

**Spain
and the
Rule of Law**

INTERNATIONAL COMMISSION OF JURISTS
GENEVA
1962

323.44
I61s

The International Commission of Jurists is a non-governmental organization which has Consultative Status, Category "B", with the United Nations Economic and Social Council. The Commission seeks to foster understanding of and respect for the Rule of Law. The members of the Commission are :

JOSEPH T. THORSON (Honorary President)	President of the Exchequer Court of Canada
VIVIAN BOSE (President)	Former Judge of the Supreme Court of India
PER T. FEDERSPIEL (Vice-President)	President of the Consultative Assembly of the Council of Europe; Member of the Danish Parliament; Attorney-at-Law, Copenhagen
JOSÉ T. NABUCO (Vice-President)	Member of the Bar of Rio de Janeiro, Brazil
SIR ADETOKUNBO A. ADEMOLA	Chief Justice of Nigeria
ARTURO A. ALAFRIZ	Solicitor-General of the Philippines; former President of the Federation of Bar Associations of the Philippines
GIUSEPPE BETTIOL	Member of the Italian Parliament; Professor of Law at the University of Padua
DUDLEY B. BONSAI	United States District Judge for the Southern District of New York; immediate Past President of the Association of the Bar of the City of New York.
PHILIPPE N. BOULOS	Deputy Prime Minister, Government of Lebanon; former Governor of Beirut; former Minister of Justice
U CHAN HTOON	Former Judge of the Supreme Court of the Union of Burma
A. J. M. VAN DAL	Attorney-at-Law at the Supreme Court of the Netherlands
ELI WHITNEY DEBEVOISE	Attorney-at-Law, New York; former General Counsel, Office of the USA High Commissioner for Germany
SIR OWEN DIXON	Chief Justice of Australia
MANUEL G. ESCOBEDO	Professor of Law, University of Mexico; Attorney-at-Law; former President of the Barra Mexicana
THUSEW S. FERNANDO	Judge of the Supreme Court of Ceylon; former Attorney-General and former Solicitor-General of Ceylon
ISAAC FORSTER	First President of the Supreme Court of the Republic of Senegal
FERNANDO FOURNIER	Attorney-General; President of the Bar Association of Costa Rica; Professor of Law; former Ambassador to the United States and to the Organization of American States
OSVALDO ILLANES BENITEZ	Judge of the Supreme Court of Chile
JEAN KRÉHER	Advocate at the Court of Appeal, Paris, France
AXEL HENRIK MUNKTELL	Member of the Swedish Parliament, Professor of Law at the University of Upsala
SIR LESLIE MUNRO	Secretary-General of the International Commission of Jurists; former President of the General Assembly of the United Nations; former Ambassador of New Zealand to the United Nations and United States
PAUL-MAURICE ORBAN	Professor of Law at the University of Ghent, Belgium; former Minister; former Senator
STEFAN OSUSKY	Former Minister of Czechoslovakia to Great Britain and France; former Member of the Czechoslovak Government
LORD SHAWCROSS	Former Attorney-General of England
SEBASTIAN SOLER	Attorney-at-Law; Professor of Law; former Attorney-General of Argentina
PURSHOTTAM TRIKAMDAS	Senior Advocate of the Supreme Court of India; Secretary, Indian Bar Association; sometime Secretary to Mahatma Gandhi
H. B. TYABJI	Barrister-at-Law, Karachi, Pakistan; former Judge of the Chief Court of the Sind

Secretary-General: SIR LESLIE MUNRO, K.C.M.G., K.C.V.O.
Former President of the General Assembly of the United Nations

Administrative Secretary: EDWARD S. KOZERA
Former Lecturer in Government, Columbia University

**Spain
and the
Rule of Law**

INTERNATIONAL COMMISSION OF JURISTS
GENEVA
1962

323.44

IG/s

TABLE OF CONTENTS

INTRODUCTION	3
I. IDEOLOGICAL AND HISTORICAL FOUNDATIONS OF THE REGIME	5
II. THE SINGLE PARTY SYSTEM	10
III. THE NATIONAL SYNDICALIST COMMUNITY	14
IV. LEGISLATIVE POWER	18
A. Legislative Power of the Chief of State	18
B. The Legislative Power of the People	18
C. The Participation of the Cortes in the Making of Laws	20
(1) Composition, Nomination, and Election of the Cortes	20
(2) The Jurisdiction of the Cortes	20
D. The Legislative Power of the Government	22
V. THE POWERS OF THE EXECUTIVE	24
A. Organization and Powers	24
B. Maintenance of Law and Order	25
C. Administrative Law	26
VI. THE JUDICIARY AND THE BAR	30
A. The Ordinary Courts	30
(1) Basic Statutes	30
(2) Appointment of Judges	30
(3) Disciplinary Measures against Judges	32
B. Special Courts	33
(1) Labour Tribunals	33
(2) Tribunals for the Protection of the Syndical Organization	35
(3) Military Courts	35
C. Independence of the Judiciary	36
D. Organization of the Bar	37
(1) The "Colegios"	37
(2) Professional Discipline	37
(3) Independence of the Advocates	38
VII. CIVIL LIBERTIES AND POLITICAL RIGHTS	40
A. Freedom of Association and Assembly	42
(1) Freedom of Association	43
(2) Regulations Governing Religious Associations	44
(3) Freedom of Assembly	46

