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PRESENTATION

by

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on

"The Spanish parliamentary system"

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The use of the term "Cortes", which is used to name our parliamentary institution and is usually found striking outside Spain, dates back historically to the Middle Ages and stems from the place where the political feudal assemblies met, which under the presidency of the King represent the origin of Parliament. This term shall be maintained in our country (whilst in France and in the United Kingdom it shall be used solely for the courts, as a reference to the jurisdictional functions which these assemblies also enjoyed) and it shall be recovered in the Cadiz Constitution of 1812, which includes the term "*Cortes Generales y Extraordinarias*" and maintained in all subsequent constitutional texts as Cortes Generales or merely Cortes until the 1978 Constitution in force.

This text entails a clear rupture with liberal constitutions as regards the characterization of parliament, since it fully introduces the democratic principle, given the influence of political parties in its actual functioning and clearly inspired by the approaches stemming from European constitutionalism after the Second World War, the so-called "rationalized parliamentarism".

The Spanish Constitution of 1978, following the classical scheme, has a dogmatic part, enshrining the catalogue of fundamental rights and public freedoms as well as their guarantees, and including, apart from the more classical ones such as ideological and religious freedom, freedom of expression, assembly and demonstration, etc.; other with a more advanced content, social rights under the heading of steering principles of the social and economic policy, which include for example the right to the protection of health, access to culture or the protection of the environment, all this in line with the principle laid down in **<u>article 1.1 :</u>** *Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates as the highest values of its legal order, Liberty, justice, equality and political pluralism.*

This dogmatic part is followed by an structured one, laying down the principle of separation of powers, based on the assertion that national sovereignty is vested in the Spanish people, from whom emanate the Powers of the State and establishing in **<u>article 1.3</u>** that: *"The political form of the Spanish State is that of a parliamentary monarchy."*

Thus, and compared to presidentialist government systems, Spain assumes a parliamentary government system according to which the model

of Head of the State (defined in Title II of the Crown, articles 56 to 65) is similar to that of the United Kingdom, Belgium, the Netherlands or Denmark, as an arbitration and moderator power but with mainly representative functions, without actual competences as regards the executive power.

Article 66 (1) of the SC lays down that: "*The Cortes Generales represent the Spanish people and shall consist of the Congress and the Senate"*. Therefore, the Cortes are the main representative body, with a bicameral structure. The Cortes Generales are a complex constitutional body since each of the Chambers that make it up (Congress of Deputies and Senate) are likewise constitutional bodies. And they share this feature with the Government, the General Council of the Judiciary and the Constitutional Court, since just like them and as regards the so-called constitutionally relevant bodies (i.e. the Ombudsperson or the Court of Auditors) their origin and development is directly enshrined in the Constitution.

Thus, right after the Crown the Constitution devotes Title III (arts. 66 to 96) to the Cortes Generales, divided into three chapters: first (arts. 66 to 80) deal with the composition, organization and functioning of the Chambers; the second (arts. 81 to 92) to the drafting of the laws, distinguishing in this sense the different types of legislative provisions and their relevant procedures and the third (arts. 93 to 96) to the regulation of international treaties.

The Cortes Generales are involved in the political direction of the State since they exercise its **legislative** power, adopt the **Budget**, **control** the action of the Government and are moreover entrusted with the other competences assigned by the Constitution (art. 66 (2)). Among them, there is the **representative function** of the Spanish people, which is the sole holder of national sovereignty from whom all powers of the State emanate as we said before, and hence they are essential to understand the democratic component which, together with the social one, define Spain's model of State. This nature belongs to the option for representative democracy which, in a non-discriminatory but exclusive manner (since there is always the option of the coexistence with some direct democracy instruments as, in our case, the referendum or the Open Council system in minor local entities) has been the one chosen by current democracies.

Thus, the Cortes Generales are elected to represent the Spanish people as a whole in the Congress (art. 68) and in its territorial diversity in the Senate (art. 69). In the first case, by means of the **350 MPs** elected by universal, free, equal, direct and secret suffrage, pursuant to the terms laid down by

Organic Act 5/1985, of June 19, on the General Electoral Regime. Namely, in accordance with a proportional system which distributes seats among provinces depending on their population and based on the D´Hondt method.

As regards the Senate, four senators are elected in each province, with some variations in the island provinces and in Ceuta and Melilla. Moreover, Autonomous Regions appoint one Senator and one more as per each million inhabitants in their territory. Despite this last correcting element, the establishment of the provincial constituency, instead of that of the Autonomous Regions, has triggered criticism to the Senate's nature as actual territorial representation Chamber and this feature has been at the core of the proposals for the reform of the Upper Chamber.

