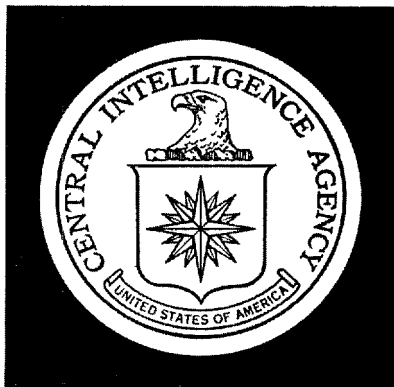


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Constitutional Reform in Spain

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CONSTITUTIONAL REFORM IN SPAIN

The constitutional law which the Spanish people approved in a referendum last month improves the framework for transition from Generalissimo Franco's personal rule. It makes some cautious changes which will not immediately weaken Franco's position of authority, but which in time could have liberalizing effects. The new law, while it reconfirms Spain as a monarchy, leaves open the question as to whether Franco will be succeeded by a king, or by a regent who might continue the present regime. By separating the powers of the chief of state from those of the chief of government, the law opens up the possibility of evolution toward a governmental system more responsive to Spain's social and economic needs than the present one.

The regime conducted a massive propaganda campaign to turn out a large affirmative vote and refused the opposition equal use of news media. These actions plus the overwhelming expression of public approval obtained--89 percent of the voters turned out and gave an affirmative vote of 96 percent--lend credibility to opposition charges that the new law was steam-rollered through without adequate debate.

Monarchy or Regency

The 1947 Law of Succession, which makes Franco chief of state for life, is retained with some amendments. Franco, thus, still has the authority--but is under no obligation--to name either a king or a regent as his successor. If he dies without having designated anyone, the problem goes to the cabinet and the Council of the Realm, a group whose chief function is to help select a successor. A two-thirds vote of those two bodies meeting in a joint continuous secret session is required to make a choice. This must be

ratified or rejected by the Cortes (legislature), which must meet within eight days.

The new law provides that the cabinet and Council of the Realm may make a second recommendation if their first is not acceptable to the Cortes. This provision might reduce the chances of the chief pretender, Don Juan de Borbon, since it offers a way of "legally" passing him over in favor of his son, Juan Carlos. Should no royal candidate be found acceptable, the nominating body may name a regent, who must also be approved by the Cortes.

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Executive Power Divided

The chief innovation in the new law is the provision for a chief of government distinct from the chief of state. The chief of government is to be appointed for a five-year term by the chief of state from three names submitted by the Council of the Realm. The chief of government recommends to the chief of state the appointment or removal of cabinet ministers. He will not be responsible to the legislature, and only the chief of state will be able to remove him, with the assent of the Council of the Realm. His duties include representing the government, directing general policy, and assuring coordination of all government and administrative organs. He will act on behalf of the chief of state as leader of the so-called National Movement, reaffirmed in the constitution as the only legal political organization in Spain.

Franco has given no indication he intends to appoint a chief of government in the near future. There is some speculation that the present vice president of government, General Munoz Grandes, may be appointed for a few months as an honor toward the end of his career. After that, the choice may come from among such other trusted members of the regime as Admirals Luis Carrero Blanco or Pedro Nieto, both now in the cabinet, or Antonio Iturmendi, the president of the Cortes. If the intent is to ensure a smooth transition on Franco's demise, a man younger than any of these may be chosen in order to avoid a further

and perhaps more disruptive transfer of power later.

Chief of State's Powers

According to the new constitution, the chief of state "personifies the national sovereignty, exercises the supreme political and administrative power, represents the National Movement, sanctions and promulgates laws, serves as commander in chief of the military services, and oversees maintenance of internal public order and external security." Article 8 of the constitution, however, stipulates that everything the chief of state does in the exercise of his authority must be endorsed in specific instances either by the chief of government, the minister involved, the president of the Cortes, or the president of the Council of the Realm. Although Franco's exercise of power is in practice unlikely to be affected, this provision would make possible a transition to a king or regent who reigned but did not rule. In such an eventuality, the chief of government would be the actual wielder of power in the country. Franco is unlikely to step down as chief of state in his lifetime. If a strong personality were to succeed him as chief of state, however, a conflict might develop despite the checks provided by Article 8.