B.	The Free Expression of Ideas and Especially Freedom of the Press	47
C.	Religious Freedom	53
D.	The Right of Petition	56
E.	Suffrage	58
VIII.	DEFENCE OF THE REGIME	60
A.	The Law on Public Order of July 30, 1959: A Penal Law enforced by the Administration	60
B.	Law on Political Responsibilities of February 9, 1939	63
C.	Penal Legislation for the Protection of the State and the Defence of the Regime	65
	(1) The Penal Code	66
	(2) Code of Military Law	70
	(3) Decree of September 21, 1960	71
	(4) Law for the Repression of Freemasonry and Communism of March 1, 1940	72
IX.	THE PENAL PROSECUTION OF POLITICAL OFFENCES	75
A.	The Predominant Role played by Military Courts	75
B.	Arrest and Preventive Custody	76
C.	Defence	78
D.	Admission of the Public to Trials	80
E.	Appeals	81
X.	CONCLUSIONS	82

APPENDICES

1.	Labour Charter of March 9, 1938	89
2.	Act of July 17, 1942, Creating the Spanish Cortes	96
3.	Charter of the Spanish People of July 16, 1945	100
4.	Referendum Act of October 22, 1945	104
5.	Law of Succession to the Chief of State of June 7, 1947	105
6.	Law on the Principles of the National Movement of May 17, 1958	108
7.	Excerpts from the Cerón Trial	111
	Part A. Public Prosecutor's Indictment	112
	Part B. Speech of Defence Counsel for Cerón	123
	Part C. The Court's Finding and Sentence	129
8.	Letter from the 339 Basque Priests	144
9.	Letter of Protest against the Censorship from 350 Spanish Intellectuals	152

INTRODUCTION

The International Commission of Jurists now publishes its report on "Spain and the Rule of Law".

The interest of the Commission in Spanish developments dates back many years. *Bulletin of the International Commission of Jurists* No. 7 of October 1957 dealt with Political Trials in Spain. *Bulletin* No. 8 of December 1958 commented on new arrests and trial proceedings in that country, while *Bulletin* No. 9 reported in August 1959 on the activities of the Spanish Bar Associations.

The then Secretary-General of the Commission visited Spain in April 1960 and established relationships with members of the legal profession in Madrid, Barcelona and Sevilla. Professor Silverio Coppa of the Rome Bar acted in March 1961 as the observer of the Commission at the trial in Madrid of Professor Tierno Galvan of the University of Salamanca and his eight co-accused.

Throughout this period, members of the Judiciary and Bar as well as academic circles in Spain have repeatedly manifested great interest in the activities of the Commission with the result that the Spanish mailing list of the Commission's publications has continued to grow. Two Spanish jurists attended the European Conference held by the Commission in Vienna in April 1957.

The Commission is aware of the sufferings and ordeals of the Spanish people during and after the Civil War. It is not for the Commission to pass judgment on the profound divisions which afflicted Spain in 1936 and thereafter and which culminated in the present Government of General Franco.

The Commission is concerned with the extent of the observation of the Rule of Law in Spain from 1936 to the present day. On this vital matter the reader will judge for himself from the Report.

It is to be profoundly hoped that respect for the dignity and the rights of the individual are about to be accorded a manifest recognition by the Spanish government. Declarations which appear to

give some degree of freedom to the Spanish press are mere words if the Government can, as it still does, appoint and dismiss editors and control absolutely both the expression of editorial opinion and the content and format of the news.

In time of peace in Spain the constant use of military courts for the trial of many offences which would normally be dealt with by civilian courts is a disturbing breach of the principles of the Rule of Law.

The Commission is animated by the sincere wish that the brave and spirited people of Spain with their splendid history and culture, should move towards freedom and prosperity in the European Community.

November 1962

LESLIE MUNRO
Secretary-General

I. IDEOLOGICAL AND HISTORICAL FOUNDATIONS OF THE REGIME

The modern Spanish State is the product of a military rebellion which has not failed to leave its mark upon it. On July 24, 1936, several days after the military revolt, led by the Generals Sanjurjo, Mola, Franco, Goded, Queipo de Llaño, Fanjul, Saliquet, Orgaz and Valera, a Junta for National Defence under the presidency of General Cabanellas was formed at Burgos and assumed all the powers of state in the nationalist zone.