Moreover, the Cortes are a **deliberation body**, an essential feature for any parliamentary institution. Articles 74 and following of the Constitution regulate joint sittings, the functioning in Plenary and in Committees, the public nature of plenary sittings, etc. Other defining features to be noted are:

- **Inviolability** of the seat (art. 66.3) and of parliamentarians (art. 71)
- **Continuity** in time guaranteed by the relevant Permanent Deputations.
- **Regulatory independence**, in financial, administrative and organization terms (art. 72) which safeguard the independence of the Chambers with respect to each other and, above all, with respect to the Executive.

  This definition is to be completed with another essential detail, such as the **imperfect and unbalanced nature of bicameralism** which favours the Congress of Deputies with respect to the Senate. This is clearly shown by the legislative procedure which, with some exceptions, is always initiated in the Congress, having this Chamber the final say since it can reject amendments or lift vetoes from the Senate; Decree-laws (rules ranking as laws adopted by the Government in case of extraordinary and urgent need) are subject to validation or repeal solely by the Congress of Deputies (art. 86.2) and when it comes to parliamentary involvement in the declaration of the states of alarm (which has only occurred twice, with a different scope, in 2020 on occasion of the health crisis caused by the COVID 19) emergency and siege, and the in the charge of treason or any offence against the security of the State of the President and other members of the Government, this is also limited to the Congress (arts. 116 and 102 SC respectively).

Moreover, only this Chamber is **involved in the investiture of the President of the Government** (art. 99) with whom it has a **relation of confidence** expressed by the possibility to adopt or reject a vote of confidence on his/her program or on a general policy statement (art. 112) and may make him/her resign holding him/her politically accountable by means of the adoption by absolute majority of MPs of a motion of censure. (art. 113).

This highlights another of the typical features of the parliamentary government system: it is only after the Parliament that the Spanish Constitution deals with the Government in its Title IV On the Government and the Administration (arts. 97 to 107) and devotes Title V to relations between the Government and the Cortes Generales (arts. 108 to 116).

Pursuant to the latter, the Government is jointly accountable to the Congress of Deputies for its political management (art. 108) which entails the obligation to provide the Chambers with whatever information and help they may need (art. 109), the possibility for the Chambers and their Committees to summon the members of the Government and for them to attend their meetings and be heard in them (art. 110); the obligation of the Government to reply to questions and interpellations (art. 111) and, above all, as we mentioned before, the possibility for the President of the Government to ask the Congress for a vote of confidence in favour of his/her program or of a general policy statement, which may be adopted by simple majority of the Congress (art. 112) and the fact that this Chamber may hold the Government politically accountable by means of a motion of censure, which is established as a **constructive motion of censure** demanding in arts. 113 and 114 that the said motion be submitted by a tenth of the MPs (35) with an alternative candidate to President of the Government, making it possible to submit alternative motions in the five following days and only one as per each period of sittings.

This is balanced with the power to dissolve the Chambers enjoyed by the President of the Government, prior deliberation of the Council of Ministers, but under his/her sole responsibility. It cannot be submitted if a motion of censure is going on nor before a year has passed after last dissolution.

This scheme of relations is to be understood bearing in mind that the President of the Government is elected by the Congress of Deputies by means of the "**Investiture**" mechanism, envisaged in art. 99 and according to which this confidence must be vested by the absolute majority of MPs

(**176**) to the candidate proposed by the King, prior consultation with the representatives appointed by political groups with parliamentary representation and through the Speaker of the Congress (who endorses the said proposal). Should this majority not be obtained, the same proposal shall be subject to vote 48 hours later, and the confidence shall be considered as vested with simple majority. If such confidence were not obtained, successive proposals shall be voted upon and if in two months' time no candidate were invested, the Chambers would be automatically dissolved, and new elections called (art. 99.5).

All this is to be understood bearing in mind that in the Constitution the Government is established according to the **chancellor principle (art. 100)** so that the President is a "*primus interpares*" with regards to the rest of the members of the Government, and thus both the Vicepresidents and the Ministers are appointed and dismissed by the King at the proposal of the President.

