

# **THE SPANISH TRANSITION TO DEMOCRACY**

## **A PUBLIC CHOICE APPROACH**

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### INTRODUCTION

The Spanish political transition of 1975-1978 undoubtedly represents a form of paradigm case: a deeply divided society shifted successfully from an autocratic regime to a fully democratic political system through a quick, smooth and peaceful change. This unique event is not only of great interest on a purely scientific level, but it is also relevant, given the normative implications it holds for so many other countries in the world currently struggling to establish democratic governments.

Naturally, the Spanish case has attracted the interest of a large number of researchers at home and abroad. The Spanish transition has been analysed by all kinds of social scientists: political scientists, sociologists, historians, politicians, as well as specialists in constitutional and legal matters, to name a few. Although a number of diverse publications

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have been written, to our knowledge, few studies of the Spanish political transition from a Public Choice perspective have yet been carried out.<sup>1</sup>

The aim of this paper is to analyse the Spanish political transition from a dictatorial autocratic regime to a fully democratic political system through an examination of the process of drafting the constitution which led to the Spanish Constitution of 1978. The theoretical apparatus applied to this analysis are Public Choice, the new Constitutional Political Economy, Exit and Voice, and the Economics of Property Rights and Entitlements. Certain elements will also be taken from Games Theory, Theory of Social Situations and Economic Theory of Oligopoly to complete the study.

## **II. THE THEORETICAL MODEL: THE CONSTITUTION AS A BARGAINING PROCESS**

The model developed in this study may seem very different from the framework established by orthodox Constitutional Political economists. However, the two models are not incompatible. In fact, they are in many respects mutually reinforcing. The present study is based on the proposition that, in practical terms, constitutions are the result of a horse-trading. They emerge from transactions between individuals who believe they are entitled to, among other things, the right to make commitments on behalf of a 'group' which they 'represent'. The constitution is essentially a record of the 'trade-off' whereby the parties involved exchange the entitlements brought to the negotiating table for others outlined in the new constitutional polity. Basically, this is no more than an extension of the simple Hobbesian situation: two individuals, based on their own appraisal of their bargaining power, decide either to create a co-operative group ('society') or to coerce or behave independently. The situation, however, becomes much more complex when we are concerned with the historic context of constitution-drafting in present-day societies.<sup>2</sup>

1 Colomer, J.M. (1995:1: Game Theory and the Transition to Democracy. The Spanish Model, Edward Elgar Publisher Ltd., Aldershot and Brookfield, is the only book on this topic written from a Game Theory perspective.

2 See Brennan, G. and Buchanan, J. M. (1985): The Reasons of Rules. Constitutional Political Economy. Cambridge University Press: Cambridge. Also Wiseman, J. (1990): "Principles of Political Economy; an Outline Proposal Illustrated to Fiscal Federalism", Constitutional Political Economy, Vol. 1, no. 1, Inaugural Issue, pages 101-124.

The following five elements are key ones to 'constitutional horse-trading':

*1. The bargainers (entitlement-holders)*

The bargainers are the representatives of groups whose approval is considered necessary by other agents in order to draft an agreed upon constitution. Two aspects of this description require explanation:

- a) The nature of the groups involved is varied as are the matters to be negotiated by spokespersons who are or believe themselves to be empowered on behalf of the group members. Likewise, the entitlements to be negotiated are complex and multi-dimensional in character.
- b) Clearly, some kind of selection process must be employed, not only to determine the allocation of seats at the bargaining table throughout the various stages of the transition, but also to decide on the various issues involved at each specific moment. Consequently, the constitution-making process cannot be understood except from a historical perspective.

*2. Group participation*

Individuals may choose to belong to a wide variety of groups. Nevertheless, it is useful for the purposes of this study to classify four broad types:

*Existing property-holders.* Constitutional debate usually takes place in circumstances when particular citizens or groups enjoy formal rights (Property) conferred to them by an existing legal system, and whose replacement is an element in the constitution-making process as examined in the present study. New 'constitutional bargaining' must incorporate a group agreement to relinquish these formal rights (or, more precisely, the actual entitlements they believe those rights would continue to confer to them in the absence of a constitutional agreement). In return they would receive new rights and/or entitlements under the emergent constitution (e.g., the Francoist Parliament, the Francoist Council of the Realm, the National Movement Party, the official Vertical Trade Union, the Army and the Catholic Church).

- b) *Holders of entitlements.* These agents are the holders of important and powerful entitlements. They are illegal in the first phases of the transition, and later on they might or might not become legal. Should they become legal, some of their entitlements turn into property rights (e.g. the illegal political parties, etc.).
- c) *Regional groups.* If the area over which the constitution is to have competence cover a population which is closely tied to the geographical region in which they live, then agents representing their regional (group) interests must also participate in the constitutional negotiating process (e.g. the Catalan and Basque or other various nationalist and regional groups).
- d) *Special interest groups.* This term includes any group whose members are united by the desire to promote a concrete common cause. Familiar examples are religious, entrepreneurial or workers' groups; however, there is clearly a great diversity among such groups. Practically-speaking, it is not possible for all special interest groups to be directly represented in the constitution-making process, and the manner through which their wishes and interests are taken into consideration itself becomes a matter of interest.

The four aforementioned groups are conceptually rather than operationally distinct. Their membership overlaps and weaves a complex web of interests. This is reflected in the conceived entitlements which particular negotiators bring to the constitutional bargaining-table. For example, a Basque priest found representatives from all four of the groups listed to negotiate on his behalf, and not necessarily in fully compatible ways.

### *3. Property rights and entitlements, and constraints*

Each one of the agents (individuals and groups) participating in the bargaining process at a given moment has a set of property rights and/or entitlements and constraints which represent his/her strength or weakness at the bargaining table. These property rights and/or entitlements and constraints can be characterised as follows:

- a) They can be either legal-formal (conferred to some agents by the existing constitution) and/or actual. The latter can be either legal or illegal depending on the existing constitution.
- b) Some property rights and/or entitlements of one or several agents-groups can, at the same time, represent constraints for other agents-groups; and vice-versa: constraints of one or more agents can simultaneously be considered property rights and/or entitlements for other agents.
- c) The property rights and/or entitlements as well as constraints may be appraised-evaluated differently by the various agents (both by their holders and by the other agents). Their value-weight changes (increases or decreases) for the agents as the process evolves, while some property rights and/or entitlements and constraints may disappear and others may emerge through the course of events. Logically, throughout the transition process, quite often agents do not have precise data with which to evaluate the true weight of some of their own property rights and/or entitlements and constraints as well as some of those of the other agents. Therefore, they must rely on both the fragmentary information available at the time and on their own appraisal for estimating the weight of all agents' assets and liabilities. Naturally, throughout the entire process, the appraisal made by the various agents concerning their own property rights and/or entitlements and constraints, in addition to those made by their fellow-agents, plays an important role in the decisions and behaviour of the agents during the transition period.

