

The New Spanish Constitution, Comments and Full Text

by GEORGE E. GLOS*

Introduction

Spain has a new constitution after nearly half a century. The constitutional provisions existing prior to their repeal by the new constitution consisted of a number of constitutional enactments rather than of a single document.¹ The new Spanish Constitution, a consolidation of old and new, was worked out by the Spanish parliament, the Cortes, on the basis of a government submitted draft, and represents the outcome of an agreement between the two leading political parties in Spain, the *Unión de Centro Democrático* (Democratic Center Union) and the *Partido Socialista Obrero Español* (Socialist Labor Party). Together these parties hold an absolute majority in the Cortes.

The constitution was approved by the Cortes on October 31, 1978, and by the voters in a plebiscite on December 6, 1978. It was signed by the King on December 27, and became effective upon its publication in the official gazette, the *Boletín Oficial del Estado*, on December 29, 1978. It is the tenth or thirteenth Spanish Constitution in Spanish constitutional history, depending upon one's view of the Napoleonic Con-

* Professor of Law, San Antonio School of Law, St. Mary's University. B.A., 1943, Lycee Prague; LL.B., 1948, Prague; J.U.D., 1948, Charles University, Prague; LL.B., 1956, University of Melbourne; J.S.D., 1960, Yale University.

1. They were chiefly: *Fuero de los Españoles* of July 16, 1945; *Fuero del Trabajo* of March 9, 1938; *Ley de Cortes* of July 17, 1942 (amended March 9, 1946); *Ley de Sucesión a la Jefatura del Estado* of June 7, 1947; and *Principios del Movimiento Nacional* of May 17, 1958; all as modified by *Ley Orgánica del Estado* of December 14, 1966. For the texts of these documents see III A. PEASLEE, CONSTITUTIONS OF NATIONS 810-43 (rev. 3d ed. 1968) [hereinafter cited as PEASLEE]. The last Spanish Constitution embodied in one constitutional document was the republican constitution of December 9, 1931. This constitution has not been translated into English, but is available in a French language translation, CONSTITUTION DE LA RÉPUBLIQUE ESPAGNOLE. The occasional English translations of sections of this constitution occurring within this article are the work of Stephen Traverse, an Articles Editor and third-year student. The British constitution, a series of constitutional provisions spanning seven centuries, illustrates a constitutional arrangement similar to that of the new constitution. The present British constitution consists chiefly of the Magna Charta of 1215, the Petition of Right of 1627, the Bill of Rights of 1688, the Act of Settlement of 1700 and the Statute of Westminster of 1931. See PEASLEE, *supra*, at 1014-22, 1030-40, 1148-51.

stitution of Bayonne and two other constitutional projects.² Most notable among the prior constitutions were the Constitution of Cadiz of March 19, 1812, and the Constitutions of June 18, 1837, of June 6, 1869, of June 30, 1876 and of 1931. All were monarchical, except the republican Constitution of December 9, 1931.

The Spanish Constitution of 1978 has a preamble, a preliminary title, ten numbered titles, additional provisions, provisions repealing inconsistent legislation and a final provision. The titles are subdivided into chapters, and the chapters into sections; the individual provisions are carried in numbered articles. Altogether, the constitution numbers 169 articles.

The Preamble and the Preliminary Title

The Preamble and the Preliminary Title lay down the fundamental principles upon which the constitution is founded. Not unlike its American counterpart,³ the Preamble to the Spanish Constitution proclaims that

[t]he Spanish nation, in order to establish justice, liberty, and security, and to promote the good of the nation in the exercise of its sovereignty, declares its will to ensure the system of democracy within the Constitution and the laws, and a just economic and social order; to secure a government of law, safeguarding the rule of law as an expression of national will; to protect all Spaniards and peoples of Spain in the exercise of human rights, culture, traditions, languages and institutions; to promote the development of culture and the economy so as to assure to all a worthy standard of living; to set up an advanced democratic society; and to contribute to the strengthening of peaceful relations and an effective cooperation among all peoples on earth.⁴

2. The Constitution of Bayonne of July 6, 1808 was imposed on Spain by Napoleon. The first of the above mentioned constitutional projects was launched after the National Assembly proclaimed a republic on February 11, 1873. The draft of this republican constitution is noted for its proposed separation of church and state, and for its institution of a federal government. On January 3, 1874, however, General Pavia dissolved the National Assembly, effectively terminating the constitutional project and the republic. The second constitutional project referred to was prepared under the auspices of General Primo de Rivera, in the 1920's. Failing to find popular approval, the proposed constitution was later withdrawn.

3. "We the People of the United States, in Order to . . . , establish Justice, insure domestic Tranquility, . . . promote the general Welfare, and secure the Blessings of Liberty . . . , do ordain" U.S. CONST., preamble.

4. CONST. OF SPAIN (1978), preamble [hereinafter cited as 1978 CONST.]. Translations into English of quoted sections of the 1978 Constitution are those of Professor Glos. An English language translation of the entire constitution is available in XIII CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds. 1979).

The Preliminary Title proclaims Spain "a social and democratic State governed by law, which considers liberty, justice, equality and political pluralism as the foremost values of its legal order. National sovereignty belongs to the Spanish people, from whom all powers of State emanate. The political form of the Spanish State is a parliamentary monarchy."⁵ The constitution recognizes local and regional autonomy, similar to the constitution of 1931 and to the present Italian Constitution.⁶

Like the French and the Italian Constitutions, the new Spanish Constitution expressly mentions political parties and imposes upon them the requirement of democratic structures and procedures.

Political parties are the expression of political pluralism. They take part in the formation and manifestation of the people's will and are essential to the people's participation in politics. They may be created freely and may freely conduct their activities. They shall respect the Constitution and the law. Their internal structure and operation shall be democratic.⁷

5. 1978 CONST., *supra* note 4, art. 1, § 1-3. *Cf.* the Spanish Constitution of 1931 [hereinafter cited as 1931 CONST.], declaring in art. I that "Spain is a democratic republic of workers of all classes, organized on the principles of liberty and justice" and that "the powers of all its organs emanate from the people." The corresponding provision of the French Constitution (1958, amended 1963) appears in article 2: "France is a Republic, indivisible, secular, democratic and social. . . . Its principle is government of the people, by the people and for the people." *Cf. id.*, article 3: "National sovereignty belongs to the people, which shall exercise this sovereignty through its representatives and by means of referendums." For the text, *see* PEASLEE, *supra* note 1, at 312-13.

6. Article 1 of the 1931 Constitution, *supra* note 5, provided that Spain is a "unitary State, with municipal and regional autonomy," and article 2, that "all Spaniards are equal before the law." Article 5 of the Italian Constitution (1947, amended 1963) provides in this respect: "The Republic, which is one and indivisible, recognizes and promotes local autonomy; it applies the fullest measure of administrative decentralization in services dependent on the State and adjusts the principles and methods of its legislation to the requirements of autonomy and decentralization." *Cf. id.*, article 6: "The Republic safeguards linguistic minorities by means of special provisions." For the text, *see* PEASLEE, *supra* note 1, at 501. Article 50 of the 1931 Constitution declared that the autonomous regions might provide public education in their respective languages; under that constitution, however, the study of Spanish was obligatory, and its use was mandated in primary and secondary education even in the autonomous regions. 1931 CONST., *supra* note 5, at 50. *Cf.* the 1978 Constitution, *supra* note 4, article 3, permitting the use of languages other than Spanish in the autonomous states according to local statute, and declaring Spain's linguistic diversity "a cultural heritage entitled to special respect and protection."

7. 1978 CONST., *supra* note 4, art. 6. Article 4 of the French Constitution reads: "Political parties and groups shall be instrumental in the expression of the suffrage. They shall be formed freely and shall carry on their activities freely. They must respect the principles of national sovereignty and democracy." For the text, *see* PEASLEE, *supra* note 1, at 313. Article 49 of the Italian Constitution reads: "All citizens have the right to freely form parties in order to contribute by democratic means to national policy." For the text, *see* PEASLEE, *supra* note 1, at 508.

This is a modern feature in the Spanish Constitution. As a rule, constitutions do not expressly mention political parties, although they may presuppose their existence.

Like the Italian and the West German Constitutions, the Spanish Constitution grants rights to trade unions and employers' associations. "Trade unions and employers' associations contribute to the protection and advancement of their own economic and social interests. Their formation and the exercise of their activities are free under the Constitution and the law. Their internal structure and operation shall be democratic."⁸

The new constitution further evidences an intent that the new Spanish government be genuinely democratic, its political parties be bound by the constitution and the law, and human rights be freely exercised under its auspices.

Public authorities shall promote conditions for a real and effective liberty and equality of individuals and of groups formed by them; they shall remove obstacles that impede their operations and shall facilitate the participation of all citizens in the political, economic, cultural and social life. The Constitution guarantees the application of principles of legality, normative order, publication of laws, prohibition of retroactivity of provisions unfavorable to or restrictive of individual rights, responsibility and prohibition of arbitrary conduct of public authorities.⁹

Notably the new constitution assures Spain's national minorities of a substantial regional autonomy, under which all are free to use their languages, flags and emblems without interference.¹⁰ A distinction is made between Spaniards, that is, all citizens on the one hand, and the Spanish nation (that is, the several national groups inhabiting Spain) on the other.¹¹ The constitution extends its full protection to both groups. Although Spain is a monarchy, the constitution stresses that national sovereignty is vested in the people, and that the powers of gov-

8. 1978 CONST., *supra* note 4, art. 7. Article 39 of the Italian Constitution provides: "Freedom in the organization of trades unions is affirmed. . . . They may . . . negotiate collective labor agreements. . . ." For the text, see PEASLEE, *supra* note 1, at 506. Article 9, section 3 of the West German Constitution (also referred to as the Basic Law of the Federal Republic of Germany) (1949, amended 1966) provides: "The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and to all trades and professions" For the text, see PEASLEE, *supra* note 1, at 363.

9. 1978 CONST., *supra* note 4, art. 9, §§ 2 & 3.

10. Article 3 of the 1978 Constitution, *supra* note 4, provides that "[t]he other languages of Spain are also official languages in their respective Autonomous Communities, in accordance with their Statutes"; and at article 4, that "[f]lags and emblems of the Autonomous Communities may be recognized by Statute."

11. *Id.* at art. 2.

ernment are derived from the people. This is a provision not usually found in monarchical constitutions.¹² Clearly manifesting a republican intent, article 1 of the 1978 Constitution resembles article 1 of the Constitution of 1931,¹³ and therefore calls to mind the compromises reached in the new constitution between the Spanish monarchical and republican forces.

Title I. Fundamental Rights and Duties

In its introductory statement to Title I, the new constitution declares that

respect for law and the rights of others is the foundation of political order and internal peace. The provisions concerning fundamental rights and liberties recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and with such provisions made in treaties and other international agreements ratified by Spain.¹⁴

Spain thus adopts a uniform, internationally verifiable standard with reference to which the protections afforded human rights in Spain may be objectively assessed. This approach is similar to that taken by certain provisions in the West German Constitution.¹⁵

As to Spanish nationality, the new constitution declares that “[a]

12. In the Spanish Constitution of 1876, sovereignty was shared by the King and the Cortes. See CONST. OF SPAIN (1876), arts. 18, 32, 41, 44, 51, 59, 62 & 63. Under the *Organic Law of the State*, sovereignty was vested in the state, the Head of State being the personification of national sovereignty. ORGANIC LAW OF THE STATE, arts. 1 & 2, reprinted in PEASLEE, *supra* note 1, at 810.

Under the Norwegian Constitution (1814, amended 1964), executive power is vested in the King, article 3, and the legislative power in the people, through parliament, article 49. See PEASLEE, *supra* note 1, at 689-705. Under the Netherlands Constitution (1815, amended 1963), executive power is vested in the King, article 56, the legislative power to be exercised jointly by the King and parliament, article 119. See PEASLEE, *supra* note 1, at 652-85. The Constitution of Sweden (1809, amended 1965), vests the executive power in the King, article 4, and the legislative power in the King and parliament, article 87. See PEASLEE, *supra* note 1, at 847-72.

13. See note 5 and accompanying text *supra*.

14. 1978 CONST., *supra* note 4, art. 10. See generally Universal Declaration of Human Rights of December 10, 1948, G.A. RES. 217, U.N. DOC. A/810, at 71 (1948).

15. The Basic Law of the Federal Republic of Germany reads, at article 2, “Everyone shall have the right to the free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral code. Everyone shall have the right to life and to inviolability of his person. The freedom of the individual shall be inviolable. These rights may only be encroached upon pursuant to a law.” See PEASLEE, *supra* note 1, at 361-62. Although the Basic Law does not expressly refer to the Universal Declaration of Human Rights, the aforementioned articles seem well within the spirit of that document.

Spaniard by birth may not be deprived of his nationality,"¹⁶ leaving open the possibility, however, that naturalized persons might under some circumstances be deprived of Spanish citizenship. The provision is more protective than its counterpart in the Italian Constitution: "[n]o one may be deprived of . . . , his citizenship, . . . for political reasons";¹⁷ but an even greater protection is afforded by the West German Constitution, under which "[l]oss of citizenship may arise only pursuant to a law, and against the will of the person affected . . . only if such person does not thereby become stateless."¹⁸ In the United States, a national by birth or by naturalization may lose his nationality for a variety of reasons;¹⁹ denaturalization as a punishment, however, is barred by the Eighth Amendment.²⁰

The Spanish Constitution affords the right to asylum, and for that right to be further elaborated by statute.²¹ This right is also referred to in the Italian and West German Constitutions, and in the Spanish Constitution of 1931;²² most constitutions do not mention the topic.

The legal status of foreigners is governed in Spain by generally accepted rules of international law. Rules of international law also apply to extradition; accordingly, the new constitution prohibits extradition for political offenses.²³ Most foreign states will not extradite their own nationals, irrespective of the offense; the United States, however,

16. 1978 CONST., *supra* note 4, art. 11, § 2.

17. CONST. OF ITALY, art. 22, *reprinted in* PEASLEE, *supra* note 1, at 503.

18. CONST. OF WEST GERMANY, art. 16, § 1, *reprinted in* PEASLEE, *supra* note 1, at 364.

19. *See* 8 U.S.C.A. § 1481.

20. *See* *Trop v. Dulles*, 356 U.S. 86, 101 (1958). *Cf.* *Schneider v. Rusk*, 377 U.S. 163 (1964), invalidating a federal statute, under which a naturalized citizen would lose his citizenship by continuous residence for 3 years in his country of origin, as violative of the Fifth Amendment's due process clause.

21. The 1978 Constitution, *supra* note 4, article 13, section 4, reads: "The right of citizens of other countries and of expatriates to asylum in Spain shall be determined by law."

22. Article 10 of the Italian Constitution provides: "The legal status of foreigners is regulated by law in conformity with international rules and treaties. A foreigner to whom the practical exercise in his own country of democratic freedoms, guaranteed by the Italian Constitution, is precluded, is entitled to the right of asylum within the territory of the Republic, under conditions laid down by law. The extradition of a foreigner for political offenses is not admitted." *See* PEASLEE, *supra* note 1, at 501. Article 26 of the Italian Constitution provides: "The extradition of a citizen is permitted only in cases expressly provided for in international conventions. Extradition shall never be permitted for political offenses." *Id.* at 504. The corresponding provision in the Basic Law of the Federal Republic of Germany is article 16, section 2, which reads: "No German may be extradited to a foreign country. Persons persecuted for political reasons shall enjoy the right of asylum." *See* PEASLEE, *supra* note 1, at 364. Article 30 of the Spanish Constitution of 1931 also prohibited the conclusion of "any international treaty or convention having for its object the extradition of socio-political offenders."

23. The 1978 Constitution, *supra* note 4, article 13, section 3 provides: "Extradition

will surrender its nationals pursuant to an extradition treaty with a foreign state, unless the treaty expressly provides otherwise.²⁴

Under the Spanish Constitution of 1931, no legal privileges inhered in filiation, social class, wealth, political ideas, or religious beliefs, nor were distinctions and titles of nobility recognized.²⁵ The new Spanish Constitution is in essential conformity with these principles,²⁶ except as regards titles of nobility (Spain having constituted itself a monarchy). The new constitution recognizes no privileges of nobility besides that of King, however, since all Spaniards are equal before the law.²⁷

Not unlike the Fourth Amendment of the United States Constitution, the new Spanish Constitution provides guarantees against unlawful arrests, searches, seizures and other invasions of privacy.

Everyone has the right to liberty and security. No one may be deprived of liberty except in accordance with the provisions of this article and in cases and form stipulated by law. Preventive detention may be imposed only for the time strictly necessary for the carrying out of an investigation to clarify the facts, but in any case, the person detained shall be either set free or handed over to the judicial authorities within seventy-two hours. The person detained must be immediately informed, in a manner understandable to him, of his rights and of the reasons for his detention, and he may not be required to speak. The right to have counsel appointed in both police and judicial proceedings is guaranteed by law. A "habeas corpus" proceeding will be provided for by law in order immediately to produce before the judicial authorities any person illegally detained. Likewise, the maximum time for which a person may be held in provisional detention by judicial authorities will be determined by law.²⁸

may be effected only pursuant to a treaty or to a law subject to reciprocity. No person may be extradited for political offenses, but acts of terrorism are not considered political."

24. See *Charlton v. Kelly*, 229 U.S. 447 (1913).

25. The 1931 Constitution, *supra* note 5, article 25, reads: "In no case shall the following be subject to juridical privilege: origin, filiation, sex, social class, wealth, political ideas, and religious beliefs."

26. The 1978 Constitution, *supra* note 4, article 14, reads: "Spaniards are equal before the law without distinction of birth, race, religion, opinion, or any other personal or social condition."

27. *Id.* See PEASLEE, *supra* note 1, at 312, 500. Cf. Constitution of France, article 2, providing that the Republic "shall ensure the equality of all citizens before the law, without distinction of origin, race or religion." Cf. also Constitution of Italy, article 3, providing that "[a]ll citizens are invested with equal social status and are equal before the law, without distinction as to sex, race, language, religion, political opinions and personal or social conditions."

28. 1978 Constitution, *supra* note 4, art. 17. Article 18 provides for the rights to personal privacy, and for the secrecy of communications. See note 41 and accompanying text *infra*.

The new habeas corpus proceedings to be enacted by statute will likely be borrowed from the Anglo-American legal system. Most countries carry such provisions in separate statutes.²⁹

In safeguarding the presumption of innocence, and the rights to a legally appointed judge and a public trial without undue delay,³⁰ the new Spanish Constitution deals with many rights guaranteed under the Fifth and Sixth Amendments of the United States Constitution. These rights are also explicitly protected in the Italian and West German Constitutions.³¹ The Spanish Constitutional provisions safeguarding prisoners' rights, such as the prohibitions against forced labor and the retroactive application of the criminal law,³² are considerably more

29. *But cf.* the Italian Constitution, providing at article 13 that no one may be personally detained except as provided by law. *See* PEASLEE, *supra* note 1, at 502. *Cf. also* the Constitution of West Germany, which deals with the matter in art. 104, along the lines of the aforementioned Spanish provisions. The detained person must be handed over to the judge at the latest on the day following his arrest; the judge then must either issue a warrant of arrest, stating reasons therefore, or set the arrested person free. *See* PEASLEE, *supra* note 1, at 386. Under article 29 of the Spanish Constitution of 1931, an arrestee was to be brought before the judicial authorities within 24 hours of his arrest. Within the next 72 hours he had to be either held under a judicial mandate or set free. 1931 CONST., *supra* note 5, art. 29.