This Junta was dissolved, upon its own initiative, by the Decree of September 29, 1936, which transferred its powers to General Franco. The essential provisions of the Decree are as follows:

The Junta for National Defence, created by the Decree of July 24, 1936, and the provisional regime of the combined command, corresponded to a need created by the most urgent demands of the Spanish liberation. Civilian life, having been reorganized in a perfectly normal fashion in the recovered provinces and liaison having been established between the different fronts on which the Armed Forces are fighting to safeguard the Nation, as well as for the cause of civilization, the need for an organic and efficient regime has arisen, in order to respond adequately to the new reality of Spain and to prepare the country's future with the utmost authority. Reasons of every kind stress the imperious necessity of concentrating under a single head all powers which aided by the fervent participation of the Nation, should lead on to the ultimate victory and to the establishment, consolidation, and development of the new State. In consideration of the motives which have been set forth here and with the assurance of interpreting the true sentiment of the Nation, this Junta, in the service of Spain, promulgates the following:

Section 1: In realization of the agreement reached by the Junta for National Defence, his Excellency Don Francisco Franco Bahamonde, General of Division, has been appointed Chief of the Government of the Spanish State, in which capacity he will assume all the powers of the new State.

Section 2: General Franco is hereby appointed supreme commander (Generalissimo) of the National Armed Forces, on land, sea, and in the air and shall receive the commission of Chief General of the Field Forces.

Section 3: This proclamation shall be solemnly made public in the presence of delegations from all national groups which comprise the liberation movement, and shall be appropriately communicated to foreign governments.

. . .

Section 5: All provisions incompatible with this Decree are hereby abolished and declared void.

The concentration of legislative and executive powers in the hands of General Franco has never been modified, in substance, by sub-

sequent legislation. Even today, the functions of Chief of State, Head of the Government, Supreme Commander of the Armed Forces, and *Caudillo* (Leader) of the National Movement (the only political party) are all united in the single person of General Franco.

From the very beginning, the military rebellion against the legal Government of the Republic was supported by two organizations, inspired by totalitarian tendencies, which existed in Spain at the time the civil war broke out. The first of these was the "Junta of the National-Syndicalist Offensive" (*JONS*), founded in 1931 and led by Ramiro Ledesma Ramos and Onesimo Redondo. The second organization was the *Falange Española*, formed in 1933 by José Antonio Primo de Rivera, son of the former dictator. In February 1934, these two organizations decided to merge, thus creating a single party henceforth known by the name of the *Falange Española y de las JONS*. A common party platform was drawn up in October 1934, with the title of *The Twenty-Seven Points*; the last of these was subsequently eliminated, since it provided for the seizure of power under the conditions to be described below. On April 19, 1937, General Franco merged by Decree the *Falange Española y de las JONS* with the Carlist Loyalists (*requetés*) who also supported the rebellion. Consequently he united also the paramilitary forces of the two movements into a single national militia and ordered the dissolution of all other organizations and political parties, appointing himself head of the single party thus formed. The Decree of August 4, 1937, ratified the statutes of this party, which assumed the name of *Falange Española Tradicionalista y de las JONS* (abbreviated FET and JONS: henceforth referred to as *Falange*; after World War II it was often called the National Movement). The *Twenty-Six Points* became the official State doctrine and programme.

The 6th point defined the concept of the State and the relations existing between the State and its citizens in the following terms:

Our State shall be a totalitarian instrument dedicated to the service of the national integrity. All of the Spanish people will participate in the State through the families, municipalities, and syndicates. No one shall participate through the mediation of a political party. We shall radically abolish the political party system with all its consequences: inorganic suffrage, representation by warring parties, and a parliament of the kind which is only too well known.

The fundamental principle of economic organization was formulated in the 9th point:

We conceive the economic organization of Spain in terms of a gigantic union of producers. We shall organize Spanish society on a corporative basis by means of a system of vertical syndicates, arranged in accordance with the various branches of production in the service of the national economic integrity.

The 25th point refers to the relationship of State to Church:

Our movement shall incorporate in the national reconstruction the Catholic faith with its glorious tradition which has been predominant in Spain. Church and State shall exercise their respective functions without any activity whatsoever being allowed to jeopardize the dignity of the State or the national integrity.

A school book (*Curso completo de Primera Enseñanza*) gives the following definition of the State which grew out of the rebellion:

The Spanish State, born under the sign of the unity and grandeur of our country, is a totalitarian instrument in the service of our Nation: it is fundamentally national-syndicalist and represents, in all its aspects, a reaction against liberal capitalism and Marxist materialism.

Franco himself declared in an interview granted to the *ABC*, the leading Monarchist newspaper, on July 19, 1937, that his goal was the creation of a totalitarian State and that the single party (*Falange*) should serve as a foundation for such a State:

There is in Spain a great mass of people who are neutral and unaligned. . . who have never wished to belong to any party whatsoever. This mass which may hesitate to join forces with the conquering group will find in the FET and JONS the appropriate channel through which they may unite themselves with Nationalist Spain.