A balance sheet can be drawn up for each political agent and interest group. On the assets side, the property rights and/or entitlements of each agent are specified. Likewise, the liabilities side of the balance sheet offers a record of each actor's constraints (legal and/or actual). This kind of balance sheets has proved to be an extremely useful analytical tool for studying the Spanish transition (and which can be generalised for use in all such kinds of analyses). First, it allows for the identification of the significant agents and interest groups present in the transition process. Secondly, it provides for the assessment of the relative strength or weakness of the various actors in the negotiations, especially in relation to the different issues debated in the transition process. Obviously, the question arises of how to assess assets (property rights and/or entitlements) and liabilities (constraints). This problem is and second, by employing indicators of power and weakness (e.g., the number

of people paying loans to the banks, the income per capita, the income distribution, the percentage of the population who are literate and who have been schooled, the level of consumption, the distribution of workers into various categories, etc.). In the model, politics is understood to be a voluntary exchange of preferences, rights and/or entitlements between political (and other) agents. It is assumed that these agents intend to maximise their preferences in regard to the type of political system to be established, the powers of the various organisms of the State, the economic system, personal liberties, education, etc. It is also assumed that the behaviour of each political agent is determined mainly by its balance sheet and the balance sheet of the other agents. Additionally, the actors behave strategically in their relationships with other agents and at the negotiating table.

#### *4. Bargaining behaviour*

It is useful to conceive the behaviour of the various entitlement-holders in a voice-and-exit, opportunity-cost mode. If a constitution is to be acceptable to all the bargainers, it can contain nothing which would cause one of the participants to choose exit (rejection of the entire constitutional agreement) over acceptance of some proposed conditions. In reaching such a decision, each entitlement-holder can be described as having a kind of (opportunity-cost) "balance-sheet" of potential gains and losses from possible constitutional arrangements. The content of these balance-sheets is rich in diversity (given the array of different interest groups involved), but it is evident their content includes exit conditions in the form of group rights which are regarded as nonnegotiable. This means that, through a diversity of positive and negative options and negotiations, the entitlement-holder in question would not agree to a constitution which abrogated them.

### *5. The phased process*

The final constitution is not normally the result of a single-stage bargaining, but rather is the end-product of a phased process, in which the focus of attention shifts from such a wide array of problems including the choosing of the bargainers and the agreement of a formal procedure (Constitution-drafting/making process) as well as the settlement of the formal details in the final constitutional document.

## **III. Applying the Model to Analyse the Spanish Transition and Constitution-Drafting Process**

Given that this paper deals mainly with a methodology, a model to analyse the surprisingly quick and non-violent Spanish transition from a dictatorship to a democracy, the following points are offered: 1) an outline of the analysis of how the entire transition process took place as explained by this model; 2) a detailed analysis of the first stage of the process as a sample of how the model may be applied to study and explain the transition; and 3) some conclusions which the model affords.

### *1. The analysis of the Spanish transition process*

#### *1.1. The historical process*

This process is divided into stages, each being describes by reference to 'balance sheets' which set out the formal rights, real and perceived entitlements, and formal, actual and perceived constraints of the various actors w 'ho employ the powers conferred on them by the extant constitution or by other means (such as the de facto powers of nationalist, religious and illegal political parties and trade unions). As already mentioned, quite often and at various stages of the transition, agents did not have concrete information on the true importance of assets and liabilities of the various agents (e.g., before the 1976 general elections, no one knew how many votes each political party would receive. In general, people believed that the Socialist Party, PSOE, would receive very few votes, the Communist Party and Alianza Popular, the main rightwing party, would take the most votes, and the votes left for UCD,

Suarez's party, remained a mystery). Therefore, agents often had to take important decisions based on how they perceived the weight of their own as well as others' assets and liabilities. Obviously, their perception was grounded on some objective data, their qualitative information of the matters, in addition to, of course, their experience and intuition. It is impossible to use any psychological theory here to explain how such perceptions were formed. This task would go beyond the scope of this study. However, we can first assume that they were grounded both on data and analysis, and second, that they played a significant role throughout the entire transition process. Theoretically speaking, those perceptions-appraisals evaluations are to be treated as expectations in Economic Theory. The groups are classified in the four broad categories outlined above.

### *1.2. The stages*

Initiated before Franco's death, the constitution-making process can conveniently be described as follows:

- 1) *The constitutional rights/entitlements and constraints position under Franco.* This is described in terms of constitutional property rights, entitlements, and constraints of significant actors under each of our four headings just prior to Franco's death . It provides the point of reference from which to explain the subsequent stages of the process.
- 2) *Juan Carlos' inheritance.* This stage shows the changes in the balance sheets of the actors identified in a), plus those of any new actors who acquired significant property rights with Franco's death. it also explains how and why Juan Carlos must have appraised his property rights/entitlements' situation quite differently from Franco's, even though the former inherited the same formal constitutional rights as those held previous' 'y by the latter. Obviously, proving this assertion with solid facts is not possible. But it was well-known to those involved that the King did and could not control as strictly as Franco had done the government, parliament, army and police forces, the Movement Party, the Council of the Realm, the extreme right-wing supporters of the dictatorship, the church, big business, or even the opposition forces. Franco had set up a tightly-knitted system of real power which went far beyond the powers conferred on him by the constitution he himself had established. Totally centring on him, this system was based upon a network of the balancing of

the various forces and personalities of the regime against each other. Not only did he surround himself by faithful followers, but he used a system of penalties and rewards so as to check their power. This was a power which the King, to a large extent, did not enjoy in real terms. The events which changed history together with Juan Carlos' own conduct unquestionably show that he perceived, not only that his real powers were far weaker than those Franco had enjoyed, but even that his crown was unsafe and that the illegal agents knew so and thus they were preparing to act accordingly.

- 3) *Inter-constitutional* reform. Juan Carlos' perception of the situation inherited comprised: i) His appraisal of the situation describes in b), and ii) His own views of the kind of 'Spanish society' he hoped to create (which included his own on-going rights and entitlements). The two together describe Juan Carlos' "Franco constitution balance sheet". Here the available evidence can only be used to infer; however, we can make some informed judgements and establish the principle proposition that some kind of constitutional reform was probably unavoidable. Even if he had wanted to continue a Franco style dictatorship, the balance sheets at a) and b), as appraised by him, would have indicated that this would not have been possible without some entitlement holders preferring exit (practically translated into civil strife) to acceptance of the status quo. The proposed model postulates that the King's personal preference for any concrete political system was irrelevant as a rational choice behaviour would have led him to choose a democratic, parliamentary monarchy.

The course of action which Juan Carlos actually chose suggests that he wanted to create a system of government responsive to the wishes of the citizens. This required the creation of an appropriate set of rights, guaranteed by a new constitution. To create such a constitution, it was necessary to ascertain and codify the property rights (and the related constraints) concerned. While referenda might have contributed to this end, they had operational and other limitations. What was also needed was the creation of a bargaining situation (horse-trading), through which representatives of significant interest groups (entitlement-holders) could agree upon a common transfer of rights which left no entitlement holder preferring exit to participation.