30. *See* 1978 Constitution, *supra* note 4, article 24 which provides that "[a]ll persons have the right to an effective protection from judges and courts, in the exercise of their rights and legitimate interests, and they may in no case be left without defense. Likewise, all have the right to a legally appointed judge, to defense and to be assisted by counsel, to be informed of any accusation made against them, to public trial without undue delay with all the guarantees, to means of proof in their defense, not to testify against themselves, nor to plead guilty and to the presumption of innocence. The law will regulate cases in which a person shall not be required to testify on presumptively criminal acts because of affinity or professional privilege."

31. *See* CONST. OF ITALY, arts. 24, 25 & 27; and the CONST. OF WEST GERMANY, arts. 101, 103 & 104, *reprinted in* PEASLEE, *supra* note 1, at 503-04, 385-86. The French Constitution sums up similar principles with extraordinary conciseness in its article 66: "No one may be arbitrarily detained. The judicial authority, guardian of individual liberty, shall ensure respect for this principle under the conditions stipulated by law." *See* PEASLEE, *supra* note 1, at 324. The Spanish Constitution of 1931 provided, at article 28, that no one could be tried "except by a competent judge in accordance with legal procedure."

32. The 1978 Constitution, *supra* note 4, article 25, provides that "[n]o one may be convicted or penalized for acts or omissions which did not constitute a crime, an offense or an administrative infraction at the time when they took place pursuant to the law in power at that time.

The punishment of imprisonment and security measures are oriented toward re-education and social reintegration, and may not entail forced labor. Persons sentenced to imprisonment are entitled to the fundamental rights of this Chapter while they are in prison with the exception of those which are expressly excluded by the terms of their conviction, by nature of their punishment, or by prison regulations. In any case, they have the right to be paid for their work and to Social Security benefits, as well as to access to culture and to the full development of their personality.

The public administration may not impose sanctions which directly or indirectly imply deprivation of liberty."

protective than the corresponding provisions of the Italian and West German Constitutions and the Spanish Constitution of 1931.³³ But again following the lead of the Italian and West German Constitutions,³⁴ the new Spanish constitution has abolished the death penalty in Spain except under military law in time of war.³⁵

Another significant move taken in the new Constitution is the abolition of a state religion, and the full recognition of religious freedom.³⁶ While similar to certain provisions of earlier constitutions recognizing religious freedom,³⁷ these new provisions, like those of the Constitution of 1931, deny to Catholicism the status of state religion. The 1978 provisions are generally comparable to those of the First Amendment to the United States Constitution.³⁸ Most modern constitutions tend to refer to religions only in connection with the guarantee of equality without regard to distinctions of origin, race or religion;³⁹ alternatively,

33. Articles 25 and 27 of the Italian Constitution prohibit the retroactive application of criminal law and state that punishment aims at reformation. See PEASLEE, *supra* note 1, at 503-04. Article 103 of the West German Constitution prohibits the retroactive application of criminal law. See PEASLEE, *supra* note 1, at 386. Forced labor is permissible in West Germany within the prison system under article 12, section 4, of the constitution. *Id.* at 364. In this connection, the 1931 Constitution prohibited only the retroactive application of criminal law: "no one shall be punished for acts declared punishable by an *ex post facto* law." 1931 CONST., *supra* note 5, art. 28.

34. Article 27 of the Italian Constitution provides that the death penalty may not be imposed except by military law in time of war. See PEASLEE, *supra* note 1, at 504. Article 102 of the Constitution of West Germany unequivocally abolishes capital punishment. See PEASLEE, *supra* note 1, at 385.

35. 1978 Constitution, *supra* note 4, article 15 provides that "[t]he death penalty is abolished, but it may be imposed by military law in time of war."

36. The 1978 Constitution, *supra* note 4, article 16 reads: "Ideological and religious freedom and freedom of individual and community worship are guaranteed and their manifestations are subject to no limitation except that necessary for the maintenance of public order protected by law.

"No one may be required to disclose his ideology, religion, or beliefs.

"There will be no state religion. Public authorities shall take into consideration the religious beliefs of the Spanish public and shall maintain relations of cooperation with the Catholic Church and the other religions."

37. *Cf., e.g.*, Constitution of 1873, articles 34 and 35, guaranteeing freedom of religion but providing for separation of state and church, and Constitution of 1876, article 11, guaranteeing freedom of religion, while recognizing Catholicism, however, as the state religion. *Cf. also* the 1931 Constitution, *supra* note 5, article 27, guaranteeing "freedom of conscience" and the right "to profess and freely practice any religion whatsoever." Under the latter provision, members of any religious denomination were free to practice their religion privately, public manifestations of religion being subject to government approval. It was because religions were considered associations, under article 26 of the 1931 Constitution, that they were subject to special regulation.

38. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. CONST., amend. I.

39. See, *e.g.*, CONST. OF FRANCE, art. 2, reprinted in PEASLEE, *supra* note 1, at 312-13.

they may carry a brief guarantee of religious freedom.⁴⁰

Rights afforded as to privacy, the inviolability of home, and the secrecy of mail and telecommunications,⁴¹ are substantially similar to various rights of privacy embodied in certain provisions of the Spanish Constitution of 1931,⁴² and of the Italian and West German Constitutions as well.⁴³ In France, these rights are protected by statute, not being specifically referred to in the constitution.

The new constitution explicitly prohibits the expropriation of private property, except for public benefit, and then only if adequate compensation is paid.⁴⁴ This provision seems clearly to reach principles embodied in the Fifth and Fourteenth Amendments to the United States Constitution.

The constitutional provisions governing the rights to travel freely within Spain, and to leave and return to Spain,⁴⁵ are virtually identical to certain provisions of the Italian Constitution.⁴⁶ The West German

40. See, e.g., CONST. OF WEST GERMANY, art. 4, reprinted in PEASLEE, *supra* note 1, at 362.

41. The 1978 Constitution, *supra* note 4, article 18, provides that "[t]he rights to honor, to privacy of the person and of the home, and to one's likeness are guaranteed.

"The home is inviolable. No entry or search may be made therein without the consent of its holder or a judicial order, except in the case of flagrant delict.

"Secrecy of communications, especially by mail, telegraph and telephone, is guaranteed except pursuant to judicial order.

"The law will limit the use of information in order to safeguard the honor and privacy of the person, and the family of citizens and the full exercise of their rights."

42. The 1931 Constitution, *supra* note 5, reads, at articles 31 and 32: "Every Spaniard shall be able to travel freely throughout the national territory and to have therein his choice of residence and domicile, and he shall not be obliged to change the same, except under a court order. The right to emigrate or immigrate is recognized, and shall be not otherwise restricted than by law. A special law shall fix the requisite guarantees concerning the expulsion of foreigners from the Spanish territory. The domicile of every Spaniard, or of every foreigner residing in Spain, is inviolable. No one shall enter therein except pursuant to the mandate of a competent judge. The search of papers and effects shall be performed always in the presence of the interested party, or of a member of his family, and failing that, in the presence of two local residents. The inviolability of correspondence, in all its forms, is guaranteed unless a judiciary order prescribes otherwise."

43. See CONST. OF ITALY, arts. 14 & 15, reprinted in PEASLEE, *supra* note 1, at 502; CONST. OF WEST GERMANY, arts. 10 & 13, reprinted in PEASLEE, *supra* note 1, at 363-64.

44. 1978 Constitution, *supra* note 4, article 33, provides that "[n]o one may be deprived of his property and rights except for public benefit or social interest and for proper compensation in accordance with the law."

45. Article 19 of the 1978 Constitution, guarantees to Spaniards "the right freely to elect their residence and to travel within the national territory. Likewise, they have the right freely to enter and leave Spain as provided for by law. This right may not be limited for political or ideological reasons." *Id.* art. 19.

46. See CONST. OF ITALY, art. 16, reprinted in PEASLEE, *supra* note 1, at 502.

Constitution refers only to internal residence and travel,⁴⁷ the freedom to leave and reenter West Germany being provided for by separate statute. The Spanish Constitution of 1931 carried a provision similar to the limited West German guarantee, but added that no one could be compelled to change his residence except pursuant to a court order.⁴⁸ Most constitutions do not carry such provisions.

The new constitution's guarantees of freedom of speech and press are counterparts to the guarantees stated in the First Amendment to the United States Constitution.

The following rights are recognized and protected: freely to express and disseminate one's thoughts, ideas and opinions by speech, writing, or any other means of reproduction, to literary, artistic, scientific and technical production and creation; to the freedom of teaching; freely to transmit and receive true information by any means of broadcasting. The law will regulate the right to conscience and to professional secrets in the exercise of these liberties. The exercise of these rights may not be restricted by any kind of prior censorship.⁴⁹

These guarantees also resemble certain provisions in the Italian and West German Constitutions.⁵⁰ Other countries such as France provide for similar freedoms via statutes.⁵¹ The new constitution further guarantees the rights of assembly and association, and, similar to the Italian and West German Constitutions, it prohibits secret and paramilitary associations.⁵²

Also guaranteed are the freedom of teaching and the right to edu-

47. See CONST. OF WEST GERMANY, art. 11, reprinted in PEASLEE, *supra* note 1, at 363.

48. See note 42 and accompanying text *supra*.

49. 1978 CONST., *supra* note 4, art. 20, §§ 1 & 2.

50. See CONST. OF ITALY, art. 21, reprinted in PEASLEE, *supra* note 1, at 503; CONST. OF WEST GERMANY, art. 5, reprinted in PEASLEE, *supra* note 1, at 362. The Spanish Constitutions of 1837, 1876 and 1931 all carried similar provisions, including the prohibition of censorship, in articles 2, 13 and 34, respectively.

51. See, e.g., the Law of July 29, 1881, providing that printing and publishing are free, article 1, and that daily newspapers and periodicals may be published without any authorization or security deposit after a declaration has been filed with the procurator, article 5 and 7.

52. The 1978 Constitution, *supra* note 4, articles 21 and 22, provide that "[t]he right to peaceful assembly without arms is recognized. The exercise of this right does not require prior authorization.

"As to meetings in public thoroughfares and demonstrations, prior notice must be given to the authorities, who may prohibit them only for reasons of public order and of danger to persons and property.

"The right of association is recognized.

"Associations which pursue criminal ends or use criminal means are illegal.

"Associations constituted under this article must register for purposes of publicity.

cation.⁵³ Although constitutions do occasionally provide for freedom of teaching,⁵⁴ the new Spanish provision safeguarding the right to education has parallels only in the constitutions of certain communist states.⁵⁵ The latter constitutions vest the state with authority to decide who will be admitted to higher education and are substantially incompatible, in this respect as in others, with the spirit of the new Spanish Constitution. In the not implausible event that leftist forces should gain a majority in the Cortes, however, fundamental changes in Spanish government might very well take place. Hence, the constitutional provision for a right to education cannot be taken at face value.

The new Spanish provisions safeguarding the right to organize trade unions, to join or abstain from joining them, and the right to strike, further strengthen individual liberties:

All have the right to unionize. The law may limit or exclude the Armed Forces, and other bodies under military discipline, from the exercise of this right and shall determine its exercise by public officers. The freedom to unionize comprises the right to

"Associations may be dissolved, or their activities suspended, only pursuant to a reasoned judicial order.

"Secret and paramilitary associations are prohibited."

Cf. CONST. OF ITALY, arts. 17 & 18, reprinted in PEASLEE, *supra* note 1, at 502-03; CONST. OF WEST GERMANY, arts. 8 & 9, reprinted in PEASLEE, *supra* note 1, at 363. Similar rights were protected in the 1931 Constitution, *supra* note 5, at arts. 38 & 39: "There is recognized the right of peaceful association without arms. A special law shall regulate the rights of open association and demonstration. Spaniards shall be able to associate or syndicate freely toward the diverse ends of human life, according to the laws of the state. Syndicates and associations are required, in conformity with law, to have themselves publicly registered." *Id.*

It is notable that on the authority of the new article 22, Spanish authorities recently denied an application for the legal registration of Freemasons, on the ground that they constitute a secret organization.

53. See 1978 Constitution, *supra* note 4, article 27, which offers the following guarantees: "All have the right to education. Freedom of teaching is recognized.

"Education has for its objective the full development of the human personality, and respect for the democratic principles of living together and for the fundamental rights and liberties.

"Public authorities guarantee to parents the right of assistance in order that their children may obtain religious and moral instruction in accordance with their own convictions.

"Primary education is obligatory and free." See also note 49 and accompanying text *supra*.

54. See, e.g., CONST. OF WEST GERMANY, art. 5, § 3, reprinted in PEASLEE, *supra* note 1, at 362.

55. See, e.g., CONST. OF THE UNION OF SOVIET SOCIALIST REPUBLICS (1977), art. 45 (Novosti Press Agency Publishing House, 1977); CONST. OF CZECHOSLOVAKIA, art. 24, § 1, reprinted in PEASLEE, *supra* note 1, at 232; and CONST. OF HUNGARY (1949, amended 1957), art. 48, § 1, reprinted in PEASLEE, *supra* note 1, at 442.

set up trade unions and to join one of one's choice, as well as the right of the trade unions to form confederations and to set up international trade union organizations and acquire membership in them. No one may be required to join a trade union.

The right of workers to strike in protection of their interests is recognized. The law which will regulate the exercise of this right will give precise guarantees to ensure the maintenance of essential services to the community.⁵⁶

Close parallels are offered by the Italian and West German Constitutions, and by the Spanish Constitution of 1931.⁵⁷

The new constitutional provisions guaranteeing the right of petition are somewhat anachronistic:

All Spaniards have the right of petition, individually or jointly, in writing, and in the form and effect as determined by law.

Members of the Armed Forces, and bodies under military discipline, may exercise this right only individually and in accordance with their special rules.⁵⁸

The right of petition is rarely provided for by modern democratic constitutions,⁵⁹ having emerged in times of political absolutism as the right of subjects to bring grievances to the attention of an autocratic government. The English Petition of Right of 1627, at least, suggests as much. The constitutional presence of such a right presupposes an inequality between rulers and subjects. In such a document as the present Spanish Constitution, under which all power emanates from the people, and pursuant to which all citizens enjoy the right to hold public office, these provisions appear to offer a superfluous assurance that the elected representatives of the people will consider grievances brought to their attention by the very people whom they have been elected to represent. The new constitution's right of petition may have carried over without

56. 1978 CONST., *supra* note 4, art. 28.

57. See CONST. OF ITALY, arts. 39 & 40, *reprinted in* PEASLEE, *supra* note 1, at 506; CONST. OF WEST GERMANY, art. 9, § 3, *reprinted in* PEASLEE, *supra* note 1, at 363; 1931 CONST., *supra* note 5, art. 39.

58. 1978 CONST., *supra* note 4, art. 29.

59. Where the right of petition is expressly alluded to, its purpose is usually to permit the lodging of complaints with proper authorities, or to permit lobbying. *Cf.* Constitution of Italy, article 50, permitting the submission of "petitions to Parliament demanding legislative measures or setting forth general needs." PEASLEE, *supra* note 1, at 508. *Cf. also* Basic Law of the Federal Republic of Germany (Const. of West Germany), article 17, granting the right "individually or jointly with others to address written requests or complaints to the competent authorities and to the representative assemblies." PEASLEE, *supra* note 1, at 364. The Spanish Constitution of 1931 carried a virtually identical provision, at article 35: "Every Spaniard shall be able, individually or collectively, to address petitions to the public authorities. This right shall not be able to be exercised by any armed force."

much thought from the Spanish Constitutions of 1812 and 1876, where its presence was essential to the protection of democratic interests.

Like the Spanish Constitution of 1931, the new constitution provides for the enactment of legislation permitting the dissolution of marriages:

A man and a woman have the right to enter into marriage with full legal equality.

Forms of marriage, age and capacity, rights and duties of spouses, grounds for separation and divorce, and the effects thereof will be determined by law.⁶⁰

A divorce statute had been enacted under the 1931 Constitution, but it lapsed with the defeat of the Spanish Republic in 1939.⁶¹ No divorce laws have been enacted in Spain since that time.

Another new provision concerns the duty and right to work:⁶²

All Spaniards have the duty and the right to work, the right freely to elect their occupation, to promotion through work and to remuneration sufficient to satisfy their needs and those of their family, without any discrimination as to sex.

A statute of workmen will be enacted.⁶³

Both the Italian and the West German Constitutions contain provisions aimed at protecting labor,⁶⁴ but neither constitution contains any provisions comparable to the Spanish right and duty to work. Such provisions do occur, however, in the constitutions of certain communist countries.⁶⁵ The new Spanish provision very likely is intended only as a declaration of policy, since collective bargaining, labor contracts, and the maintenance of essential public services during labor

60. 1978 CONST., *supra* note 4, art. 32.

61. The Spanish Constitution of 1931, *supra* note 5, article 43, provided, that marriage presupposed "the equality of rights for the two sexes," and that dissolutions could be sought "for reasons of neutral dissatisfaction, or on the demand of one spouse . . . for just cause." *Id.* The divorce law enacted under this provision was promulgated on March 9, 1932. Most constitutions do not provide for marriage and divorce, leaving domestic relations a matter of statutory regulation; most countries do, however, have divorce statutes. Even Italy has enacted a limited divorce statute. Law of December 1, 1970, No. 898. In addition to the Spanish constitutional guarantees of spousal equality in marriage, Spanish law has traditionally sought to achieve spousal equality in property rights through the enactment of community property statutes, as now embodied in the Spanish Civil Code, articles 1392-1444.

62. 1978 CONST., *supra* note 4, art. 35.

63. *Id.*

64. See CONST. OF ITALY, arts. 35-37, *reprinted in* PEASLEE, *supra* note 1, at 505-06; CONST. OF WEST GERMANY, art. 12, §§ 1 & 2, *reprinted in* PEASLEE, *supra* note 1, at 363-64. See also notes 56 & 57 and accompanying text *supra*.

65. See, e.g., CONST. OF THE UNION OF SOVIET SOCIALIST REPUBLICS, (1977) arts. 40 & 60, (Novosti Press Agency Publishing House, 1977); CONST. OF POLAND (1952, amended 1963), arts. 14 & 58, *reprinted in* PEASLEE, *supra* note 1, at 712-13, 720.

disputes are subject to no explicit restrictions vis-à-vis the right and duty to work.⁶⁶ Indeed, the new Spanish Constitution seems to foretell a labor-management relationship comparable to that currently existing in the United States.

