

The Monarchy in Spain

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*Abstract**

This paper offers an overlook on the institution of monarchy in Spain: history, organization, competences and legitimization. We emphasize the fact that with almost all competences formally linked to the King's role as Head of State, the monarch only carries out a 'formal act', whereas decisions rest with the Government and responsibility rests with the countersignatory of the King's acts. It introduces as well the question about the present and future role of the monarchy in European Union.

Este artículo ofrece una introducción a la institución de la monarquía en España: historia, organización, competencias y legitimación. Se destaca el hecho de que, en casi todas las competencias formalmente vinculadas con el papel del Rey como jefe del Estado, el monarca sólo ejecuta un acto formal, mientras que las decisiones recaen sobre el Gobierno y, la responsabilidad, sobre el refrendante de los actos del Rey. Se aborda igualmente el papel actual y futuro de la monarquía en la Unión Europea.

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1. *The Spanish Monarchy: A Brief History*

Several kingdoms reigned in the Middle Ages¹: under the Catholic kings in 15th century Spain became one kingdom [ending (1492) with the conquer of Granada] and their grandson, Carlos I, became the first king of the Austrian dynasty, ending with Carlos II. When Carlos II died without leaving any heir, Secession War (1700-1714) broke out between the Austrian (Habsburg) and Bourbon candidates to the throne, ending with the victory of the Bourbon candidate, a grandson of Luis XIV of France, who became Felipe V.

After the Napoleonic invasion (1808-1814), when the royal family was transferred to France and Napoleon installed his brother Joseph in their place, and the War of Independence, the Bourbon dynasty continued with Fernando VII. There were periods when the Constitution of 1812 was upheld (the Constitution drawn up by the liberals opposed to the French invasion) and others of absolutism. Upon Fernando VII's death his daughter Isabel became Queen Isabel II, and this was followed by the *carlistas* wars between the supporters of Isabel and those of Carlos, brother of Fernando VII². Several Constitutions succeeded each other: the Royal Statute of 1834 (a concession from the monarch³), and the Constitutions of 1837 and 1845, which reflected the government's liberalism to a greater (1837) or lesser (1845) extent. In 1868 Isabel II had to go into exile, because her government was unable to resolve the social and political problems and the opposition forces joined together against the queen. In 1870, with a break in the dynasty, the Parliament chose Amadeo de Saboya as King. After his resignation (2/1873), the First Republic in Spain (1873-1874) had a brief life because of the political and social instability, and the division between federalists and unionists, and the lack of a powerful social support; in such a short period it had four presidents. The Republic ended January 3rd, 1874 after a coup d'état, and -after a period of undefinition- was proclaimed the 'Restoration' (of the Bourbon dynasty), and Alfonso XII, son of Isabel II, was ruled as King.

The Constitution of 1876 installed a constitutional monarchy, where the King was not only Head of State but also Head of the Executive, and the government required the approval of both King and Parliament. Democracy was weak and elections were rigged, as a way to obtain the majority for the head of cabinet chosen by the monarch.

During Alfonso XIII's reign, a dictatorship existed between 1923 and 1930, under the command of General Primo de Rivera. The monarchy became weak because of the support to dictatorship and the II Republic was declared on April 14th 1931. Council elections were then held, won by Republican forces. The II Republic ended with the Spanish Civil War and Franco's victory in

¹ These reigns were consequence of the Reconquest against the Moslems that had invaded the peninsula (711).

² The *Pragmática Sanción* was abolished in 1789. This law, introduced by the Bourbon dynasty, prevented any female from inheriting the throne (*ley sálica*) and fully reintroduced *Las Partidas*. This latter law allowed female successors to the throne, but was rejected by the supporters of Fernando VII's brother.

³ From the Regent, María Cristina de Borbón, mother of future Queen Isabel II.

April 1939. Franco's dictatorship was imposed until his death (November 20th 1975), but during the regime he declared Don Juan Carlos, son of Don Juan, son of Alfonso XIII, as successor (1969), according to the Succession Act (1946). Although the legitimate heir according to the dynastic rules was Don Juan, Franco placed his trust in his son⁴. Don Juan Carlos left his parents' residence in exile (1948) in Estoril and moved to Madrid in order to receive education from Franco. When Franco died, Don Juan Carlos was designated king. Thereafter, it was the King's wish to bring back democracy to Spain.

2. *The Monarchy: Organisation and Conduct*

2.1. **Inheritance and succession**

The Crown under the Spanish Constitution is the outcome of recent events and a search for equilibrium during the delicate transition to democracy, involving not only rational but also personal factors.