The division of the three classical powers is reflected in the regulation of the Judicial Power in Title VI (arts. 117 to 127) as an independent power whose solemn proclamation is to be found in art. 117.1 pursuant to which: *"1. Justice emanates from the people and is administered on behalf of the King by Judges and Magistrates of the Judiciary who shall be independent, irremovable, and liable and subject only to the rule of law".* Their independence is guaranteed by the establishment of a self-governing body named General Council of the Judiciary, which, inspired on the Italian Higher Council of the Magistracy is enshrined in art. 122 which refers to an Organic Act to regulate its status and system of incompatibilities of its members and their functions; more specifically, as regards appointments, promotions, inspections and disciplinary system. This article is currently developed by Organic Act 6/1985, of July 1, on the Judiciary, whose more controversial aspect is that of the appointment of its members, as shown by the fact that its renewal is currently at a standstill in the absence of a political agreement endorsed by the majority of the 3/5 of the Chambers (210 MPs in the case of the Congress) with respect to all proposed candidates, resulting in the fact that the current members of the Council are acting members and their mandate has been extended for more than two years.

Finally, the Constitutional Court is dealt with in Title IX (arts. 159 to 165) inspired in the Kelsen's system of concentrated jurisdiction, with the nuance of the inclusion of the so-called exception of unconstitutionality that may be raised before the Constitutional Court by ordinary courts.

In any case, we would like to stress that it is established as a counterweight to the Parliament as supreme interpreter of the Constitution, and from this perspective the problem is, as it is the case in other concentrated constitutional jurisdictional systems, the need to avoid the Constitutional Court acting as a "negative legislator" which might invade competences of the Chambers, something it might do even unknowingly when issuing the so-called interpretative or "manipulative" decisions, as Zagrebelsky called them. For example, when it implements the principle of "principle of interpretation according to the Constitution". A principle which, by the way, it has not applied recently in three decisions of the Constitutional Court settling the action of unconstitutionality brought against the declaration of the state of alarm by the health crisis caused by COVID 19 and against the suspension of the parliamentary deadlines agreed in this same framework of exceptionality.

Finally, now that we are about to celebrate the XLIII Anniversary of the 1978 Constitution, the assessment on the functioning of the aforementioned constitutional design cannot be but positive. The general evaluation, regardless of some bizarre positions and without detriment to the fact that there a is need for reform in some aspects, also recognizes the leading role of the Cortes in the restoration of democracy in Spain and in the establishment of a political regime equivalent to that of all States in our legal-political environment, which has also made it possible to enjoy a period of an unprecedented economic and social development.

However, half through the XIV Legislative term, we must recall that for some time now we have been witnessing experiences which some years ago would have seemed lab hypothesis, pertaining more to political fiction than to our likely or daily reality. For example, the failed legislative terms (XI and XIII) when elections had to be repeated; the holding of up to three sessions of investiture in the same year of 2016, or the approval of a motion of censure for the first time in our constitutional history on June 1, 2018. The Institution seems to have successfully overcome these and other trials, actual "stress tests" and expressions of the replacement of the bipartisan system of rotation in the Government by a fragmentation of the parliament typical of the current situation prevailing in the whole of Europe.

In this sense, the current Spanish parliament is undergoing a situation which although might not be defined as of atomization, it could certainly be described as of "severe fragmentation" with 24 different political groups having obtained representation in the Congress of Deputies and an unprecedented number of 10 different parliamentary groups and, although to a lesser extent, in the Senate there is also this very diversified representation.

And also for the very first time in our history a coalition government has been set up between two left-wing parties: the Partido Socialista Obrero Español and Unidas Podemos which, as it might be expected, lacks the cohesion and stability of prior singled-party governments.

All in all, the main political tensions stem mostly form the polarization in the two blocks that gather the different fragmented forces, causing multiple confrontations and which stem from a well-known phenomenon, clearly diagnosed and prevailing in many neighbouring countries: the rise of populist and nationalist movements which, as if we were witnessing a cyclical repetition of history, replicate worldwide political circumstances pertaining to the third decade of the 20st century in the 20's of the 21st century.

We cannot deal with this matter as extensively as we would wish. But, looking to the future and exercizing some self-criticism, we must admit that one of the reasons of the aforementioned situation is the growing distance between the Parliament and Society; the distance between representatives and the demands of their represented or, at least, the perception that the latter have in this sense. Any change or reform that no doubt is to be posed, must bear this into account. This is not an easy challenge, but in this case the lessons that History has taught us are of particular relevance to guide us in the path to be followed.

Thank you very much for your attention and I remain at your disposal for any remarks or doubts you may have.