The declaration of state policy concerning social and economic matters, as embodied in the new constitution's Chapter Three, directs government to engage in various activities on behalf of the Spanish people, in assurance of the fundamental rights specified in Chapter Two. Similar principles of policy appear in other modern constitutions.⁶⁷ The unusual provision encouraging conditions conducive to the return of Spanish workers from abroad⁶⁸ calls to mind the current high rate of unemployment in Spain, and the relatively low wages, at least as compared with those available in most other Western European countries.

Chapter Four's express guarantee of the fundamental rights and liberties described in Chapter Two provides for a Defender of the People:

An organic law will regulate the office of the Defender of the People as high commissioner of the General Cortes, appointed by them to protect the rights referred to in this Title, who will supervise the functioning of public administration and will report to the General Cortes.⁶⁹

Spain thus institutes an ombudsmanship, as have such other European countries as Sweden, Denmark, Finland and Norway.

The Spanish Constitution expressly provides for the suspension of rights and liberties but only under strictly regulated circumstances.⁷⁰ This topic is not usually mentioned in constitutions, but is more com-

66. The 1978 Constitution, *supra* note 4, article 37 provides that "The right to collective bargaining between labor and management, and the binding nature of labor contracts, will be guaranteed by law.

"The right of labor and management to take collective action against each other is recognized. The law, which will regulate the exercise of this right, without prejudice to limitations which it may establish, will give precise guarantees to ensure the maintenance of essential services to the community."

See also notes 56 & 57 and accompanying text *supra*.

67. *See, e.g.*, CONST. OF ITALY, arts. 29-47, *reprinted in* PEASLEE, *supra* note 1, at 504-07.

68. Article 42 of the 1978 Constitution, *supra* note 4, provides that "[t]he State shall especially safeguard the economic and social rights of Spanish workers abroad and shall promote policies for their return."

69. *Id.* art. 54.

70. The 1978 Constitution, *supra* note 4, article 55, provides that "The rights referred to in articles 17, 18, sections 2 and 3, articles 19, 20, sections 1, a) and d), and 5, articles 21, 28.

monly the subject of statute. The fact that the Spanish Constitution limits the suspension of civil rights testifies to the great attention afforded this matter by the constitutional assembly.⁷¹

Title II. The Crown

The new constitution's provisions concerning the Crown are virtually identical to those found in the constitution of such other monarchies as Belgium, Denmark, the Netherlands, Norway and Sweden.⁷² The new provisions make Spain a modern parliamentary monarchy, much like Great Britain, with the King exercising the honorific functions of Head of State, and the burden of government being left to the Cortes and the Council of Ministers:

The King:

- a) Sanctions and promulgates the laws.
- b) Convenes and dissolves the General Cortes and calls elections as provided in the Constitution.
- c) Calls referendums in cases provided for the Constitution.
- d) Proposes the candidate for President of Government and, appoints him and relieves him of his functions as provided in the Constitution.
- e) Appoints and recalls members of Government at the proposal of its President.
- f) Signs decrees made in the Council of Ministers, appoints civil and military public servants, and confers honors and decorations in accordance with law.
- g) Must keep informed of the business of State and he may

section 2, and article 37, section 2, may be suspended upon declaration of a state of exception or of siege as provided for in the Constitution.

"An organic law may provide for form and cases in which individually and by judicial action and under proper parliamentary control, the rights referred to in articles 17, section 2, and 18, sections 2 and 3, may be suspended with respect to particular persons in connection with investigation into the activity of armed gangs or terrorists. The unjustified or abusive application of the powers granted by the said organic law would result in criminal liability as violation of rights and liberties recognised by the law."

This article is virtually identical to article 42 of the 1931 Constitution.

71. Suspension of civil rights is frequently mentioned in Latin American constitutions. The present Mexican Constitution is illustrative, providing for suspension of constitutional guarantees in its article 29. CONST. OF MEXICO, art. 29, *reprinted in* IV A. PEASLEE, CONSTITUTIONS OF NATIONS 907 (rev. 3d ed. 1970).

72. *See* CONST. OF BELGIUM (1831, amended 1921), arts. 60-85, *reprinted in* PEASLEE, *supra* note 1, at 83-85; CONST. OF DENMARK, arts. 5-27, *reprinted in* PEASLEE, *supra* note 1, at 253-56; CONST. OF NETHERLANDS (1815, amended 1963), arts. 10-87, *reprinted in* PEASLEE, *supra* note 1, at 653-64; CONST. OF NORWAY (1814, amended 1964), arts. 3-48, *reprinted in* PEASLEE, *supra* note 1, at 689-95; and CONST. OF SWEDEN (1809, amended 1965), *reprinted in* PEASLEE, *supra* note 1, at 847-72.

for that reason, if he so desires, preside over the meetings of the Council of Ministers at the request of the President of Government.

h) Has the supreme command of the Armed Forces.

i) Exercises the right of pardon in accordance with the law, which may not provide for general pardon.

j) Holds the High Patronage over Royal Academies.

The King accredits ambassadors and other diplomatic representatives. Foreign diplomatic representatives are accredited to him.

The King declares the consent of the State to be bound by international treaties in accordance with the Constitution and the laws.

The King declares war and makes peace with the prior authorization of the General Cortes.⁷³

The new constitution requires that the King's acts be countersigned by a person responsible to the Cortes.⁷⁴ In this respect, Spain's constitutional structure comports with that of other European constitutional monarchies. Notably, the King has no power to veto legislation submitted to him by the Cortes.⁷⁵ Thus his position is weaker than was the president's under the republican Constitution of 1931; under that document, the president enjoyed the power of veto over all acts of the Cortes, except those relating to finance and those passed by a two-thirds majority.⁷⁶

Title III. The Cortes

The new Spanish Constitution provides for the composition and functioning of the Cortes in considerable detail. The mandates concerning the two chambers of the Cortes are similar to provisions of other European constitutions,⁷⁷ and to provisions of the Spanish Constitution of 1931.⁷⁸ The main distinction between the Constitution of 1931 and the present document is that under the former, the Cortes had only one chamber, the House of Deputies; the present Cortes is bicam-

73. 1978 CONST., *supra* note 4, arts. 62 & 63.

74. The 1978 Constitution, *supra* note 4, article 64 provides that "[t]he acts of the King must be countersigned by the President of Government or by the competent Ministers. The proposal for the appointment of President of Government, his appointment and the dissolution foreseen in article 99, must be countersigned by the President of the Congress. "Persons who countersign the acts of the King are responsible therefor."

75. *See* note 72 and accompanying text *supra*.

76. *See* 1931 CONST., *supra* note 5, arts. 83 & 110.

77. *See, e.g.*, CONST. OF FRANCE, arts. 24-51, *reprinted in* PEASLEE, *supra* note 1, at 316-22; CONST. OF WEST GERMANY, arts. 38-53, *reprinted in* PEASLEE, *supra* note 1, at 368-71; CONST. OF ITALY, arts. 55-82, *reprinted in* PEASLEE, *supra* note 1, at 509-13.

78. *See* 1931 CONST., *supra* note 5, arts. 51-66.

eral. Notably, members of the Cortes are constitutionally free not to vote according to the dictates of their parties' leadership.⁷⁹ The new constitution sets the number of deputies at between 300 and 400.⁸⁰ In compliance with these terms, the first Congress of Deputies elected under the present constitution, in the elections of March 1, 1979, has 350 deputies, and the first Senate has 208 senators.

The new constitution contains a separate chapter on the making of laws.⁸¹ Most constitutions handle the topic under the chapter on parliament generally, and the more detailed provisions on legislation are usually dealt with in such special statutes as the Swedish Riksdag Act.⁸² In other countries these provisions may be found in the regulations of the respective chambers of parliament.⁸³ One of the few constitutions dealing with the matter in a separate section, as does the Spanish Constitution, is the Italian Constitution.⁸⁴

The new constitution contains a separate chapter on international treaties. Most constitutions approach the topic differently and deal with international treaties in the title on the head of the state.⁸⁵ The French Constitution, however, deals with the topic in a separate title, not unlike the new Spanish Constitution.⁸⁶

The new constitutional provisions governing the conclusion of international treaties accord with those of other modern constitutions. However, the constitution also deals with the abrogation of international treaties, requiring that the same procedures be followed as are required for the conclusion of such treaties.⁸⁷ Most constitutions, including that of the United States, are silent on this matter. In the United States, the prevalent view is that the President may denounce a

79. Article 67 of the 1978 Constitution, *supra* note 4, provides that "[m]embers of the General Cortes are not bound by imperative mandate."

80. The 1978 Constitution, *supra* note 4, article 68, provides that "[t]he Congress is composed of 300 Deputies as a minimum and 400 as a maximum, elected by universal, free, equal, direct and secret ballot, as determined by law." *Id.* at § 1.

81. These provisions are contained in the 1978 Constitution, *supra* note 4, articles 81-92.

82. Act of June 22, 1866. See PEASLEE, *supra* note 1, at 872-99.

83. Constitutions sometimes provide for the enactment of these regulations, or rules of procedures. See, e.g., CONST. OF AUSTRIA (1955, amended 1964), art. 30, § 2, reprinted in PEASLEE, *supra* note 1, at 35; CONST. OF BELGIUM, art. 38, reprinted in PEASLEE, *supra* note 1, at 79; CONST. OF WEST GERMANY, art. 40, reprinted in PEASLEE, *supra* note 1, at 369.

84. See CONST. OF ITALY, arts. 70-82, reprinted in PEASLEE, *supra* note 1, at 511-13.

85. See, e.g., CONST. OF WEST GERMANY, art. 59, reprinted in PEASLEE, *supra* note 1, at 373; CONST. OF ITALY, art. 87, reprinted in PEASLEE, *supra* note 1, at 513-14; 1931 CONST., *supra* note 5, art. 76.

86. See CONST. OF FRANCE, arts. 52-55, reprinted in PEASLEE, *supra* note 1, at 322-23.

87. The new constitution's article 96 provides that "international treaties which are validly concluded, and which are officially published in Spain, form part of the internal order.

treaty without the advice and consent of the Senate, a case in point being President Carter's recent denunciation of the Mutual Defense Treaty with Taiwan.⁸⁸ The Spanish constitutional provisions concerning the powers to make and abrogate international treaties conform largely to provisions in the Spanish Constitution of 1931.⁸⁹

Title IV. Government and Administration

The topic of government and administration is covered generally in most constitutions.⁹⁰ The present Spanish Constitution, however, provides a detailed coverage of the topic and carries provisions that are dealt with by special laws in other countries.⁹¹ The president and other members of government are individually responsible for assuring that public administrative bodies function according to the principles laid down in the constitution.⁹² Moreover, the constitution specifically pro-

Their provisions may be repealed, amended, or suspended only in the form provided in such treaties, or in accordance with the general mandates of international law.

The procedure for the making of international treaties and agreements foreseen in article 94 must be followed in the case of their abrogation." 1978 CONST., *supra* note 4, art. 96.

88. As of January 1, 1979, the United States terminated its Mutual Defense Treaty with Taiwan and recognized the People's Republic of China as the sole legal government of China. *See* DEPT. OF STATE BULL., (January 1979). Vol. 79, No. 2022, p. 26.

89. *See* 1931 CONST. *supra* note 5, art. 65: "All international conventions ratified by Spain and registered with the League of Nations, since they have the character of international law, shall be considered as constituting part of Spanish legislation, which must comport with their terms. When an international convention affecting the State's legal structure shall be ratified, the government shall present to the Chamber of Deputies, as soon as possible, such legislative proposals as are necessary to the execution of its prescriptions. No law may be promulgated contrary to the aforementioned conventions, if the latter have not themselves been first proclaimed in conformity with the procedure established therein. Such proclamation shall be sanctioned first by Parliament." *Cf. id.*, article 76, where secret treaties and agreements, and secret clauses in any treaty or agreement, are declared not to bind the country.

90. *Cf., e.g.*, CONST. OF BELGIUM, arts. 86-91, *reprinted in* PEASLEE, *supra* note 1, at 86, where these matters are dealt with in much less detail. *Cf. also* CONST. OF FRANCE, arts. 20-23, *reprinted in* PEASLEE, *supra* note 1, at 316; CONST. OF WEST GERMANY, arts. 62-69, *reprinted in* PEASLEE, *supra* note 1, at 374-75; CONST. OF ITALY, arts. 92-100, *reprinted in* PEASLEE, *supra* note 1 at 514-16; U.S. CONST., art. II. *But cf.* CONST. OF FINLAND (1919, amended 1957), arts. 23-52, *reprinted in* PEASLEE, *supra* note 1, at 274-80, where the office and functions of the head of state are also considered. A second Finnish constitutional document, the Parliament Act of Jan. 13, 1928 (amended 1955), contains similar provisions in even greater detail than the new Spanish constitution. *See* PEASLEE, *supra* note 1, at 287-307.

91. These provisions are contained in the new constitution's articles 97-107, which lay down fundamental rules for the exercise of executive power under a parliamentary scheme providing for the orderly passing of power from government to government. 1978 CONST., *supra* note 4, arts. 97-147.

92. The 1978 Constitution, *supra* note 4, article 97, provides that "[t]he Government conducts the internal and external policy of the state, and its civil and military Administra-

vides for criminal prosecution of those who abuse their official functions.⁹³ The government is charged also with keeping the national peace.⁹⁴ In the exercise of these functions it may consult the Council of State, whose "composition and competence will be regulated by an organic law."⁹⁵

Title V. Relations Between the Government and the Cortes

The new constitution's provisions on the relationship between the government and the Cortes are comparable with those of other European constitutions in that they prescribe a strong parliamentary control over the government. This is especially apparent in the handling of the states of emergency, exception and siege:

An organic law will regulate the state of emergency, exception, and siege and the corresponding powers and limitations.

State of emergency is declared by the Government by decree in the Council of Ministers for a maximum time of fifteen days. Immediate notice thereof must be given to the Congress of Deputies, which must be called for that reason, and without the consent of which the time may not be extended. The decree sets the territorial extent to which the effects of the declaration apply.

State of exception is declared by the Government by decree in the Council of Ministers, prior authorization of the Congress of Deputies having been obtained. The authorization and declaration of the state of exception must expressly stipulate the effects thereof, the territorial extent of its application, and its duration, which may not exceed thirty days and which may be extended for another equal time under the same terms.

State of siege may be declared by the absolute majority of the Congress of Deputies at the exclusive proposal of the Gov-

tion and defense. It exercises the executive power, and the power to make regulations, in accordance with the Constitution and the laws."

93. Article 102 of the new constitution provides that "[t]he President and the other members of Government may be criminally prosecuted in the Criminal Chamber of the Supreme Court.

An accusation of treason, or of any offense against the security of State in the exercise of their official functions, may only be formulated by one-fourth of members of the Congress with the approval of the absolute majority thereof.

The royal prerogative of pardon may not be exercised in any of the cases of the present article." *Id.* at art. 102.

94. Article 104 of the 1978 Constitution provides that "[s]ecurity forces are subordinated to the Government and have the task to protect the free exercise of rights and liberties and ensure the safety of citizens.

An organic law will determine the functions, basic principles of procedure, and the status of the security forces." *Id.* at art. 104.

95. *Id.* at art. 107.

ernment. Congress determines its territorial extent, duration, and conditions.

Congress may not be dissolved while any of the states included in this article are declared, and the Chambers are automatically called into session if they are not in session. Their functioning, as well as that of the other constitutional powers of State, may not be interrupted while any of the states are in effect.

If a situation arises which gives ground to any of the said states while Congress is dissolved or while its mandate has expired, its powers are exercised by its Permanent Committee.

Declaration of the state of emergency, exception, or siege does not affect the principle of responsibility of Government and its instrumentalities recognized in the Constitution and in the laws.⁹⁶

After bad experiences in the past, the Spanish constitutional assembly was evidently determined to center political power in the Cortes. The structure of the Spanish government parallels that of the English Cabinet in all respects. The provision for interpellation, as commonly found in parliamentary practice, strengthens the parliamentary supervision of government actions.

Interpellations and questions may be directed to the Government and to individual Ministers in the Chambers. The Regulations will provide a minimum weekly time for such debates.

Any interpellation may lead to a motion in which the Chamber states its position.⁹⁷

Constitutions of other countries do not generally deal with this topic in a special title, a notable exception being the French Constitution.⁹⁸

Title VI. The Judiciary

Title VI of the Spanish Constitution contains such provisions con-

96. *Id.* at art. 116.

97. 1978 CONST., *supra* note 4, art. 111. All European parliaments reserve time for questions, or "interpellation," which may be directed by members to the government generally or to individual ministers. The new Spanish Constitution distinguishes between interpellations and questions. As provided in article 111, section 2, an "interpellation" is a question which challenges the stand taken by the government generally, or by an individual minister, on a particular matter, and may force the Chamber to state its position on the matter. A "question," on the other hand, is asked and answered, and the matter is then closed unless raised later by members. *Cf.* Constitution of France, article 48, which mentions only questions of any minister. PEASLEE, *supra* note 1, at 321.

98. *See* CONST. OF FRANCE, arts. 34-51 *reprinted in* PEASLEE, *supra* note 1, at 318-22. It is notable that the subjects covered in Titles IV and V of the new Spanish constitution were dealt with in three Titles in the Constitution of 1931 (Titles IV-VI). The present treatment is considerably more compact, therefore, than that of the older document.

cerning the judiciary as are commonly found in modern democratic constitutions,⁹⁹ and describes a judicial system whose structure has not changed in over one hundred years. The Spanish Constitution of 1931 dealt with the administration of justice along substantially similar lines.¹⁰⁰

Yet the new document introduces one significant innovation in the possibility of trial by jury in criminal cases:

Citizens may exercise popular action and participate in the Administration of Justice through the institution of Jury in the form and in such criminal trials as determined by law, as well as in customary and traditional Courts.¹⁰¹

Juries have not been an established feature of the Spanish legal system, even in the area of criminal law. Juries were mentioned for the first time in the Constitution of Bayonne, promulgated under French influence.¹⁰² The Law of October 22, 1820, permitted the experimental use of juries in criminal trials, but the experiment was apparently unsuccessful for the use of juries was discontinued. The Constitution of 1869 authorized the government to empanel juries in trials for political offenses and other common offenses to be determined by law. Under that authority, trials by jury were instituted by the Provisional Code of Criminal Procedure of 1872, whose provisions, however, were suspended by the Decree of January 3, 1875. It was not until the enactment of the Law of April 20, 1888, that trials by jury became active in the Spanish criminal law for an appreciable length of time. That statute provided for a jury of twelve to decide questions of fact, and a court of three judges to decide questions of law, in trials for specified serious crimes. The right to a trial by jury even under these conditions, however, was suspended by the Decree of September 21, 1925, under the dictatorship of General Primo de Rivera. Jury trials were reintroduced by the Decree of April 27, 1931, under the Spanish Republic, but were discontinued yet again by the Nationalist Government during the Civil War of 1936-39. Since that time, Spanish law has recognized no right to trial by jury. The new constitutional provision authorizes the institution of trial by jury in criminal cases along lines similar to provisions in

99. *See, e.g.*, CONST. OF ITALY, arts. 101-113, *reprinted in* PEASLEE, *supra* note 1, at 516-18, to which the new Spanish provisions are closely related. *See also* CONST. OF BELGIUM, arts. 92-107, *reprinted in* PEASLEE, *supra* note 1, at 86-87; CONST. OF FRANCE, arts. 64-68, *reprinted in* PEASLEE, *supra* note 1, at 324-25; CONST. OF WEST GERMANY, arts. 92-104, *reprinted in* PEASLEE, *supra* note 1, at 383-86.