However, for this 'constitution-making' stage to operate satisfactorily, it was necessary for the entitlement-holders involved in the 'constitutional bargaining' to be broadly 'representative' of the community members whose interests the emergent constitution was designed to serve. Juan Carlos did not consider the system of entitlements which he inherited as appropriate to this end. Hence, there was a prior (inner-constitutional) need for reform in the system of entitlements, before the process of constitutional reform could begin.

In describing what Juan Carlos actually did, the general 'story' was as follows: 1) a change in his own balance sheet (entitlements situation) by the transfer of certain rights and obligations to the new Prime Minister, Suárez, (perhaps making something of the fact that he used his powers under the 'old' constitution to get rid of some of the undesirable entitlements and entitlement-holders, such as the former Prime Minister, Arias, while simultaneously transferring his own rights); and 2) the use of his powers through the new Prime Minister to create a pattern of entitlements and to establish a "bargaining environment" appropriate for the final stage: the negotiation of a new constitution.

This was carried out through the legalisation of all political parties (with exception of the communist one) and of all trade unions. Legalisation was established mainly through the Law for the Political Reform of the existing Francoist constitution drawn up by the Suárez Government, which kept the legality requirements of the latter, and which was approved by a large majority of the voters in a referendum. This law, which was approved only a few months after Suárez became Prime Minister (less than a year after Franco's death) set the new rules of the game whereby all political parties, except the Communists, could participate. The government then reformed the Criminal Code which previously did not allow for the legalisation of the Communist Party and later went on to finally legalise it. All of these sweeping measures set the stage for all political parties to be eager to enter the political game and be willing to participate in the negotiation of the important issues, which the government announced were open for debate and negotiation, except for the monarchy as the form of political system to be established, and showed the opposition parties that the government was willing to negotiate in earnest.

- 4) *The constitutional bargain.* This describes the process from which the new constitution emerged, using the balance sheets of the participants to explain both particular provisions of the constitution and

also gaps in its content (such as the absence of any formal commitment to a federal structure). The aim here is to explain the final document as the result of a bargaining process, rather than as the articulation of a common set of 'principles'.

#### IV. AN ANALYSIS OF THE FIRST STAGE OF THE SPANISH TRANSITION

##### 1. *The constitutional rights and entitlements and constraints*

###### *under Franco*

According to the proposed model, an analysis of the Spanish transition must start from considering the situation under the Franco regime. First, the significant agents-groups holders of formal/actual property rights and entitlements, and constraints must be identified. Second, their balance sheets must be drawn up; that is, to determine their legal property rights and constraints under the Franco's constitution, as well as their real-actual entitlements and constraints-liabilities.

Briefly stated, under Franco, the Spanish political system was a rightwing personal dictatorship. Naturally, Franco had given it the appearance of legitimacy and legality as a so-called "organic democracy", through a number of laws (the so-called Fundamental Laws of the State) which amounted to a formal constitution. These seven laws were passed during Franco's rule and were meant to constitute an open constitutional system.

As in any personal dictatorship, even if the dictator could enjoy some measure of popularity and support from certain sectors of the population and, more importantly, from certain power groups, there were many citizens and groups who opposed him. They were excluded from participating in the political game and the attainment of power either by legal and/or by actual measures. By actual measures, I mean, those actions taken by the various organisms of government to impede any individual or group of individuals to attain something which was legal. For instance, often, Franco's Ministry of Education pressed the members of the examining boards to fill chairs at the public universities either by assigning them or by not assigning them to specific candidates. The same thing was done in all spheres of society (filling service posts, promoting civil servants, granting of loans, etc.). Things were

done formally complying with the existing laws, but, in fact, decisions were arbitrary.

In short, the constitution was not accepted by most of the citizens and by many of the significant groups in politics who opposed it in various ways and tried, unsuccessfully, to overthrow the regime while Franco was alive. The Spanish society was deeply divided, as it had been for centuries, to the point that it was said and assumed that there were two irreconcilable Spains: one consisted of the reactionary, deeply conservative, right-wing undemocratic and privileged individuals and groups; the other made up of the democratic, progressive and underprivileged citizens and groups. This division of the society had been a tragic constant in the history of Spain for almost four centuries, and the 1936-39 Civil War had only been the last showdown between the two sides, resulting in the triumph of the reactionary faction who went on to enjoy power and privileges, and were still doing so at the time of Franco's death. Of course, four centuries earlier, the adjectives democratic and progressive had different meanings than they do nowadays. However, they also referred to the anti-conservative citizens who wanted society to progress in the sense we understand it today.

Obviously, this is a very general overview and a gross oversimplification, but it is essentially correct as a description of the situation. Added to this division of society was the problem of how to maintain after his death the political system Franco had established. For there is no question that the individuals and the groups holding power under the Franco's regime would fight to keep it, or, at best, to give away the least amount of power possible. By contrast, the individuals and groups excluded from power would naturally try to overthrow the regime and establish a different one. There were many different positions on both sides as to how much should be maintained and how much was to be changed in the system. The large majority of individuals and groups were conscious that conditions had changed enormously since 1939, both in the domestic and in the international spheres.

I start my analysis from the situation just before Franco died on the 20th of November 1,975. At this moment, we can identify the truly significantly powerful holders of property rights and entitlements as the following:

- a) Holders of legal property rights and actual entitlements entitlements:
  - Franco himself
  - The government

- The army
  - The National Movement Party
  - The parliament
  - The Council of the Realm
  - The Catholic Church
  - The judiciary
  - The official, so-called, Vertical Trade Union
  - The bureaucracy
- b) Holders of actual entitlements: - The illegal political parties
- The Spanish Socialist Workers Party (PSOE)
  - The Communist Party of Spain (PCE)
  - The various Christian Democratic parties
  - The illegal trade unions, mainly:
    - The Workers Commissions, CCOO, (controlled by the PCE)
    - The General Workers Union, UGT, (controlled by the PSOE)
    - Sindical Workers Union, USO, (Christian)
- c) The Nationalist movements and their political representative parties, mainly:
- The Catalans
  - The Basques
- d) Special Interests groups
- The entrepreneurs
  - The mass-media

The foreign powers (mainly USA, but also Germany, France, England, Italy and the USSR)

These agents were holders of property rights and/or entitlements which were legal, but very restricted by law and their activities were closely watched by the government. This was particularly so of the newspapers and magazines, but, to a lesser degree, also of the entrepreneurs and foreign powers which formed an altogether different case. These last two agents held very weighty entitlements and the dividing line between which actions were legal or illegal was hardly defined.

Obviously, the paramount holder of formal property rights and entitlements was Franco. His balance sheet was:

**BALANCE SHEET: Franco***Property rights and entitlements*

- Head of the State.
- Commander-in-chief of the army.
- The power to appoint and dismiss the chairmen and the members of highest bodies of State: the president of the National Council of the Movement, the president of the government and ministers, the speaker of the parliament, and the president of the Council of the Realm.
- To call the parliament into session, to prolong sessions, to veto, to submit to referendum and to decide on the constitutionality of any law passed by it.
- To *de facto* nominate all candidates to the parliament.
- The power to appoint and dismiss presidents of all the lower important organisms of State.
- The loyalty and the effective control of the army.
- The effective control of the bureaucracy, the judiciary and the police.
- The support by a majority of the Catholic high hierarchy.
- The support of a substantial portion of the population who had obtained privileges from the regime.