With the approaching defeat of Fascist Italy and National Socialist Germany but, more especially, after the victory of the western democracies, the regime made an effort to rid itself of the most flagrant features of its Fascist trappings. The proclamation of the Charter of the Spanish People of July, 16, 1945, constituted an attempt to give a democratic appearance to the regime. A definition of the State which differed strikingly from that given in the 6th Point was inserted in the Law of Succession of June 7, 1947. Its terms were as follows: "Spain, as a political unit, is a Catholic, social and representative State, which in accordance with its traditions, declares itself to be a kingdom." More recently the regime's theoreticians have seen fit to define it as an "organic democracy". General Franco himself expressed his views on the characteristics of an "organic democracy" in an interview granted to the editor-in-chief of *US News and World Report*, which was published in the May 20, 1955, issue of that magazine:

I judge, in relation to the general political problems of the nations, that there exists in the world today a crisis of systems. The old nations which have worn out their political systems have to evolve toward new forms. The events that have occurred in Europe in the past 40 years show us that the political systems of Europe do not satisfy the needs of the countries which are old and over-populated.

And it is no mere whim, for example, that in Russia Communism exists and that other countries follow; or that there has been Fascism in Italy, Hitlerism in Germany, a special system in Portugal and one in Spain. No, this is not whim. We men are not the ones who create the political systems; it is the historic necessity of the nations which forces them to seek solutions to the political problem presented to them.

In Europe in general, and particularly in Spain, the political systems were moving towards Communism and would have ended in Communism, because inorganic democracy opens the doors and gives opportunities to Communism and tyranny to establish itself. And it is clear, if we do not wish to fall into that of total negation, which is Communism, and if we do not want to see our personality extinguished and our country destroyed, then we have to seek solutions to the political problems, and not by those routes that have brought failure to us, but by new routes.

And so we have had to give an organic and balanced form to democratic representation; that is to say, the participation in government of the national interests through the Cortes [Spain's national legislative body] and not through political parties, which sacrifice the interests of the nation to those of the party itself.

It has been necessary, then, to resolve the needs of the nation through its own natural organizations. And, therefore, we base ourselves on the municipalities, the organizations of the provinces, the unions, the corporations, the institutions of public law, the universities.

These entities send their representatives to the Cortes, so that in balanced form— one third unions, another third of the cultural institutions and the other third of the municipal organizations— they are able to exercise the same functions as deputies exercise in all countries, but without the passions or the party fights, and dedicated only to the service of the nation. As they are the representatives of responsible organisms, those organisms exercise a check upon their representatives when they do not serve their legitimate interests.

The making of laws and the dissemination of public information about laws and the participation of all Spaniards in the legislative tasks are being carried out efficiently. They are not done with the democratic formalisms that are used by the inorganic democracies in many countries, but it is evident that this system here complies with a living reality.

The *Twenty Six Points* of the *Falange* seem to have been implicitly abrogated by the Law of May 17, 1958, on the Principles of the National Movement. Articles VII and VIII of this Law which deal with the form and specific character of the State are as follows:

Article VII: The Spanish people, united under a legally constituted order and inspired by the postulates of authority, liberty and service, constitute the national State. Its political form within the framework of the immutable principles of the National Movement and of the principles defined by the Law of Succession and the other fundamental laws, is the traditional, Catholic, social and representative monarchy.

Article VIII: The representative character of the State is the essential principle of our public institutions. The participation of the people in the work of legislation and other functions of general concern shall be effected through the family, the commune, the syndicate and other organizations endowed with an inherently representative nature and recognized for that purpose by the law. Any political organization, whatever its character, which lies outside this representative system, shall be considered illegal. Public appointments and offices are open to all Spaniards according to their merits and capabilities.

The most important principles of doctrine are those which refer to General Franco's position within the framework of the State and the National Movement. A doctrine very similar to the *Führerstaat* of Nazi Germany was developed in Spain, namely the doctrine of the *caudillaje* which makes the "Leader" (*Caudillo*) the key figure of the regime. The position occupied by this figure is defined in Chapter XI of the *Falange* statutes (which formed the subject of the Decree of August 4, 1937) in the following terms:

As the author of the historical epoch during which Spain achieved its historic destiny, while at the same time obtaining the goals of the Movement, the Chief (or Leader) exercises the most absolute authority to its full extent. The Leader is responsible before God and history.

Article 42 of these statutes stipulated that, "the *Caudillo* will secretly designate his successor, who will be proclaimed by the Council in the event of death or physical incapacity (of the *Caudillo*)". This was the first measure taken to assure the continuity of the Franco regime.

Juan Beneyto Perez, the most eminent theoretician of the regime's initial period, developed the concept of the *Caudillo* and prepared the way for the doctrine of the *caudillaje* in works which appeared in 1939 and 1940. In *El Partido*, which he published in 1939 with the collaboration of Costa Serrano, he wrote: "The concept of the *Caudillo* is a synthesis of reason and ideal necessity. It is not only force, but also spirit, and constitutes a new technique, being the incarnation of the National Soul and even of the national physiognomy. As a technique, it is the natural consequence as well as the organic necessity of a unitary, hierarchic, and totalitarian regime."

