a point of proclaiming the equal rights of women and men. For the first time in a Latin country, women are given equal voting power with men and equal capacity to sit in the legislature. It is fitting that this right should first be recognised in Spain, in whose

history women have played such a leading part. The importance and strength of character of the women of Spain have always been a fact noted both by the Spaniard and the foreigner. With this advanced social attitude to women can be associated the provision in the constitution for ensuring equal rights to those born in and out of wedlock. Dr. Havelock Ellis, in his very able study, *The Soul of Spain*, has remarked on "the recognition that was accorded in many circumstances to unmarried mothers, and the relative absence of the social stigma elsewhere attached to illegitimate children. This," he says, "was doubtless a survival of primitive matriarchal conditions, but it was adhered to with great tenacity by Spaniards, and even the not uncommon practice of a legitimate son preferring to use the name of his mother rather than that of his father shows the absence of any ostentatious preference for paternal descent."

But, as has been said, the distinctive features of the modern state are its concern with economic questions and social duties. These two tendencies are particularly marked in the Spanish Constitution. Articles 44 and 45, representing a compromise between the old bourgeois sanctification and the socialist denigration of private property, proclaim its social function. The right of private property is limited by public necessity, but on the other hand expropriation may only take place with compensation. The historical and artistic wealth of the country is regarded as a social possession implying powers and obligations on the part of the state.

The social duties which the constitution recognises are of fundamental importance. True to the announcement at the beginning of the constitution that "Spain is a Republic of workers," the constitution in Article 46 places work under the care of the state and guarantees to the worker "the necessary conditions of a worthy life." It proceeds, in the following articles, to set forth a programme of social legislation. In this is contained a proposal to facilitate the participation of workers in the direction of industry.

Education and the safeguarding of equality of educational opportunity are recognised as a duty of the state (Article 48). The general cultural development of the country is under the care of the Government. Finally, the constitution asserts in Article 43 that the family is safeguarded by the state, and imposes upon the state the additional duty of carrying out the obligations of parents in the event of their being unable to fulfil them.

One of the most interesting features of post-war constitutions is, as M. Mirkin-Guetzevitch has pointed out, the increased tendency to recognise the international obligations of the state. This has gone farther in the new Spanish Constitution than in any other. It was accentuated by the nationalistic and anti-League policy of the Dictator. Traces of this influence are to be detected in the provisions of Article 78, proposed by Professor de Madariaga. These prevent Spain from leaving the League save after giving the notice imposed by the Covenant and after the passage through the Cortes of a special authorisation approved by more than half of the total number of deputies. Further, the devastating importance of modern warfare to the structure of modern society is fittingly recognised by the incorporation in the constitution of the principles both of the League Covenant and of the Kellogg Pact. By Article 6, Spain renounces war as an instrument of national policy. Under Article 77 a declaration of war would be illegal if Spain had failed to conform to the obligations of judicial arbitration and conciliation established by the Covenant. And even after these international preliminaries have been undergone, war must be authorised by a special statute in order to have legal force. Several important principles of international law are thus given constitutional force, but the makers of the constitution went much further than this. Article 7, showing the influence of Weimar and of the newer conception of the supremacy of international law, runs as follows: "The Spanish State will accept the universal norms of international law incorporating them in its positive law." It thus adopts the only political

philosophy which is possible in the modern world. Nor is the constitution content with the mere proclamation of principles. After a keen struggle between the centralisers and the Catalonians over the question of responsibility for social legislation, power of inspection and supervision was granted to the central Government "in order to ensure the strict application of social laws and of international treaties."¹ In this way was avoided that absence of responsibility on the part of Spain's representatives abroad which paralyzes negotiations with some federal countries and which must soon become a legal, as well as a political, crime.

The same tendency to simplify international agreement is apparent in Articles 65 and 76. The former forbids the submission of treaties to referendum. Under the second the power to ratify is given to the President, but authority to do this is severely limited by the terms of the next paragraph. "Treaties of a political character," this provides, "those relating to commerce, those which impose a burden upon the public exchequer or upon individual citizens and, in general, those which require legislation for their execution, shall only create a national obligation if they have been approved by the Cortes."