*Constraints*

- Opposition from nationalist movements.
- Opposition from illegal political parties, both right and left wing.
- Opposition from illegal trade unions.
- Opposition from certain sectors of the Catholic Church (certain bishops, but mainly many lower clergymen and grass root groups of purist Catholics).

Misgivings by the economic oligarchy about the constraints the political system imposed on the growth of the Spanish economy, and particularly to enter the EEC.

Unsatisfaction by large sectors of the population.

Opposition from the student movements.

Opposition from a small group of young army officers (the Democratic Army Union).

Terrorist groups (ETA, GRAPO, and others).

International repulse, and particularly the EEC refusal to accept Spain as a member-country.

**BALANCE SHEET: The Government and its President***Property rights and entitlements*

-Through the constitution, the government (headed by the Prime Minister) became the organism re-

*Constraints*

It was totally subjected to Franco, who practically appointed and dismissed both the Prime Minister and

sponsible for deciding all national policies.

- To ensure the implementation of laws.
- To run the public administration.
- To exercise regulatory power in all spheres of national activity through decrees which needed not be passed by Parliament.
- A *de facto* monopoly of initiating legislation.
- It was not responsible before parliament so a vote of censure could not be applied.
- The control of the various police forces.
- The control of bureaucracy.
- The power to *de facto* arbitrarily grant privileges of all kinds (subsidies, soft loans, import and export licenses, etc.).
- Some ministers enjoyed their own popularity.

other ministers at will.

- The army was continually monitoring its decisions and policies. In fact, three generals always served as ministers.
- *De facto* Franco decided which policies and laws were to be approved by the government, which were to be carried out and which not.
- Opposition from certain sectors of the Catholic Church.
- Unpopularity among the citizens, or, at best, total indifference among them, as they considered the government dependent totally on Franco.
- Opposition from illegal political parties, trade unions, and nationalist movements.
- Little or no support from foreign powers.
- Terrorism coming from several quarters (nationalists, extreme leftists, etc.).

### **BALANCE SHEET: The Army**

#### *Property rights and entitlement*

- The recognition by the constitution of its role in guarding the unity and the integrity of her territory, in providing national security, and in defending the institutional and constitutional system.
- The support of Franco.
- The power of weapons.
- The support of a significant portion of the Spanish population who regarded the army as a guarantee against a left-wing take-over of power and against separatism and independence by the nationalists, as well as the depository of the true essence of Spain (The army

#### *Constraints*

- Complete submission to and control by Franco.
- Soldiers were mostly conscripts.
- The antagonism of the illegal political parties, workers organisations and nationalist movements.
- The threats of terrorist organisations.
- Isolation caused by loss of contact with modern armies of other western countries and obsolete weapons.
- A few high officers did not agree with the existing political system.
- Some young officers disagreed with Franco's regime.

had won the Civil War against what these supporters considered to be the enemies of the true Spain: communists, anarchists, freemasons, etc.).

-The high officers knew the Western world, particularly the USA, would favour our neither a coup d'Etat nor the establishment of a military dictatorship after Franco's death. This was a very important constraint.

### **BALANCE SHEET: The National Movement**

#### *Property rights and entitlements*

- The constitution recognised it was the only legal party and its doctrine inspired the political philosophy of the regime.
- The National Council, supreme body, had certain powers conferred by the constitution.
- The support of Franco.
- It held a few seats in parliament.

#### *Constraints*

- Complete submission and control by Franco.
- Unpopularity (it had a very small membership and few supporters)
- Antagonism by the illegal political parties, workers organisations and nationalist movements.
- The army did not lend it support, as the National Movement interposed itself between Franco and the army.

### **BALANCE SHEET: Parliament**

#### *Property rights and entitlements*

- It was recognised by the constitution as the highest body of participation and representation of the Spanish people in the affairs of the State.
- It had the formal (legislative) power to elaborate and approve the laws.
- The support of Franco.
- Certain pressure groups were represented in it (only those specified by the constitution) and allowed to defend and further their interests.

#### *Constraints*

- Complete submission and control by Franco.
  - Franco had veto power (the parliament lacked the ultimate legislative power).
  - No in-between power (no power to change the constitution)
  - No real representation of the citizens; only some privileged groups were represented.
- It had no real power to control the Executive, which was not responsible before it and needed not have its support.
- The large majority of the citizens considered the parliament a sham and were antagonistic towards it.

### **BALANCE SHEET: The Council of the Realm**

#### *Property rights and entitlements*

Through the constitution the Council became the mandatory legal advisory body for the Head of the State on all important matters of its sole competence.

- To assist the Head of the State in his executive functions: drafting of all important laws to be submitted to referendum, appointing the 25 members of parliament which Franco had the right to do at will.
- To defend the constitutional system by giving its opinion (although not mandatory) to the Head of the State on any exceptional measures decided by the latter and by advising him on recourses of unconstitutionality.
- Most important was its role in the succession to the Head of the State and other constitutional provisions.
- To give its, sometimes mandatory sometimes only advisory, opinion on the appointment and dismissal of persons in the high posts of all important organisms of the State.

To suggest three persons to the Head of the State from whom the latter could choose one to be appointed Prime Minister. This legal power became very important after Franco's death. - Its chairman was, at the same time, the speaker of the parliament.

The Council was made up of 16 members: 2 members came from the hierarchy of the Catholic Church, 2 were high-ranking generals, and 1 representative from each one of the important institutions of the country (Lilies, uni-

#### *Constraints*

- it was controlled by Franco.
- Only Franco decided who was to be both its chairman and its members.
- *Franco de facto* decided the names of the three persons to be proposed to him for filling the high posts of the main bodies of the State.
- With the possible exception of the two generals (who were also controlled by Franco), none of its members had any power of his own.
- The general public knew very little about it, so. it had no popular support.

versities, municipalities, the supreme court, the official trade union, etc.).

### **BALANCE SHEET: The Catholic Church**

#### *Property rights and entitlements*

- Its doctrine was established by the constitution as the official doctrine of the State, and the Catholic religion was the official religion of the Spanish state.
- It had representation in parliament.
- It had the support of Franco.
- Moral authority over a large portion of the population (the large majority of the people were normally Catholic and many were practising Catholic).
- It controlled a sizeable number of the educational centres, particularly in primary and secondary education.
- There was no divorce, so it controlled the dissolution of marriages through annulment. This was an important factor for many people.

#### *Constraints*

- Its doctrine had to conform with Franco's ideas and political system, as well as the prevailing social and economic conditions.
- Financial dependency on Franco's government.
- Franco had the *de facto* power to appoint bishops.
- Unpopularity of the upper hierarchy among a large percentage of the population.
- A few members of the upper hierarchy disagreed with the close relationship between the Church and Franco's regime.
- Many members of the lower clergy actively opposed the regime.
- Quite a number of the Catholic laymen disagreed with the Church's close ties with the state.
- A sizeable number of the citizens were not practising Catholics and regarded the Church as a supporter of the regime, making it unpopular among them.