The doctrine of the *caudillaje* is, above all, an attempt to legitimize a regime born of an insurrection. As such, it continues to preoccupy the theoretician of the regime. Thus, in a speech given on May 15, 1957, at Vich, Gabriel Arias Salgado who at the time was the Minister of National Education, took the utmost pains to show the difference which might exist between the *caudillaje* and a dictatorship. He describes the *caudillaje* as having sprung from an historic situation: the collapse of the political institutions of a people. It was at this moment that the people chose a man endowed with exceptional qualities, in whom it placed its confidence, and whom it charged with the task of compensating for this absence of institutions.

This is not the case in a dictatorship, a regime in which, in order to meet the exigencies of a crucial situation—whether incidental or accidental—a person is invested with every possible prerogative and with an urgent, though provisional, mission. Once these exceptional circumstances have been passed over, the government reverts to the former political order which has never ceased to exist... a dictatorship and a *caudillaje* are two different political situations because the essentially transitory character of a dictatorship is not present in the *caudillaje* which, it is clear, calls for a maximum duration... The justification of a dictatorship resides in the existence of a constitutional order which continues to exist and has only been temporarily suspended. It is nothing more than a risk—albeit objective, precise, and limited—due to the unusual circumstances... A *caudillaje*, on the other hand, is the result of an historical contingency leading to political chaos and of the liquidation of the past... either tacitly or explicitly we expect the *caudillaje* to found a new historical, legal, and political order... dictatorship is transitory, whereas the *caudillaje* is fundamental.

The two institutions which are the product of the Falangist doctrine and which characterize the new State, more particularly from the point of view of constitutional theory, are the single party and the vertical syndicates, a syndicate being a single organization uniting employers' and workers' associations from a sector of the economy in one body. They will be analyzed in the following two chapters.

II. THE SINGLE PARTY SYSTEM

As early as September 13, 1936, the Junta for National Defence had already adopted a Decree, according to which "... all parties and all political and social groups which as of February 16 of the current year [the date on which the elections were held] have been adherents of the Popular Front, or any other organization opposed to the forces cooperating with the National Movement..." were declared illegal. Subsequently, the Law on Political Responsibilities of February 9, 1939 (see p. 63), furnished in Section 2 a list of the principal illegal organizations.¹ As has already been said in the preceeding chapter, General Franco adopted a measure on April 19, 1937, which certainly was of a very singular character from the legal stand point: he "nationalized", as mentioned above, those political movements characterized by marked Fascist tendencies by merging the *Falange Española y de las JONS* with the *requetés*, thus creating a single State party under his direction. The most important provisions of this Decree of Unification of April 19, 1937, are as follows:

Section 1: The Falange and the *requetés* along with their services and current components shall be integrated into a single political organization under my direction which shall henceforth be known as *Falange Española Tradicionalista y de las JONS*. This organization, as intermediary between society and State, shall have the principal mission of communicating the opinion of the people to the State and of informing the former of the ideas of the latter by means of political and moral virtues, hierarchical services and fraternity. All those who, on the day of the publication of this Decree, were in possession of the membership booklet of the Spanish Falange or of the *requetés* shall be fully entitled to membership in the new organization. In addition, all those Spaniards who so desire may become members following admission procedure. All other organizations and political parties are hereby dissolved.

Section 2: The directors of this new organization shall consist of the Chief of State, a Secretariat or political Junta, and the National Council. The

¹ *Acción Republicana, Izquierda Republicana, Unión Republicana Partido Federal, Confederación Nacional del Trabajo, Unión General de Trabajadores, Partido Socialista Obrero, Partido Comunista, Partido Sindicalista, Sindicalista de Pestana, Federación Anarquista Ibérica, Partido Nacionalista Vasco, Acción Nacionalista Vasca, Solidaridad de Obreros Vascos, Esquerra Catalana, Partido Galleuista, Partido Obrero de Unificación Marxista, Ateneo Liberatorio, Socorro Rojo Internacional, Partido Socialista Unificado de Cataluña, Unión de Rabassaires, Acción Catalana Republicana, Partido Catalañista Republicano, Unión Democracia de Cataluña, Estat Catala*, as well as all the Masonic Lodges. All parties or groups affiliated with any of the above or having similar tendencies are likewise forbidden. The assets belonging to these organizations were confiscated and contributed to the State (Section 2, of the Law of February 9, 1939).

Secretariat or political Junta is charged with the duty of establishing the internal structure of the organization in order to realize its principal objectives, as well as of assisting its leader in working out the organic and functional structure of the State, and collaborating on every occasion with government action. Half of its members with whom it will begin its activities shall be designated by the Chief of State and the other half shall be elected by the National Council. The National Council shall take into consideration the weighty national problems which the Chief of State shall submit to it, according to terms which shall be established in supplementary provisions. While awaiting the realization of the work in progress for the definitive organization of the new totalitarian State, we shall give form to those national aspirations with which the members of the FET and JONS are charged within the State organizations and services, in order that these may lend them a new impetus.