Constitutional force is given by the same Article to the duties imposed (by Part XIII of the Treaty of Versailles) upon states members of the International Labour Organisation. The same applies to the Covenant's requirement that treaties be registered with the League in order to become a part of international law, and to the consequent provision that secret treaties are invalid.

Finally, the supremacy of international law is still more closely defined in Article 65, which is worth reproduction here and which runs as follows :

" All international agreements ratified by Spain and inscribed with the League of Nations, having the

¹ Article 25 (2).

character of international law, shall be considered an essential part of Spanish law which must accommodate itself to them.

“ Once an international agreement that affects the laws of the state is ratified, the Government shall present to the Cortes within a short space of time, the projects of law necessary for the application of its provisions.

“ No law may be made that is in contradiction with the said agreements unless they have previously been denounced in accordance with the procedure established in them.

“ The initiative of denunciation must be approved by the Cortes.”

The terms of this, as indeed of all other Articles, can and must be enforced by the Court of Constitutional Guarantees. This is therefore given the interesting authority to find a law passed through all its stages unconstitutional and illegal on the ground that it infringes the terms of an international treaty ratified by Spain, or of a basic principle of international law.

On the other hand, it must be admitted that, in common with so many other countries, Spain has compulsory military service, and provides in Article 37 of the constitution for making this an obligation to her citizens.

The state which fails to provide equality of educational opportunity to its citizens is to-day below the level of modern civilisation. When the German Constitution proclaimed this principle in 1919, it was doing no more than accept the general view. Still later experience has only emphasised its importance. “ Educational service is an essential function of the state,” says the Spanish Constitution,¹ and in doing so recognises the sole means through which such equality can be ensured. The Spanish constitution falls short of the German in failing to provide for compulsory education up to the age of eighteen. That, however, was perhaps too much to demand of a community

¹ Article 48.

still 50 per cent. illiterate. " Primary education is free and obligatory. Teachers and professors of official establishments are public servants. The freedom of the chair is recognised and guaranteed." In this last principle is to be found the final refutation of the Dictator's policy of arbitrarily exiling professors whose teaching the army or the Church disliked.

" The Republic shall legislate with the object of ensuring to every economically-necessitous child access to all grades of teaching, so that opportunities may not be conditioned by anything other than aptitude and vocation."

Although teaching must be laical, churches may still teach their respective doctrines in their own establishments specially maintained for that purpose.

The principle of a unified educational system is laid down, which shall co-ordinate schools from the infant class to the university. To ensure this the state is given the exclusive power to grant academic distinctions and organise tests for that purpose. It may establish the conditions with which private schools must conform in order to secure recognition, and may inspect any teaching establishment anywhere in Spain, whether in an autonomous region or not.

Finally, like the German Constitution with its outlining of the objects to which education must be directed, such as the creation of a civic sentiment, of a spirit of tolerance, of a desire for international reconciliation, the Spanish finely asserts that teaching shall " be inspired by the ideals of human solidarity."

The Spanish Constitution is marked by technical deficiencies. These are probably inseparable from a constitution which is drafted in moments of political stress, or by a large assembly. There is, for example, a tendency to give different names to the same thing. The legislature is referred to sometimes as the Parliament, sometimes as the Congress, or the Cortes. Still more significant is the incompleteness of the constitution. Professor Pérez Serrano has reckoned that forty-two Articles out of a total of 125 refer

to a subsequent law or laws. Clearly, such a fact as this must be borne in mind in any discussion of the general terms of the constitution. There is no provision for making these future laws a part of the constitution as was the practice adopted in the constitution of 1869.¹ Then further, such reliance on the ordinary laws of the state for applying principles laid down in the constitution must also add greatly to its flexibility. It has been suggested that the new constitution is extremely rigid, and this attitude is probably due to a failure to take account of this fact and to stressing only the difficulties of a reform.

The organic part of the constitution has several interesting features. It is essentially democratic. The Cortes act in the name of the people. There was never any question of representing traditionalism in the constitution. The only proposal for a senate had for its purpose the representation of technical and corporate associations, not of any privileged class. Even the check on the elected assembly which might be constituted by the functions of the President and which, in fact, is found in the office of the American and German Presidents, is almost entirely absent from that of the Spanish President. The courts act in the name of the state, and their democratic function is emphasised by the fact that the President of the Supreme Court is elected, not appointed. Besides, as we have seen, the dogmatic clauses stress in their turn the democratic nature of the new constitution.