The Constitution provides that "The Spanish Crown shall be inherited by the successors of H. M. Juan Carlos I de Borbón, the legitimate dynastic heir. Succession to the throne shall follow ordinary principles of first-born and representation, with the first line always having preference over subsequent lines; within the same line, the closer grade over the more remote; within the same grade, male over female, and if of the same sex, the elder over the younger" (Section 57.1). That is the historical order of succession, without excluding women from the throne, but where men have preference over women.

The current Crown Prince (traditionally named Prince of Asturias) is Prince Felipe, the King's only son, though the youngest of his children. This is the only case in the Spanish Constitution where men and women are not completely equal. The preferential treatment given to males is a historical tradition derived from *Las Partidas* of Alfonso X, El Sabio (The Wise), dated 1265. Although the framers of the Constitution of 1978 wanted to implement a modern parliamentary monarchy, some traditions continued as a concession to the past. However, at the time the Constitution was enacted, this was the standard formula in monarchic European Constitutions. Only some years later was this changed to enable the first-born to prevail, regardless of sex.

The Constitutional Court has rejected the unconstitutionality of Section 57.1⁵ since it expresses the will of the constituents, in the same way as Section 14, which prohibits discrimination on the grounds of sex⁶.

⁴ Franco considered himself monarchical and defender of monarchy, although he wanted a monarchy compatible with his will. The monarchists fought with Franco during the Civil War.

⁵ Decision 126/1997, of July 3rd.

⁶ In 1984, when Spain signed the Convention on the Elimination of all forms of Discrimination against Women, Spain made a reservation regarding succession to the Crown. The European Convention on Human Rights rule that Section 14 may only be upheld in connection to the violation of another right. Based on this argument, the

During Zapatero's first government (2004 to 2008), the Council of State (senior authority for discussion) was instructed by the Government to examine several constitutional changes, including different succession rules that removed all preferences on the grounds of sex⁷. Nevertheless, after issuing its report, the Government did not initiate any constitutional reform because the aim was not only to alter the succession to the throne but other more important issues, basically Title VIII, "Regions", on which a consensus is currently impossible. Furthermore, a constitutional reform in this case is very difficult as it must be approved by a two thirds' majority of the members of each House of Parliament; Parliament is then immediately dissolved and the *Cortes* elected must ratify the decision and examine the new constitutional text; this must be upheld by a two thirds' majority of the members of each House and, finally, is presented for approval in a referendum⁸. Besides, after the birth of Prince Felipe's second daughter, Government considered there is no longer an urgent need to change the present regulations. In any case, the reform would not affect Prince Felipe but his children. Nevertheless, a proposed amendment that only affects equal treatment in inheritance to the Crown would be feasible as it is unanimously believed that equality between sexes must also be present in this issue.

If all the lines designated by law become extinct, the *Cortes Generales* (Spanish Parliament) shall provide for succession to the Crown 'in the manner most suitable to the interests of Spain' (Section 57.3).

The Constitution also contains the basic rules on abdication and accession to the throne. It provides that all abdications and waivers must be settled by an 'Organic Act', i.e. a law that requires an absolute majority in Congress, Parliament's lower chamber (Section 57.5). An event where the right of accession to the throne is lost is marriage against the express prohibition of the King and the *Cortes Generales* (Section 57.4). Therefore, any "exceptional" case requires the

ECtHR has rejected four appeals brought by Spanish women who alleged discrimination on the grounds of sex in the inheritance of noble titles. Applications n. 41127/98, 41503/98, 41717/98 and 45726/99; the Court declares the inadmissibility (October 28th 1999): "The Court considers that a nobiliary title cannot, as such, be regarded as amounting to a "possession" within the meaning of that provision. In general, the same applies to a mere hope of being able to exploit such a title commercially, for example, as a trademark. Since in the instant case the applicants are unable to assert the right to use the nobiliary titles concerned, *a fortiori*, they cannot claim any legitimate expectation concerning the commercial exploitation of those titles. In these circumstances and in accordance with Section 35 § 3 of the Convention, the Court considers that the applicants' complaints under Section 1 of Protocol No. 1 taken alone and under Section 14 of the Convention taken together with Section 1 of Protocol No. 1 must be dismissed as being incompatible *ratione materiae* with those provisions".

⁷ See *El Informe del Consejo de Estado sobre la reforma constitucional*. Consejo de Estado-Centro de Estudios Políticos y Constitucionales, Madrid 2006, which provides the opinions of legal scholars on this reform.

⁸ Although the authors of the Constitution only wanted to protect the monarch's decision-making, provisions on constitutional review (Section 168 Spanish Constitution) refer to Title II, meaning that any change within this Title –such as a reference to sex in inheritance to the Crown– must follow this difficult procedure. Changes involving Title VIII (Regions) do not need this procedure, but the opinion of Council of State was to use the same procedure for every proposed reform, when they take place at the same time.

intervention of Parliament: anything that departs from the provisions of the Constitution must be subject to the decision of the people, not the monarch's will. This highlights the fact that the monarchy, albeit linked to the past, is subject to the will of the people.