### **BALANCE SHEET: The judiciary**

#### *Formal rights and entitlements*

- Through the constitution, justice was to be administered, in the name of the Head of the State, according to the existing laws, by judges and magistrates.
- Judges and magistrates were inde-

#### *Constraints*

Although legally independent, judges and magistrates particularly those in high posts, *eg.* in the Supreme Court) had to be careful not to displease the political authorities, as they could be re-

- pendent, immovable and responsible to the law.
- The administration of justice worked under the principle of jurisdictional unity, but in fact there were several jurisdictions.
  - There was both a military jurisdiction and an ecclesiastical jurisdiction.
  - There also was the so-called The Court of Public Order charged to judge all political crimes.
  - The Supreme Court was very important, not only as the highest court, but because it could prosecute high officers (ministers included) of the state.
  - A sizeable number of judges and magistrates (particularly the older ones) tended to be rather conservative, if not outright Francoists.
  - Although in 1975 it was less so, the administration of justice was still used at times to favour supporters of the regime and to punish its opponents.
- moved to less sensitive posts.

The administration of justice was quite slow, which not only damaged the interests of the citizens, but also lessened its popularity.

Citizens, particularly lower classes, did not trust the impartiality of the judges' rulings (although this popular feeling was not completely justified in 1975; this was true earlier and was to some extent still so) making the administration of justice somewhat unpopular.

Many judges and magistrates, particularly the younger ones, were not content with the political regime, many of the laws and the system of administration of justice.

The Court of Public Order was highly unpopular.

## BALANCE SHEET: Official Vertical Trade Union

### *Property rights and entitlements*

- Through the constitution, it was made the only legal trade union.
- it was recognized in the constitution as one of the basic structures of the national community (together with the family and the municipality).
- it had representation in parliament.
- Its branches (one for each productive sector) had the status of a public corporation and the power to regulate economic matters (salaries and wages, working conditions, etc.).
- it had at its disposal large financial

### *Constraints*

-Submission to Franco and its socio-political-economic system. Discouragement of innovation and economic development: both the dismissal of workers and lockouts were forbidden, and it over-regulated all aspects of economic activity. These were constraints imposed by a protectionist *corporative* economic structure.

-It was not at all representative of the workers or the entrepreneurs, particularly of the former (and it did not truly defend their interests).

resources, as membership was compulsory through the payment of a membership fee.

-It had the support of Franco.

- Entrepreneurs and workers were put together in the same trade unions.

- Rejection by the entrepreneurs and workers' associations of other countries, making the Spanish Vertical Union one of the obstacles in Spain's attempts to join the EEC.

## BALANCE SHEET: The Bureaucracy

### *Property rights and entitlements*

- Made by the law and subject to it, it was in charge of -running the public administration and therefore the state.

- The support of Franco.

- *De facto* control of the administration, as they run the daily working of the state (an important asset, given that the public sector was large and regulation widespread).

- *A de facto* arbitrary power to grant privileges of all kinds (economic, licenses, etc.) and to give advantages to some citizens and to penalise others.

### *Constraints*

- Submission to Franco, the government and high hierarchy of the system.

-Unpopularity among the ordinary citizens, as they held immense power which they often used arbitrarily.

-Corruption and abuse of power by some high bureaucrats and by some lesser civil servants.

## **BALANCE SHEET: Illegal political parties**

### *Entitlements*

-Assumed strong although as yet untested popular support.

-Strong support by foreign powers.

-The Communist Party had an efficient and widespread clandestine organisation, as well as a long experience of underground struggle against Franco's regime and his police.

-The Christian democratic parties had some popular support

### *Constraints*

-Illegality and opposition from Franco, the army, the government and all the Francoists.

-Poor organisation (with the exception of the Communist Party).

-Lack of financial resources.

- They were divided among themselves and did not trust each other.

Although at the moment of Franco's death all illegal political parties shared the importance consequences of their being illegal and their possible police repression, their true, and more importantly, their expected assets varied greatly. The weight of those entitlements (which soon became property rights) could not be assessed with any degree of accuracy at that stage, and later became the cards they brought to the constitutional bargaining table.

**BALANCE SHEET: Illegal nationalist movements**

*Entitlements*

- Strong popular support in their regions (particularly Catalonia and the Basque Country).
- Significant economic power in their regions and at the national level.
- The threat of secession and armed struggle.
- The existence in the Basque Country of the terrorist, independentist organisation ETA.
- Some members of the high hierarchy of the Catholic Church as well as many Catalan and Basque members of the low clergy supported autonomy of their regions.

*Constraints*

- Illegality and Franco's opposition.
  - Strong army's dislike and opposition to any kind of federalism or even any degree of autonomy for their regions.
  - Quite widespread, popular opposition to a federal state in the rest of Spain (not just for Catalonia and the Basque Country).
  - Opposition from the high economic oligarchy.
  - Opposition from most of the upper Catholic hierarchy.

**BALANCE SHEET: Illegal Trade Unions**

*Entitlements*

- Strong support from workers (particularly the communist controlled Workers Comissions) and power to bring workers in the streets.

*Constraints*

- Illegality.
- Opposition from Franco, the government, the army, the Vertical Union, some of the entrepreneurs and the Francoists.

- Strong support from the illegal political parties.
- Strong support by many foreign Governments, political parties and trade unions.
- Good organisation (particul-

- The support they received from the workers was strong but not very widespread.
- They were divided and did not trust each other.

arly the Workers Commissions) and a sizeable number of determined militants and activists.

Let us now see the balance sheet of those agents who were legal but whose freedom was much constrained:

### **BALANCE SHEET: Large-scale entrepreneurs**

#### *Entitlements*

- Economic power and control of large economic resources (big banks as well as large industrial, commercial and service firms).
- Power to influence the economic and therefore the social and political situation of the country.
- Implicit support by Franco, the army, the government, the bureaucracy and the Francoist regime as a whole.
- Support from foreign governments, political parties and entrepreneurs' associations.

#### *Constraints*

- They were not allowed to have legal associations and were ultimately subjected to Franco and to the government.
- Constraints imposed by the political and legal system on economic development and growth.
- Dependence on the government for important matters such as cheap loans, protection from foreign competition, imports and exports licenses, credit facilities, tariffs and regulations, etc.
- There was a very large public sector with public monopolistic firms in many economic sectors.

### **BALANCE SHEET: Mass Media**

#### *Formal -rights and entitlements*

- From 1962 onward, the press was legally free.
- Although compared to other countries not many people read newspapers and magazines, there were a sizeable number of educated persons who read them.
- There was a number of newspapers and magazines, which, bordering the limits of legality, informed their readers quite accurately of events, and therefore

#### *Constraints*

- Although legally free to print any news, newspapers and magazines had to watch what they published, as they could be closed down on any legal pretext.
- Most of the newspapers (at least one in each of the 48 provinces) belonged to the National Movement Party.
- The few existing private newspapers and magazines had a small circulation, and they depended to

a sizeable, well-informed public opinion was developing, particularly in the large and medium-sized cities.