But Spain has shown that the experience of other democracies has not been lost. Perhaps the most important lesson they teach is the need for a strong government, capable of giving a strong lead and taking effective action. Sir Maurice Amos has pointed out the opposition between government as directive action and the government of consent, and has suggested that the chief merit of the English Constitution is to have discovered the means of reconciling the two. That recon-

¹ See *Constituciones y Reglamentos*, page 171.

ciliation is found immediately it is seen that democracy means simply and chiefly responsible government. That implies government by a small committee responsible to an elected assembly, but with the onus of leadership and the duty of action. This necessity was recognised by the Cortes. Speaking in the debates, Don José Ortega y Gasset said : " It is not that we are less liberal ; it is that public life has become too complex and difficult and obliges the state, whether it wishes or no, to intervene where before it abstained." It is for these reasons that the old democracy of checks and balances has been largely discarded. The position of the Government is strengthened by the special requirements for votes of censure. These must be signed by fifty deputies, may not be taken until five days have passed, and must secure an absolute majority.¹ This clearly gives peculiar solemnity to such votes, and makes them more difficult. The Government has also the power of dissolution, which, as anyone knows who has compared the Cabinet and party systems in France and England, confers an important power upon the Cabinet. Further, the old applications of pure democracy, the referendum and initiative, are given very limited expression. Neither the constitution, nor the regional statutes, nor the complementary laws to these, nor international conventions already registered with the League, may be submitted to referendum. For other laws 15 per cent. of the electorate must sign a petition in order either to force a submission of them to referendum or, in the case of a project of law, to submit it to the Cortes.

The emphasis of the constitution has definitely been upon the Parliament. The President has no power of veto² on financial laws or on those passed by two-thirds majority. All legislation and decrees are determined by

¹ Article 64.

² This is particularly significant when contrasted with the power conferred by the Polish Constitution on the President even to decree the budget.

the Cortes or proclaimed in its name. Its position as the corner-stone of the state is seen throughout the whole organic part of the constitution, particularly in relation to the Cabinet, the President, the Courts, and the observance of constitutional guarantees. Almost the only power not given to it is the direct choice of the Prime Minister. That function is given to the President, but in the ministerial crisis of 1931, before the election of a President, it was easily and satisfactorily performed by the President of the Cortes.

Even the regions are dependent upon it for their statute, which may apparently be altered as well as granted by the action of the Cortes. The regional statute does not possess constitutional character. But it is not merely an ordinary law. While the Cortes, being a necessary party to its original passage, may therefore rescind it, the suggestion of Articles 11 and 12 relating to change is that it must secure the support of two-thirds of the regional electorate. In practice the region would naturally make the most of this position, and it is not easy to imagine a Cortes which would be so unwise as arbitrarily to alter a regional statute without a powerful demand from the region.

Finally, the Spanish Parliament lacks even the internal check constituted by the existence of a second chamber. The Cortes alone is the sovereign body of the Republic and the keystone of the political edifice.

The separation of powers in the old dogmatic way has been avoided, simply because in practice it has been found to be impossible. Unlike the earlier proposals for the constitution, the final text does not adopt the principle of the separation of powers as such. But it does make use of some of the advantages which a degree of separation creates. In other words, there are checks by one organ of government upon another, but their main object is to secure the supremacy of Parliament, and the observance of the constitution. The Court of Accounts of the Republic is, for instance, a check upon the executive and depends

directly upon the Cortes. The Court of Constitutional Guarantees, while independent of both the executive and the Cortes, has three members chosen by the Cortes. The independence of the judges is provided for in Article 98, and the independence of the Chief Justice is strengthened by the fact that he is elected, under Article 96, by a legal assembly. Again, the courts have a responsibility to check the activities of both the Cortes and the Government, having the power to refer a law to the Court of Constitutional Guarantees, if they consider that it infringes the constitution.¹ Then, of course, the Public Prosecutor has to see to the observance of the laws in general.