A Decree of July 31, 1939, established the statutes of the FET and JONS in their final form, the first statutes of the combined party having been formulated in the Decree of August 4, 1937. From then on—starting at the lowest level and working up to the top—the *Falange* comprised the following elements: (1) its members; (2) the local branch of the *Falange*; (3) the provincial officers; (4) the regional inspectorate; (5) the administration for its social services; (6) the militia and the syndicates; (7) the national inspectorate; (8) the national representatives; (9) the Secretary-General; (10) the political Junta; (11) the President of the political Junta; (12) the National Council; and (13) the *Caudillo*, or National Leader of the *Falange* who exercised “the most absolute authority to its full extent”.

The highest level organ is the National Council. This Council meets upon convocation by the *Caudillo*, who establishes the agenda. The Council is under obligation to meet every year on July 17, and consider questions which touch upon the following subjects in particular: (1) the organizational principles of the Movement; (2) the structure of the State; (3) the organization of the syndicates; (4) important national or international problems submitted by the leader of the Movement. The members of the National Council are appointed by the *Caudillo*. In pursuance of the Law of February 22, 1941 (which is a Charter of the *Falange* Hierarchy), these members enjoy a certain immunity from penal prosecution. None of the *Falange* members of the National Council may be arrested, except by order of the *Caudillo* himself. A national councillor may not be indicted except with the agreement of the President of the political Junta. In case of indictment, he must be tried before the second Chamber of the Supreme Court.

The most important duty which devolved, and still devolves, upon the *Falange* is the maintenance of the syndicates' organization in order to carry out the functions entrusted to syndicates' officials by the legislation on labour, production, and distribution of assets. The officials of the organization must be recruited from the ranks of the *Falange*. The national delegate of the syndicates must be an active member. The internal organization has a “vertical hierarchy in the manner of an army”.

The *Falange* holds a monopoly on social welfare work through its administration of social assistance. This activity functions in close association with the obligatory social service and welfare work of the *Falange*, in which women—affiliated to the *Falange*—participate.

The first statutes established by the Decree of August 4, 1937, had created at the core of the *Falange* twelve special services, corresponding to the principal administrative departments of the State. The purpose was to familiarize party ranks with the duties incumbent upon the administration and to associate them with administrative activities, with the aim of making them capable of supervising the administrative agencies of the State.

A Decree of November 28, 1941, suppressed these twelve special services which duplicated the Departments of the State.

By a Decree of May 19, 1941, the Department of Press and Propaganda was removed from the Ministry of Interior and placed under the Department of Public Education which had just been created within the *Falange* organization. However, four years later this Department was transferred back to the administration, under control of the Ministry of National Education (Decree of July 27, 1945).

A Law of July 2, 1940, reorganized the militia of the *Falange*, which was divided into a permanent force, a pre-military militia, a front line militia, and a second class militia.

The permanent force was charged with maintaining law and order inside the *Falange*, as well as with the pre-military instruction of the youth and with the officering of the active force of the front line. The pre-military militia was comprised of young members, from the age of 18 when they ceased to belong to youth organizations until they reached the age of admission to the army. The front line militia was comprised of members from the age when they were released from army service up to the age when they were absolved from military obligations. The second class militia included all those members from the age when they were absolved from military obligations up to the age of fifty-five.

Members of the militia enjoyed the right of preference in competition for government offices, as well as various other advantages. The militia was disbanded by the Decree of December 12, 1944.

Legislation relating to the *Falange* reveals that its influence has undergone a steady decline. An attempt to reinstate it in 1956 was crowned with failure. At that time the political situation reached such straits that General Franco thought it desirable to reinforce the somewhat weak position of the *Falange*. Once again, he appointed José Luis de Arrese Secretary-General of the Party. A Commission was created in order to propose a revision of the statutes and a reform of the fundamental laws with the object of broadening the basis of the regime. This commission was partly composed of "old guard"

Falangists who were delighted to seize what they considered as their last chance of restoring vigour to the Party and of re-defining its functions. For the first time since the civil war its membership increased. The commission drew up several Bills which were submitted to the National Council of the *Falange*, where the most divergent opinions were expressed. The authoritative voices of the army, the Church and high finance opposed the proposals of the commission concerning which no further action was taken.

Membership of the FET and JONS was made easier by subsequent legislation with the object of transforming the single party, to an even greater degree, into that "Communion of Spaniards in the ideals which gave birth to the Crusade" of which there is mention in the Law on the Principles of the National Movement of May 17, 1958.

Albeit that Article 8 of the Law of May 17, 1958, states that "public appointments and offices are open to all Spaniards according to their merits and capabilities". Candidates for jobs with the administration must present a membership card of the "glorious National Movement" in order to be admitted to the written examinations. This card is issued by the Department of Information and Investigation of the Party. There is no appeal in the case of refusal to deliver such a card, as was decided by the Supreme Court (decisions of September 25, 1956, and April 24, 1957).

It may be deduced from the legislation analyzed above that the position and political importance of the *Falange* have been subject to constant variations. Nevertheless this organization has retained the functions with which it was vested with regard to the organization of the syndicates. "The syndical organization has become the principal, and since 1958, the ultimate citadel of the *Falange*."

