



## NATIONAL

# ON THE 30TH ANNIVERSARY OF THE FIRST DEMOCRATIC ELECTIONS: THOUGHTS FOR TODAY IN THE FACE OF A BASIC CONSENSUS BEING SHATTERED

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PHOTO: EFE

Adolfo Suárez, the first Prime Minister under the democratic regime, surrounded by the Parliamentary Group of the UCD the day the lower house of Parliament approved the 1978 Constitution. The text was approved by 326 votes in favour and six against, with 13 abstentions. It was ratified by the Spanish in a referendum on December 6th that year. The photo shows Adolfo Suárez surrounded by (foreground, left to right) Salvador Sánchez Terán, Juan Antonio García Díez, Íñigo Cavero, Agustín Rodríguez Sahagún, Joaquín Garrigues Walker (crouching), Gabriel Cisneros, Ignacio Camuñas and Manuel Clavero.

## The will for consensus

Thirty years ago, on June 15th 1977, the Spanish people decided on a transcendental change in the course of our historic development. By means of free elections designed to prepare a new constitution and called by a government arisen out of the Fundamental Laws enacted by the Dictatorship, liberal representative democracy was reinstated in Spain. Two figures, King Juan Carlos and Prime Minister Adolfo Suárez, already two renowned figures of Spanish History, kicked off, drove through and achieved this radical institutional change with the active collaboration of the political groups and their leaders in the democratic opposition. The process of drafting a constitution also gave rise to a parliamentary monarchy, the rule of law, the decentralization of the State or Devolution, the non-denominational nature of the State and the definitive sub-ordination of military power to civilian authorities emerged from the ballot boxes.

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**The purpose so intensely shared by the main protagonists of the age was, above all, not to replicate our tormented History, to learn from it so that it would not be repeated. It was not easy because we had all come from a Civil War and through a lengthy dictatorial regime with with winners and losers, with chased and persecutor, with victims and executioners distributed on both sides.”**

Although the process was very transcendental because it satisfactorily found solutions to the dramatic and long-standing conflicts that had always led to the violent disruption of our peaceful cohabitation, this was not what really defined the nature of the change. What was truly transcendental, what turned us all into an example for the world, was the **will to attain consensus** that presided over the entire period. The purpose so intensely shared by the main protagonists of the age was, above all, not to replicate our tormented History, to learn from it so that it would not be repeated. It was not easy because we had all come from a Civil War and through a lengthy dictatorial regime with with winners and losers, with chased and persecutor, with victims and executioners distributed on both sides.

## Agreements of principle

The will for consensus gave rise to the four main agreements of principle:

**1) Agreement on the past:** It was felt that all of our past, including the most recent, belonged to history and was therefore a matter for historians to dissect, discuss and assess. It was not a matter of forgetting the past, as it was permanently present in the political discourse of the moment, but of not re-

peating it, in other words of not going back, under any circumstances, to a civil or armed uprising that would destroy democratic cohabitation.

**2) Amnesty agreement:** This had two faces. On the one hand, moral and economic reparation for the repression, persecution and injustices which, as in any civil war, were inflicted upon the losers during the post-war period. But, on the other hand, this was done with the deliberate aim of avoiding to further offend anyone. In other words, without decreeing the blameworthiness of others whose patriotic motives were not to be doubted or subjected to persecution for any reason.

**“The history of continental Europe has, until relatively recent times, been an uninterrupted succession of wars”**

**3) Agreement on the nature of the Constitution:** It was agreed that a draft democratic Constitution would be drawn up between by all, for all, in order in order to bring to an end the sectarian partisanship that had characterized Spain’s previous constitutions.

**4) Agreement to safeguard the process of establishing a Constitution:** The complicated economic situation Spain was going through at the start of the process to establish a Constitution (a 23% inflation rate, a severe industrial crisis caused by the 1973 oil shock) had been put on hold by the governments of the day so as not to aggravate with restrictive economic measures the uncertainty that invaded the country during the General Franco’s last illness. This circumstances led to the **Moncloa pacts** that allowed Adolfo Suárez’s Government to apply a harsh economic adjustment plan that provoked a rise of the unemployment rate at the same time as decisions were reached on the text of the constitution and provisional laws were enacted to regulate public freedoms.

**“Consensus, albeit by providing an imperfect and unsatisfactory solution, is effective, that is, it can reduce tension and provide lasting channels that frequently allow differences to be solved”**

### **The significance of consensus: a conviction**

In abstract terms, consensus as an ordinary decision-making process does not sit well with the basic rule of democracy: half plus one of the votes is the source of legitimacy for any decision, whether it is in the form of a Constitution or a piece of legislation, or else an opinion expressed in a referendum or before the Houses of Parliament, duly elected by universal, free, direct and secret vote. Politics have however sometimes wandered from this position. Indeed the history of continental Europe has, until relatively recent times, been an uninterrupted succession of civil wars, wars of religion, struggles for supremacy, violent ideo-

logical conflicts for the organization of power and freedom or for the regulation of such transcendental issues as education.