-There were some illegal newspapers and magazines which, although small, had a considerable circulation.

-There were many journalists who were willing to take risks in order to inform and to uncover events and scandals.

-Politician of all shapes and sizes began to try to get the favour of newspapers and journalists, as they thought of a possible change of regime after Franco's death.

some extent on the government for financial support, in the form of allotments of printing paper prices and a variety of advertisements and announcements made by the administration at all levels.

-There were only two TV channels and they were state-owned.

### **BALANCE SHEET: Foreign Powers**

#### *Entitlements*

-Power to accept or refuse Spain's request to join the EEC and other international organisations.

-The power to grant economic aid to the government and to encourage or discourage private and public foreign investment in Spain.

-The power to reach or to reject trade agreements with Spain.

-The power to give respectability to the government in the eyes of the Spanish people and the international public opinion.

-Ultimately, the power to intervene and overthrow the regime (the Western countries could not afford to uphold a right-wing, reactionary dictatorship in their area of influence).

#### *Constraints*

-The unpopularity of isolating the Spanish government in the eyes of the Spanish people.

-The risk of a revolution (right or left wing) taking place in Spain if they either intervened openly or kept aloof (the Western countries needed a peaceful transition to democracy to take place in Spain in 1975).

From the aforementioned balance sheets of most of the significant agents in the game, several conclusions can be drawn:

a) Franco held immense power. His assets (rights and entitlements) weighed far more than his liabilities (constraints). He had become the centre of a circle of 'power, which he distributed and balanced among the interest groups, who not only supported him, but also depended on him. None of these groups was strong enough to impose its preferences upon him while he was alive, even when he was old, physically and mentally weakened, and his death represented a threat to their privileged position. But although Franco's rights were formally legal, in fact they were personal, actual entitlements which could not be effectively transferred to any other person, despite the constitutionally established succession.

b) The group of agents holding formal rights and entitlements depended very heavily on Franco. Both the existence and the weight of most of their actual, entitlements and constraints were dependent on Franco's being alive. Under Franco, the army held a prominent position in the state, and some of its members enjoyed privileges; however, at the same time the generals would not try to overthrow him and establish any other regime, given the fact that Franco kept them divided and under effective control. Naturally, this constraint disappeared with Franco's death. It was to have very important consequences for the transition, since the army was the only agent of the former regime to improve its position with Franco's death: it kept its main entitlement (the power of weaponry), while its main constraint disappeared. The army created many difficulties during the transition and the attempt at a coup d'Etat in 1981 proved it. Likewise, under Franco the Catholic Church also enjoyed a prominent position in the state, but it was equally constrained into not playing the role and to expound a doctrine many Catholics thought was the true Christian doctrine. In both cases, their formal rights were enhanced and their actual entitlements were constrained or diminished by Franco's regime. The parliament, the National Movement and the official Trade Union were in an even more dependent position. Their formal rights had no real power base, as they were grounded only on the constitution, and the constitution depended entirely on Franco. :

The government also depended on the constitution and, therefore on Franco. But it had the entitlement of controlling the administration and the police forces (the state) and of running the country. Ultimately,

this power, backed by the King, allowed the government to take the initiative in the process of transition and, consequently, to play a crucial role in it. The Council of the Realm only played an important role in the first stage of the transition when, manipulated by its chairman Fernández Miranda (the most trusted adviser to the King included Suárez among the three persons from whom the King could choose the Prime Minister. Subsequently, it disappeared from the political scene. Both the judiciary and the bureaucracy held assets and liabilities which were less dependent on Franco and less politicized, although the high ranking officers in both bodies could fear the prospect of any change, given the possibly their power would be reduced.

This created a situation of uncertainty for these nine agents as to their role and power in the future society after Franco's death. Only the army and the Catholic Church held entitlements, particularly the army, but they were conscious of the fact that the Spanish society had changed enormously since 1939. The large majority of the citizens had not lived through the Civil War, and they wanted to have a political system similar to that in other Western countries (that is, a parliamentary democracy). The social structure had become much more complex and diversified than it was in 1936, when there was a small upper class holding and enjoying the largest share of the wealth and income of the country, a small middle class, and a large working class with a very low standard of living. Average real income per capita had increased greatly in the previous fifteen years and was still increasing, and even the standard of living of the lowest income groups was high enough to allow

3

for a decent life. Income per capita in Spain in 1975 was 75% of the average income per capita in OECD countries. Unemployment was very low. There was almost no illiteracy and the level of education of the population at large had risen considerably. Mass media, modern means of communication, millions of tourists visiting Spain each year, Spaniards working and travelling abroad by the millions were among the important factors of change. The mentality of the large majority of the citizens had evolved tremendously during the forty years of Franco's regime. They had become much more tolerant, less inclined to take or to support extreme positions of any kind, more conscious of their rights, and more interested in participating in politics. This enormous

3 In 1975 GDP per capita at current prices and 1985 exchange rates was (in US dollars) \$1000 in Spain, \$1310 in Italy, \$2410 in the United Kingdom, \$5640 in W.Germany and \$3100 in France. Source: OECD National Accounts. Main Aggregate Volumes. 1960-1992.

change in the society, together with the existence of a market economy which was supplying the goods and services people wanted to consume and the jobs they required, are, undoubtedly, the paramount background factors which made possible the quick and peaceful transition to democracy in Spain.

These sociological and economic changes as compared with the situation in 1936 were very important, since the weight of the formal right and actual entitlements of Franco and of the supporters of the regime depended almost entirely on them. The people holding fascist ideas became a very small minority, and there were few people willing to take the risk and 'even fewer who wished to fight to keep the dictatorship. Many Catholics, not the least of whom the Vatican, became conscious that it was not wise (rather, it became a hindrance) to continue officially associating the Catholic Church with the regime and to accept the restrictions it imposed on its freedom to preach and act as it saw fit. Big business and entrepreneurs who in the past had, generally speaking, greatly benefited from Franco's economic policy of protecting them from foreign competition, outlawing strikes, wages controls, and generous and cheap credit facilities, by 1975, were beginning to see Franco's regime as a serious hindrance for further economic growth, given that Spain would not be allowed to join the EEC. All these factors decreased the value and real strength of their formal rights and actual entitlements, although before November 20th, 1975 Franco and the agents supporting, him still held an enormous power.

c) The group of informal, actual entitlements holders were very diverse in character and they pursued different aims. The illegal political parties, trade unions and nationalist movements had their being illegal in common, and opposition from Franco, the government and the army was their main constraint. But at the same time they certainly enjoyed popular support, although they did not know how much. They knew that they were very much attuned to the feelings, aspirations and thinking of the large majority of the population who favoured a democratic system whereby they could enjoy freedom and would be able to defend their interests. But they could not be certain as to what extent the people would be willing to fight for those rights if the holders of formal rights and entitlements were determined to keep them. Besides, they were very numerous, pursued different goals and there was even antagonism among some of them, which further weakened their total and each group's relative strength. The mass media, particularly, some newspapers (both Spanish and foreign: it was said that *Le Monde* was

the best Spanish newspaper) and magazines held already some power, as they were shaping a growing public opinion, which was becoming more and more conscious of the unsustainable situation and of the need to change to a democratic regime. The Western powers, it can be safely assumed, wanted a change to a parliamentary democracy, but would prefer a right wing dictatorship to a communist revolutionary regime. The USSR would prefer the opposite.