100. *See* 1931 CONST., *supra* note 5, arts. 94-106.

101. 1978 CONST., *supra* note 4, art. 125.

102. *See* CONST. OF BAYONNE, art. 106.

the Constitution of 1931.¹⁰³ Spanish law has never favored juries, and it remains to be seen whether their present introduction into Spanish law will be successful.

Title VII. Economy and Finance

Many modern constitutions carry provisions similar to those of the new Spanish Constitution on such economic subjects as the budget, taxation, the national debt, the borrowing of money and the Court of Accounts.¹⁰⁴ On the other hand, some countries, France for example, deal with virtually all these matters in special laws without mentioning them in the Constitution. Interestingly enough, the Spanish provisions concerning the economic activities of the public sector,¹⁰⁵ the standard of living,¹⁰⁶ economic planning and a more just distribution of property,¹⁰⁷ however, sound merely sloganistic. These provisions find closer analogues in the constitutions of certain communist states,¹⁰⁸ and their inclusion in the new constitution testifies to the commanding influence of the Spanish political left in the drafting of that document.

103. See 1931 CONST., *supra* note 5, art. 103: "The people shall participate in the administration of justice, through the institution of a jury, whose organization and operation shall be the object of a special law."

104. See, e.g., CONST. OF BELGIUM, arts. 110-117, *reprinted in* PEASLEE, *supra* note 1, at 88-89; CONST. OF FINLAND, arts. 61-74, *reprinted in* PEASLEE, *supra* note 1, at 281-83; CONST. OF WEST GERMANY, arts. 105-115, *reprinted in* PEASLEE, *supra* note 1, at 386-91; CONST. OF NETHERLANDS, arts. 133-36, *reprinted in* PEASLEE, *supra* note 1, at 670-71.

105. Article 128 of the 1978 Constitution, *supra* note 4, provides that "[t]he wealth of the country in all its forms is subject to the general interest, irrespective of ownership.

"The public sector may engage in economic activities. A law may assign essential resources and services to the public sector, especially in the case of monopolies, and may provide for the supervision of enterprises in the national interest."

106. Article 130 of the 1978 Constitution provides that "[p]ublic authorities will promote the modernization and development of all branches of the economy especially agriculture, livestock farming, fisheries and trades, in order to improve the standard of living of all Spaniards.

"Special treatment will be accorded to mountain zones for the same purpose." *Id.* at art. 130.

107. Article 131 of the 1978 Constitution provides that "[t]he State may by law, plan the general economic activity to serve general needs, balance and harmonize regional and sectional development, and stimulate the growth of income and property and their more just distribution.

"The Government will prepare plans in accordance with data supplied by Autonomous Communities and with the cooperation of unions and other professional, managerial and economic organizations. A Council will be established for that purpose, and its composition and function will be determined by law." *Id.* at art. 131.

108. See, e.g., CONST. OF CZECHOSLOVAKIA, arts. 7, 11-15, *reprinted in* PEASLEE, *supra* note 1, at 228-30; CONST. OF THE GERMAN DEMOCRATIC REPUBLIC (1949, amended 1960), arts. 19-29, *reprinted in* PEASLEE, *supra* note 1, at 337-39; CONST. OF RUMANIA, arts. 5-13, *reprinted in* PEASLEE, *supra* note 1, at 767-69.

While the Spanish Constitution of 1931 contained some similar features,¹⁰⁹ it also empowered the state to engage in economic activities and in the management and coordination of industrial enterprises when in the national interest.¹¹⁰ The 1931 constitution carried the matter still further in authorizing the state to bring private property into public ownership and to nationalize public services and other businesses of general importance, should it become necessary in the public interest.¹¹¹

Title VIII. Territorial Organization of the State

In this title the constitution lays down basic principles of Spanish territorial policy. It declares that “[a]ll Spaniards [citizens] have the same rights and duties in any part of the state territory” and that “[n]o authority may adopt measures which would directly or indirectly obstruct the freedom of movement and settlement of persons and the free movement of goods throughout the entire Spanish territory.”¹¹² The statement resembles those of the privileges and immunities clause and the commerce clause of the United States Constitution.¹¹³ Although Spain professes indivisible oneness, its constitutional provisions dealing with the Autonomous Communities are comparable with the constitutional provisions of federated nations as to relations between the states and the federation. Like the Canadian Constitution,¹¹⁴ the Spanish Constitution adopts the technique of providing two lists of enumerated powers, one pertaining to the Autonomous Communities and another to the central government.¹¹⁵ The powers so enumerated fairly express the principle of an equal division of powers between federal and state governments. The authority granted to the Autonomous Communities is as broad as that granted to the cantons under the Swiss Constitu-

109. See 1931 CONST., *supra* note 5, arts. 107-120.

110. See *id.* art. 44.

111. *Id.*

112. 1978 CONST., *supra* note 4, art. 139.

113. Art. IV, § 2, cl. 1 of the U.S. Constitution reads: “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” Art. I, § 8, cl. 3 reads: “The Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

114. See BRITISH NORTH AMERICA ACT (1867), arts. 91-92 *reprinted in* IV A. PEASLEE, CONSTITUTIONS OF NATIONS 226-27 (rev. 3d ed., 1970).

115. Articles 148 & 149 of the 1978 Constitution provide as follows: “Autonomous Communities may assume authority in the following matters:

- (1) Organization of their institutions of self-government.
- (2) Modification of municipal boundaries within their territory, and in general, au-

tion.¹¹⁶ Overall, however, Title VIII of the new constitution is a replica

thority of State Administration over local Corporations, the transfer of which is authorized by legislation on Local Government.

- (3) Authority over land, urban development, and housing.
 - (4) Public works pertaining to Autonomous Communities within their territory.
 - (5) Railroads and highways which run fully within the territory of the Autonomous Community, and the transport conducted on them or by cable.
 - (6) Small local harbors, harbors and airports for sporting purposes and, in general, those not used in commerce."
 - (7) Agriculture and cattle farming in accordance with the general administration of the economy.
 - (8) Mining and forestry.
 - (9) Environmental protection.
 - (10) Construction and use of water projects, canals, and irrigation pertaining to the Autonomous Community; mineral and thermal water.
 - (11) Fishing in internal waters, shell-fish fishing, hydrobiology, hunting and river fishing.
 - (12) Local fairs.
 - (13) Promotion of the economic development of the Autonomous Community within the objectives of national economic policy.
 - (14) Artisanship.
 - (15) Museums, libraries and conservatories of music pertaining to the Autonomous Community.
 - (16) Monuments pertaining to the Autonomous Community.
 - (17) Promotion of culture and research and, whenever applicable, instruction in the language of the Autonomous Community.
 - (18) Promotion and regulation of tourism within its territory.
 - (19) Promotion of sport and the proper use of leisure.
 - (20) Welfare.
 - (21) Health and hygiene.
 - (22) Protection and maintenance of its buildings and plants. Coordination and other authority in connection with local policing as determined by an organic law.
2. After five years by means of amendment of their Statutes, Autonomous Communities may gradually expand their authority within the ambit of article 149.
- [Article 149.]
1. The State has exclusive authority over the following matters:
 - (1) Regulation of fundamental conditions which guarantee the equality of all Spaniards in the exercise of their rights and in the fulfillment of constitutional duties.
 - (2) Nationality, immigration, emigration, authority over foreigners, and the right of asylum.
 - (3) Foreign relations.
 - (4) Defense and Armed Forces.
 - (5) Administration of Justice.
 - (6) Legislation concerning commerce, criminal law, and penitentiaries: Legislation concerning procedure without prejudice to the necessary specialized procedure which is called for by special features of the substantive law of the Autonomous Communities.
 - (7) Labor legislation without prejudice to its enforcement by organs of the Autonomous Communities.
 - (8) Civil legislation without prejudice to the preservation, amendment, and development by the Autonomous Communities of civil, local, and special laws whenever in existence. In any event, the rules of application and enforcement of legal norms, civil law with respect to the form of marriage, regulation of public registers and instruments, foundations

of Title I of the Spanish Constitution of 1931, the differences between the two documents, at least on this subject, being relatively minor.¹¹⁷

of contractual obligations, norms for the determination of conflict of laws, and the determination of sources of law concerning norms of local and special law.

- (9) Legislation on intellectual and industrial property.
- (10) Customs and tariffs; foreign trade.
- (11) Monetary system; foreign currency, exchange, and convertibility; bases for the regulation of credit, banking, and securities.
- (12) Legislation of weights and measures; determination of official time.
- (13) Bases and coordination of general planning and economic activity.
- (14) Financing and State Public Debt.
- (15) Promotion and coordination of scientific and technical research.
- (16) External health. Bases and general coordination of health. Legislation concerning pharmaceuticals.
- (17) Basic legislation and economic system of Social Security without prejudice to the rendering of such services by the Autonomous Communities.
- (18) Bases of legal regime of public Administration and status of its officers guaranteeing equal treatment to parties before them; general administrative procedure without prejudice to particularities originating from the organization of Autonomous Communities; legislation on eminent domain; basic legislation on administrative contracts and grants and the system of responsibility of all public bodies.
- (19) Maritime fishing without prejudice to the authority granted to Autonomous Communities in this respect.
- (20) Merchant marine and registration of vessels; illumination of shore and maritime signals; harbors and general interest; airports of general interest; control of airspace, traffic and transport by air, meteorological service and registration of aircraft.
- (21) Railroads and transport over land extending over the territory of more than one Autonomous Community; general system of communications; traffic and operation of motor vehicles; mail and telecommunications; aerial and submarine cables and radio-communication.
- (22) Legislation over regulation of and disbursements of funds for hydraulic devices concerning waters flowing through more than one Autonomous Community, and authorization of electrical plants when their operation affects another Community or when the energy is carried out of its territory.
- (23) Basic legislation concerning the protection of the environment without prejudice to the authority of Autonomous Communities to make additional norms for its protection. Basic legislation concerning forests, forest products and rural roads.
- (24) Public works of general interest or whose realization affects more than one Autonomous Community.
- (25) Fundamentals of the mining and energy system.
- (26) Regime and production, trade, possession, and use of arms and explosives.
- (27) Basic norms governing the press, radio and television and, in general, all means of communication, without prejudice to powers pertaining to the Autonomous Communities concerning their development and enforcement.
- (28) Protection of the Spanish cultural, artistic, and monumental heritage against exportation and spoliation; State museums, libraries, and archives without prejudice to their management by the Autonomous Communities.
- (29) Public security without prejudice to the possibility of creation of police forces by Autonomous Communities, as provided in their respective Statutes, and within the scope of provisions made by an organic law.
- (30) Regulation of conditions of attainment, issuance and validation of academic and

A close relationship also exists between the new Spanish Constitution's Title VIII and corresponding provisions of the Italian Constitution, especially with respect to the Italian regions and the Spanish Autonomous Communities. The Italian Constitution's provisions for a political subdivision of the country into communities, provinces and regions¹¹⁸ are followed in the Spanish Constitution, the Spanish Autonomous Communities being the counterpart of Italian "regions." The Spanish Constitution's grant of powers to Autonomous Communities also corresponds quite closely to the Italian Constitution's grant of similar powers to the regions.¹¹⁹ There is some reason to believe, there-

professional titles, and basic norms for the development of article 27 of the Constitution in order to guarantee the fulfillment of obligations of public authorities in this respect.

(31) Statistics for State purposes.

(32) Authorization to obtain popular advice by way of a referendum.

2. Without prejudice to the authority assumed by the Autonomous Communities, the State considers serving culture to be a duty and an essential function, and will facilitate cultural intercourse among Autonomous Communities in agreement with them.

3. Matters not expressly attributed to the State in this Constitution may be taken over by the Autonomous Communities in their respective Statutes. Authority over matters not taken over by the Statutes of Autonomy belongs to the State, whose laws will prevail in case of conflict over those of the Autonomous Communities in all matters which are not attributed to the exclusive authority of the latter. State law will in any case supplement the law of the Autonomous Communities." *Id.*

116. See CONST. OF SWITZERLAND (1874, amended 1964), reprinted in PEASLEE, *supra* note 1, at 932-63. There is an especially striking similarity between article 145 of the 1978 Constitution and the Swiss Constitution's article 7, prohibiting the cantons from making treaties, but allowing them to enter into agreements of cooperation with the consent of the Confederation. *Cf. also* 1978 Constitution, *supra* note 4, article 158 with the Constitution of Switzerland, article 42B, providing for financial equalization among the cantons.

117. The territorial organization of the state is dealt with in the Constitution of 1931, *supra* note 5, articles 8-22. The two documents' corresponding provisions concerning municipalities, elections of mayors and councilors, the provinces, archipelagos, islands and Autonomous Regions are virtually identical. See *id.*, articles 8-11. The constituting act of an Autonomous Region was required to be approved by a majority of municipalities or by a two-thirds majority of the voters in the region. It then had to be approved in a referendum by two-thirds of the voters. If this majority is not reached, the movement for regional autonomy could not be reinitiated until after five years. After a successful referendum, the constituting act required the approval of the Cortes. See *id.*, art. 12. Autonomous regions could not federate. See *id.*, art. 13.

The powers retained by the state were virtually identical to those retained by the state under the present constitution. See *id.* art. 14. The powers granted to the Autonomous Regions, see *id.*, art. 15, together with a detailed regulation of federal-local relations were to be taken up by the constituting act of each Autonomous Region, see *id.*, art. 19. The model constituting act was that of the Catalan Region, and consisted of two constitutional documents. One, promulgated on September 21, 1932, regulated the external relations of the Catalan Region; the other, promulgated on May 25, 1933, regulated its internal relations.

118. See CONST. OF ITALY, arts. 114-133, reprinted in PEASLEE, *supra* note 1, at 518-22.

119. Compare 1978 CONST., *supra* note 1, art. 148 (see note 114 *supra*) with CONST. OF ITALY, art. 117, reprinted in PEASLEE, *supra* note 1, at 518-19.

fore, that the favorable developments in the Italian regions might be duplicated in the Spanish Autonomous Communities. It must be kept in mind, however, that important differences exist between the political situations in Spain and Italy, and that they may influence the realization of the Spanish constitutional arrangement. Unlike Italy, Spain has had great difficulty in assimilating the country's national minorities. The regional political parties, for example, enjoyed unexpected success in the Spanish elections of March 1, 1979.¹²⁰ Further, the Catalans and the Basques are each culturally and linguistically different from the rest of Spain, and have generally sought a much broader autonomy than even the new constitution grants them. Movements for secession are becoming increasingly popular in both areas. It remains to be seen whether the present arrangement will prove satisfactory to the other Autonomous Communities, particularly the Canary Islands, which have been subject to considerable political unrest.

120. The results of the Spanish elections of March 1, 1979, confirmed the Democratic Center Union as the strongest party, with 168 seats in the 350 member Congress of Deputies; the Democratic Center Union was followed by the Socialist Labor Party with 122 seats, the Communist Party with 23 seats, the Democratic Coalition with 9 seats, the National Union with 1 seat, and the regional political parties with an aggregate total of 27 seats. No party attained an absolute majority (176 seats). Although the Democratic Center Union of President Adolfo Suárez needs only 8 supporting votes to claim a numerical majority, and while it may obtain them from the Democratic Coalition, the majority may prove to be too small to govern effectively. A coalition with the Socialists, if it could be formed, would give Spain a stable government, but the likelihood of such a coalition seems very remote at present. The twin specters of an unstable government, not unlike that currently existing in Italy, and a growing political disorder, grow ever more apparent; these Spain can ill afford. The economic and political difficulties that have beset Spain since the death of General Franco are worsening. Mass strikes within virtually every segment of the working force, political terrorism, rising crime, inflation, unemployment—all well known from the Spanish Republic of the 1930's—do not augur well for Spain and the new constitutional order.

Following a vote of confidence in him as the King's designated candidate for the presidency, on March 30, 1979, in accordance with article 99 of the new constitution, the President of the Democratic Center Union, don Adolfo Suárez González, was confirmed as President of Government. The vote was 183 for, 149 against, with 8 abstentions and 10 absences. The affirmative vote was composed of the members of the Democratic Center Union and the Democratic Coalition, with seven additional votes from the regional parties. The negative votes were cast by the Socialists, the Communists, the National Union and the remaining members of the regional parties. The abstentions were recorded by the regional parties. The ten absences were from several parties and were attributable to various circumstances, but among the absences were the three members of Herri Batasuna's Basque Separatist Party, who boycotted the meeting and continue to demand independence for the Basques.

Very likely these divisive forces will prove difficult to control; almost certainly they will contribute to the Madrid government's political weakness, a weakness also well known from the Spanish Republic of the 1930's.

Title IX. The Constitutional Court

Provisions concerning the organization of a Constitutional Court, to decide disputes between the federation and one or more constituting units, or between such units, appear in many European constitutions.¹²¹ The new Spanish Constitutional Court is similar to its predecessor under the Spanish Constitution of 1931¹²² and to that of Italy.¹²³ In contrast to American judicial practice, a Spanish court cannot declare a statute unconstitutional, but must submit such matters to the Constitutional Court; the latter has the exclusive jurisdiction to make declarations of unconstitutionality. In this respect, the Spanish practice comports with that in the aforementioned European countries.

The Constitutional Court under the present constitution has identical jurisdiction to that accorded the Court of Constitutional Guarantees under the Constitution of 1931,¹²⁴ except in cases concerning the criminal responsibility of high governmental officials; under the new constitution such matters are to be heard by the Criminal Chamber of the Supreme Court.¹²⁵ The King, however, is neither civilly nor criminally responsible under the present constitution.¹²⁶

The highlight of the new constitution's Title IX is its provision on *amparo*. The *amparo*, a citizen's action contesting the validity of any law or official disposition adversely affecting constitutionally guaranteed civil rights, is first alluded to in a Spanish constitutional context in the Constitution of 1931.¹²⁷ Under that document, the *amparo* might have been brought before the Court of Constitutional Guarantees when

121. See, e.g., CONST. OF AUSTRIA, arts. 137-48, reprinted in PEASLEE, *supra* note 1, at 65-70; CONST. OF WEST GERMANY, arts. 92-104, reprinted in PEASLEE, *supra* note 1, at 383-86.

122. See 1931 Constitution, *supra* note 5, arts. 121-24, providing for a Court of Constitutional Guarantees. This court had jurisdiction to pass on claims of unconstitutionality, actions of *amparo* (upon exhaustion of local remedies), and disputes concerning the relative legislative competence of the state and the Autonomous Regions, and of the several Autonomous Regions themselves. It had jurisdiction also over cases bearing on the criminal responsibility of the Head of State, the President of Government, the Ministers of Government, the President and Judges of the Spanish Supreme Court, and the Procurator General of Spain. See *id.*, art. 121.