One result of this historic reality is the generalization on continental Europe of the proportional representation electoral system making absolute majorities difficult to achieve, thus the obligation of pacts, and the conviction that certain matters, because they affect the essence of free co-existence, must not be decided by a majority vote. Experience has shown, in effect, that some decisions taken with a legitimate majority still do not ensure sufficient stability to be effective and they may even generate violence that, although illegitimate, ends up by preventing the resolution of the problem they are attempting to deal with. Consensus, albeit by providing an imperfect and unsatisfactory solution, is effective, that is, it can reduce tension and provide lasting channels that frequently allow differences to be solved.

**“The constitutional consensus and its subsequent projection have provided thirty years of fruitful democratic life and great prosperity, up until 2004”**

If in the 19th and 20th centuries (until 1976) Spain’s rulers had assumed this kind of political stance in which majorities do not squash, isolate or exclude minorities, our historic process would have been less violent and more fertile. Neither the form of the State, nor the religious question; neither political decentralization nor the organization of public freedoms; neither the insertion of military power within a constitutional regime nor agricultural and educational reforms would have led to a violent confrontation that was expressed, first of all, in the armed revolutionary uprising of 1934 against a centre-right government and later, in the military uprising in 1936 against the Popular Front Government, that led to the Civil war.

### **The fruits of consensus**

The constituent parliament that drew up the Constitution of 1978 and its mechanism for adopting decisions by consensus was extremely fecund. Under its aegis, Spain was governed through a crisis and lacking a Constitution; a constitutional code was drawn up and accepted by practically all of the political forces represented in parliament except for extreme left-wing nationalists and a small group of right wing MPs who voted against it, and the Basque nationalists of the PNV, who abstained during the vote on the entire text in the House and later in the referendum for its ratification); it also initiated the transformation of the apparatus of the authoritarian state; began to address the old and always tragic dilemmas of Spain’s history referred to above (the form of the State, the regional issue, the religious problem, the widespread acceptance of the ground rules for democracy); progressive reforms were introduced in tax legislation, in the criminal justice and the penitentiary system as well as in the regulations governing the organization of the Armed Forces and the State’s Se-

curity Forces. Finally, the most wide-ranging and generous Amnesty Law was enacted, emptying Spain's prisons of all those imprisoned for crimes related directly or indirectly with the struggle for democracy.

**“Between 1976 and 2004, with ups and downs, getting some things right and others wrong, with successes and failures, Spain has overall been well governed and democratically governed, with common sense. .It has been able to exploit its opportunities to become a modern, dynamic, respected and influential country”**

### **The projection of consensus into the future**

Thus, both the transition to democracy and specially the process of establishing the constitution. itself were successful not only for their institutional outcome, which has evident imperfections, but rather for having built around themselves an effective consensus as a basic principle. Throughout the term of the subsequent Parliament, the first ordinary session under the constitution, an overwhelming consensus voted in favour of the Statutes for regional autonomy of the Basque Country, Catalonia and Galicia as well as the most important organic laws (the Election Procedure Act and key legislation on referendums, the Constitutional Court, the General Council of the Judiciary , the Ombudsman, Finance of regional authorities, and on various public freedoms). The 1981 and 1992 Autonomy Agreements were another expression of a fruitful consensus that first organized the generalization of access to political autonomy for all the regions of Spain and later extended the powers of the regional authorities.

**“What is even more serious is that this government has, in power since the 2004 elections, has destroyed one of the underlying principles of the transition to democracy by stirring up the review of the Civil War and the immediate post-war years through a Historic Memory Act that, even with some of its initial proposals somewhat watered down, seeks to find the roots of the current democratic system with the Republican regime in 1936 and thus deprive of legitimacy the agreement reached by the representatives of a vast majority of Spaniards from very different backgrounds in 1977.”**

Thus there was another outstanding uniqueness in our life under democracy: the initial will to project consensus into the future and turn it into a permanent principle characterizing certain aspects of our political and institutional life. As a result, this aspiration has had a two-fold effect still present in our development: one is **explicit**, through the inclusion of a requirement for consensus in

the text of the Constitution itself (on those matters in which qualified majorities of three fifths or two thirds are required); the other is **implicit**, arising out of the political will (in place until 2004) not to adopt certain decisions, not to make certain appointments or not to amend certain basic laws (organic laws and the regional statutes) without agreement between the two main national parties even where, legally, such actions could be pushed through in parliament by the majority of the day. Such a political will has also made it easier to reach other significant agreements on foreign policy, in the fight against terrorism, in labour relations, about the public pension system under the Pact of Toledo, and regarding the organization of the public health service. Although not, for instance, on the arrangement of the educational system which, incidentally, has been the main failure (one should say disaster) of our democracy due, precisely, to the lack of consensus.