All these factors made the situation complex, and it was not easy to ascertain the real weight and strength of each illegal agent's actual entitlements and constraints. Therefore, their position, attitude and bargaining power were uncertain at the moment of Franco's death.

## *2. King Juan Carlos Real Inheritance*

Following the provisions of the Law of Succession to the Head of the State, Juan Carlos was crowned King of Spain and sworn in by the parliament immediately after Franco died. He inherited the same formal constitutional rights as those formerly enjoyed by Franco. However, an important change took place in the weight and strength of those formal rights and particularly of his actual entitlements. A similar change took place in the value and strength of the assets and liabilities in the balance sheets of all the other significant agents-groups, both legal and illegal. The magnitude of the change in the weight of the entitlements and constraints of each agent depended not only on its actual size, but also on how it and the other agents perceived it.

A summary accounting the change in the balance sheets of the agents after Franco's death shows the following picture. Briefly, the shift in the appraisal of their entitlements by the different agents was as follows:

a) The King must have appraised his property/entitlements situation as different from that of Franco. He would not be able to have effective control of and support from the army, the parliament, the National Movement, the Catholic Church, the bureaucracy, the police and the judiciary. These groups might seek to impose and/or pursue their own interests and conceptions of the political system they preferred, making it impossible for the King to preserve his formal rights, not to mention his crown. Besides, he might have had his own views of the kind of society he would like to create, perhaps one which would embrace his

own on-going entitlements. In any case, the King must have realized that it was quite uncertain whether Franco's autocratic political regime could be maintained with Juan Carlos holding absolute power. Therefore, his balance sheet shows the assets side lost weight.

b) Let us take a brief look at the main changes that took place among the groups of rights and entitlements holders. The army lost some weight in its assets side (e.g., the support and prominence Franco had given to it), but its main constraint (Franco's effective control) disappeared. Consequently, it became a very prominent agent in the game. The parliament, by contrast, lost weight drastically since it had not been elected by the citizens through a satisfactory franchise. Further, it had only been the instrument of Franco's policy; even though its constraint of Franco's control disappeared, its main entitlement (Franco's support and upholding) also disappeared. The same thing happened to the National Movement. Other than Franco's, its members had no other real source of authority, as they had no other power base. Although when Franco died, its main constraint disappeared its real entitlements also evaporated (its formal rights formally remained, but they had no real value). The Church did not see itself as an independent actor, but only sought Franco's recognition and support. Upon his death, its formal rights remained but they lost weight, as presumably the Church would not be able to keep its monopoly of being the sole state religion. Its entitlements remained, given its influence on the people's conscience and attitude. On the liabilities side, the constraint of Franco's determination to hold matters of doctrine in check weakened, as it could be assumed that the King, although having the formal power to do so, would not repress the Church as Franco had done. The official Trade Union experienced the same fate as the National Movement. Having no power base of its own, its sources of power and the constraints (submission to Franco) died out with the Caudillo.

c) Within the holders of entitlements, one should distinguish two groups: 1) those of the outlawed agents, and 2) those of the establishment actors. The first group was composed of illegal political parties, trade unions, entrepreneurial associations and nationalist movements. The balance sheets of these agents changed considerably. In the existing atmosphere of uncertainty about the future, there was a widespread belief that the system could not be upheld and, with the prevailing international situation, their assets (popular and international support) gained weight. Their main constraint (Franco's and the government's

determination to suppress them) lost value. The second group was comprised of the bureaucracy, judiciary, mass media, entrepreneurs and foreign powers. Bureaucracy, which was one of the Franco's instruments of control over the society, under Franco's regime it had acquired and exercised a power that in other countries only parliament has. Therefore, bureaucracy lost most of its weight, as its main entitlement (the power conferred to it by the dictator) had vanished. The large entrepreneurs did not have formal associations. Officially, they were integrated within the vertical Trade Union, together with the workers. De facto, not only did they have the economic power, but they were also in Franco's favour, even if he always kept them in check. They presumably perceived Franco's death more as a possibility to get rid of a constraint than as a threat to loose a privileged position. However, on the whole, their power decreased, since there were more losses of assets than liabilities. The assets of the medium-size and small entrepreneurs were reduced, since they would most surely loose the protection from foreign competition that Franco's regime provided them. Finally, the balance sheet of the foreign powers also changed. Franco's death strengthened the entitlements of the Western powers. They held the power to give respectability to the Spanish government and to accept it as an equal in the community of nations. Likewise, loosing certain constraints enabled the foreign powers to further economic growth in Spain. Their liabilities, especially Franco's appeal to the pride of the Spanish people against foreign interference, lost importance.

## V. CONCLUSIONS

The present analysis allows for the identification of the agents-groups whose formal rights and actual entitlements were increased and/or those who lost standing with Franco's death. It can be asserted that, given the prevailing internal and international conditions, the illegal political parties, illegal workers' unions and nationalist movements gained relative importance (the value of their assets-entitlements rose considerably, while their main constraint - Franco's and his government's determination to suppress them - was lessened). The army, on the one hand, lost one of its entitlements (Franco's support). On the other hand, its main constraint (Franco's control) disappeared. There-

fore, it became one of the most prominent actors, as it naturally continued to have a very weighty entitlement (the power of weaponry). The Catholic Church, on the whole, probably lost standing considering that the loss of Franco's support outweighed the actual freedom the Church gained in being able to preach its doctrine. The parliament, the National Movement and the official Trade Union and entrepreneurs' associations all became less significant, since their only real actual entitlement was Franco's support. The mass media, particularly newspapers, magazines and radios, substantially gained assets. Upon the death of Franco, the government would not use its power to control what the press published so stringently. They became far freer to publish news and analyses about events taking place in the country.