The position of the Cabinet is parallel to that of the Cabinet in England. In fact, the Spanish Constitution is following out other post-war constitutions in giving juridical form to the English practice. The Cabinet, in other words, is responsible to Parliament, and must therefore represent a majority therein. This is in contradistinction to the Spanish Constitution of 1876, which made no mention of Cabinet responsibility to the Cortes, and which did not give to the Cortes the power of dismissing Ministers. Besides, the doctrine of collective responsibility is recognised in Article 91. But the worst dangers of the Parliamentary Cabinet are guarded against. Greater flexibility is given by providing that all members of the Cabinet need not be Members of Parliament, but must attend the debates of the Cortes when required, and secondly, by the provision that some Ministers may enjoy office without the duties of controlling departments. The dangers resulting from a free power to institute legislation implying financial obligations are avoided by the provision that such legislation must be taken on the initiative of the Government. As has been pointed out, the vote of censure is particularly difficult, requiring five days' notice and to be proposed by no fewer than fifty

¹ Article 100.

members of the Cortes. This is a provision suggested by the constitution of Czechoslovakia. The Cabinet may legislate by decree when specially authorised by the Cortes, and its powers in this connection, in times of parliamentary recess, are, as we shall see, still greater. Also, in times of emergency the authority of the Cabinet is increased, it being able to make special financial arrangements outside the budgetary provisions. Its authority for this is to be found in Article 114. Provided the Cabinet can get the agreement of the President, it has also the power of dissolving, which clearly must add greatly to its independence and authority.

The President of the Republic is not an officer of the Cortes, although he is replaced temporarily by the President of the Cortes in the event of being removed from his office. Also the method adopted of electing him gives to the Cortes a share in the choice, and, in the same way, a share in the power of dismissing him. The electoral college is an interesting combination of the French and the American, or German, methods of election, combining some degree of dependence upon the legislature with the necessity for a special election. It is composed of the Cortes and of an equal number of electors chosen by the electorate solely to appoint the President. The Spanish President is not, therefore, to be the direct and simple choice of the electorate, as in America or in Germany, but since an election has to be held of as many as half the members of the electoral college, the results of that election must clearly indicate the popular choice with regard to the new President, and the Cortes—the other half of the electoral college—must clearly be in a difficult position if they wish to overthrow the decision expressed by the electorate. How, in fact, this will work out, only the future can tell. The general result is, as was intended in the *Anteproyecto*, something between that of the Presidents of France and Germany. It is possible for him to be removed from office by an adverse vote of three-fifths of the Cortes, followed by an election of a new

electoral college in which a majority vote is passed against him; or he may be dismissed if it is established before the Constitutional Court that he has infringed his constitutional obligations.

Broadly, his position is one which constitutes a check on the Government rather than on the Cortes. His sole authority over the Cortes is exerted through the rights of veto and of dissolution or suspension, and each of these is severely restricted. His veto does not apply to financial measures or to any others which can secure a two-thirds majority. He may not dissolve more than twice during his six years' tenure of office. Each decree of dissolution must be reasoned and must be accompanied by the summons of a new Cortes. The second dissolution has special penalties attached. In this case the first act of the new Cortes must be to examine the motives for the President's dissolution of its predecessor and to decide upon the necessity for that action. (If an absolute majority decides unfavourably to the President he is automatically dismissed.) The right, further, of suspending the sittings of the Cortes is limited to a period of one month.

As complete ministerial responsibility is created for every act and order of the President it is clear that executive authority is likely to devolve solely upon the Cabinet and that Ministers will probably inherit each one of the President's powers over the Cortes. Two conflicting tendencies of modern politics are in fact given the opportunity of expression, and it is not possible from the mere written word to decide which is more likely to triumph in practice. The condition that every presidential order shall be countersigned by a Minister in order to have validity suggests that the Spanish President may become as complete a cipher as tradition makes of the English king. On the other hand, one who owes his office to election rather than to accident is more likely to-day to claim some of the appurtenances of power. If the President cannot act without a Minister, cannot even dismiss a Cabinet or an individual Minister, veto legisla-

tion or suspend a legislative sitting on his own, it is equally true that these powers cannot be executed by anyone else without his consent and that he has the chance, therefore, of exercising a significant degree of influence. Even the act of appointing a new Prime Minister would seem, by the terms of Article 84, to require the countersignature of the outgoing Premier. This, in view of the British practice of receiving advice by one Prime Minister as to his successor, is not as startling as it might appear, and there is nothing in fact in it inherently unworkable. The President's power over the Government, on the other hand, is increased by his right to refuse to sanction decrees which it submits to him, and to refer them to the Cortes.