Almost all provisions regulating the Crown are in the Constitution. Many issues unrelated to the constitutional duties of the Crown are not implemented by law, e.g. the role of the royal family.

The general opinion is that the royal family must be politically neutral. In line with this, members of the royal family may not run for public office⁹. The King, the Queen and the Crown Prince must be fully dedicated to their tasks. Other family members, such as the King's daughters, though they occasionally act as representatives of the Crown (mainly in acts related to culture or patronage), have jobs as any other citizen. There are no legal limits on which jobs they may hold.

2.2. Financing of the Royal Family

The royal family is assigned an amount from the public budget, which is freely disposed of by the King to pay the royal family and all staff working for him (*Casa Real* or Royal Household). This budget must be administered according the general rules on public accounts¹⁰, is issued by the Government and is then approved by the Parliament, as part of the general budget. Each year the Head of the Royal Household informs the Government of the amount he considers necessary, but the final decision rests with the Government and Parliament. Legal scholars have indicated that this amount must be suitable to accomplish the tasks attributed to the monarchy.

For reasons of transparency, a supervisor is in charge of the Royal Household's accountability¹¹.

Although there is no exception under Spanish tax law, the King has no "salary", and from the budgetary amount assigned to the *Casa Real* the King himself must decide how much will be used to pay civil and military offices, and how much should be allocated to him or his family. It is therefore difficult to know the exact figure of his 'private income'. This, together with the non-accountable nature of his acts, makes it difficult to demand any tax payment. However, other members of the royal family (the King's daughters) are subject to the same tax obligations as ordinary citizens.

2.3. Accountability and immunity

The King enjoys political immunity and is exempted from criminal law¹²: "The person of the

⁹ Section 6 Organic Law of the General Electoral Regime.

¹⁰ The 2008 budget figure is 8,663.02 millions euros. A further 5,987.05 millions euros is assigned to the administration of the Head of State. The 2009 draft budget keeps the same amounts, because of the economic 'crisis'.

¹¹ Royal Decree 1106/2007, August 24th.

King is inviolable and shall not be held accountable" (Section 56.3).

In political terms, responsibility for the monarch's acts lies in the persons who countersign his acts. These acts are mainly countersigned by the President of Government or Ministers; in presidential elections, the power to countersign is entrusted to the Chairman (Speaker) of Congress (House of Parliament) (Section 64.1). Any countersignatory of the King's acts shall be liable for the same (Section 64.2).

The Spanish Constitution only refers to the king's immunity, not accountability. This is best explained by the fact that the King only accomplishes constitutional duties that were conceived for other persons or institutions, rather than the traditional motto "The king can do no wrong".

Nevertheless, royal immunity did not prevent Spain's ratification of the treaty on international criminal Court, on the grounds that internal immunity did not affect international liability. There was no constitutional reform, as in other countries.

Immunity only applies to the King, not to the entire royal family. Nevertheless, the common opinion among legal scholars is that other members of the royal family, basically the Queen and Crown Prince, should also enjoy immunity when acting on behalf of the monarch, e.g. official visits of the Crown Prince.

2.4. Criminal offences against the Monarchy

Crimes committed against the monarch, royal family and regent (if applicable), are the object of a special chapter in the Criminal Code (Title XIX, Chapter II), ranging from murder to slander and libel. More serious penalties are imposed than in ordinary cases. A difference in relation to offences and libel is that ordinary citizens may only be prosecuted at the request of the injured party, whereas in cases involving the monarch and royal family these crimes are prosecuted by the Crown Prosecutor and exclusively when the monarchy is affected. The scope of the expression "when the monarchy is affected" is disputed: this would seem to only refer to cases related to duties legally attributed to the King, but since it has been traditionally held that a person who is king is so every day and always, there may be a larger number of cases where the Crown Prosecutor can act. Furthermore, there are some events totally unrelated to the monarch's duties that are potentially detrimental to the Crown's image¹³.

¹² Legal scholars consider that it would be possible a civil –at least a patrimonial- responsibility through the Royal Household, because there is no legal provision that the king could be judged by courts: BIGLINO CAMPOS (2001, pp. 207-208). DE CARRERAS (2003, p. 244) considers that the king has not only civil responsibility but penal responsibility in cases not related to his public functions.