Council of the Realm

Under the new law, the Council of the Realm is retained, but

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becomes the principal consultative body to the chief of state. The Cortes elects ten of the council's members, and the remaining seven are regime officials serving ex officio. In addition to its role in choosing a chief of state, the council is to participate in selecting a new head of government or a president of the Cortes by proposing a slate of three candidates in each case, from which the chief of state is to choose one. The Cortes-elected majority in the council thus could control designation of the candidates. Under present circumstances this is a relatively superficial liberalization of the system, since the membership of the Cortes itself is still largely appointive. The council can also remove the head of government if two thirds of its members decide that he is incapacitated.

The Council of the Realm also has the nature of a constitutional court. It can consider charges that a law or governmental action violates the fundamental laws, and indicate to the chief of state what action should be taken.

National Council

A new body of some 112 members, slightly more than half of whom are elected rather than appointed, the National Council replaces the old National Council of the National Movement, which was set up to participate in the regime's policy making but never did so. It is charged with the "protection" of the Movement and its code of twelve principles

which have the force of law. These principles are general moral and social precepts, except for the eighth, which outlaws other political organizations. The National Council is also assigned such tasks as preparing youth to understand the principles of the Movement, and providing a channel for the expression of different political opinions.

The latter function is a tacit admission that the regime's long-standing denunciation of political parties has failed to eliminate divergent opinion. Although the National Council initially is unlikely to display divergencies, since it will be composed largely of loyal members of the regime, it may eventually serve as an outlet for expression of political differences.

The National Council is a purely advisory body. It makes suggestions and reports to the cabinet, and issues formal appeals to the Council of the Realm, which decides what recourse to take. The National Council was evidently created to give the members of the National Movement some feeling of participation in the government. Since another provision of the new law divorces the labor syndicates from the Movement, the latter's powers in the government are greatly reduced.

The Cortes

Under the new law, the composition of the membership of the

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Cortes is also to be changed. About 100 members (two from each province or approximately a fifth of the membership) are to be directly elected. Voters will include heads of families and their wives. Formerly, women could vote only in the rare national referendum and in local elections if they were heads of households. The large majority of the Cortes will continue to be chosen by indirect elections in the labor syndicates, professional associations, municipalities, and other institutions, and will have a number of ex officio members. Representation allowed some groups will be changed somewhat so that the new Cortes will have a bit less than the present membership of just over 600.

The powers of the Cortes are still limited. The head of government is not responsible to it. The chief of state's power to issue "decree laws" for "reasons of urgency" is continued, although he must consult a special committee of the Cortes beforehand. Moreover, the chief of state may prorogue the Cortes or return any law passed by it for further study.

The Defense Council

Another innovation established by the new law is the Defense Council, made up of the chief of government, the ministers of the military departments, and the chiefs of staff of the High General Staff and of the individual services. It is charged with proposing to the council of ministers general

policy concerning security and national defense. Several Spanish observers have noted that the Defense Council, using the sweeping powers granted to the armed forces in Article 37 to guarantee national security and defense of the institutional order, may impose its own interpretation of the constitution in times of crisis. This opinion thus holds that the army now has legal authority to play a major role in arranging the succession to Franco.

Other Significant Changes

In another amendment, the principle of religious liberty for non-Catholics is proclaimed as a legal right protected by the state. Thus the toleration of non-Catholic churches which has become the informal practice in the past few years will be formally recognized. The new rights are to be spelled out in a law to be passed by the Cortes.

Also important is the revision of the labor code to free the labor syndicates from supervision by the National Movement, and the abolition of the requirement of "vertical syndicalism," which required labor and management in a particular industry to be organized in the same syndicate. The organization of the new syndicates is, however, to be worked out in a law to be passed by the Cortes. Some autonomy may be allowed, but it is doubtful that labor organizations will be completely freed from governmental control.

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Appraisal

Much will depend on the additional laws that must be passed to implement the new constitution as well as on the personalities selected to fill the position of chief of the government, and later, chief of state, and the timing of the change. The prohibition of political parties is a setback to opponents of the regime, although they are already talking of forming discrete informal

associations. The elections to the Cortes may provide a forum for expression and the possibility of electing individuals opposed to the regime. The introduction of direct elections for even a part of the Cortes may set the precedent for an extension of this privilege. Thus, the law marks a turning away from rigid authoritarianism in the direction of gradual liberalization on a course that would be difficult to re-

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