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State, Constitution, and Parliament: Three Axes of the Spanish Constitutional Debate of 1931[1]

ABSTRACT

This article aims to elucidate the relationship between the ideas of state, constitution, and Parliament in the Spanish constitutional debate of 1931. It argues that Members of Parliament (MPs) made a valuable contribution when understanding the relevance of this interrelation in terms of political philosophy and legal theory. From a methodological perspective, this study pays attention to the arguments of MPs in the course of the constitutional sessions which took place between August and December 1931. In doing so, it portrays the ideological differences of left-wing, centrist and right-wing parties in that constituent assembly. In the first section ("European influences on the Constitution of 1931") the intellectual links with interwar trends of public law, administrative law and European constitutionalism are highlighted. The second section ("Constitution and Parliament according to Spanish representatives"), shows the meanings given to this nascent constitutional democracy by MPs. Despite their ideological differences they were in favour of strengthening Parliament and the Constitution as a prerequisite for safeguarding democracy. The conclusions resume the argumentative thread, that is to say, that the regime, a democratic republic, was understood by a large majority of MPs as the confluence of three conditions founded on doctrinal and conceptual exchanges from interwar European constitutionalism: the acknowledgement of parliamentary sovereignty, the legal and administrative revamping of institutions, and state intervention in the economy.

Key words: state, constitution, Parliament, Spanish constitutional debate of 1931

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INTRODUCTION

Speeches on the role of Parliament and the Constitution were presented during the months of August and December 1931 in the constituent assembly (*Cortes Constituyentes*) of the Spanish Second Republic. Both right-wing and left-wing representatives usually argued in favour of Parliament as the primary institution of the nascent democracy. Without it, the new regime could not qualify as a republican democracy. Most MPs thought that the constitutional draft should be adapted to the reality in the country: economic backwardness, concentration of agrarian property in the hands of big landowners, illiteracy of many citizens and inefficient administration, among others. That claim stressed that the competences of the courts of justice and Parliament should be clearly separated from each other in order to safeguard democracy.

For centre-left MPs, the Republican Action Party and some members of the Spanish Socialist Workers' Party, the new constitutional state meant that only Parliament (*Cortes*) had the legitimacy to transform Spain through economic and social laws complying with the rights acknowledged in the new Constitution of 1931 (regarded as the supreme law of the country). According to centre and centre-right MPs (Radical Republican Party, Progressive Republican Party, Group at the Service of the Republic, Liberal Democratic Republican Party and some agrarian representatives), the Constitution should serve as a reformist deal between left and right to reach reforms by keeping political and economic stability.

The first governments of the Republic worked for about two years with institutions of a still weak parliamentary regime. They were unable to form stable majorities in the long run due to the fragmented structure in the number of seats that resulted from the general election of June 1931 [Sánchez Agesta 1984: 472]. MPs sought to coordinate the representative function of Parliament, elected by universal male suffrage, with a procedure of direct democracy established in Article 66 of the Constitution: "The people will be able to decide through referendum the laws voted by Parliament. To do so it will be enough that 15 percent of the electoral body request it". That way MPs aimed to assure instruments of direct democracy. As a setback, instead, governmental instability and confusing constitutional interpretations about the formation of government and the vote of confidence made it difficult to combine mechanisms of direct and representative democracy in practice.

The new boost given to the Constitution relied on three factors which not all MPs did always share: a closer adjustment of institutions to the precarious socioeconomic conditions of the country, the uniformity of the legal system across the country, and the supreme law of the nation embodied by the constitutional text as the appropriate instrument to guarantee rights [Roura Gómez 1998: 272]. The second and third factors were political novelties when compared to the Spanish parliamentary tradition going back to the 19th century.

EUROPEAN INFLUENCES ON THE CONSTITUTION OF 1931

Central European and French public law doctrines that were coined between the end of the 19th and the beginning of the 20th centuries made explicit that constitutions exist to guide the ordinary laws of a country through a set of consistent principles [Muñoz Machado 2004: 45]. Nonetheless, the discredit of written constitutions was still a hindrance that only by the end of the 1910s, and beginning of the 1920s was challenged by recent doctrines of Central European public lawyers. They advocated written constitutions as the highest laws of the legal order of a country. Actually, all political parties in the Spanish Parliament agreed on the foundational character of the Constitution, with the exception of the conservative Basque-Navarre Minority. According to MP Antonio Royo Villanova, of the Popular Agrarian Minority, the aim of a constitution is to shape the political structure of the state. That end has to be contrasted with Carl Schmitt's idea in his *Verfassungslehre* (*Constitutional Theory*), disputed during European scholarly debates that the proper subject of any constitution is the political unity of the people, not that of the state.