123. See CONST. OF ITALY, arts. 134-37, reprinted in PEASLEE, *supra* note 1, at 522-23.

124. See note 121 and accompanying text *supra*.

125. See note 92 and accompanying text *supra*.

126. The 1978 Constitution, *supra* note 4, provides, at article 56, section 3, that "[t]he person of the King is inviolable and is not subject to responsibility."

127. See 1931 CONST., *supra* note 5, art. 105: "The law shall organize certain emergency tribunals to assure the protection of individual guarantees." See also *id.*, art. 121: "There is established, with jurisdiction over all the territory of the Republic, a tribunal of Constitutional guarantees, with competence to take cognizance of appeals based on the unconstitutionality of laws; appeals based on the protection of individual guarantees. . . ."

recourse to other authorities failed to provide redress. Curiously, the *amparo* in its present form was introduced into Spain from Mexican constitutional law.¹²⁸

Title X. Amendment of the Constitution

The Spanish provisions concerning constitutional amendment do not differ greatly from the provisions of other European constitutions and disclose substantial similarities with those of the Belgian, French, Italian and Swiss Constitutions and the Spanish Constitution of 1931.¹²⁹ The similarity with the Belgian and French Constitutions is especially striking.

The Spanish Constitution of 1931 provided for amendments pursuant to the proposal of the government or one-fourth of the members of the Congress of Deputies.¹³⁰ The proposal for amendment was required to state which article or articles should be deleted, amended or added and was treated like a parliamentary bill. If made within four years of the constitution's promulgation, it had to be approved by two-thirds of the deputies; and thereafter, by an absolute majority. If the bill was so approved, the Cortes was automatically dissolved and new elections held within sixty days. The Congress of Deputies so elected would then decide on the proposed reform. The major difference between the Constitution of 1931 and the present constitution is that the former did not differentiate between minor and major amendments and did not require any referendum.

Amendment of the new Spanish constitution is made rather difficult, requiring a three-fifths majority in each chamber of the Cortes:

Proposals for constitutional amendment must be approved by a three-fifths majority in each Chamber. If agreement by the Chambers is not reached, a Committee composed of an equal number of Deputies and Senators is to be set up to propose a text to be voted upon in the Congress and in the Senate.¹³¹

If the requisite majority is not reached, it is reduced to an absolute majority in the Senate and a two-thirds majority in the Congress:

128. See CONST. OF MEXICO, art. 107, reprinted in A. PEASLEE, CONSTITUTIONS OF NATIONS, *supra* note 70 at 932-36, whose provisions on the *amparo* are set forth in considerable detail. The earliest Mexican provisions on the *amparo* date from the draft Constitution of Yucatan of 1840, article 53 of which provided for this remedy.

129. See CONST. OF BELGIUM, art. 131, reprinted in PEASLEE, *supra* note 1, at 90; CONST. OF FRANCE, art. 89, reprinted in PEASLEE, *supra* note 1, at 329; CONST. OF ITALY, arts. 138-39, reprinted in PEASLEE, *supra* note 1, at 523-24, CONST. OF SWITZERLAND, arts. 118-23, reprinted in PEASLEE, *supra* note 1, at 962-63, 1931 CONST., *supra* note 5, art. 125.

130. See 1931 CONST., *supra* note 5, art. 125.

131. 1978 CONST., *supra* note 4, art. 167, § 1.

If approval is not obtained in accordance with the procedure outlined in the preceding section, but if the text has actually obtained an absolute majority of votes in the Senate, Congress may approve the amendment by a two-thirds majority.¹³²

Only a total revision of the constitution, however, requires prior approval from a majority of two separate parliaments, with elections intervening, as in the Belgian constitution.¹³³ This procedure is also required when such fundamental principles of the constitution as the rights and liberties of citizens, or the position of the Crown, are under revision:

When a full revision of the Constitution is proposed, or a partial one which affects the Preliminary Title, Chapter Two, Section 1, of Title I, or Title II, and the substance of the proposed revision is approved by a two-thirds majority in each Chamber, the Cortes is immediately dissolved.

The elected Chambers must ratify the decision and consider the new constitutional text, which must be approved by a two-thirds majority in both Chambers.

The revision having been approved by the General Cortes, it is submitted to a referendum for its ratification.¹³⁴

The anticipated revision of the position of the Crown suggests the possibility that a republic might be declared. Such a declaration would not be unlikely in the event leftist parties were to obtain a majority in the Congress of Deputies in some future election. The Socialist Labor Party, the Communist Party and virtually all of the regional parties are republican, having accepted the monarchy only provisionally. Clearly the new constitution would be severely strained if the republican left were to attain a majority in the Congress of Deputies, but lacked enough votes to proclaim a republic by the constitutionally required two-thirds majority. Far-reaching political—and therefore constitutional—changes might be expected in Spain under such circumstances.

Conclusion

Title X of the constitution is followed by additional provisions, transitory provisions, the repeal of inconsistent legislation and a final provision. Under the repeal articles, all formerly enacted constitutional provisions and some provisions of a nonconstitutional nature are repealed. The final provision provides that the constitution will become effective upon its publication in the *Boletín Oficial*.¹³⁵

132. *Id.* § 2.

133. See CONST. OF BELGIUM, art. 131, reprinted in PEASLEE, *supra* note 1, at 90.

134. 1978 CONST., *supra* note 4, art. 168.

135. Publication occurred on December 29, 1978. On December 27, 1978, in a ceremony

As compared with prior Spanish constitutions, and even with those of other nations, the present Spanish Constitution shows considerable merit as an elaborate document embodying the fundamental principles on which the Spanish State will be based in the immediate future. As detailed as it is, it may be subject to more frequent change than would a less elaborate document. The provisions concerning amendment of the constitution seem to anticipate this circumstance, however, and strongly militate against casual amendment of the new document. Such foresight will prove felicitous, in light of the new constitution's strong democratic substance, provided the constitution lives up to the promise it exhibits.

It portends well that the two leading political parties in Spain, the Democratic Center Union and the Socialist Labor Party, have demonstrated by their conduct a determination to assure the beneficial operation of the new constitution. They will be aided in their efforts by the document's laudable attention to democratic ideals; one hopes it will prove sufficiently durable to survive such political strife as may be anticipated in years to come. For the first time in its history, Spain has charted its course as a parliamentary monarchy, despite its past failures with other forms of parliamentary government. It may be significant that earlier Spanish constitutions have not been particularly enduring, some lasting for barely a few years. The present constitution's exceptional qualities, however, inspire confidence that this new document will prevail sufficiently long at least to allow Spain to find a place among western democracies.

held in the Cortes, the constitution was signed by the King; the President of the Cortes, don Antonio Hernández Gil; the President of the Congress of Deputies, don Fernando Alvarez de Miranda y Torres; and the President of the Senate, don Antonio Fontán Pérez; as well as by members of the presidency of both chambers.

Appendix

The Constitution of Spain of 1978

PREAMBLE

The Spanish nation, in order to establish justice, liberty and security and to promote the good of the nation in the exercise of its sovereignty declares its will to ensure the system of democracy within the Constitution and the laws and a just economic and social order; to secure a government of law, safeguarding the rule of law as an expression of national will; to protect all Spaniards and peoples of Spain in the exercise of human rights, culture, traditions, languages and institutions; to promote the development of culture and the economy so as to assure to all a worthy standard of living; to set up an advanced democratic society; and to contribute to the strengthening of peaceful relations and an effective cooperation among all peoples on earth.

In consequence, the Cortes approve and the Spanish people ratify the following.

CONSTITUTION PRELIMINARY TITLE

Article 1.

1. Spain constitutes itself a social and democratic State governed by law, which considers liberty, justice, equality and political pluralism as the foremost values of its legal order.

2. National sovereignty belongs to the Spanish people, from whom all powers of State emanate.

3. The political form of the Spanish State is a parliamentary monarchy.

Article 2.

The Constitution is based on the indivisible oneness of the Spanish nation, the common and indivisible home of all Spaniards. It recognizes and guarantees the right of autonomy in the nationalities and regions of which it is composed and solidarity among them all.

Article 3.

1. Castilian is the official language of the State. All Spaniards have the duty to know it and the right to use it.

2. The other languages of Spain are also official languages in their respective Autonomous Communities in accordance with their Statutes.

3. The richness of Spain's linguistic diversity is a cultural heritage entitled to special respect and protection.

Article 4.

1. The Spanish flag is composed of three horizontal stripes, red yellow and red, the yellow stripe being twice as wide as each red stripe.

2. Flags and emblems of the Autonomous Communities may be recognized by Statute. They shall be displayed together with the Spanish flag on their public buildings and on their public occasions.

Article 5.

The capital of Spain is the city of Madrid.

Article 6.

Political parties are the expression of political pluralism. They take part in the formation and manifestation of the people's will and are essential to the people's participation in politics. They may be created freely and may freely conduct their activities. They shall respect the Constitution and the law. Their internal structure and operation shall be democratic.

Article 7.

Trade unions and employers' associations contribute to the protection and advancement of their own economic and social interests. Their formation and the exercise of their activities are free under the Constitution and the law. Their internal structure and operation shall be democratic.

Article 8.

1. The Armed Forces are formed by the army, the navy and air force. They guarantee the sovereignty and independence of Spain, and protect its territorial integrity and its constitutional order.

2. The bases of military organization will be determined by an organic law in accordance with the principles expressed in this Constitution.

Article 9.

1. Both citizens and public authorities are subject to the Constitution and the legal order.

2. Public authorities shall promote conditions for a real and effective liberty and equality of individuals and of groups formed by them; they shall remove obstacles that impede their operations and shall facilitate the participation of all citizens in the political, economic, cultural and social life.

3. The Constitution guarantees the application of principles of legality, normative order, publication of laws, prohibition of retroactivity of provisions unfavorable to or restrictive of individual rights, responsibility and prohibition of arbitrary conduct of public authorities.

TITLE I**On fundamental rights and duties****Article 10.**

1. The dignity of the person, its inherent inviolable rights, free development of personality, respect for law and the rights of others are the foundation of political order and internal peace.

2. The provisions concerning fundamental rights and liberties recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and with such provisions made in treaties and other international agreements ratified by Spain.

CHAPTER ONE**On Spaniards and foreigners****Article 11.**

1. Spanish nationality is acquired, preserved and lost in accordance with the law.

2. A Spaniard by birth may not be deprived of his nationality.

3. The State may make treaties of dual nationality with Latin American countries or with countries that have had or have a special link with Spain. Spaniards may become naturalized citizens of these countries without losing their nationality of origin even though such countries do not grant their citizens reciprocal rights.

Article 12.

Spaniards attain majority upon reaching 18 years of age.

Article 13.

1. Foreigners enjoy in Spain the public liberties guaranteed by this Title in accordance with treaties and the law.

2. Only Spaniards are entitled to rights recognized in article 23, except that the right to vote in municipal elections may be granted by treaty or by law subject to reciprocity.

3. Extradition may be effected only pursuant to a treaty or to a law subject to reciprocity. No person may be extradited for political offenses, but acts of terrorism are not considered political.

4. The right of citizens of other countries and of expatriates shall be determined by law.

CHAPTER TWO**Rights and liberties****Article 14.**

Spaniards are equal before the law without distinction of birth, race, religion, opinion, or any other personal or social condition.

Section 1.**On fundamental rights and public liberties****Article 15.**

All have the right to life and to physical and spiritual integrity. They may in no case be subjected to torture or to inhumane or degrading punishment or treatment. The death penalty is abolished, but it may be imposed by military law in time of war.

Article 16.

1. Ideological and religious freedom and freedom of individual and community worship are guaranteed and their manifestations are subject to no limitation except that necessary for the maintenance of public order protected by law.

2. No one may be required to disclose his ideology, religion, or beliefs.

3. There will be no state religion. Public authorities shall take into consideration the religious beliefs of the Spanish public and shall maintain relations of cooperation with the Catholic Church and the other religions.

Article 17.

1. Everyone has the right to liberty and security. No one may be deprived of liberty except in accordance with the provisions of this article and in cases and form stipulated by law.

2. Preventive detention may be imposed only for the time strictly necessary for the carrying out of an investigation to clarify the facts, but in any case, the person detained shall be either set free or handed over to the judicial authorities within seventy-two hours.

3. The person detained must be immediately informed, in a manner understandable to him, of his rights and of the reasons for his detention, and he may not be required to speak. The right to have counsel appointed in both police and judicial proceedings is guaranteed by law.

4. A "habeas corpus" proceeding will be provided for by law in order immediately to produce before the judicial authorities any person illegally detained. Likewise, the maximum time for which a person may be held in provisional detention by judicial authorities will be determined by law.

Article 18.

1. The rights to honor, to privacy of the person and of the home, and to one's likeness are guaranteed.

2. The home is inviolable. No entry or search may be made therein without the consent of its holder or a judicial order, except in the case of flagrant delict.

3. Secrecy of communications, especially by mail, telegraph and telephone, is guaranteed except pursuant to judicial order.

4. The law will limit the use of information in order to safeguard the honor and privacy of the person and the family of citizens and the full exercise of their rights.

Article 19.

Spaniards have the right freely to elect their residence and to travel within the national territory.

Likewise, they have the right freely to enter and leave Spain as provided for by law. This right may not be limited for political or ideological reasons.

Article 20.

1. The following rights are recognized and protected:

- a) To freely express and disseminate one's thoughts, ideas and opinions by speech, writing, or any other means of reproduction;
 - b) To literary, artistic, scientific and technical production and creation;
 - c) To the freedom of teaching;
 - d) To freely transmit and receive true information by any means of broadcasting. The law will regulate the right to conscience and to professional secrets in the exercise of these liberties.
2. The exercise of these rights may not be restricted by any kind of prior censorship.
 3. The law will regulate the organization and parliamentary control of the media of communication affiliated with the State or any other public entity, and shall guarantee access to these media to significant social and political groups, while respecting the pluralism of the society and the several languages of Spain.
 4. These liberties are delimited by respect for the rights recognized in this Title, by provisions of law expounding such rights, and especially, by the right to one's honor, privacy, likeness and by the right to the protection of youth and infancy.
 5. Publications, recordings, and other means of information may be seized only pursuant to a judicial order.

Article 21.

1. The right to peaceful assembly without arms is recognized. The exercise of this right does not require prior authorization.
2. As to meetings in public thoroughfares and demonstrations, prior notice must be given to the authorities, who may prohibit them only for reasons of public order and of danger to persons and property.

Article 22.

1. The right of association is recognized.
2. Associations which pursue criminal ends or use criminal means are illegal.
3. Associations constituted under this article must register for purposes of publicity.
4. Associations may be dissolved, or their activities suspended, only pursuant to a reasoned judicial order.
5. Secret and paramilitary associations are prohibited.

Article 23.

1. Citizens have the right to participate in public matters either

directly, or through representatives freely elected by universal suffrage in periodically held elections.

2. Likewise, they have the right to hold public office on conditions of equality, according to the requirements established by law.

Article 24.

1. All persons have the right to an effective protection from judges and courts, in the exercise of their rights and legitimate interests, and they may in no case be left without defense.

2. Likewise, all have the right to a legally appointed judge, to defense and to be assisted by counsel, to be informed of any accusation made against them, to public trial without undue delay with all the guarantees, to means of proof in their defense, not to testify against themselves, nor to plead guilty and to the presumption of innocence.

The law will regulate cases in which a person shall not be required to testify on presumptively criminal acts because of affinity or professional privilege.

Article 25.

1. No one may be convicted or penalized for acts or omissions which did not constitute a crime, an offense or an administrative infraction at the time when they took place pursuant to the law in power at that time.

2. The punishment of imprisonment and security measures are oriented toward re-education and social reintegration, and may not entail forced labor. Persons sentenced to imprisonment are entitled to the fundamental rights of this Chapter while they are in prison with the exception of those which are expressly excluded by the terms of their conviction, by nature of their punishment, or by prison regulations. In any case, they have the right to be paid for their work and to Social Security benefits, as well as to access to culture and to the full development of their personality.

3. The public administration may not impose sanctions which directly or indirectly imply deprivation of liberty.

Article 26.

Courts of Honor are prohibited in public administration and in professional organizations.

Article 27.

1. All have the right to education. Freedom of teaching is recognized.

2. Education has for its objective the full development of the human personality, and respect for the democratic principles of living together and for the fundamental rights and liberties.

3. Public authorities guarantee to parents the right of assistance in order that their children may obtain religious and moral instruction in accordance with their own convictions.

4. Primary education is obligatory and free.

5. Public authorities guarantee the right of all to education by means of a general system of instruction, with the participation of all concerned, and the establishment of teaching centers.

6. Both physical and juridical persons are free to establish teaching centers respecting constitutional principles.

7. Teachers, parents, as well as students participate in the supervision and management of all the centers maintained by the public administration with public funds in accordance with the law.

8. Public authorities shall inspect and approve the educational system to ensure compliance with the law.

9. Public authorities shall assist the teaching centers which comply with the requirements established by law.

10. University autonomy is recognized in accordance with the law.

Article 28.

1. All have the right to unionize. The law may limit or exclude the Armed Forces, and other bodies under military discipline, from the exercise of this right and shall determine its exercise by public officers. The freedom to unionize comprises the right to set up trade unions and to join one of one's choice, as well as the right of the trade unions to form confederations and to set up international trade union organizations and acquire membership in them. No one may be required to join a trade union.

2. The right of workers to strike in protection of their interests is recognized. The law which will regulate the exercise of this right will give precise guarantees to ensure the maintenance of essential services to the community.

Article 29.

1. All Spaniards have the right of petition, individually or jointly, in writing, and in the form and effect as determined by law.

2. Members of the Armed Forces, and bodies under military discipline, may exercise this right only individually and in accordance with their special rules.

Section 2.

On the rights and duties of citizens

Article 30.

1. Spaniards have the right and the duty to defend Spain.

2. The law will determine the military obligations of Spaniards and will regulate, with the proper guarantees, conscientious objection as well as the other grounds of exemption from compulsory military service, and may, in proper cases, impose a social service in substitution.

3. There may be established a civil service for the attainment of ends of general interest.

4. The law may determine the duties of citizens in the case of grave danger, catastrophe or public calamity.

Article 31.

1. All shall contribute to the public expenditure in proportion to their resources, by means of a just system of taxation based on principles of equality and progressiveness, which in no case may become confiscatory.

2. Public expenditures shall be made by using a fair share of public resources, and its purposes and execution shall be subject to the criteria of efficiency and economy.

3. Personal and property taxes may be imposed only in accordance with the law.

Article 32.

1. A man and a woman have the right to enter into marriage with full legal equality.

2. Forms of marriage, age and capacity, rights and duties of spouses, grounds for separation and divorce, and the effects thereof will be determined by law.

Article 33.

1. The right to private property and inheritance is recognized.
2. The social function of these rights will delimit their contents in accordance with the law.
3. No one may be deprived of his property and rights except for public benefit or social interest and for proper compensation in accordance with the law.

Article 34.

1. The right to set up foundations for the general good, in accordance with the law, is recognized.
2. The provisions of section 2 and 4 of article 22 apply also to foundations.

Article 35.