¹³ The recent case of prosecutions brought against the authors of sarcastic cartoons, in which appeared the Crown Prince and his wife making love; the Court considers that the authors have insulted the Institution of the Crown (Decision of the Central Criminal Court, 2007, November 13th). In another case (Decision of the Central Criminal Court 2008, December 22nd) absolved the authors of another cartoon in which the king appeared hunting a drunk

2.5. Limits on the public behaviour of the Monarch and Royal Family

Rather than legal limits, there are self-restraints, e.g. the Royal Family never votes (except in a referendum) in order to reflect its political neutrality.

The Royal Family must serve as an example, which is why the Spanish press traditionally followed a policy of self-control. Perhaps the Spanish Royal Family has been less exposed than other royal families, and only main family events –weddings, births– are reported to the press. This principle lately seems to be applied less strictly.

Incompatibilities are not foreseen by law, but are implicitly applied, based on the duty to be accomplished by the monarch and his role as the Head of State. In other words, incompatibilities are usually conventional.

The behaviour of members of the Royal Family is not often discussed in public debates. It is occasionally the object of debate in a special event, e.g. royal marriage, etc., mostly related to the Royal Family's private life. Only lately has there been more debate regarding certain affronts to the King and Royal Family, as will be seen below.

3. Current duties/competences of the King

Although the King is Head of State (Section 56.1), it is traditionally assumed that the 'king reigns but does not govern', i.e., he has *auctoritas* but no *potestas*. He is a State authority, separate from other authorities; although many competences are linked to the Government, the Crown¹⁴ is a fully separate body, completely departed from the monarchical model of the 19th and early 20th centuries: at that time, the king was also head of government, notwithstanding the prime minister, and the king ruled over Parliament, as he appointed a number of senators and was empowered to sanction or to veto laws, with a real power of veto.

At present, the Constitution grants the monarch a number of powers (or duties, in more precise terms), always related to his role as Head of State and far removed from the powers held by the Crown in the past. Even his general tasks "to arbitrate and direct" do not involve duties conferring independent power, but duties linked to the tasks assigned. Thus, the King may arbitrate or direct whilst executing his duties, not when separate competences are assumed, e.g. he may advise the President of the Executive when receiving information on State affairs, with the understanding that the King must not advise him publicly and, most importantly, whether or not the King's advice is followed is exclusively decided by the President.

bear, because the Court this time considered that they had only made an acid critic, but they had not insulted the Crown.

¹⁴ In Spain there is no identity between Crown and State.

The King¹⁵ must swear before Parliament that he will faithfully carry out his duties, obey the Constitution and the law and Regions. Like any other citizen, the King is subject to the Constitution and the law but, as other State bodies, has a stronger entail (Section 53.1).

All King's duties described below are derived from the Constitution.

3.1. Representation and general competences as Head of State

The monarch symbolises State unity and permanence (Section 56.1)¹⁶. This characteristic is highlighted by the Regions, acting as a symbol of unity against party divisions. Together with the King's role as representative in international relations, they underline the symbolism traditionally associated to the monarchy.

He arbitrates and directs regular institutional operation (Section 56.1). These powers do not entail an active political role, but the possibility of supporting institutions and other political bodies in a search for general consensus. The foregoing is basically expressed through institutional messages or speeches, mostly indirect. Although some authors¹⁷ have indicated that the King holds real powers that should be wisely administered, these opinions were expressed shortly after the Constitution was approved, influenced by historical experience and the *Transición*, and omitted a global analysis of a king's role under new constitutions, where the monarchy is another component of democracy. The King may direct or arbitrate in matters related to constitutional competences, derived from the monarch's traditional role as "advisor", based on his long experience gathered over various periods and governments¹⁸. In any case, although the king may offer advice, the final decision is always taken by the body or person with true competence. Some authors have remarked that the King may try to persuade, as long as he does not interfere in the normal operation of the State. The King may not exert any political influence but can only act further to a relationship, leaving the players free¹⁹.

He assumes the highest representation of the Spanish State in international relations, especially with its historic nations (Section 56.1). The traditional view was that "historical nations" referred to Latin American countries, formerly Spanish colonies. However, after Spain's adhesion to the European

¹⁵ The Crown Prince must also take the oath upon coming of age (Section 61).

¹⁶ According to Prof. RUBIO, the King is more a symbol of the nation than of the State, like two amendments proposed whilst Congress and Senate were writing the constitutional text. The king is more a symbol of the common characteristics of the Spanish people than symbol of the juridical form, the State. See RUBIO LLORENTE (2001, pp. 44-45).

¹⁷ Basically HERRERO DE MIÑÓN, including SÁNCHEZ AGESTA and GARCÍA DE ENTERRÍA.

¹⁸ Presidents of a Republic usually hold their mandate for a shorter number of years.

