CHAPTER FOURTEEN

WOMEN AND THE COST OF TRANSITION TO DEMOCRATIC CONSTITUTIONALISM IN SPAIN*

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THE SPANISH CONSTITUTION AND THE CONSOLIDATION OF THE SPANISH DEMOCRACY

The first Spanish constitution dates back to 1812. It symbolizes Spain joining in the bourgeois revolutions of the late 18th century. However, it was not until the 1931 Republican Constitution that Spain initiated its democratic constitutional venture. Unfortunately, the Republican experience was soon interrupted by the 1936–9 Civil War, which was followed by Franco’s dictatorship from 1939 to 1975.

The current Spanish Constitution was enacted in December of 1978 and marks Spain’s transition to democracy (for an overview of the different aspects of Spain’s democratic transition, see de Blas et al., 1993). Although Spain’s struggle with accommodating ‘nationalist forces’ is, to this day, the largest unresolved question, it is generally agreed upon that the Spanish Constitution has played a central role in consolidating Spain as a modern democracy within the larger European context (Hernández Gil, 1982; Peces Barba, 1989). Purposefully vague about those issues that most threatened the ultimate goal of consensus at the time, the 1978 Constitution came to be generally accepted as a valid framework for Spain’s modern democratic venture. It extracted broad, if not unanimous, consensus in Spain’s at the time largely polarized society. In the midst of an economic crisis, the Left was pressing for the constitutionalization of the welfare state and for republicanism, whereas the growing entrepreneurial class, happy to see Franco’s paternalistic interventionism go, was not willing to accept principles that would risk progress towards a modern capitalist society. Nationalist forces, such as

the Catalan and the Basque, reacting against the repression of their cultural identity and political autonomy during Franco, were asserting strong historical claims of self-government. Finally, the Catholic Church was trying to have its say too, on issues such as divorce, abortion and the state funding of religious schools.

The Spanish process of transition has been signalled for its positive singularity and its peacefulness. The monarchy, whose historical legitimacy had been interrupted, was restored by Franco as a solution to the problem of his succession. However, instead of perpetuating Franco’s regime, King Juan Carlos of Borbón led the country through a peaceful transition to democracy (Powell, 1991). With the coming into force of the constitution, there was a shift in the basis of legitimacy of the monarchy—from a title of succession to General Franco to the popular will expressed through the constitution. From a strictly constitutional point of view, the process was remarkable indeed: there was no constituent moment in purity, there was no full rupture, no revolution. Instead, there was a transformation process which formally proceeded under the legal instruments and apparatus of the old regime.

For the general population it was clear that the 1978 Constitution represented the best attempt to let the old wounds behind (for some, the wounds of the Civil War, for others, those of the dictatorship as well) and look forward to the consolidation of Spain as a democratic country within a broader European framework. Indeed, since its coming into force, in December 1978, the constitution has been accepted as a constitution of consensus. It has served centrist, left-wing and right-wing governments peacefully. Only once, in February of 1981, was there a short-lived intent of military coup, which was hindered by King Juan Carlos. In all this time, the constitution has only experienced one small reform, to allow EU citizens to be elected in municipal elections so as to comply with the Treaty of Maastricht. The only serious challenge to its legitimacy comes from those sectors within Basque nationalism, which claim a right of full self-determination, a claim that cannot be accommodated within the current constitutional framework.

Spain’s current constitutional reality is not unlike that of many of its western homologues. It is a social democratic state under the rule of law (Estado social y democrático de derecho); the powers of the monarchy are now largely symbolic. The real powers are divided between the three traditional branches and shared, according to jurisdictional divides, between central authorities and the Autonomous Regions which have granted themselves statutes of autonomy (estatutos de autonomía) spelling