1. All Spaniards have the duty and the right to work, the right freely to elect their occupation, to promotion through work and to remuneration sufficient to satisfy their needs and those of their family, without any discrimination as to sex.
2. A statute of workmen will be enacted.

Article 36.

The structure of professional associations, and the practice of titled professions, will be regulated by law. Their internal structure and procedures shall be democratic.

Article 37.

1. The right to collective bargaining between labor and management, and the binding nature of labor contracts, will be guaranteed by law.
2. The right of labor and management to take collective action against each other is recognized. The law, which will regulate the exercise of this right, without prejudice to limitations which it may establish, will give precise guarantees to ensure the maintenance of essential services to the community.

Article 38.

The freedom of enterprise in marketing is recognized. Public authorities guarantee and protect its exercise, and safeguard productivity, in accordance with the needs of the economy as a whole and with economic planning.

CHAPTER THREE

On principles governing social and economic policy

Article 39.

1. Public authorities assure the social, economic and legal protection of the family.

2. Public authorities also assure the complete protection of children, who are equal before the law irrespective of their affiliation, and of mothers irrespective of their marital status. The law will facilitate paternity investigation.

3. Parents shall support their children, born in or out of wedlock, during minority and in other cases legally determined.

4. Children are entitled to the protection of international treaties safeguarding their rights.

Article 40.

1. Public authorities shall develop conditions conducive to social and economic progress and a more equitable distribution of personal and regional income within the scope of the policy of economic stability. They will especially pursue a policy conducive to full employment.

2. Likewise, public authorities will develop policies conducive to professional education and re-education; they will insure safety and hygiene at work and guarantee the necessary rest by limiting the labor day, by periodic paid leave, and by the development of proper facilities.

Article 41.

Public authorities shall maintain a public system of Social Security for all citizens which shall assure sufficient assistance and payments in case of need, especially in unemployment. The assistance and payments will be free.

Article 42.

The State shall especially safeguard the economic and social rights of Spanish workers abroad and shall promote policies for their return.

Article 43.

1. The right to the protection of health is recognized.

2. Public authorities shall organize and protect public health by preventive measures, contributions and the necessary services. The law will determine the rights and duties of all in this respect.

3. Public authorities shall promote health education, physical education and sport. They shall likewise facilitate the proper use of leisure.

Article 44.

1. Public authorities shall promote and protect access to culture, to which all have a right.

2. Public authorities shall promote science and scientific and technical research for the general good.

Article 45.

1. All have the right to live in proper surroundings for the development of their person, as well as the duty to protect them.

2. Public authorities shall watch over the rational use of all natural resources with the object of protecting and improving the standard of living, and shall protect and restore the surroundings while relying on the necessary public support.

3. Those who offend the provisions of the preceding section will be subject to criminal or administrative sanctions, and will incur the obligation to make good the damage caused thereby, in accordance with the law.

Article 46.

Public authorities assure conservation and promote the enrichment of the historical, cultural, and artistic heritage of the peoples of Spain and of the property of which it is composed irrespective of its legal status and ownership. Penal law will punish offenses against such heritage.

Article 47.

All Spaniards have a right to suitable and adequate housing. Public authorities shall promote the necessary conditions and establish proper rules to make this right effective, and shall regulate the use of the land in accordance with the general interest, to prevent speculation.

The community will share in the increased value produced by the city improvement measures of public entities.

Article 48.

Public authorities shall promote conditions for the free and efficient participation of young people in political, social, economic, and cultural development.

Article 49.

Public authorities shall develop a policy of prevention, treatment, rehabilitation, and integration for the physically, sensorially, and mentally handicapped, and shall give them the specialized attention they require and shall assist them especially in the enjoyment of the rights granted by this Title to all citizens.

Article 50.

Public authorities shall assure, by means of adequate and periodically paid old age benefits, the economic sufficiency of senior citizens. Likewise, and independently of family obligations, they will promote their well-being by a system of social services which will attend to their specific problems of health, housing, culture, and leisure.

Article 51.

1. Public authorities shall assure the protection of consumers and users by defending their safety, health, and legitimate economic interests through efficient proceedings.

2. Public authorities shall assure the adequacy of information available to consumers and users, shall support their organizations, and shall hear them in matters of concern to them in accordance with the law.

3. The law will regulate internal trade and the system of licensing commercial products within the scope provided for in the preceding sections.

Article 52.

The law will regulate professional organizations for the protection of appropriate economic interests. Their internal structure and procedures shall be democratic.

CHAPTER FOUR

On the guarantees of fundamental liberties and rights

Article 53.

1. The rights and liberties recognized in Chapter Two of this Title bind all public authorities. The exercise of such rights and liberties as are protected in accordance with the provisions of article 161, section 1(a), may be regulated only by law, which shall respect their essential contents.

2. Every citizen may obtain protection of the liberties and rights

expressed in article 14, and in Section 1 of Chapter Two, in regular courts, in proceedings based on the principles of preference and summariness, and in proper cases by the remedy of *amparo* in the Constitutional Court. This latter remedy applies to the conscientious objection referred to in article 30.

3. The recognition, respect, and protection of the principles expressed in Chapter Three applies to legislation, judicial practice, and the practice of public authorities. The rights embodied in that Chapter may be asserted only in proceedings before regular courts on the basis of statutes in which they are defined.

Article 54.

An organic law will regulate the office of the Defender of the People as high commissioner of the General Cortes, appointed by them to protect the rights referred to in this Title, who will supervise the functioning of public administration and will report to the General Cortes.

CHAPTER FIVE

On the suspension of rights and liberties

Article 55.

1. The rights referred to in articles 17, 18, sections 2 and 3, articles 19, 20, sections 1, (a) and (d), and 5, articles 21, 28, section 2, and article 37, section 2, may be suspended upon declaration of a state of exception or of siege as provided for in the Constitution.

2. An organic law may provide for form and cases in which individually and by judicial action and under proper parliamentary control, the rights referred to in articles 17, section 2, and 18, sections 2 and 3, may be suspended with respect to particular persons in connection with investigation into the activity of armed gangs or terrorists. The unjustified or abusive application of the powers granted by the said organic law would result in criminal liability as violation of rights and liberties recognized by the law.

TITLE II

On the Crown

Article 56.

1. The King is the Head of State, the symbol of its unity and constancy. He arbitrates and moderates the regular operation of public authorities, he assumes the highest representation of the Spanish State

in international relations, especially with nations of its historic community, and exercises functions expressly attributed to him in the Constitution and the law.

2. His title is the King of Spain, and he may use others which belong to the Crown.

3. The person of the King is inviolable and is not subject to responsibility. His acts must always be countersigned in the form provided for in article 64, and are invalid without such countersignature except as provided in article 65(2).

Article 57.

1. The Spanish Crown is hereditary and descends to the successors of H.M. Don Juan Carlos I de Borbón, the legitimate heir of the historic dynasty. Succession to the throne is in the regular order of primogeniture and representation, the nearer line being always preferred to the more remote; within the same degree, the male to the female, and within the same sex, the older person to the younger.

2. The heir apparent, from his birth or from his appointment, shall have the title of Prince of Asturias and other titles which traditionally belong to the heir to the Spanish Crown.

3. Should all the lines entitled by law become extinct, the General Cortes will decide on the succession to the Crown in accordance with the best interests of Spain.

4. Should any person with the right of succession to the throne enter into marriage in breach of a direct prohibition of the King and the General Cortes, such person and his descendants will be excluded from succession to the Crown.

5. Abdications, renunciations, and any doubt of fact or law in the order of succession to the Crown shall be decided by an organic law.

Article 58.

The Queen or the consort of the Queen may not hold any constitutional office except as provided under Regency.

Article 59.

1. Should the King not be of age, his father or mother, and failing them his relative of full age nearest in line to succeed to the Crown in accordance with the order determined in the Constitution, shall immediately assume the Regency and shall exercise it for the time of the King's minority.

2. Should the King become incapacitated to exercise his func-

tions and the impossibility is acknowledged by the General Cortes, the heir apparent to the Crown shall immediately assume the Regency if he is of age. If not, the provisions of the preceding section take effect until the heir apparent attains full age.

3. Should no person be qualified to assume the Regency, it will be appointed by the General Cortes and shall consist of one, three, or five persons.

4. To exercise the Regency one must be Spanish and of full age.

5. The Regency is exercised by constitutional order and always in the name of the King.

Article 60.

1. The person appointed in the will of the late King will be the guardian of the minor King, if of full age and Spanish by birth; if no one is so appointed, the father or the mother becomes his guardian so long as they are widowed. Failing them, the guardian will be appointed by the General Cortes, but the office of Regent and guardian may not be held by the same person except the father, the mother, or the direct ascendants of the King.

2. The guardianship is also incompatible with any other office or political function.

Article 61.

1. Upon being proclaimed before the General Cortes, the King takes an oath faithfully to discharge his functions, to protect and make safe the Constitution and the laws, and to observe the rights of citizens and of the Autonomous Communities.

2. The heir apparent, upon reaching majority, and the Regent or Regents, upon taking office, make the same oath, as well as one of fealty to the King.

Article 62.

The King:

- a) Sanctions and promulgates the laws.
- b) Convenes and dissolves the General Cortes and calls elections as provided in the Constitution.
- c) Calls referendums in cases provided for in the Constitution.
- d) Proposes the candidate for President of Government and appoints him and relieves him of his functions as provided in the Constitution.

e) Appoints and recalls members of Government at the proposal of its President.

f) Signs decrees made in the Council of Ministers, appoints civil and military public servants, and confers honors and decorations in accordance with law.

g) Must keep informed of the business of State and he may for that reason, if he so desires, preside over the meetings of the Council of Ministers at the request of the President of Government.

h) Has the supreme command of the Armed Forces.

i) Exercises the right of pardon in accordance with the law, which may not provide for general pardon.

j) Holds the High Patronage over Royal Academies.

Article 63.

1. The King accredits ambassadors and other diplomatic representatives. Foreign diplomatic representatives are accredited to him.

2. The King declares the consent of the State to be bound by international treaties in accordance with the Constitution and the laws.

3. The King declares war and makes peace with the prior authorization of the General Cortes.

Article 64.

1. The acts of the King must be countersigned by the President of Government or by the competent Ministers. The proposal for the appointment of President of Government, his appointment and the dissolution foreseen in article 99, must be countersigned by the President of the Congress.

2. Persons who countersign the acts of the King are responsible therefor.

Article 65.

1. The King receives from the State Budget income in a lump sum, for the maintenance of his Family and his Household, which he may freely apply.

2. The King freely appoints and discharges civil and military members of his Household.

TITLE III

On the General Cortes

CHAPTER ONE

On the Chambers

Article 66.

1. The General Cortes represent the Spanish people and are composed of the Congress of Deputies and of the Senate.

2. The General Cortes exercise the legislative power of the State, approve their Budgets, supervise the conduct of Government and exercise other powers attributed to them by the Constitution.

3. The General Cortes are inviolable.

Article 67.

1. No one may hold membership in both Chambers at the same time, or in the Assembly of an Autonomous Community and the Congress of Deputies.

2. Members of the General Cortes are not bound by imperative mandate.

3. Meetings of Members of Parliament held without any proper convocation do not bind the Chambers and may not exercise their functions nor claim their privileges.

Article 68.

1. The Congress is composed of 300 Deputies as a minimum and 400 as a maximum, elected by universal, free, equal, direct and secret ballot, as determined by law.

2. The province is the electoral circumscription. The cities of Ceuta and Melilla are represented by one Deputy each. The law determines the total number of Deputies by assigning an initial minimum representation to each circumscription and distributing the remainder in proportion to population.

3. Election is determined in every circumscription in accordance with the criteria of proportional representation.

4. Congress is elected for four years. The mandate of the Deputies expires four years after the election or on the date of dissolution of the Chamber.

5. All Spaniards having full use of their political rights may vote and be elected.

The law shall recognize and the State shall facilitate the exercise of the right to vote for Spaniards who are out of Spain.

6. Elections are held between thirty and sixty days from the expiration of the mandate. The elected Congress must be called into session within twenty-five days following the elections.

Article 69.

1. The Senate is the Chamber of territorial representation.

2. Four Senators are elected in every province by universal, free, equal, direct, and secret ballot by the voters of that province, in accordance with the provisions of an organic law.

3. In the island provinces, every island or group of islands constitutes a circumscription for the election of Senators. The larger islands—Gran Canaria, Mallorca and Tenerife—have three Senators each, and the following smaller islands or groups of islands: Ibiza-Formentera, Menorca, Fuerteventura, Gomera, Hierro, Lanzarote and La Palma have one Senator each.

4. The cities of Ceuta and Melilla elect two Senators each.

5. Autonomous Communities have one Senator each and another one for every million of inhabitants in their respective territories. They are designated by their legislative Assemblies, and failing them by the superior collegiate organ of the Autonomous Community, in accordance with the provisions of Statutes which insure in any event an adequate proportional representation.

6. The Senate is elected for four years. The mandate of the Senators expires four years after their election or on the date of dissolution of the Chamber.

Article 70.

1. Ineligibility and incompatibility of Deputies and Senators will be determined by electoral law, which will include in any case:

- a) Members of the Constitutional Court.
- b) High officers of State Administration, as determined by law, with the exception of members of Government.
- c) The Defender of the People.
- d) Magistrates, Judges, and Procurators in active service.
- e) Professional military personnel and members of the Security Forces and Police in active service.
- f) Members of Electoral Commissions.

2. Validity of the certificates of election and credentials of mem-

bers of both Chambers is subject to judicial control, as determined by the electoral law.

Article 71.

1. Deputies and Senators may not be proceeded against for opinions expressed in the exercise of their functions.

2. Deputies and Senators are immune from criminal prosecution as long as they hold their mandate, and may be detained only in case of a flagrant delict. They may not be charged or proceeded against without prior consent of their respective Chambers.

3. Cases against Deputies and Senators will be heard in the Criminal Chamber of the Supreme Court.

4. Deputies and Senators receive an allowance determined by their respective Chambers.

Article 72.

1. The Chambers make their own Regulations, approve their budgets, and together they make Rules concerning the Employees of the General Cortes. The Regulations and their amendment must be submitted to a final vote in their totality and require an absolute majority.

2. The Chambers elect their respective Presidents and the other members of their Steering Committees. Joint sessions are presided by the President of Congress and are governed by the Regulations of the General Cortes approved by an absolute majority in each Chamber.

3. Presidents of the Chambers exercise on their behalf all administrative powers and prerogatives of police inside their respective buildings.

Article 73.

1. The Chambers hold two regular annual sessions: The first from September to December, and the second from February to June.

2. The Chambers may meet in extraordinary session at the request of the Government, of the Permanent Committee, or of the absolute majority of members of either Chamber. Extraordinary sessions are called to attend to a specific business, and are terminated as soon as this has been done.

Article 74.

1. The Chambers meet in joint session to attend to other than legislative business expressly reserved to the General Cortes in Title II.

2. Decisions of the General Cortes foreseen in articles 94(1), 145(2), and 158(2) are adopted by majority in each Chamber. In the first case, proceedings are initiated in the Congress, and in the other two, in the Senate. In both cases if there is no agreement between Senate and Congress, a Mixed Committee composed of an equal number of Deputies and Senators will attempt to reach one. The Committee will present a text, which will be voted upon in both Chambers. If it is not approved as presented, the Congress may approve it by an absolute majority.

Article 75.

1. The Chambers meet in Plenary sessions and in Committees.
2. The Chambers may delegate to Permanent Legislative Committees the approval of legislative drafts or proposals. The Plenary session may, however, reopen the debate at any time and vote on any legislative draft or proposal which was the object of the delegation.
3. Constitutional reform, international matters, organic laws and laws of bases and the General Budget of the State are exempt from the provisions of the preceding section.

Article 76.

1. Congress and the Senate, and both Chambers jointly may appoint investigation Committees on any matter of public interest. Their findings are not binding on the courts and do not affect judicial decisions, but the results of the investigation may be communicated to the Public Ministry for further action.
2. Any person summoned by the Chambers must comply. Penalties for nonappearance will be determined by law.

Article 77.

1. The Chambers may receive individual and collective petitions always in writing. Direct presentation by manifestants is prohibited.
2. The Chambers may pass on to the Government the petitions received. The Government is bound to make a statement concerning their contents whenever the Chambers so require.

Article 78.

1. A Permanent Committee is set up in each Chamber. It has at least twenty-one members representing parliamentary groups in proportion to their numerical strength.
2. Permanent Committees are presided over by the Presidents of

the respective Chambers. Their functions are those foreseen in article 73, those to be exercised by the Chambers in accordance with articles 86 and 116, in case of dissolution of the Chambers or upon expiration of their mandate, and to safeguard the authority of the Chambers when they are not in session.

3. In case of expiration of the mandate or of dissolution, the Permanent Committees continue to exercise their functions until new General Cortes are constituted.

4. The Permanent Committee makes a report of its actions and decisions to the respective Chamber at its next meeting.

Article 79.

1. To make decisions, the Chambers must be properly called into session and a majority of their members must be present.

2. To be valid, decisions must be approved by a majority of members present without prejudice to special majorities required by the Constitution or organic laws, and Regulations of Chambers for the election of persons.

3. The vote of Senators and Deputies is personal and nondelegable.

Article 80.

Plenary sessions of the Chambers are public except by the contrary order of each Chamber, as adopted by an absolute majority or in accordance with Regulations.

CHAPTER TWO

On the making of laws

Article 81.

1. Organic laws are such as expound fundamental rights and public liberties, which approve Statutes of Autonomy and the general electoral system and other laws foreseen in the Constitution.

2. The enactment, amendment, or repeal of organic laws must be made by an absolute majority in Congress in a final vote on the totality of the proposal.

Article 82.

1. The General Cortes may delegate to the Government the power to make norms with the rank of law concerning specific matters not included in the preceding article.

2. Legislative delegation is given in a law of bases when elaborate provisions are to be made, or in an ordinary law when several statutory provisions are to be consolidated into one.

3. Legislative delegation is given to the Government expressly for a specific purpose to be exercised within a fixed time. The authority comes to an end upon publication of the delegated legislation by the Government. It may not be understood to have been given by implication or for an unlimited time. Neither can it permit subdelegation to authorities other than the Government.

4. The law of bases must specify with precision the object and scope of the delegation and the principles and criteria which will have to be followed in its exercise.

5. The authority to consolidate legal texts must determine the normative scope of the delegation and must specify whether only a single text is to be produced, or whether the delegation includes also the power to regulate, explain, and harmonize the legal texts to be consolidated.

6. Without prejudice to the jurisdiction of Courts, the laws of delegation may establish in each case additional rules of control.

Article 83.

Laws of bases may in no case:

- a) Authorize the amendment of the law of bases.
- b) Provide for the making of norms with retroactive effect.

Article 84.

When a bill or an amendment is contrary to delegated legislation in power, the Government may oppose the proceedings. A bill to repeal the delegated legislation in full or in part may then be introduced.

Article 85.

Governmental measures which contain delegated legislation are called Legislative Decrees.

Article 86.