¹⁹ DE CARRERAS (2003, pp. 255-256).

Community, Europe is also considered part of this historical community, based on both current and past links with many European countries and traditional ties between royal families. Over the last few years certain acts of representation in Latin American countries (mainly when a president accepts office) have been assumed by Prince Felipe, as a way to grant him more presence in international relationships and prepare him for future royal tasks. Nevertheless, some authors have questioned the legality of his presence, as the official role of the Crown Prince is not foreseen by law.

The King also plays a significant role in relationships with other monarchies, particularly in Arab countries, from Morocco to Saudi Arabia. On occasions, the King has been the key to enter this inaccessible world.

Most of the competences attributed are symbolic, since the King only 'perfects' an act in a formal manner, whilst the real competence rests with another institution.

3.2. Competences that involve other State bodies

- *To sanction and enact laws* [Section 62 a)]: Although the formula was taken from ancient monarchical constitutions, now this approval is conceived as a duty: a monarch is unable to ignore this duty to approve. This sanction is not subject to any type of control, whether political or judicial. The sanction and enactment of a law perfect an act approved by the *Cortes Generales*, recognising its status as national law.

- *To summon and dissolve the Cortes Generales (Parliament) and to call elections under the terms provided for in the Constitution* [Section 62 b)]. The dissolution of the Parliament is substantively a duty entrusted to the President of the Executive, following a discussion in the Council of Ministers. The act needs the signature of the President of Government

- *To call a referendum in the cases provided for in the Constitution* [Section 62 c)]. A call for a referendum is also a duty of the Executive and its justification is expressed in the Constitution. The authors of the Constitution intended a limited use of a referendum, only allowing it in the case of "political decisions of special importance"²⁰ or in the event of constitutional review (Sections 92.1 and 168).

- *To propose a candidate as President of the Executive and, if applicable, to appoint or remove him/her from office, as provided in the Constitution* [Sections 62 d) and 99]. Proposing a candidate in practice involves the King's highest decision-making capacity, although his choice is determined by the election results. The King nominates a candidate after consulting the representatives appointed by political groups in Parliament, aware of which candidate is able to obtain the support of Congress in order to become President. Hypothetically, if the outcome of the elections is disputed and does not have a clear majority, the King could have 'real' decision-making capacity.

²⁰ Since approval of the Constitution, a referendum has only been called on two occasions: to question Spain's adhesion to NATO (1983) and to approve the Treaty for a European Constitution (2005).

However, until now, the only possibility has been to name the candidate of the party with the most votes or the candidate with the highest support in Congress. This power entrusted to the King, to appoint a candidate as President of the Executive, is probably a result of pre-constitutional practice. The authors of the Constitution ignored any difference between the new monarchy imposed and the previous system. PÉREZ ROYO has even stated that it would be preferable for the candidate to be appointed by the Chairman of Congress²¹. In any case, practice has confirmed that the King may only designate a person with the highest possibilities of obtaining a vote in Parliament and, more importantly, that only Congress is able to decide: members of Parliament choose the President of Government through their vote. The King's margin of discretion is very limited: even when election results are not clear a nomination cannot be made without taking into account the weight of political forces in Congress; and even if the members uphold this nomination, this only confirms that the King made the right choice (without imposing any decision).

- *To appoint and dismiss members of Government following the President's proposal* [Section 62 e)]. All decisions on the composition of Cabinet are made by the President of Government. Although Parliament controls the Government through a motion of censure, this covers the entire Government and a vote passed in relation to an individual minister does not necessarily entail his/her removal. The President of the Executive may change his ministers at will.

- *To issue decrees approved by the Council of Ministers* [Section 62 f)]: in the same way as enactment of the law, the issue of decrees is a duty. It is another formality, given that decrees only express the will of the Government. Although some decrees are linked to the Royal Household (e.g. appointment of the Head of the Royal Household and the granting of a noble title to the King's daughters upon marriage) and, under the form of a decree, express two wills (the king's will, with the approval of the President), they relate to a particular domain based on the Royal Household and family.

- *To confer civil and military positions and award honours and distinctions in conformity with the law* [Section 62 f)]. All these positions are approved by the Government or other authorities as established by law. A special case is the granting of noble titles, which is carried out by the Government²², although some authors consider that this is a residual power of the monarch. Perhaps the possibility of inheriting a noble title should be questioned in a democracy, even if merely symbolic²³.

²¹ PÉREZ ROYO (2001, p. 164).

²² Other titles have been granted for life to reward special services, e.g., to Adolfo SUÁREZ, former President of the Executive, Sabino GONZÁLEZ CAMPO, former Head of the Royal Household, or Camilo José CELA, Nobel Literature Prize. The King has also granted a noble title to his daughters (only for life) upon marriage.