The procedure of legislation by decree is interesting. It was clearly necessary to avoid the possibility of repeating the dangerous and unfortunate substitution of legislation by decree for legislation by due process which Spain had already so often suffered. But the probably very wise course was taken of avoiding the opposite extreme. The Government was given this power of decree during a parliamentary recess, but it was necessary that every such decree should be approved by a majority of the relevant technical Advisory Committee and of the Permanent Committee of Parliament. This decree must be submitted immediately on the reassembling of the Cortes as an ordinary project of law. In normal times, when the Cortes are in session, the first step is the permission by the Cortes according to the terms of Article 61. This implies a decree for the purpose of implementing a statute. The Government then proceeds to elaborate the exact terms of the decree. After this the decree is submitted to the President, who may, under Articles 76 and 79, refer it back to the Cortes. When the Cortes are not in session, the Government may decree without first obtaining their permission, but the procedure must follow certain definite lines. It must be taken by unanimous proposal of the Government. It must then be approved by a two-

thirds majority of the Permanent Committee. After having been proclaimed by the President it remains in force only until the Cortes have time to legislate on the matter.

The Permanent Committee, to which reference has been made, is an interesting revival of an organisation which has been found in the constitutions of Spain since that of Cadiz. It also resembles the Permanent Committee of the German Reichstag. Its purpose is simply to prolong the supervision exercised by the Cortes through the parliamentary recess. It is not unlike the "Continuation Committee" proposed by Bentham a century ago when writing a constitution for a Spanish colony, and his influence on the earlier form may have been considerable. This Committee is to be found in both the first and second drafts. Article 62, which regulates its character, decides that it shall contain not more than twenty-one members drawn from the members of the Cortes in proportion to party strength. Its chairman is the President of the Cortes. When the Cortes are not in session it must perform the functions belonging to that body in relation to the suspension of constitutional guarantees. It must decide, that is to say, upon the validity of the suspension, and in doing so its powers are equal to those of the Cortes. Again, when the Cortes are either in recess or dissolved, a decree requires the consent, as we have seen, not only of the Government but of two-thirds of the Permanent Committee. Further, whether the Cortes are sitting or not, the Committee is to decide in a case where a deputy is proceeded against at law or imprisoned. Finally, it is within the power of the Cortes to confer any other functions upon the Committee. There has thus been created an institution of great potential usefulness. Its existence must appreciably increase the authority and influence of the legislature.

Other legislative procedure also makes full use of parliamentary committees. The original proposal contained in the *Proyecto* for technical advisory councils, particularly an economic council, was defeated in the Cortes

chiefly through the argument that the similar economic council in Germany had never worked efficiently. This argument is, of course, ill-founded, since, in fact, the German Reichswirtschaftsrat has been a valuable political organisation, an expert advisory body, even if it has not exercised power. Article 93 does, however, provide for the creation of such technical advisory councils, and as a result of this, both the Juridical and Economic Councils have been created. The function of these is the preliminary work of drafting legislation. This is then considered by the Government before being submitted to the Cortes. The actual procedure inside the Cortes is that characteristic of Continental legislating bodies. The Spanish Parliament, that is to say, is organised into a whole series of specialised committees, one at least for each department. All legislation is normally submitted to them. An interesting further provision aiming at a good legal system is the power given to the President of the Supreme Court to propose any reform of the law or of judicial procedure, which may be suggested to him by the experience of the courts. There is thus a still further element of technical advice which enters into the process of legislation.

While the Cortes can meet on certain occasions without being summoned, and assemble automatically on two dates in the year, the President has also the power to summon extraordinary sessions, and as has been seen already, to suspend or dissolve within definite limits.

The problem of a second chamber raised a great deal of discussion in the Committee of Jurists, as indeed at each stage. The chief battle was fought between those who wished to have a senate representing the various technical and functional groups and those to whom a second chamber seemed unnecessary and undesirable. There was never any question of representing privilege and tradition. The first view triumphed in the Committee, but by a majority of only two votes.