1. In case of extraordinary and urgent need, the Government may take provisional legislative measures, known as Decree-Laws. They may not affect the ordering of fundamental State institutions, the rights, duties and liberties of citizens dealt with in Title I, the regime of Autonomous Communities, or the general electoral law.

2. Decree-Laws must be immediately submitted to the Congress

of Deputies which must debate and vote on them within thirty days of their promulgation. If Congress is not in session, it must be called into session for that purpose. Congress must expressly decide within that time whether to confirm or repeal them, for which the Regulations will establish a special, summary proceeding.

3. Within the time set by the preceding section, the Cortes may consider them as bills to be debated under the rules of urgency.

Article 87.

1. Legislative process may be initiated by the Government, the Congress and the Senate, in accordance with the Constitution and Regulations of the Chambers.

2. The Assemblies of Autonomous Communities may request the Government to adopt draft legislation, or they may submit to the Steering Committee of Congress a bill and send to the said Chamber not more than three members to promote the proposal.

3. The requisites and the exercise of popular initiative in drafting new laws will be regulated by an organic law. In any event not less than 500,000 verified signatures are required. Organic laws, tax laws, and those dealing with international matters or with the prerogative of pardon may not be so initiated.

Article 88.

Bills are approved in the Council of Ministers and are submitted to Congress together with a statement of reasons necessary for their consideration.

Article 89.

1. Procedure on bills is governed by the Regulations of the Chambers, but the precedence given to bills may not impede legislative initiative within the terms of article 87.

2. Bills which are considered in the Senate, in accordance with article 87, are remitted to Congress for its consideration.

Article 90.

1. Upon its approval in the Congress of Deputies, a bill of ordinary or organic legislation is immediately forwarded by its President to the President of the Senate for debate there.

2. The Senate may within two months from the receipt of the bill veto it by an absolute majority and give its reasons therefor, or it may make amendments to it. The bill may not be submitted to the King for

his signature unless in case of a veto its original text is ratified in Congress by an absolute majority, or by simple majority after two months have run from the veto, or after the Congress has passed on the amendments by simple majority, whether accepting them or not.

3. The term of two months within which the Senate may veto or amend a bill is reduced to twenty days in case of bills declared urgent by the Government or the Congress of Deputies.

Article 91.

The King signs within fifteen days the laws approved by the General Cortes, promulgates them, and orders their immediate publication.

Article 92.

1. Political decisions of special importance may be submitted to a consultative referendum of all citizens.

2. The referendum is called by the King at the proposal of the President of Government with the prior approval of the Congress of Deputies.

3. Conditions and proceedings concerning the diverse modalities of referendums foreseen in the Constitution will be regulated by an organic law.

CHAPTER THREE

On International Treaties

Article 93.

An organic law may authorize the making of treaties which confer upon an international organization or institution the right to exercise powers derived from the Constitution. The General Cortes or the Government, as the case may be, will guarantee compliance with such treaties and the decisions of such international or supranational bodies.

Article 94.

1. The assent of the State to incur obligations by international treaties and agreements requires prior authorization of the General Cortes in the following cases:

- a) Political treaties.
- b) Military treaties and agreements.
- c) Treaties and agreements which affect the territorial integrity of the State or the fundamental rights and duties referred to in Title I.

d) Treaties and agreements which imply financial obligations for the Public Treasury.

e) Treaties and agreements which impose the amendment or repeal of a law, or which require legislative measures for their execution.

2. The Congress and the Senate must be immediately informed of the making of any other treaty or agreement.

Article 95.

1. The conclusion of an international treaty which would contain provisions contrary to the Constitution requires prior amendment of the Constitution.

2. The Government or either Chamber may request the Constitutional Court to rule whether such clash does or does not present itself.

Article 96.

1. International treaties which are validly concluded, and which are officially published in Spain, form part of the internal order. Their provisions may be repealed, amended, or suspended only in the form provided in such treaties, or in accordance with the general mandates of international law.

2. The procedure for the making of international treaties and agreements foreseen in article 94 must be followed in the case of their abrogation.

TITLE IV

On the Government and the Administration

Article 97.

The Government conducts the internal and external policy of the State, and its civil and military Administration and defense. It exercises the executive power, and the power to make regulations, in accordance with the Constitution and the laws.

Article 98.

1. The Government is composed of the President, the Vice-Presidents, if any, the Ministers, and other members as provided by law.

2. The President directs the actions of the Government and coordinates the functions of its other members without prejudice to their direct authority and responsibility for their actions.

3. Members of Government may not exercise any representative functions except those of parliamentary mandate, nor any other public

function which would not be derived from their office, nor any professional or commercial function.

4. The Status and incompatibilities of members of Government will be determined by law.

Article 99.

1. After every reconstruction of the Congress of Deputies and on other occasions calling for the procedure, the King, having consulted the representatives of political groups with parliamentary representation, and through the President of Congress, designates a candidate for the office of President of Government.

2. The candidate designated in accordance with the provisions of the preceding section then presents to the Congress of Deputies the political program of the Government he intends to form and requests the confidence of the Chamber.

3. If the Congress of Deputies accepts his program by a vote of confidence given by an absolute majority of its members, the King will appoint him President. If such majority is not obtained, a new vote is taken forty-eight hours later, and the confidence is granted if it obtains a simple majority.

4. If confidence for investiture is not obtained in the above voting, successive proposals will be handled in the form provided in the preceding sections.

5. If no candidate obtains the confidence of Congress within two months from the first vote of investiture, the King shall dissolve both Chambers and shall call new elections, the act being countersigned by the President of Congress.

Article 100.

The other members of Government are appointed and dismissed by the King at the request of its President.

Article 101.

1. The mandate of the Government expires upon holding of new-elections, upon the loss of parliamentary confidence as provided in the Constitution, or upon the resignation or death of its President.

2. The outgoing Government remains in office until a new Government takes over.

Article 102.

1. The President and the other members of Government may be criminally prosecuted in the Criminal Chamber of the Supreme Court.

2. An accusation of treason, or of any offense against the security of State in the exercise of their official functions, may only be formulated by one-fourth of members of the Congress with the approval of the absolute majority thereof.

3. The royal prerogative or pardon may not be exercised in any of the cases of the present article.

Article 103.

1. Public Administration serves with objectivity the public interests and acts in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration, and co-ordination and is fully subject to the statutes and the law.

2. Organs of State Administration are instituted, governed, and co-ordinated in accordance with the law.

3. A law will regulate the status of public servants, appointment to public office in accordance with the principles of merit and capability, the particularities of their right to unionize, incompatibilities, and guarantees of impartiality in the exercise of their functions.

Article 104.

1. Security forces are subordinated to the Government and have the task to protect the free exercise of rights and liberties and ensure the safety of citizens.

2. An organic law will determine the functions, basic principles of procedure, and the status of the security forces.

Article 105.

The law will regulate:

a) The participation of citizens, directly or through organizations or associations recognized by law, in the process or formulation of administrative measures which affect them.

b) The access of citizens to administrative archives and registers with the exception of those which deal with the security and defense of the State, criminal offenses, and privacy of persons.

c) Administrative procedure ensuring, whenever appropriate, the participation of the person concerned.

Article 106.

1. The Courts exercise control over the power to make regulations and the legality of administrative acts as well as their keeping within the purposes which justify them.

2. Individuals who suffer injury to their property and rights are entitled to indemnity as provided for by law, except in cases of an Act of God, so long as the injury arises in consequence of the operation of public services.

Article 107.

The Council of State is the highest consultative organ of Government. Its composition and competence will be regulated by an organic law.

TITLE V**On relations between the Government and the General Cortes****Article 108.**

The Government is jointly responsible for its political actions to the Congress of Deputies.

Article 109.

The Chambers and their Committees may obtain through their Presidents any information and assistance they require from the Government and its departments and from any State authority or the Autonomous Communities.

Article 110.

1. The Chambers and their Committees may request members of Government to appear before them.

2. Members of Government have access to the sessions of the Chambers and their Committees and the privilege to address them. They may request that the information be presented by officers of their Departments.

Article 111.

1. Interpellations and questions may be directed to the Government and to individual Ministers in the Chambers. The Regulations will provide a minimum weekly time for such debates.

2. Any interpellation may lead to a motion in which the Chamber states its position.

Article 112.

The President of Government may, after deliberation in the Council of Ministers, place before the Congress of Deputies a motion of confidence with respect to his program or declaration of general policy. The motion carries if it is approved by a simple majority of the Deputies.

Article 113.

1. The Congress of Deputies may vote the Government out of office by the adoption of a motion of censure by absolute majority.

2. The motion of censure may be introduced by at least one-tenth of the Deputies and must name a candidate for the office of President of Government.

3. The motion of censure may not be voted upon until five days have run from its presentation. Alternative motions may be made within the first two days of that term.

4. If the motion of censure fails to pass in Congress, its promoters may not move it again within the same session.

Article 114.

1. When the Government loses the confidence of Congress, it must present its resignation to the King, and the proceedings provided for in article 99 for the appointment of a new President of Government are initiated.

2. When Congress adopts the motion of censure, the Government must present its resignation to the King, and the Candidate named therein is deemed to hold the confidence of the Chamber with the effects provided for in article 99. The King will appoint him President of Government.

Article 115.

1. The President of Government may, after deliberation in the Council of Ministers, under his exclusive responsibility propose the dissolution of the Congress, of the Senate, or of the General Cortes, which will be decreed by the King. The decree of dissolution sets the date for the elections.

2. The proposal of dissolution may not be made when a motion of censure is under consideration.

3. No new dissolution may be decreed within one year of the last one, except as provided in article 99, section 5.

Article 116.

1. An organic law will regulate the state of emergency, exception, and siege and the corresponding powers and limitations.

2. State of emergency is declared by the Government by decree in the Council of Ministers for a maximum time of fifteen days. Immediate notice thereof must be given to the Congress of Deputies, which must be called for that reason, and without the consent of which the time may not be extended. The decree sets the territorial extent to which the effects of the declaration apply.

3. State of exception is declared by the Government by decree in the Council of Ministers, prior authorization of the Congress of Deputies having been obtained. The authorization and declaration of the state of exception must expressly stipulate the effects thereof, the territorial extent of its application, and its duration, which may not exceed thirty days and which may be extended for another equal time under the same terms.

4. State of siege may be declared by the absolute majority of the Congress of Deputies at the exclusive proposal of the Government. Congress determines its territorial extent, duration, and conditions.

5. Congress may not be dissolved while any of the states included in this article are declared, and the Chambers are automatically called into session if they are not in session. Their functioning as well as that of the other constitutional powers of State, may not be interrupted while any of the states are in effect.

If a situation arises which gives ground to any of the said states while Congress is dissolved or while its mandate has expired, its powers are exercised by its Permanent Committee.

6. Declaration of the state of emergency, exception, or siege does not affect the principle of responsibility of Government and its instrumentalities recognized in the Constitution and in the laws.

TITLE VI

On the judicial power .

Article 117.

1. Justice emanates from the people and is administered in the name of the King by independent, irremovable Judges and Magistrates, responsible and subject only to law.

2. Judges and Magistrates may not be dismissed, suspended, or retired except for cause and under the guarantees of law.

3. The exercise of judicial power in all its aspects, proceedings, trials and execution of judgments belongs exclusively to Courts designated by law in accordance with the rules of jurisdiction and procedure established therein.

4. Courts exercise only the functions referred to in the preceding section and such others as are expressly attributed to them by law.

5. The organization and operation of Courts is based on the principles of jurisdictional unity. The exercise of military jurisdiction within its strictly military sphere and during the state of siege will be regulated by law in accordance with the principles of the Constitution.

6. Special Courts are prohibited.

Article 118.

Judgments and other decisions of Judges and Courts must be complied with, and they must be given assistance demanded by them in the proceedings and in the execution of decisions.

Article 119.

Justice is administered free of charge when so provided by law, and is always free to persons of insufficient resources.

Article 120.

1. Judicial proceedings are public, except as provided by the law of procedure.

2. Proceedings are predominantly oral especially in criminal matters.

3. Judgments must give reasons and must be publicly pronounced.

Article 121.

Damages caused by judicial error or improper operation of the Administration of Justice give rise to indemnity from the State in accordance with law.

Article 122.

1. An organic law on the judiciary will determine the constitution, functioning, and administration of Courts, as well as the legal status of professional Judges and Magistrates, who form one judicial body, and that of other personnel in the Administration of Justice.

2. The General Council on the Judiciary is the governing body thereof. An organic law will determine its constitution and provide rules for judicial incompatibilities, appointments, promotions, supervision, and discipline.

3. The General Council on the Judiciary is presided over by the President of the Supreme Court and is composed of another twenty members appointed by the King for a five year term. Twelve of them are taken from Judges and Magistrates of all ranks as determined by an organic law, four at the proposal of the Congress of Deputies, and four at that of the Senate; the latter are elected in both cases by a three-fifth majority of their members from among counsel and jurists of note of at least fifteen years of professional standing.

Article 123.

1. The Supreme Court with jurisdiction over all Spain is the highest jurisdictional organ, except with respect to constitutional guarantees.

2. The President of the Supreme Court is appointed by the King at the proposal of the General Council on the Judiciary as provided by law.

Article 124.

1. The Public Ministry, without prejudice to duties entrusted to other organs, has the duty to see to it *ex officio* or at the request of interested parties, that justice is dispensed in accordance with the law, that rights of citizens and public interests are protected, and it must guard the independence of the Courts and intercede before them for the protection of the social interest.

2. The Public Ministry exercises its functions in accordance with the principles of centralized organization, hierarchical subordination, legality and impartiality.

3. An organic statute of the Public Ministry will be enacted by law.

4. The Procurator General is appointed by the King at the proposal of the Government after consultation with the General Council on the Judiciary.

Article 125.

Citizens may exercise popular action and participate in the Administration of Justice through the institution of Jury in the form and

in such criminal trials as determined by law, as well as in customary and traditional Courts.

Article 126.

The judicial police are subordinated to Judges, Courts, and the Public Ministry in the exercise of their functions of investigation of crime and the identification and apprehension of offenders in accordance with the law.

Article 127.

1. Judges, Magistrates, and Procurators in active service may not hold any other public office or membership in political parties or unions. The system and modalities of professional association of Judges, Magistrates, and Procurators will be established by law.

2. Incompatibilities of members of the judiciary will be determined by law, which shall ensure their full independence.

TITLE VII

Economy and Finance

Article 128.

1. The wealth of the country in all its forms is subject to the general interest, irrespective of ownership.

2. The public sector may engage in economic activities. A law may assign essential resources and services to the public sector, especially in the case of monopolies, and may provide for the supervision of enterprises in the national interest.

Article 129.

1. Participation in Social Security, and in the activities of public entities whose operation directly affects the standard of living and the general well-being, will be determined by law.

2. Public authorities will diligently stimulate various kinds of participation in the management and promote co-operative associations by appropriate legislation. They will also provide the means to enable workers to participate in the ownership of the means of production.

Article 130.

1. Public authorities will promote the modernization and development of all branches of the economy, especially agriculture, livestock

farming, fisheries and trades, in order to improve the standard of living of all Spaniards.

2. Special treatment will be accorded to mountain zones for the same purpose.

Article 131.

1. The State may, by law, plan the general economic activity to serve general needs, balance and harmonize regional and sectional development, and stimulate the growth of income and property and their more just distribution.

2. The Government will prepare plans in accordance with data supplied by Autonomous Communities and with the cooperation of unions and other professional, managerial and economic organizations. A Council will be established for that purpose, and its composition and function will be determined by law.

Article 132.

1. Legal regime of public and communal property and its disposal will be regulated by law founded on the principles of inalienability, imprescriptibility, and immunity from seizure.

2. State public property is determined by the law, but it comprises in any case the coastal zone, the beaches, the territorial sea, and the natural resources in the economic zone and in the continental shelf.

3. Property of the State and National Property, and its administration, protection, and conservation will be regulated by law.

Article 133.

1. The original power of taxation is vested exclusively in the State as provided by law.

2. Autonomous Communities and local corporations may levy rates in accordance with the Constitution and the laws.

3. Any tax benefit which concerns State taxes must be provided for by law.

4. Public authorities may incur financial obligations and make expenditures only in accordance with laws.

Article 134.

1. State General Budget is prepared by the Government and is examined, amended, and approved by the General Cortes.

2. State General Budget is made annually and comprises all ex-

penditure and income of the state public sector, and the amount of any expenditure applying State tax monies must be included therein.

3. The Government must submit the State General Budget to the Congress of Deputies at least three months before the expiration of that of the preceding year.

4. If the Budget is not approved before the first day of its operation, the operation of the preceding Budget is automatically extended until the approval of the new one.

5. A State General Budget having been approved, the Government may submit a bill which implies an increase in public spending or a decrease of income for the same fiscal year.

6. Any proposal or amendment implying the increase of indebtedness or the decrease of budgetary income requires the consent of the Government for its hearing.

7. The Budget may not introduce new taxes. It may amend them if a substantive tax law so provides.

Article 135.

1. The Government needs statutory authorization to incur public debt or to borrow money.

2. Credits needed for the payment of interest and corpus of the State Public Debt are understood as always included in the statement of budgetary expenditures and may not be amended or modified while they are adjusted to the terms of the law of their issue.

Article 136.

1. The Court of Accounts is the supreme authority over the accounts and the economic management of the State and of the public sector.

It is directly subordinated to the General Cortes and performs the function of examining and verifying the General Account of the State.

2. The accounts of the State and of the state public sector are submitted to the Court of Accounts for examination.

The Court of Accounts, without prejudice to its own jurisdiction, submits an annual report to the General Cortes wherein it indicates any irregularities which may in its opinion have occurred.

3. Members of the Court of Accounts are independent, irremovable, and subject to the same incompatibilities as Judges.

4. The composition, organization, and function of the Court of Accounts will be regulated by an organic law.

TITLE VIII

On the Territorial Organization of the State

CHAPTER ONE

General Principles

Article 137.

The State is territorially composed of municipalities, provinces, and such Autonomous Communities as may be established. All these entities enjoy autonomy in the management of their interests.

Article 138.

1. The State guarantees the effective realization of the principle of solidarity referred to in article 2 of the Constitution, by striving to achieve an adequate and just economic balance between the several parts of the Spanish territory, attending especially to the circumstances of insularity.

2. Any differences in the constituting Acts of the several Autonomous Communities in no case imply economic or social privileges.

Article 139.

1. All Spaniards have the same rights and duties in any part of the state territory.

2. No authority may adopt measures which would directly or indirectly obstruct the freedom of movement and settlement of persons and the free movement of goods throughout the entire Spanish territory.

CHAPTER TWO

On Local Administration

Article 140.

The Constitution guarantees the autonomy of municipalities. They have full legal personality. Their government and administration belong to their respective town-halls composed of Mayors and Councilors. Councilors are elected by inhabitants of the municipality by universal, equal, free, direct and secret ballot as determined by law. Mayors are elected either by the Councilors or by the inhabitants. The law will provide for the setting up of a regime of an open council.

Article 141.