Nonetheless, the influence of Schmitt among Spanish MPs is hard to estimate, whereas Hans Kelsen's ideas can be easily checked. His name, sometimes wrongly transcribed as "Kelssen", is quoted at different times of the constitutional debate between August and November, almost always in connection with his key role in the writing process of the Austrian Constitution of 1920 and the creation of a constitutional court. In the book originally published in German as *Hauptprobleme der Staatsrechtslehre*, (*Main Problems of the Public Law Doctrine*), in Spanish *Problemas capitales de la teoría jurídica del Estado*, Kelsen objected to consider the legislative process as a state act that depends on institutions formed by the people. He understood from its origin law-making as a state act that takes place before its institutions are completely shaped. Only in a final step can the state organs be completed. The Weimar Constitution of 1919 pointed out this new trend. Nicolás Pérez Serrano, a prominent Spanish jurist who participated in the drafting process of the Spanish Constitution, regretted that the influence of the Constitution of Weimar on the Spanish Constitution of 1931 was exerted just at the same time the Republic of Weimar became an unstable regime [Pérez Serrano 1984: 574].

Among the writings that were read by some Spanish MPs trained in Germany, *Die Souveränität. Ein Beitrag zur Theorie des Staats- und Völkerrechts* (*Sovereignty: A Contribution to the Theory of Public and International Law*) by Hermann Heller, was an influential text to understand the diverse controversies around the meanings of state sovereignty in interwar constitutionalism. There, sovereignty appears as a pure legal concept that highlights the relationship between an organ or decision-making authority and positive law, regardless of other rules and social forces. One year later, the book originally published in German as *Verfassung und Verfassungsrecht* and translated into Spanish as *Constitución y derecho constitucional* (*Constitution and Constitutional Law*) was published by the antipositivist Rudolf Smend. In his

view, the tasks of the state represent aspects belonging to a certain culture, and such a culture cannot be separated from the own aims whether of the state or the law. Heller's account was opposed both to Kelsen's positivism and to the full antipositivism embodied by Smend. The clash between these two perspectives also took place in the Spanish Constituent Assembly, even if explicit mentions to those scholars were relatively scarce.

Among MPs, Manuel Azaña, of the Republican Action Party, prime minister (*Presidente del Consejo de Ministros de España*) from October to December 1931 spoke about the Spanish "political problem": "to organise the state so as to make it adequate to this new and historic phase of the Spanish people" [DSCCRE, 13 October 1931: 1667]. Royo Villanova, of the Popular Agrarian Minority, clearly distinguished between the powers of the state and its proper activity to say that "the state is not a power" [Royo Villanova, 1923: 223]. His opinion was favourable to the principle of legality as understood by Léon Duguit: no authority can act by itself in accordance to law dismissing other state institutions [Royo Villanova, 1923: 666–667]. Arbitrariness by the state was one of his main political and legal concerns. That issue is reflected both in his speeches in Parliament and in his book *Elementos de Derecho Administrativo* (*Handbook of Administrative Law*).[2]

Likewise, Royo Villanova resumes the arguments by Joseph Barthélemy about the public budget of beneficence for the Catholic Church by arguing that public money can sometimes benefit the interests of some tax payers and at the same time be neutral or even harmful to the interests of others. He attributed solidarity to the state and public powers as their distinctive feature [Royo Villanova 1923: 515]. Following French doctrines and the writings by the Spanish professor of administrative and state law José Gascón y Marín, Royo Villanova accepted state intervention in the local realm as precisely the distinctive and dominant feature of contemporary administrative law, which made it different from former and outdated trends. Hence, he fully distinguishes state interventionism from socialism in the Marxist sense [Royo Villanova 1923: 271–275].

French legal doctrines were also influential among Spanish MPs. The ideas of Raymond Carré de Malberg gave grounds to a personality of the state as a consequence of the legal order, as he wrote in *Contribution à la théorie générale de l'État* (*Contribution to a General Theory of the State*). This was commonplace, repeated and assumed by a number of representatives in Parliament. The theories of Maurice Hauriou and Adhémar Esmein, to mention the most remarkable examples, were a decisive factor in understanding public initiative as a counterweight to the individual one. Hauriou himself considered that function one of the essential features of the state in *Précis de droit constitutionnel* (*Summary of Constitutional Law*).