Up until 2004, the constitutional consensus and its subsequent projection have provided thirty years of fruitful democratic life and great prosperity. An example of the result: in 1977, Spain was receiving financial aid from the OECD as an under-developed country. Today it is the world's eighth-largest economy in terms of its Gross Domestic Product. Not since the reign of King Charles III, at least, has there been any similar period of stability and progress. The logical explanation for this collective success lies, to a large extent, in the adaptation of the political and institutional framework to the demands of the present and in the attitude of the main leaders and political groups undertaking, in practice, reasonable programmes of government, seeking consensus on the subjects of the greatest scope and avoiding the vindictiveness so regrettably common in other periods of history. Between 1976 and 2004, with ups and downs, getting some things right and others wrong, with successes and failures, Spain has overall been well governed and democratically governed, with common sense. It has been able to exploit its opportunities to become a modern, dynamic, respected and influential country. This great asset is today in danger of being lost. If it has not already been lost.

**“A new and unannounced constitutional process  
has been initiated through the amendments  
to the Regional Statutes”**

**The destruction of consensus**

The dual dimension, explicit and implicit, of the constitutional consensus raises a very far-reaching issue: whether it is legitimate for the Government of the day to abandon or fail to comply with an implicit consensus, that cannot be enforced through legal means. The present Government, in power since the 2004 elections, has fostered a new regional statute for Catalonia, approved only by the parties providing its parliamentary majority; it has unilaterally abandoned the Anti-Terrorist Pact, replacing it with a policy of dialogue and agreement with ETA and its acolytes; it has turned its back on the shared positions on basic for-

eign Policy issues; it has unilaterally amended key organic laws such as that of the General Council of the Judiciary, that of the Constitutional Court; it has turned its back on the main opposition party, which is also the only alternative option for governing the country, with regards to key issues like the appointment of the heads of such essential regulatory bodies as the Bank of Spain, the National Securities Market Commission or the National Energy Commission. This government has also ruthlessly sought to eliminate a number of structural actions undertaken by previous governments, which were key outcomes of the general agreement, such as the National Hydrological Plan, something that was done before neither by the PSOE with respect to the UCD in 1982, nor the PP with respect to the PSOE in 1996, or in other words, at those points in our recent history where, democratic handover to a new party of government was conducted smoothly, in a positive manner and avoiding revenge. What is even more serious is that this government has destroyed one of the underlying principles of the transition to democracy by stirring up the review of the Civil War and the immediate post-war years through a Historic Memory Act that, even with some of its initial proposals somewhat watered down, seeks to find the roots of the current democratic system with the Republican regime in 1936 and thus deprive of legitimacy the agreement reached by the representatives of a vast majority of Spaniards from very different backgrounds in 1977.

**“The severity of the rupture of the implicit consensus cannot be brushed off. From now on, everything will be open to amendment by means of a parliamentary majority (either simple or absolute) except, of course, on those matters for which the Constitution demands a qualified majority”**

Apart from the Statute of Catalonia, currently pending a legal decision regarding its constitutionality, no objection on formal legal grounds can be made against the Government’s other decisions, even where they annihilate the consensus previously in force and conscientiously woven by its predecessors in office. But the severity of the rupture of the implicit consensus cannot be brushed off. From now on, **everything** will be open to amendment by means of a parliamentary majority (either simple or absolute) except of course on those matters for which the Constitution demands a qualified majority. The door is open for the sterile ups and downs from the past. The breakdown of the consensus, being it attributable to the Government and thus distorting a substantial part of our political and institutional system; a system designed, through the sum of widespread consensus, with profiles that are perhaps excessively open. The end result is that a new and unannounced process has begun for the re-drafting of the Constitution by means of the amendments to the regional statutes. Nowadays, since the entry into force of the new Catalanian statute, the nature of the “State of the Regions” is once more in question along with its possible transformation, *de facto*, into a kind of confederation of regional

communities. There are also questions raised regarding the integrity of Spain's territory as a result of the demands for self-determination made by some anti-system allies of the so-called "national" government: the future of Navarre as a an autonomous region with specific rights, and the change of strategy in the fight against terrorism, previously seen as the prosecution and elimination of ETA, in order to give rise to some kind of co-sovereignty agreement established between the Basque Country and the Spanish State (although this will not of course be the terminology employed. The question now is to know whether the results of the recent municipal elections will force the President of the government to change his strategy or will push him, for the next general elections, into greater radicalism.

**“The question now is whether or not the results of the recent municipal elections will force the Prime Minister to change direction or if he will stake his all on the forthcoming general elections”**

### **Recovery of consensus and constitutional reform**

If the foregoing considerations expressing processes already under way today were to take on a definitive political body, we would be embarking on an institutional crisis of great magnitude. We are already heading in that direction with firm and inevitable step, unless the forthcoming general elections bring about political change. But even if the PP were to win the next parliamentary elections, it would be absolutely essential once more to achieve a nationwide agreement with the PSOE (a PSOE that, after defeat, would probably do without Zapatero as its head) to revive, *servata distantia*, the Agreement on the Transition. Agreement or coalition if that is preferred, in order to bring about a limited yet substantial reform of the constitution that will make it impossible to negotiate territorial sovereignty or to engage in horse trading with the exclusive, unrenounceable and non-delegatable competencies of the State, of a State worthy of the name. But that would be a completely different kettle of fish.