²³ Organic Act 3/2007, of March 23rd, passed under the socialist Government of José Luis RODRÍGUEZ ZAPATERO, established equal treatment in relation to the inheritance of a noble title, which until then was governed by the ancient *Partidas* of the Middle Ages. Perhaps this traditional inheritance should be abolished, rather than just changing the way in which titles are inherited. In any case, noble titles do not confer any right or privilege now,

- *To be informed of State affairs and, for this purpose, to preside over meetings of the Council of Ministers* [Section 62 g)] whenever he deems fit and the President of the Executive's requests this. In this case the King is the president of the Council of Ministers in a formal manner: his presence is only formal, as a way to obtain information on State affairs. It is important to note that the President's request is necessary, although the King must be in agreement, i.e. both the will of Government and King must be present. In any case, when the King presides the Council of Ministers he does not take part in any decisions, as he is only present for information purposes. In practical terms, the King's presence on the Council of Ministers is not common and he is only occasionally invited. The usual channels of information are the regular meetings held between the King and the President of the Executive.

- *To exercise supreme command of the Armed Forces* [Section 62 h)]: Although this is another formal competence²⁴, it is a monarchic tradition for the King first, and then the Prince, to receive military training. Nevertheless, as pointed out by De Otto²⁵, the King does not effectively command the Armed Forces. This command is entrusted to the Government, although the King is endowed with authority, the hierarchical command of every superior over lower ranks (i.e. authority but not power). It is only in extraordinary cases when the King can exert command over lower ranks, such as in the failed coup d'état of 1981, when the government was kidnapped inside the House of Congress and the King addressed the instigators both as their king and as high commander. In the foregoing extraordinary circumstances, it would even have been possible to entrust the Secretaries and Deputy Secretaries of State with the power to countersign²⁶, as they assumed the Government's powers during the time it was kidnapped by the military rebels.

- *To exercise the right of clemency in accordance with the law, though excluding any general pardons* [Section 62 i)]. This power is derived from former constitutions but has a different meaning nowadays when entrusted to the Government, according to the law.

- *The King accredits ambassadors and other diplomatic representatives and the King expresses the State's assent to international commitments through treaties*, in conformity with the Constitution and the law (Section 63). These competences are also formal duties that are exercised by the Government. These include the standard competences of any Head of State, where symbolism has a special meaning. In any case it is the Government that makes the final decision and, in the case of certain treaties, the Government together with Parliament (Sections 93-96).

except the right to use and transfer the title. The power "to confer and award honours and distinctions" is given a wider meaning and usually includes the concession of other worldwide honours and distinctions (medals...).

²⁴ Nevertheless, some authors (SÁNCHEZ AGESTA, HERRERO DE MIÑÓN, a minority) believe that the King is the actual head of the Armed Forces, although this position is held jointly with the Government. SÁNCHEZ AGESTA (1984, pp. 238-239); HERRERO DE MIÑÓN (1980, p. 50).

²⁵ DE OTTO (1988, pp. 11-44).

²⁶ TORRES DEL MORAL (2001, pp. 235-238).

- *The appointment of various members of important State bodies*: The King appoints the members and chairman of the General Council of the Judiciary (Section 122), the State's Public Prosecutor (Section 124) and the judges and chairman of the Constitutional Court (Section 159). All these members are previously nominated by other bodies: the *Cortes*, Government, etc. in the form established by law (Organic Act of the Constitutional Court, Organic Act of the Judiciary, Public Prosecutor's Statute).

- *Justice emanates from the people and is administered on behalf of the King* by judges and magistrates belonging to the Judiciary (Section 117): this formula is reminiscent of the past and also expresses a symbolic State unity and permanence.

3.3. Purely symbolic competences

Acting as the Senior Patron of Royal Academies [Section 62 j)]. This exclusively symbolic power is a tribute to the fact that many Academies were historically sponsored by the Bourbon dynasty when it arrived in Spain. It has the same significance as the honourable patronage of other culture or welfare entities assumed by the King or other members of the Royal Family.

All these competences belong to the Government or other institutions. Though linked to the King's role as Head of State, all these powers are symbolic (or ceremonial), since decision-making lies with the Government (or other organs). The monarch only carries out a 'formal act', whereas decisions and responsibility rest with the Government.

Responsibility rests with the countersignatory of the King's acts. Every public act of the King must be countersigned, usually by the President of the Executive or his Ministers, and by the Chairman of *las Cortes* if related to presidential election. This countersignature may be tacit rather than explicit, e.g. the presence of a minister during an official visit has the value of a countersignature.