[2] According to Royo Villanova, a liberal state is characterised by principles such as: to declare the primacy of the rights of people in line with Rousseau's political philosophy, to attain a division of powers imitating Montesquieu's original ideas, a rule of law inspired by the German *Rechtsstaat* and a parliamentary regime to include the main features of Westminster [Calonge 2017: 62].

Nonetheless, the Constitution of 1931 did not only receive external influences, but it was itself a source of inspiration to understand the process of regional decentralisation in the manner of the so-called "integral state". In 1932, professor of state theory Eduardo Luis Lloréns published *La autonomía en la integración política* (*The Autonomy of Political Integration*) to defend the distribution of competences between state and regions to set limits on regional autonomy through a series of rules [Lloréns 1932: 120]. Luis Jiménez de Asúa, of the Spanish Socialist Workers' Party, mentioned in his inaugural speech during the constitutional debate Otto von Gierke and Georg Jellinekas – the legal scholars who prevented Hugo Preuss from developing the project of an integral state in the Weimar Constitution of 1919 [DSCCRE, 27 August 1931: 645]. These facts reveal a remarkable degree of acquaintance of Spanish legal scholars and politicians with French and German trends of public law.

Analysing the legal references about the ideas of state and constitution during the constituent assembly the following speeches should be emphasised: Emiliano Iglesias Ambrosio, of the Radical Republican Party, quoted Preuss as inspiring the preamble and the preliminary title of the Constitution [DSCCRE, 15 September 1931: 919]; Luis Araquistáin, of the Spanish Socialist Workers' Party, understood the new ideas held by Kelsen and Duguit as representative of a new trend that considered society and individuals, neither the nation nor the state, the main focus of the law [DSCCRE, 16 September 1931: 942–943]; Justo Villanueva, of the Radical Republican Party, resumed Jellinek's ideas in his speech of 18 September 1931 to argue that the right to preserve the territory was an inescapable function of the state [DSCCRE, 18 September 1931: 1030]; Jiménez de Asúa claimed that the thesis of the integral state was intermediate between "the federal sense and the unitary sense" the same day that the Constitution was passed in Parliament [DSCCRE, 9 December 1931: 2907]. The development of the idea of state in the new doctrines of public law during the first third of the 20th century can be easily checked by enquiring into the speeches of Spanish MPs.

From the point of view of their legal regulation, the approval of social laws depended on parliamentary majorities. Constitutional constraints, instead, were to be settled by the constitutional court (*Tribunal de Garantías Constitucionales*). Contradictions between constitutional provisions and ordinary social legislation should be resolved by legislators [Ayala 1932: 11]. That fact entailed a new understanding of the role of representatives in the legal system which conferred them broader powers to decide on the legality of passed laws.

CONSTITUTION AND PARLIAMENT ACCORDING TO SPANISH REPRESENTATIVES

As a token of the strong link between the role assigned to Parliament and the principle of the separation of powers, in the foundational manifesto of the Progressive Republican Party (Liberal Republican Right until 1931), published in July 1930, one

of its first concerns had to do with parliamentarism. Parliaments were portrayed as potential instruments to improve the balance of powers in a republican democracy, though they equated pure parliamentarism without presidential powers with a dissolute, dysfunctional regime. The temptation of MPs not to legislate could lead to instability and lack of coordination between powers [Artola [1974] 1991: 327].

During the 19th century, the so-called internal, or historical, constitution was drawn as the compendium of old treatises and "historical rights" acquired by different social strata and territorial bodies: from clerical rights to local ones [Portillo Valdés 2002: 189]. Then, the idea of a historical constitution was not new in Spain, even though towards the second decade of the 20th century, its previous wider acceptance began to disappear. The majority of left-wing and centre parties involved in the constitution-making of 1931 rejected the idea of a historical constitution as useless as far as building a political regime is concerned.

Still in 1931, referring to an ancient, unwritten constitution meant to defend a certain historical sense of stability which was considered necessary to approve a new constitution. Radical centrism and democratic socialism opposed their idea of the Constitution of 1931 as the supreme law of the legal order to the moderate and conservative liberalism of 19th-century Spain [Varela Suanzes-Carpegna 2007: 525]. However, a careful revision of the constitutional debate demonstrates that a certain number of right-wing MPs such as Niceto Alcalá-Zamora, and Juan Castrillo, both of the Progressive Republican Party, together with some agrarian and Basque-Navarre representatives appealed to a supposed inner (historical) constitution of the country.