III. THE NATIONAL SYNDICALIST COMMUNITY

If it can be said that the State dominates the single party, then it can also be said, that the single party dominates trade union organizations or, more exactly, that the State dominates syndical organization by means of the single party. The Decree of August 4, 1937, which contains the first statutes of the single party, gave the *Falange* the power to create and maintain syndical organizations capable of supplying the agents to supervise the labour force and the production and distribution of goods. According to the terms of the Decree, the organizations' leaders were to be conscripted into the ranks of the *Falange* and to be guided by the leaders of the *Falange* in order to ensure the subordination of the syndical organization to the national interest and to the ideals of the State. Furthermore, the national direction of the syndicates was to be entrusted to a single active member and its internal organization was to be set up "with the vertical hierarchy of a creative, just, and well-ordered army".

The principles determining the ideology, structure, and organization of the syndicates, are set forth in Chapter XIII of the Labour Charter of March 9, 1938, the essence of which is as follows:

(a) The national trade union organization of the State shall be based on the principles of unity, totality, and graduated authority (Chapter XIII, Article 1).

(b) All factors of economic life shall be incorporated in vertical unions according to branches of production or services (Chapter XIII, Article 2).

(c) The vertical union shall be a public body incorporating in a single organization all elements which are engaged in the economic process in a specified service or branch of production; the union shall be organized in hierarchic grades under the direction of the State (Chapter XIII, Article 3).

(d) The direction of the unions shall devolve necessarily upon the militant members of the *Falange* (Chapter XIII, Article 4).

(e) A vertical syndicate shall be an instrument in the service of the State and shall constitute the principle medium through which the State will put its economic policy into effect (Chapter XIII, Article 5).

Of the three principles which underlie the National Syndicalist organization—unity, totality, and hierarchy—and which are defined in the Labour Charter, the principle of unity has been consecrated by the Law of January 26, 1940, concerning Syndicalist Unity. According to this Law the vertical syndicates are the only ones which are legally recognized; free trade unions are forbidden and the law governing cooperatives abrogated. The terms of the Law are explicit:

Section 1: The syndicalist organization of the FET and the JONS shall be the sole syndical organization which the State recognizes as a legal person; the State shall not permit the existence of any other organization with similar aims.

Section 2: From the date of publication of this Law, all associations which were created to protect or represent economic or class interests, wholly or in part, whether they are called trade unions, workers' associations, employers' associations, guilds, etc., shall be incorporated in the syndicalist organization of the Movement.

Section 3: From the said date the activities of the said associations shall be subject to the discipline of the Movement, under the supervision of the National Trade Union Office (*Delegación Nacional de Sindicatos*).

In order to put into effect the principles formulated in the preceding regulations and in conformity with which the various local and national Falangist syndicates were created *de facto*, the general organization and structure of the syndicates were laid down in the Law of December 6, 1940. The following passage is taken from its introductory explanation:

The regime's system of trade unions does not, therefore, represent a private group upon which the State has conferred a greater or lesser degree of authority, but in accordance with the principles embodied in the *Twenty-Six Points*, under which Spain is economically a huge union of producers, syndicalism has become the political form adopted by Spain's entire economy. All those who contribute to our nation's power, through their participation in a branch of production—as members of our movement—are organized into a militia.

The entire sum of Spain's productive force (employers, technicians, and workers) is called the National Syndicalist Community. It has been defined as "an active unit in the discipline of the Movement" (Section 1 of the Law of December 6, 1940).

The national delegate of the syndicates occupies the highest position in the pyramid of the syndical organization. Since 1958, these functions have been taken over by the Minister Secretary-General of the Movement.

The national delegate takes over the political direction of the "National Syndicalist Community" by means of the national syndicates which are, in turn, divided into local and provincial syndicates. The statutes of each national syndicate must be approved by the *Caudillo*, upon the initiative of the national delegate, who is, moreover, appointed by the *Caudillo*. Again, it is the *Caudillo*

who appoints the chief (*jefe*) of each national syndicate—twenty-four chiefs in all.

The chief of each national syndicate is aided in his administrative tasks by deputies provided for by the statutes of each syndicate. These assistants, who along with a director form the central Junta of the syndicate, must be appointed by the Secretary-General of the *Falange* on the proposal of the national delegate.

The national delegate appoints the provincial delegates who are responsible for the political administration of the provincial syndicates (the total number of syndicates in a given province). Each provincial syndicate is administered by a director, appointed by the chief of the national syndicate, who is, in turn, appointed by the *Caudillo*, as we have already said.

The same system of nominations "from the top to the bottom" is applied on the smaller scale to local organization and the political administration of the syndicates within a given local area is assumed by a local area delegate of the syndicates.