The persons entitled to countersign the King's acts are stated in the Constitution: the President of the Executive, the Ministers or the Chairman of Congress (Sections 64 and 99). Only these authorities may countersign the acts entrusted to the King, even if the countersignatory is unrelated to the act, e.g. Presidents of Regions are elected by Autonomous Parliaments and must then be appointed by the King: the President must countersign an appointment he has not participated in. The Constitutional Court has held that the individuals entitled to countersign may only be those authorities named in the Constitution and nobody else²⁷.

The only acts of the monarch that are not subject to a countersignature are these linked to the

²⁷ Decisions 16/1984, of February 6th; 5/1987, of January 27th; and 8/1987, of January 29th. The first case dealt with the appointment of the President of the Autonomous Community of Navarre, and the other two examined the appointment of the President of the Basque Country.

Royal Household (Section 65)²⁸. In this case, the Constitution states that the King may freely appoint and dismiss the civil and military members of his Household, and may freely allocate the budgetary amount to his family and Household. Nevertheless, even in this field, it is a fact that a Royal Decree decides the Household's organization and that only minor decisions are left to the full discretion of the King. The appointment of the Head of the Royal Household is also passed by a governmental decree, indicating the need for a double guarantee in carrying out this task: the Head is in charge of royal institutional relationships, mainly with the Government, and is also liable for the Royal Household's acts²⁹. The general rule, then, is that even here in most cases a countersignature is necessary to validate any royal acts, which are otherwise null and void.

It is also generally agreed that all acts concerning the Royal Household are subject to judicial review, when they are acts of public administration which, though separate from the general public administration, pertain to the State and are therefore subject to control by ordinary courts (in the case of a fundamental right, the Constitutional Court may be involved).

There is more discussion on whether the Auditors' Court may exercise control, although it is generally believed that this control would only be formal. In any case, all bookkeeping is governed by general accounting rules and responsibility for these acts always rests with the Head of the Royal Household.

4. Current Legitimization of the Monarchy

Spain's current monarchy has inherited its 'historical monarchy' -in the words of the Constitution-, i.e. the king descends from the former ruler: Don Juan Carlos is the grandson of Alfonso XIII, the last king who ruled before the 1931 Republic and Franco's regime. He is also Franco's chosen heir, because Franco preferred Juan Carlos to his father Don Juan, son of Alfonso XIII. Although Franco was in favour of the monarchy, he did not trust Don Juan, which is why Don Juan Carlos left his family to be educated by Franco. When Juan Carlos had already been proclaimed king and the first steps towards democracy had been taken before the first general elections, Don Juan renounced. This made Juan Carlos the legitimate heir in strict monarchic terms.

During the constitutional debates, the main political forces agreed to support the monarchy. Nevertheless, the Socialist Party (PSOE) provisionally maintained an amendment for the Republic that could be used in exchange for other more important concessions (mainly related to

²⁸ The Household is the body that supports any activity connected to the tasks of the Head of State. It has administrative and economic powers and must oversee its relationship with other state bodies, entities and individuals, ensuring the safety of the King and Royal Family. It also handles the internal organization of the Household. Thus, its role is both domestic and institutional; this latter role is very important as it ensures a stable relationship with other bodies and entities, and the adequate execution of the King's duties.

²⁹ Constitutional Court Decision 112/1984, of November 28th, which settled an individual appeal for protection (*recurso de amparo*) brought against the alleged discrimination of a member of the Royal Guard.

fundamental rights). This amendment was more of a strategic weapon than the expression of a real purpose and was withdrawn as soon as the Party achieved its purpose. The Communist Party had previously declared its support of the monarchy, as a way to enable the implementation of democracy in Spain. Only very minor political forces in the constituent *Cortes* actually advocated a Republican State³⁰.

True and authentic legitimation is granted by the people's will, expressed in the Constitution. The monarchy, as well as the other constitutional authorities, is democratic because the entire State organization is based on the Constitution, which was enacted by a constituent parliament with the people's majority consent expressed in a referendum.

Consequently, Juan Carlos is legitimated in three ways: by historical monarchy, by Franco's designation as his successor and by the people's constitutional will. The first two only have historical significance and the last one is actually authentic in legal terms.

From a personal point of view, Juan Carlos represented a key in the path to democracy, someone who could obtain the support (or not direct opposition) to democracy from sectors friendly to Franco's regime, specifically the army. Although many people have defined themselves as "Republican", it was believed that Juan Carlos could enable a peaceful transition to democracy. Another factor was the memory of past Spanish republics that had sadly failed. The general feeling was that only Juan Carlos's monarchy could secure the desired objectives.

Because of the role played by Juan Carlos in the *Transición* (from Franco's death till the failed attempt of coup d'état in February 13th, 1981), many people are specific supporters of Juan Carlos but not, or not to the same degree, of the monarchy.