1. The province is a local entity endowed with legal personality. It is formed by the grouping of municipalities, and it is a territorial division for the fulfilment of State activities. Any modification of its boundaries must be approved by the General Cortes in an organic law.

2. Autonomous government and administration of the provinces is conducted by Provincial Assemblies or other representative Corporations.

3. Groupings of a province's diverse municipalities may be made.

4. As concerns archipelagos, the island will also have their own administration in the form of Chapters or Councils.

Article 142.

Local treasuries must disperse sufficient monies for the performance of duties attributed to the respective Corporations by law, and are funded mainly by local taxes and by sharing in those of the State and of the Autonomous Communities.

CHAPTER THREE

On Autonomous Communities

Article 143.

1. In the exercise of the right to autonomy recognized in article 2 of the Constitution, adjoining provinces with common historical, cultural, and economic features, insular territories, and provinces which are historic regional entities, may assume self-government and constitute themselves Autonomous Communities in accordance with the provisions of this Title and the respective Statutes.

2. The process of autonomy is to be initiated by the Provincial Assemblies concerned, or by the corresponding interinsular organ, and by two-thirds of municipalities the population of which represents at least the majority of registered voters of each province or island. These prerequisites must be met within six months from the time of adoption of the first respective motion by the interested local Corporations.

3. If the movement does not succeed, it may be renewed only after an interval of five years.

Article 144.

The General Cortes may by an organic law for reasons of national interest:

- a) Authorize the constitution of an Autonomous Community even though its territory does not exceed that of a province and does not comply with the requirements of section 1 of article 143.
- b) Authorize or grant the Statute of Autonomy to territories not forming part of provincial organization.
- c) Substitute the initiative of local Corporations referred to in section 2 of article 143.

Article 145.

1. Autonomous Communities may in no case federate one with another.

2. Statutes may provide for eventualities, prerequisites, and terms on which Autonomous Communities may make agreements among themselves for the management and supply of services, as well as the nature and effects of such a communication to the General Cortes. In the other eventualities, the agreements of co-operation among Autonomous Communities require the authorization of the General Cortes.

Article 146.

The proposal of Statute is drafted by an assembly composed of members of the Provincial Assembly or the interinsular organ of the participating provinces, and of Deputies and Senators elected therein, and is then submitted to the General Cortes as a bill.

Article 147.

1. Within the terms of the present Constitution, the Statutes are the fundamental norms of every Autonomous Community. They are recognized by the State and form part of its legal system.

2. Statutes of autonomy must contain:

- a) The name of the Community which expresses best its historic identity.
- b) Delimitation of its territory.
- c) The name, organization and seat of autonomous institutions.
- d) The authority assumed within the provisions of the Constitution and the bases for the transfer of that authority.

3. Any amendment of the Statutes must be made in accordance

with rules made therein, and must, in any case, be approved by the General Cortes in an organic law.

Article 148.

1. Autonomous Communities may assume authority in the following matters:

- (1) Organization of their institutions of self-government.
- (2) Modification of municipal boundaries within their territory, and in general, authority of State Administration over local Corporations, the transfer of which is authorized by legislation on Local Government.
- (3) Authority over land, urban development, and housing.
- (4) Public works pertaining to Autonomous Communities within their territory.
- (5) Railroads and highways which run fully within the territory of the Autonomous Community, and the transport conducted on them or by cable.
- (6) Small local harbors, harbors and airports for sporting purposes and in general, those not used in commerce.
- (7) Agriculture and cattle farming in accordance with the general administration of the economy.
- (8) Mining and forestry.
- (9) Environmental protection.
- (10) Construction and use of water projects, canals, and irrigation pertaining to the Autonomous Community; mineral and thermal water.
- (11) Fishing in internal waters, shell-fish fishing, hydrobiology, hunting and river fishing.
- (12) Local fairs.
- (13) Promotion of the economic development of the Autonomous Community within the objectives of national economic policy.
- (14) Artisanship.
- (15) Museums, libraries and conservatories of music pertaining to the Autonomous Community.
- (16) Monuments pertaining to the Autonomous Community.
- (17) Promotion of culture and research and, whenever applicable, instruction in the language of the Autonomous Community.
- (18) Promotion and regulation of tourism within its territory.
- (19) Promotion of sport and the proper use of leisure.
- (20) Welfare.

(21) Health and hygiene.

(22) Protection and maintenance of its buildings and plants. Coordination and other authority in connection with local policing as determined by an organic law.

2. After five years by means of amendment of their Statutes, Autonomous Communities may gradually expand their authority within the ambit of article 149.

Article 149.

1. The State has exclusive authority over the following matters:

(1) Regulation of fundamental conditions which guarantee the equality of all Spaniards in the exercise of their rights and in the fulfillment of constitutional duties.

(2) Nationality, immigration, emigration, authority over foreigners, and the right of asylum.

(3) Foreign relations.

(4) Defense and Armed Forces.

(5) Administration of Justice.

(6) Legislation concerning commerce, criminal law, and penitentiaries; Legislation concerning procedure without prejudice to the necessary specialized procedure which is called for by special features of the substantive law of the Autonomous Communities.

(7) Labor legislation, without prejudice to its enforcement by organs of the Autonomous Communities.

(8) Civil legislation without prejudice to the preservation, amendment, and development by the Autonomous Communities of civil, local, and special laws whenever in existence. In any event, the rules of application and enforcement of legal norms, civil law with respect to the form of marriage, regulation of public registers and instruments, foundations of contractual obligations, norms for the determination of conflict of laws, and the determination of sources of law concerning norms of local and special law.

(9) Legislation on intellectual and industrial property.

(10) Customs and tariffs; foreign trade.

(11) Monetary system; foreign currency, exchange, and convertibility; bases for the regulation of credit, banking, and securities.

(12) Legislation of weights and measures; determination of official time.

(13) Bases and coordination of general planning and economic activity.

- (14) Financing and State Public Debt.
- (15) Promotion and coordination of scientific and technical research.
- (16) External health. Bases and general coordination of health. Legislation concerning pharmaceuticals.
- (17) Basic legislation and economic system of Social Security without prejudice to the rendering of such services by the Autonomous Communities.
- (18) Bases of legal regime of public Administration and status of its officers guaranteeing equal treatment to parties before them; general administrative procedure without prejudice to particularities originating from the organization of Autonomous Communities; legislation on eminent domain; basic legislation on administrative contracts and grants and the system of responsibility of all public bodies.
- (19) Maritime fishing without prejudice to the authority granted to Autonomous Communities in this respect.
- (20) Merchant marine and registration of vessels; illumination of shore and maritime signals; harbors of general interest; airports of general interest; control of airspace, traffic and transport by air, meteorological service and registration of aircraft.
- (21) Railroads and transport over land extending over the territory of more than one Autonomous Community; general system of communications; traffic and operation of motor vehicles; mail and telecommunications; aerial and submarine cables and radio-communication.
- (22) Legislation over, regulation of and disbursements of funds for hydraulic devices concerning waters flowing through more than one Autonomous Community, and authorization of electrical plants when their operation affects another Community or when the energy is carried out of its territory.
- (23) Basic legislation concerning the protection of the environment without prejudice to the authority of Autonomous Communities to make additional norms for its protection. Basic legislation concerning forests, forest products and rural roads.
- (24) Public works of general interest or whose realization affects more than one Autonomous Community.
- (25) Fundamentals of the mining and energy system.
- (26) Regime of production, trade, possession, and use of arms and explosives.
- (27) Basic norms governing the press, radio and television and, in general, all means of communication, without prejudice to powers

pertaining to the Autonomous Communities concerning their development and enforcement.

(28) Protection of the Spanish cultural, artistic, and monumental heritage against exportation and spoliation; State museums, libraries, and archives without prejudice to their management by the Autonomous Communities.

(29) Public security without prejudice to the possibility of creation of police forces by Autonomous Communities, as provided in their respective Statutes, and within the scope of provisions made by an organic law.

(30) Regulation of conditions of attainment, issuance and validation of academic and professional titles, and basic norms for the development of article 27 of the Constitution in order to guarantee the fulfillment of obligations of public authorities in this respect.

(31) Statistics for State purposes.

(32) Authorization to obtain popular advice by way of a referendum.

2. Without prejudice to the authority assumed by the Autonomous Communities, the State considers serving culture to be a duty and an essential function, and will facilitate cultural intercourse among Autonomous Communities in agreement with them.

3. Matters not expressly attributed to the State in this Constitution may be taken over by the Autonomous Communities in their respective Statutes. Authority over matters not taken over by the Statutes of Autonomy belongs to the State, whose laws will prevail in case of conflict over those of the Autonomous Communities in all matters which are not attributed to the exclusive authority of the latter. State law will in any case supplement the law of the Autonomous Communities.

Article 150.

1. The General Cortes may, in matters of State competence, authorize all or some Autonomous Communities to enact their own legislative norms within the scope of principles, bases, and directives applicable to State laws. Without prejudice to the jurisdiction of Courts, each model law will provide for the control of the General Cortes over these legislative norms of the Autonomous Communities.

2. The State may by an organic law transfer or delegate to the Autonomous Communities authority over matters of State competence which by their own nature are susceptible of transfer or delegation.

The law will in each case provide for the requisite transfer of funds as well as for such control as is reserved to the State.

3. The State may make laws which would establish principles necessary for the harmonization of legislation of the Autonomous Communities even in matters reserved to them when this is in the general interest. The necessity must be determined by an absolute majority in each Chamber of the General Cortes.

Article 151.

1. It is not necessary to let run the time of five years referred to in section 2 of article 148, when the process of autonomy is initiated within the time specified in article 143(2), by the Provincial Assemblies or the corresponding interinsular organs, and by three-fourths of the Municipalities of each of the concerned provinces which represent at least the majority of registered voters in each of them, and the said initiative is ratified in a referendum by the affirmative vote of the absolute majority of voters in each province within the time set by an organic law.

2. In the eventuality foreseen in the preceding section, the procedure for the drafting of the Statute shall be as follows:

(1) The Government will call all Deputies and Senators elected in the territory in question to form an Assembly for the sole purpose of drafting a proposed Statute of Autonomy by an absolute majority of its members.

(2) The proposed Statute having been approved by the Assembly of members of parliament, it is presented to the Constitutional Committee of Congress, which together with the delegates of the proposing Assembly will examine it within two months to determine its final wording by common agreement.

(3) If the agreement is reached, the final text is submitted to a referendum of voters in the provinces within the territory of the proposed Statute.

(4) If the proposed Statute is approved in each province by majority of votes validly cast, it is brought to the General Cortes. Each house sitting in full assembly will vote on the text in a vote of ratification. If the Statute is ratified, the King will sign it and proclaim it as a law.

(5) If the agreement referred to in paragraph (2) of this section is not reached, the proposed Statute will be treated as a bill by the General Cortes. The text approved by them will be submitted to a referendum of voters in the provinces within the territory of the proposed

Statute. If it is approved in each province by majority of votes validly cast, it will be promulgated as provided in the preceding paragraph.

(3) In cases of paragraphs (4) and (5) of the preceding section, if the proposed Statute is not approved by one or more provinces, it will not prevent the remaining provinces of the proposed Autonomous Community from promulgating an effective Constitution in the form determined by an organic law as provided by section 1 of this article.

Article 152.

1. In the Statutes approved by the procedure referred to in the preceding article, the autonomous organization will be based on a Legislative Assembly elected by universal suffrage, in accordance with the system of proportional representation, which will also assure the representation of the various zones of the territory; a Council of Government with executive and administrative powers, and a President, elected by the Assembly from among its members and appointed by the King, whose powers comprise the chairmanship of the Council of Government, the supreme representation of the respective Community, and the ordinary representation of the State in the Community. The President and members of the Council of Government are politically responsible to the Assembly.

A Superior Court of Justice will head the judicial organization within the territory of an Autonomous Community without prejudice to the jurisdiction of the Supreme Court. The Statutes of Autonomous Communities may provide for eventualities, and for the form of their participation in the organization of judicial districts within the territory, all this in agreement with the provisions of the organic law on the judiciary and within its unity and independence.

Without prejudice to provisions of article 123, judicial proceedings initiated before a competent court of first instance, within the territory of an Autonomous Community will be finally adjudicated by courts sitting therein.

2. Once the respective Statutes are sanctioned and promulgated, they may be amended only by proceedings stipulated therein and by a referendum of voters entered in the proper electoral registers.

3. The Statutes may provide for adjoining municipalities to form territorial units with full legal personality.

Article 153.

The control of the functioning of organs of the Autonomous Communities is exercised:

- a) By the Constitutional Court with respect to the constitutionality of their legislative enactments of statutory power.
- b) By the Government on the advice of the Council of State, with respect to the exercise of delegated authority referred to in section 2 of article 150.
- c) By administrative courts with respect to their administrative authorities and regulatory norms.
- d) By the Court of Accounts with respect to economic and tax matters.

Article 154.

A delegate is appointed by the Government to head the State administration in the territory of the Autonomous Community and to coordinate it, whenever necessary, with that of the Autonomous Community.

Article 155.

1. Should an Autonomous Community fail to carry out the obligations imposed on it by the Constitution and the laws, or act contrary to the general interests of Spain, the Government will ask the President of the Autonomous Community to correct the matter. If he does not do so, the Government, with the approval of the absolute majority of the Senate, may adopt measures necessary to enforce compliance of its obligations or to protect the above mentioned general interest.

2. The Government may give instructions to all authorities of the Autonomous Communities for the enforcement of measures referred to in the preceding section.

Article 156.

1. Autonomous Communities have financial autonomy for the development and enforcement of their authority, in accordance with the principles of coordination with the State Treasury and solidarity among all Spaniards.

2. Autonomous Communities may act as delegates or associates of the State for the raising, management, and realization of State taxes, in accordance with laws and the Statutes.

Article 157.

1. The income of the Autonomous Communities is composed of:
 - a) Taxes ceded in full or in part by the State; surcharges on State taxes and other sharing of the State income.

- b) Their own taxes, rates and special levies.
 - c) Transfers from the fund of interterritorial compensation and other transfers from the General Fund of the State.
 - d) Income from their property and revenue of private law.
 - e) Income from investments.
2. Autonomous Communities may not impose taxes on property situated outside of their territory, nor impede the free flow of goods and services.
 3. An organic law may regulate the exercise of the financial powers enumerated in the preceding section 1, rules for the decision of conflicts which may arise and the possible forms of financial co-operation between the Autonomous Communities and the State.

Article 158.

1. The State General Budget may provide for an assignment to the Autonomous Communities of income in proportion to the volume of services and state duties they have taken over, and guarantee a minimum level of fundamental public services rendered in all Spanish territory.
2. In order to correct any interterritorial economic inequalities, and to promote solidarity, a Compensation Fund will be set up to provide funds which will be distributed by the General Cortes among the Autonomous Communities and provinces as the case may be.

TITLE IX

On the Constitutional Court

Article 159.

1. The Constitutional Court is composed of twelve members appointed by the King; four at the proposal of Congress by three-fifths majority of its members; four at the proposal of the Senate by an identical majority; two at the proposal of the Government; and two at the proposal of the General Council of the Judiciary.
2. Members of the Constitutional Court are appointed from among Magistrates and Procurators, University Professors, public officers, and advocates, all jurists of renown of at least fifteen years' professional standing.
3. Members of the Constitutional Court are appointed for a term of nine years, one third of them every three years.
4. Membership in the Constitutional Court is incompatible: with any representative mandate; with any political or administrative office;

with discharge of directorial functions in a political party or a trade union and with employment by them; with the exercise of judicial or procuratorial office; and with any professional or commercial activity.

In addition, the incompatibilities applicable to members of the judicial power apply also to members of the Constitutional Court.

5. Members of the Constitutional Court are independent and irremovable in the exercise of their mandate.

Article 160.

The President of the Constitutional Court is appointed by the King, for a term of three years, from among its members on its own motion in plenary session.

Article 161.

1. The Constitutional Court has jurisdiction over all Spanish territory and decides:

a) On the appeal of unconstitutionality against laws and provisions having the force of law. Declaring unconstitutional a legal norm with the rank of a law will strike it down, so long as the judgment or judgments do(es) not lose the standing of *res judicata*.

b) On the appeal of *amparo*, for violation of the rights and liberties referred to in article 53, 2 of this Constitution in the cases and in the form determined by law.

c) On conflicts of jurisdiction between the State and the Autonomous Communities and between Autonomous Communities.

d) On any other matter attributed to it by the Constitution and the organic laws.

2. The Government may challenge in the Constitutional Court any provisions and decisions adopted by organs of the Autonomous Communities. The challenge operates the suspension of the provision or decision complained of, but the Court must uphold it or lift it within five months as the case may be.

Article 162.

1. The authority:

a) To bring the appeal of unconstitutionality is vested in the President of Government, the Defender of the People, fifty Deputies, fifty Senators, the collegiate executive organs of Autonomous Communities, and their Assemblies as the case may be.

b) To bring the appeal of *amparo* is vested in any physical or

legal person having legitimate interest, in the Defender of the People, and in the Public Ministry.

2. In all other cases, an organic law will determine the persons and organs so authorized.

Article 163.

When a court of law considers a legal norm determinative of a case, but of doubtful constitutional validity, it will submit the matter to the Constitutional Court in such cases, in such form, and with such effect as shall be determined by law, which may in no event permit such decisions to be delayed.

Article 164.

1. Judgments of the Constitutional Court will be published in the official gazette of the State, together with separate opinions, if any. They acquire the power of *res judicata* on the date following that of their publication, and they are subject to no remedy. Those which declare the unconstitutionality of a law or a norm having the power of law, and those which are not limited to the subjective determination of a right, have full effect against everyone.

2. The portion of the law unaffected by the unconstitutionality remains in power, unless otherwise provided in the decision.

Article 165.

An organic law will determine the functioning of the Constitutional Court, the status of its members, procedure before it, and the conditions for the bringing of suits.

TITLE X

On constitutional amendment

Article 166.

The initiative for constitutional amendment is exercised in the terms of sections 1 and 2 of article 87.

Article 167.

1. Proposals for constitutional amendment must be approved by a three-fifths majority in each Chamber. If agreement by the Chambers is not reached, a Committee composed of an equal number of Deputies and Senators is to be set up to propose a text to be voted upon in the Congress and in the Senate.

2. If approval is not obtained in accordance with the procedure outlined in the preceding section, but if the text has actually obtained an absolute majority of votes in the Senate, Congress may approve the amendment by a two-thirds majority.

3. The amendment having been approved by the General Cortes, it will be submitted to a referendum if it is demanded within fifteen days following the approval by one tenth of members of either Chamber.

Article 168.

1. When a full revision of the Constitution is proposed, or a partial one which affects the Preliminary Title, Chapter Two, Section 1, of Title I, or Title II, and the substance of the proposed revision is approved by a two-thirds majority in each Chamber, the Cortes is immediately dissolved.

2. The elected Chambers must ratify the decision and consider the new constitutional text, which must be approved by a two-thirds majority in both Chambers.

3. The revision having been approved by the General Cortes, it is submitted to a referendum for its ratification.

Article 169.

No constitutional amendment may be initiated in time of war or while any of the states referred to in article 116 are in power.