The senate which they proposed was an interesting organisation. Article 37 of the *Anteproyecto* read as

follows : " The Senate shall be composed of 250 senators : 50 elected by the provinces or regions with their municipal districts ; 50 by the workers' organisations of agricultural, industrial, and commercial groups ; 50 by employers' organisations ; 50 by the associations of the liberal professions ; and 50 by the universities, cultural institutions and religious bodies ; all in the form that the laws may determine." It could not be dissolved, and half of it was to be renewed every four years. The ingenuity of the Juridical Committee, however, was of no avail, for the whole section was voted out of existence by the Parliamentary Committee. As Mr. H. G. Wells has said, no business firm ever thought of having a bicameral board of directors, and the view which prevailed in the Committee seems to have been that a second chamber to-day was an anachronism, or what Mill called the House of Lords " a very irritating kind of minor nuisance," with which there was no reason to burden Spain.

The technical councils which were to replace the senate proposed by the jurists also gave matter for debate in the Cortes. They were ruled out of the constitution on the argument that it was not necessary to give them constitutional status, and that they might prove more adaptable if this were not done. Instead, Article 93 provides for a special law to regulate their functions, thus making it clear that they were intended to form an integral part of the technical and economic organisation of the state.

The section dealing with public finance was especially strict and inclusive. Some provisions had been made in each of the previous Spanish constitutions, but the *Ante-proyecto* dealt more thoroughly with this matter. For the most part its provisions appear in the final constitution, but with two alterations. The Parliamentary Committee added Article 110 of the constitution which excepted the budget from the presidential veto and the necessity for presidential promulgation. And as the result of a special amendment of Don Enrique Ramos, which was accepted

neither by the Advisory Committee nor by the Parliamentary Committee, the Cortes added Article 120 which provides that the Court of Accounts of the Republic, a new body, should be the supervisory organ, and should be directly subject to the Cortes alone, but omitted the proposal that this Court should have the same authority over the budgets of the regions. Any conflict between this body and another is subject to the ruling of the Court of Constitutional Guarantees.

The reason which the Advisory Committee gave for inserting the section relating to public finance illustrates the pragmatic character which the Spanish Constitution shares with others. "This part" (of the *Anteproyecto*) said the Committee, "concerned with public finance, which is one of the most technical sections, may be accused of being too meticulous, and even of containing themes proper to a law of public accounts. The Committee has regarded it as indispensable to proceed as it has, because parliaments, governments, and dictators have treated the financial system with such free-handed confidence and have arrived at such extremes of waste and favouritism, that it has become necessary to give constitutional force to these provisions and guarantees, in order that the taxpayer may be more secure and the ruler more responsible and controlled."

Perhaps the most important single innovation in the constitution is the Court of Constitutional Guarantees. This has a strong authority, being able to declare laws unconstitutional, to decide conflicts between the state and the regions, to enforce the observance of individual guarantees, and to determine responsibilities for the infraction of the constitution. The composition of the Court of Constitutional Guarantees is interesting. American experience of the findings of the Supreme Court has shown the importance of the political philosophy attached to its personnel. Clearly the best way of avoiding a sectional attitude is to take its members from as wide a class as possible. The President of the Court and two judges are

elected by the Cortes. The Chief Justice and the chairman of the Court of Accounts are *ex-officio* members. Each region may appoint one judge and the College of Advocates elects two. Finally, the Court is to contain four professors of law elected freely by all university teachers of law in Spain.

“ Article 123. The following are competent to appear before the Court of Constitutional Guarantees :

1. The Public Prosecutor.
1. Judges and courts in the case of Article 100 (relating to the question of administering a law considered unconstitutional).
3. The Government of the Republic.
4. The Spanish regions.
5. Every individual or collective body, although they may not have been directly wronged.”

Section 5 of this article gives an important increase to the jurisdiction of this Court which for the most part is not to be found in other constitutional courts.

“ The administration of justice is conducted in the name of the state. The Republic shall assure to all economically-necessitous litigants gratuitous justice. Judges are independent in their functions. They are subject only to the law.” Article 94 lays down in these terms the main principles. Equality before the law is proclaimed, military and other courts of honour being abolished. Judges may not be removed from office except after crime has been proved against them before the Supreme Court.