In a similar vein, Julián Ayesta Manchola, of the Progressive Republican Party, aimed to highlight the liberal sense of the Constitution over alternative understandings of popular and national sovereignty. No personal power can be included within the laws of the republican democracy. Parliament's sovereignty, legislative sovereignty and popular sovereignty expressed together the complex nature of the modern idea of sovereignty. Ayesta Manchola took a stance in favour of it when deliberating on the withdrawal of constitutional guarantees in specific cases:

> There is no personal power that the Republic has to defend, but only the security of the state. And at the same time, it demands that the seriousness would be evident and imminent. Ultimately, Parliament, when transferring this prerogative, does not reduce its sovereignty, the sovereignty of the legislative power, but it is the legislative power itself that in this case, as in others, transfers its own sovereignty because it [the legislative power – F.J.B.] is precisely the sovereign and the only one to determine the rule to follow to benefit the Republic, that is to preserve the constitutional order. [DSCCRE, 2 October 1931: 1416–1417]

The powers of the state were not in a perfect balance, but institutional counterweights helped to preserve a high degree of compatibility and autonomy between different authorities: Parliament, constitution, ordinary laws, people's sovereignty,

government and judicial power. This idea of sovereignty reshaped the classical understanding of popular and national sovereignty in favour of institutions as holders and instruments of shared sovereignty.

José Álvarez Buylla, of the Radical Republican Party, stood up for a flexible constitution able to be adapted to different circumstances and to be reformed when needed. Dictatorship is identified as the main cause of political distrust of institutions. A flexible constitution was needed in order to assure that new rights would not be betrayed in the future. To satisfy popular demands was not just the result of people's sovereignty but, as the Spanish Socialist Workers' Party expressed, it was a task of constituent members as representatives of the nation in Parliament [DSCCRE, 1 September 1931: 695].

The intellectual concern for Spain of the MPs that belonged to the Group at the Service of the Republic led them to compare the constitutional draft of 1931 with features from past constitutions and regimes. For instance, a speech by José Ortega y Gasset highlighted the task that MPs faced when drafting a democratic constitution in metaphorical terms. According to him, the Constitution would be "a formidable machine" working according to certain principles which produced a number of both intended and unintended effects. As a consequence, he concluded: "our task is, then, one of engineering" [DSCCRE, 4 September 1931: 772].

To give an illustration, Ortega sharply argued that the executive power, to regularly work as an effective power, should not be entirely subordinated to Parliament in every step of the decision-making process. Otherwise, the structure of the state would be dysfunctional with an unworkable executive. If the tendency were just the opposite, that is to say, the legislative branch under the executive power, then the state would be unprotected against arbitrariness. A paralysed government was a danger which, accordingly, demanded to build a strong Parliament balanced with the executive power. Conflicts between these two branches were to be reduced as much as possible. That was precisely one of the ends of any modern democratic regime in Ortega's view [DSCCRE, 4 September 1931: 776].

In that same speech Ortega praises the balance in the Constitution between the powers of Parliament and those of the executive branch. Although the government requires a moderate and tempered Parliament, the executive branch needs its own domain for developing its activity and should not be subject to Parliament in all its actions. For that reason, the Constitution could help to solve that problem:

> These times demand, then, a restrained Parliament but, in truth, with full and sharp efficiency of its attributes. Against it, the [constitutional – F.J.B.] draft presents an executive power that is comfortably independently above Parliament. That is, as I see it, the greatest point, the most exemplary and apt part of the draft. Instead of resolving the opposition between both powers, putting one before the other, it has raised each one of them to its peak. [DSCCRE, 4 September 1931: 777]

Other moderate representatives of the same parliamentary group, for example, Vicente Iranzo, argued that the failure of the 19th-century liberal constitutional state was due to the wrongdoings of past political leaders in determining the country's historical moments. Both Ortega and Iranzo believed that, because of that betrayal, liberal constitutions failed to build a liberal state [DSCCRE, 1 October 1931: 1370].

That, and not deficient constitutional efforts, was interpreted by a number of left MPs as the reason for hardly effective, unsatisfactory public powers. Ascribing political responsibilities to both the classic liberals and authoritarian men of the constitutional tradition rhetorically strengthened by contrast the positive meaning of the republican democracy. Nevertheless, the constitutional tradition of Spain itself was not rejected. Criticisms related mainly to the wrongdoings of rulers than to deficient ideas or laws.

Francisco Javier Elola, of the Radical Republican Party and member of the Legal Advisory Committee which prepared the preliminary draft of the Constitution, affirmed that the text does not differ from a set of rules, more or less perfect, which regulate political powers at certain historical moments. He wanted to say that constitutions offer guidelines for citizens to drive their public life accordingly and principles for state action in the daily life of institutions [DSCCRE, 17 November 1931: 2381]. Thus, the Spanish democracy was regarded as relying on the joint foundation of Parliament and the Constitution.