5. *The Republican tide*

Opposition to the monarchy is insignificant in Spain, due to the support of Juan Carlos and the role he played in early democracy (although many claim to be *juancarlistas* rather than monarchists). Many left-wing parties have defined themselves as Republican, notwithstanding their respect and loyalty to the monarchy. Although many left-wing people are keen supporters of the Republic, the Monarchy-Republic debate is no longer a priority. Perhaps a test of the monarchy will come with Juan Carlos's succession, when it will be apparent whether the monarchy is actually supported or not.

Nevertheless, in late 2007, some opinions were expressed against the monarchy, leading to a debate. Some of these derived from small groups of Catalanian independence-seeking activists,

³⁰ These constitutional debates on the monarchy are available in a compilation drawn up by CENTRO DE ESTUDIOS POLÍTICOS Y CONSTITUCIONALES (2004). See http://www.cepc.es/include_mav/getfile.asp?IdFileImage=458.

who burnt some photographs of the King³¹. Also in Catalonia, a party has defined itself as “Republican” (Esquerra Republicana de Catalunya) and most openly shows public opposition to the monarchy (e.g., party leaders do not attend any royal receptions). On the other hand, on the right wing of the political spectrum, a well-known radio announcer, working at a radio station supported by the Catholic Church, also in 2007 declared that Juan Carlos must abdicate, an opinion held by the far right in early democracy and based on the fact that Juan Carlos was a traitor to Franco’s regime (this was also the reason for the radio-announcer? May be, but he didn’t mention it).

A result of these events has been a certain debate on the monarchy, mostly to defend the role played by the King or to request a limit on future criticisms of the monarch or Royal Family. Later in 2008, some Queen’s opinions appeared in a biography became very polemic and opened a debate on the role and limits of monarchy, and in some way it was understood that perhaps monarchy was not already the only option.

The general feeling on the Monarchy-Republic debate is that it is not a priority given many other important issues. Therefore, as long as the monarchy acts according to the Constitution in the role entrusted as Head of State it may continue as such. Furthermore, a thorough discussion on significant aspects of the Constitution would be able to lead to other debated issues, e.g. the significance of Regions, not because of the symbolic unity represented by the monarch but because of the open-ended nature of the provisions on Regions. At present, there is still discussion between the Central Government and Regions on the scope of each competence³².

6. EU Membership and the Monarchy

European integration has not changed the monarchy’s position, but may have only emphasized the King’s symbolic role. As the King has no executive power he did not benefit from the EU’s executive development.

Spain has not discussed the monarch’s compatibility with principles of democracy and the rule of law on which European integration is founded, and European integration and its effects are also undisputed. European integration is a fact, and membership of the EU its natural consequence. The general feeling is that the EU was, and still is, positive for Spain. Spain’s improvement after its adhesion to the EU is undeniable: it no longer represents Europe’s exotic far-west but is one of its significant components.

³¹ The accused people were condemned for offences to the Crown, but two judges expressed dissident opinions in which they considered that the burning of a royal photograph is a way of ideological and expression liberties. Decision of *Audiencia Nacional* (National High Court), December 5th, 2008.

³² Nationalist parties include some that are Republican, but not everyone. On occasion, leaders from Regions have resorted to the King’s power as arbitrator in order to settle disputes.

The monarchy is considered compatible with democracy because it is enshrined in the Spanish Constitution and brought democracy after Franco, where real power rests with the people. Nevertheless, the monarchy should not be considered a permanent part of constitutional unity. Monarchical principle is submitted to a very complex procedure of revision, this is believed to have prevented a discussion about the Head of State (when not supported by the main political parties and society as a whole).

In any case, the issue of the monarchy's compatibility with the EU has not been the object of any proper debate³³, perhaps because there is a general feeling that King Juan Carlos is immune or that an open argument on the subject could dangerously lead to other issues, as mentioned before. On the other hand, the Spanish Constitution has not been amended in order to incorporate its European links and limitations, as have most other European Constitutions, although this was envisaged as part of the European Constitution (not for the Treaty of Lisbon? No, the Treaty of Lisbon was thought fully conformed to the Constitution). In the future case that further European integration is required, the Constitution must be followed and a referendum held in order for the Spanish people to approve the reform and/or put an end to the monarchy.

In any case, as some authors have pointed out, a monarchy may be justified as long as it is useful and plays the role assigned by the Constitution. Otherwise, the monarchy should disappear³⁴. This would definitely be the case if the EU were to become a Federal State.

If we eventually reach a European federation further to consensus on European integration, the monarchy would no longer be a significant issue and the Spanish monarchy should be no obstacle to a true EU.

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