The Chief Justice has important functions and is chosen in a peculiar way. Instead of being appointed by the Minister of Justice, like other judges, he is elected by an assembly of lawyers, the exact composition of which is determined by a subsidiary law. He must be a Spaniard more than forty years old and have graduated in law. His term of office expires at the end of ten years. He, like the

Chief Public Prosecutor, is an *ex-officio* member of the Parliamentary Committee of Justice. He may propose legal reform to the Ministers, and, in agreement with certain legal advisers determined by law, has the duty of deciding the promotion and removal, though apparently not the appointment, of judges. The Chief Justice and Chief Prosecutor can only be removed after crime has been proved against them before the Court of Constitutional Guarantees.

Article 100 further provides that "when a court has to apply a law which it considers contrary to the constitution, it must suspend the case and submit the matter to the Court of Constitutional Guarantees."

Finally, by Article 103 a jury system is established. The whole execution of justice is thus made a separate power in the state, and the fact that the Chief Justice, or President of the Supreme Court, is elected by a special assembly of jurists called for that sole purpose, makes it to some extent an autonomous service.

Reform of the constitution is not easy, but it is considerably more so than was originally proposed by the experts. Under the *Anteproyecto* reform could only be achieved by proposal of the Government, of Parliament, or of one-quarter of the electorate, and then could only come into operation after it had gained a four-fifths majority in the Cortes, and had been approved by a new Cortes specially called for the purpose. The final constitution, although some of this rigidity remains in it, is considerably more flexible. The method is decided in Article 125, which runs as follows :

"The constitution may be reformed :

- (a) at the proposal of the Government ;
- (b) at the proposal of a quarter of the Members of Parliament.

"In any of these cases the proposal shall mark out concretely the article or articles that may have to be suppressed, reformed or added ; it shall follow the

course of a project of law and shall require the vote, in conformity with the reform, of two-thirds of the deputies in the exercise of their duties, during the first four years of the existence of the constitution, and the absolute majority thereafter.

"The necessity of the reform having been agreed in these terms, the congress shall stand automatically dissolved and a new election shall be held within the space of sixty days.

"The chamber, thus elected, functioning as a constitutional assembly, shall decide upon the reform proposed and shall function afterwards as an ordinary Cortes."

The biggest single problem which the first Drafting Committee had to face was whether to recommend that Spain should be a unitary or a federal state. The arguments on both sides were very strong. The home-rule movement in Catalonia had already brought about the momentary proclamation in Barcelona of an independent Republic of Catalonia. Besides, the revolutionary movement itself had been greatly strengthened by the agreement made at San Sebastian in the summer of 1930 between the leaders of the republicans and the Catalan nationalists. It was clearly indispensable that the aspirations of Catalonia should be satisfied. Also there were the similar desires of the other provinces of Spain which had grown more self-conscious and now might want some measure of independence, too. The solution finally offered by the Juridical Committee was to make Spain into a unitary state, but to lay down in the terms of its constitution the basic principles upon which subsequent legislation constituting regions must be founded. This gave to them the possibility of demanding, and being granted by the Cortes, a large degree of independence, but at the same time reserved to the Spanish state the necessary unity and supremacy. The Committee was careful to assert that the autonomy of such provinces should not be regarded as

purely administrative, but was political also. In the actual drafting of the scheme of division of powers the Juridical Committee was guided chiefly by the federal constitutions of Europe, and particularly of Germany. This solution was finally adopted in its general outline by the Cortes and so became a part of the constitution.

All unspecified powers may belong to the regions, if named in their statutes. Among those reserved exclusively to the central Government under Article 14 are such questions as finance, nationality, defence, foreign relations, the monetary and banking system, the production of and trade in armaments, immigration, communications, the relations of Church and state, and health and police services in so far as they affect extra-regional interests. Article 15 provides that in certain cases legislation shall be by the state and administration or execution by the region. It is expected that the state will establish minima in regard to certain social services; the region is free, however, to exceed these. It is under the obligation to carry out the laws of the Republic relating to such matters as marriage, crime, bankruptcy, contract, labour conditions, education, copyright, insurance, the Press, the socialisation of national resources or economic enterprises, wireless and airway service. The state also reserves the right to carry out its own public works in the territory of the regions.