Another radical republican MP, Emiliano Iglesias Ambrosio, connected the Constitution with the idea of building the structure of the legal system for the nation. He emphasised the lack of attention that the constitutional committee had paid to it. Doctrinal principles were essential to any draft. Without them constitutions cannot succeed. The balance between the different organs of the state in the new constitutionalism added overwhelming complexities if compared to the liberal institutions of previous decades:

> We, within the committee, have not talked about or discussed at all the doctrinal principles which every Constitution has to start from, that is to say, what is the matter of law, how law is organised, what is the organ of law, and what are the relationships between the organs of law and the living matter of law. [DSCCRE, 15 September 1931: 917]

Legislative procedures depended on different organs. Their contents were contested because there are no common grounds accepted by political representatives about how to regulate the law and what the relationships between different institutions would be like. Thus, doctrinal and procedural disagreements were unavoidable. In fact, different political parties suggested incompatible answers to these constitutional issues.

As a token of this tendency, Mariano Ruiz Funes, of the Republican Action Party, distinguished the three powers that according to him were central to the constitutional project: the power of Parliament, the presidential power that was initially assigned to MP Alcalá-Zamora and the power of government in the hands of a large coalition of parties. According to Ruiz Funes, these three different powers had to be mutu-

ally coordinated [DSCCRE, 27 October 1931: 1956]. In doing so, state institutions provided political stability. Otherwise, if these powers acted independently of each other, the state would lose its efficiency.

This balance of institutions in line with political liberalism, as defended by Melquíades Álvarez, of the Liberal Democratic Republican Party, also mean to advocate a constitution that can guarantee the rights of all citizens and prevent the abuses of majorities against minorities. Conflict in society was mediated through institutions and laws that would provide the necessary instruments to diminish its impact in the civil and political life since the "Constitution is nothing other than a law of guarantees that protects and gives shelter to the rights of everyone, of us all, of all the ideas". He continues to affirm that to have a liberal constitution is equated with the defence of individuals against the state and "of the general interests against particular ones, even if this could seem paradoxical and unnecessary" [DSCCRE, 9 September 1931: 816].

With a similar aim, Santiago Alba, an independent representative of monarchic constitutionalism, regarded Parliament as the ideal place for exchanging ideas between the executive power and the different representatives of the nation, even if he believed that this relationship was being broken: "The essence of a parliamentary regime, in a constituent assembly and in other kinds of assemblies, is a dialogue between the executive power and Parliament. But here that dialogue is not taking place in this confusing moment in Parliament" [DSCCRE, 16 September 1931: 965].

With similar nuances, in October, the Catholic independent representative Ángel Ossorio y Gallardo defines Parliament as a high aspiration of politics based on the deliberation about rival ideas and different viewpoints about any issue of the state where minorities are essential. Agreements, even if desirable, are not always possible: "Parliament is a comparison of ideas, clash of aspirations, contest of feelings" [DSCCRE, 15 October 1931: 1744].

These different views were not legally neutral. For instance, Royo Villanova distinguished the central state administration in contemporary societies as a growing system indispensable to distribute resources and to safeguard the normal government functions, conferring exclusively to constitutional law the capacity to solve the problems of the political structure of the state [Royo Villanova 1923: 13]. Doctrinal disagreements, far from being exceptional, remained constant between government and opposition during the constitutional debate. To reconcile individual liberties with the new social ends acknowledged in interwar constitutions was particularly a growing concern for MPs with legal training.

CONCLUSIONS

In the constitutional debate, MPs interpreted the revamping of the state differently (extension of new rights in the Constitution, balance of powers and state institutions, pace of reform policies and scope of economic intervention) but also with shared con-

cerns (strengthening the state through institutions and laws, enlarging citizens' freedoms and easing the access to primary education for children from all social classes).

The political language of Spanish MPs was a typical European parliamentary language of that time, where concepts such as democracy, law, constitution and republic were connected to each other and to other concepts forming the basic vocabulary used by political representatives in the constituent assembly. Institutional design was inconceivable for them without taking into account new political concerns related to an updated interpretation of those basic ideas. Even if a political agenda in the modern sense was not explicitly recognised as such, the parliamentary system worked accordingly responding to the demands of a pluralist political system and, in the political language, showing the ideological complexity of a late case of interwar constitution-making. Past and contemporary European experiences were the historical background. The parliamentary debates of the Spanish Constituent Assembly 1931 provided a fair example of conceptual and argumentative transfers in European constitution-making.

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