By using this model, we may analyze the subsequent stages in the process of the Spanish transition by drawing up the balance sheets of the various agents at the different stages, and by showing, through a sequence of the events and by the agents' behaviour throughout the process, that such a quick and peaceful transition was mainly due to the following factors:

a) The decisive factor in setting into motion a process of change toward the attainment of a democratic political system was the King's appraisal of his actual entitlements. Besides the fact that personally, he might prefer to establish a democracy, he must have clearly perceived that the actual entitlements he had inherited from Franco no longer carried the same weight, but that they had lost a very sizeable part of it. This loss and the uncertainty it produced made the King doubt if indeed he would be able to uphold the political system he had just inherited. All the other agents must have also perceived this same change in the King's actual entitlements and balance sheet. The balance sheets of the various agents gave the King enough information to come to such a conclusion.

b) Barely seven months after Franco's death, the King granted the rather quick de facto transfer of some of his rights and obligations to the new Prime Minister (Suárez). He hoped to establish the system of rights and entitlements of the various agents which corresponded to the new reality as required by the significant agents who, with this move, would be willing to participate in the 'constitutional bargaining'. The King realized that it was absolutely necessary for entitlement-holders to be involved in the constitutional bargaining. The bargaining had to be broadly representative of the large majority of the citizens and of the

interest groups whose aspirations the still-to-be-negotiated constitution was designed to fulfil.

c) The assets and liabilities in the balance sheets were determined mainly by the internal and international situations. Soon after Franco's death, all significant political agents and other actors understood and accepted the fact that none of them had enough rights and/or entitlements to impose their political preferred system upon the other agents. Again, the assets and liabilities in their balance sheets show the logic of taking this decision. Under these conditions, the actions and inter-relations among the agents became a cooperative game. It must also be mentioned that, although we did not naturally have access to the documents, it can be assumed that foreign powers played a most important role in the consensual cooperative attitude and behaviour of all relevant agents.

d) Consequently, all agents accepted both that a change of the Francoist system was inevitable and that such a change had to lead toward a democratic political system, since it was the only one in which all actors could participate and have a legal position. The question then for each agent was how to maximize its gains through the negotiating process and, more importantly, how to best draft the new constitution. The significant agents constituted an oligopoly in which the ten main agents had similar strength, popular support and prospects for the future.<sup>4</sup> The other agents had to follow the ten above-mentioned actors. Therefore, all the actors preferred to follow the behaviour of joint maximization of profits (political gains) instead of fighting each other or following the behaviour of the individual maximization of profits. Consensus and cooperation among them was, therefore, more profitable for all agents.

e) Both the Crown and the first two Suarez governments quickly took a number of sweeping measures, which set the necessary conditions and the rules of the game. These rules convinced all the agents (both those inside the Franco regime and particularly those placed outside and who were quite suspicious of the true intentions of the government)

4 The King, the government, the representative of the moderate right wing evolutionary democratic political option, (in fact, this political option organized by Suárez in his UCD party won the first two general elections), the army, the Socialist party, the Communist party, the Catalan and Basque nationalists, the two main trade unions (the Communist controlled "Comisiones Obreras" and the socialist controlled UGT), the large-scale entrepreneurs and the foreign powers.

to participate in the negotiations. These negotiations would deal with the new political system to be established, and with the many concrete issues which were at stake. The government made clear from the beginning that everything was open to negotiation except for the monarchy itself as the form of state. In exchange, the left-wing agents accepted the monarchy, to keep the economic status quo, the free market economy and a sort of disguised general amnesty for all those individuals who had abused power, committed acts of repression or benefited in any way or measure through the former regime. This made it possible for these people to accept the reform of the regime without opposing it. An important consequence of this attitude was that the government became earnest about negotiating and bringing about real change in the political system, one which was toward democracy. In fact, throughout the transition process, the government was able to retain the initiative, to continue holding the basic powers of the state, and to impose the change of the regime from the existing legality (this is why the early dichotomy reform, advocated by the government, versus rupture with the old system, demanded by the opposition agents, was quickly resolved in favour of reform). Under these circumstances, exit by any concrete agent became exceedingly costly to it.

f) As a result of this situation (and it is here that the model shows one of its most original features and its explanatory power), the agents holding property rights and entitlements under the old regime were voluntarily willing (even eager) to exchange them for assets, legal rights and actual power) under the new system being negotiated. Likewise, the agents, which previously were outside the Francoist regime and held weighty entitlements, were also willing to exchange them for assets (rights and actual powers) in the new political system.

The model explains the fact that no significant agent chose exit, the high degree of consensus reached among the various actors, the representatives, of which agents negotiated every issue throughout the transition process, and, most importantly, who sat at the negotiating table to draft the constitution and who voted for it in parliament. The main agents, whose representatives to participate in the long negotiations were, on one hand, the government (which representatives defended the interests of the moderate right-wing political parties, the army, the Church, the large-scale entrepreneurs, the bureaucracy, the police and the judiciary, what one could call the 'Establishment'). On the other hand, the Socialist party, the Communist party (the two parties which upheld the interests of the trade unions), and the Catalan and Basque nationalist movements. They

were the real holders of weighty assets. Of course, the negotiations were complex and very often the number of agents negotiating on a concrete issue varied. The constitution was drafted by a team of seven persons: three representatives from the government UCD party, one from each of the following parties: the Alianza Popular (more right winged than the UCD party and which represented the near Francoist right), the Socialist party, the Communist party, and a nationalist representing the Catalans, and all the other nationalist. All the parties but one voted in favour of the constitution in parliament. Only the Basque nationalists abstained due to the fact that they had been excluded from the committee which drafted the constitution and that they had not achieved the right to their self-determination enshrined into the new constitution. but it was rather a gesture addressed to the local voters and never threatened to withdraw from the parliament.

The model also explains the shape of the end-product which came out of the horse-trade: the constitution of 1978. This constitution embodies, in a contradictory way on some matters, the differing preferences of the various agents, and leaves open those issues which not all agents agreed upon. An example of the first such matters is how private property and the market economy are treated. At first sight, the Spanish constitution would seem to ensure private property rights beyond dispute, and to envisage their exercise over a wide range within a free market context. Thus 'Private property and inheritance rights are recognised' (Article 33.1); 'free enterprise is recognised within the framework of a market economy' (Article 38). At the same time, the private property rights recognised in Article 33.1 are defined by reference '... to the social function those rights fulfil' (Article 33.2), and the free market economy of Section 38 shall be limited "... in accordance with the demands of the economy's planning' (Article 38). Again in Article 131: 'The State, through the law, shall be able to plan general economic activity in order to meet collective needs' and 'shall draft planning projects with ... forecasts ... and the advice and collaboration of trade unions and other professionals, employers' and financial organisations'. The trump card here seems to be Article 128, which states quite unequivocally that: "The entire wealth of the country in its different forms, irrespective of its ownership, is subordinated to the general interest". The issue of the autonomic regulation of the various regions or nations was left quite open, as the agents could not

agree on its final form. The process of its completion is still going on and continues to be a source of conflict.' Lately it has become a very serious issues with the demand by the catalans to what amount to independence.

Finally, it must be pointed out that this model explains the process of the Spanish transition to democracy far better than other models based on such hypotheses. Some authors have explained the Spanish transition mainly as the consequence of the facts that there was an enlightened political elite at that moment in the country, and that there was a widespread sense and desire of reaching consensus among the political and other leaders. The political elite in Spain from 1975 to 1978 was no more enlightened than the one existing from 1931 to 1936. The latter could not prevent the fall of the Second Republic and the Civil War. As to the existence of a general desire of consensus, it is a question which must be explained why.

<sup>5</sup>Brennan, G. and Casas Pardo, J. (1990): 'A Reading of the Spanish Constitution (1978)', *Constitutional Political Economy*, Vol. 2, no. 1, winter 1990.