There is thus a substantial restriction of the functions of the regional governments, which nevertheless are left free to develop many important services of their own or to extend those which they have merely to administer. The first regional statute, that of Catalonia, has in fact followed out very closely the provisions of these two articles of the constitution. Finally, no official discrimination is allowed between one Spaniard and another.

The general result of the Spanish constitution is the creation of a pluralist state that is distinct from a federal state. "The state of to-day," as Don José Ortega y Gasset says, "finds itself confronted, not as in the romantic age, in which liberal democracy was born, by

mere individuals, but by powerful organisations of every kind, and it should be understood that reference is not made only or chiefly to societies, but much more to great financial and economic organisations." It is with such a democracy of corporate bodies that the constitution must be prepared to deal. Its method of co-ordinating them is through the principle of pluralism. This takes three forms. The first is the regional. In the same speech¹ Don José expresses the ideal underlying the creation of regions. "I imagine a new Spain," he says, "consisting of great regional units, each with its local government and with its assembly chosen by universal suffrage. In this multitude of local assemblies there will be mobilised a growing number of men who will learn in them the meaning of political responsibility and the feel of public life. From these men, thus collected, will be chosen the most capable for the local government, and from among these will arise those with superlative capacities to form that reserve of national statesmen without whom the life of any state is sterile." This first application of the pluralist principle is the not uncommon geographical one, but it is given in the new Spanish Republic a significance, cultural and economic, which is normally to be found only in federal states. The distinction between this and federalism is, of course, the fact that the Cortes alone remain supreme without the formal necessity to consult the regions in order to legislate. The second expression of this pluralistic principle is to be found in the constitutional recognition of trade unions and economic and professional associations, and the programmatic principle that workmen shall be given a share in the direction of industry. The third and final interpretation of pluralism is the much attenuated provision for the creation of technical councils representing interests, which has already been mentioned and which is to be found in Article 93. But this pluralistic principle is more than a mere organisation of the Spanish Republic. To judge by the expression of those responsible for the constitution, it

¹ *Rectificación de la República*, page 83.

suggests much more. Taken in combination with the strong socialism and internationalism of the constitution, it suggests an aspiration which Spain has been the first modern state to recognise, an aspiration towards a socialist, pluralist world-state of which Spain herself is merely one region among many.

BIBLIOGRAPHY

- Nicolás Pérez Serrano, *La Constitución Española*, Madrid, 1932.
- Luis Jiménez de Asúa, *Proceso Histórico de la Constitución de la República Española*, Madrid, 1932.
- Adolfo Posada, *La Reforma Constitucional*, Madrid, 1931; "Chronique Constitutionnelle d'Espagne," in the *Revue de Droit Public*, October, 1931. *La Nouvelle Constitution Espagnole*, Paris, 1932.
- José Ortega y Gasset, *Rectificación de la República*, Madrid, 1932.
- Gumersindo de Azcárate, *El régimen parlamentario en la práctica* (Introduction by Posada), Madrid, 1931.
- Joaquín Maurín, *La Revolución Española*, Madrid, 1932.
- Jaime Aiguader, *Cataluña y la Revolución*, Madrid, 1932.
- Mauricio Karl, *El Comunismo en España*, Madrid, 1932.
- Angel Marvaud, "La nouvelle constitution espagnole," in the *Revue des Sciences Politiques*, July, 1932.

DOCUMENTS

- Constituciones y Reglamentos*, a document giving the text of all Spanish constitutions from 1808, printed for the Cortes, Madrid, 1931.
- Anteproyecto de Constitución de la República Española que eleva al Gobierno la Comisión Jurídica Asesora*, Madrid, July, 1931.
- Diario de Sesiones de las Cortes Constituyentes.*
- Crónica de las Cortes Constituyentes*, prepared by A. Mori (which is a verbatim report of many of the most important speeches and a summary of the general debates), Vols. I, II, III, Madrid, 1932.

The *Proyecto* is to be found in this last work and also in the book of Don Luis Jiménez de Asúa named above.

MORE GENERAL WORKS

Salvador de Madariaga, Spain, London, 1930.

Havelock-Ellis, *The Soul of Spain*, London, 1926.

Gmelin, *Studien zur Geschichte spanischer Verfassungsentwicklung im XIXten Jahrhunderts*.

Miguel de Unamuno, *En torno del Casticismo*.