After the end of World War II, the organization of the syndicates underwent a certain democratizing process, as did the other institutions of the Franco regime. This process however had very little effect. From then on, the workers elected their own representatives to the committees of the industrial undertakings (*enlaces*), who in turn elected workers' representatives to a provincial assembly. These provincial representatives designated the workers' representatives to the national assembly of that particular professional field. However, the lists of candidates were drawn up by the Falangist officials of the syndicates. Moreover, the powers of these committees and assemblies are strictly limited to consultation. At the very most they are permitted to express certain complaints among their own members. This state of affairs exists also where the syndicates' congresses are concerned. This was well evidenced in the second Congress of Syndicates which took place in the month of March 1962. José Solís Ruiz, Minister Secretary-General of the Movement and national delegate of the syndicates, stated at the time that each person should be given the opportunity of expressing his own point of view.

If the presiding members of the Congress attempt to impose their own views, or if they do not allow you any measure of discussion among yourselves, you may protest. Indeed we invite you to express your own opinions, You have the right to make suggestions, propositions, and recommendations, all of which will be taken up by the national delegate. Then after analysis they will be submitted to the Secretary-General of the Movement, and be subsequently given to the *Caudillo*... However, and this I repeat, inasmuch as you are national syndicalists who desire a strong union movement, we shall open a discussion and in no way permit ourselves to stray away from the chosen path. Nothing more than this, fellow-members. Arriba España.²

² *ABC* (Madrid), March 8, 1962.

It is evident that the organized mass of workers in these Spanish vertical syndicates are today as firmly disciplined and dominated by the leaders of the National Movement as they were in the past. Since the National Movement is itself dominated by the *Caudillo*, who is Chief of State and of the Government, the syndicates are nothing more than an additional part of State machinery.

On August 13, 1956, the International Confederation of Free Trade Unions filed a complaint with the International Labour Office against the Spanish Government, stating that the Spanish syndicates' organization did not represent an expression of the free will of the Spanish workers, but constituted instead, a hierarchical, totalitarian organization imposed upon them and entirely subordinated to the *Caudillo*.

It is also interesting to know that in a letter of November 15, 1960, addressed to the Minister Secretary-General of the Movement and national delegate of the syndicates, Cardinal Pla y Daniel, Primate of Spain, recalled that, as early as 1956, the Archbishops of Valladolid and Saragossa, as well as the Cardinal himself, had — in the course of an interview with General Franco — emphasized the fact that in their eyes the representation of workers within the Falangist unions was not “authentic”.

At the aforementioned second Congress of Syndicates the first commission submitted a report on the “reform of syndicate structure”. This report, presented by Mr. Pio Cabanillas, Mr. Emilio Romero, director of the daily paper of the syndicates, “Pueblo”, and Mr. Chozap, proposed that the syndicate organization be transformed into a federation consisting of two separate associations, one composed of workers, and the other of employers, and that all the officials be freely elected. In reality this proposition tended to modify the corporative character of the vertical syndicates and to partly remove them from the control of the political leaders of the Movement.

The “old guard” Falangists, among whom the former Minister Fernandez Cuesta was prominent, opposed this proposal, arguing that it was “unconstitutional”, on the one hand because it did not state explicitly that the syndicate organization must be submitted to the political direction of the National Movement, and on the other hand because it tended to replace the “unitary” syndicates, which were the most original feature of Spanish syndicalism, by associations dividing the workers and employers into two separate groups.

Following a motion by Cuesta, asking for the revision of the report on the improvement of the syndical structure, the Commission decided, by a vote of 83 to 73, to appoint a sub-commission entrusted with the task of preparing a new text. To all appearances, then, the attempt at reform has been defeated.

IV. LEGISLATIVE POWER

A. Legislative Power of the Chief of State

It has already been pointed out that the Junta for National Defence had invested General Franco with "all the powers of the new State", by the Decree of September 29, 1936.

The allocation of legislative power to the Chief of State was explicitly corroborated by the Law of January 30, 1938. Section 17 of this Law specifies as follows:

The power of establishing legal norms of a general character is vested in the Chief of State who assumes all the powers of government by virtue of the Decree of the Junta for National Defence of September 29, 1936. The decisions and resolutions of the Chief of State, after deliberation on the part of the government and following a motion of the Minister concerned, will take the form of laws, whenever they bear upon the organic structure of the State or when they constitute the principal rules of the country's legal organization.

Section 7 of the Law of August 8, 1939, on the reorganization of the central administration of the State, extended the legislative powers of the Chief of State still further by authorizing him to decree legal norms of a general character "even if they are not the result of deliberation by the Council of Ministers". Provision is made that in such cases the Chief of State "will subsequently make known his provisions and resolutions".

This legislative power is further confirmed in the preamble to the Law Creating the Spanish Cortes of July 17, 1942:

Since the supreme legislative power is in the hands of the Chief of State, following the terms of the Laws of January 30, 1938, and of August 8, 1939, the agency which is about to be created will be both a means of cooperation in matters of legislation, as well as a self-limiting principle for a more systematic establishment of power.

Article 1 of the same Law shows that the "principal mission of the Cortes consists in the preparation and elaboration of laws, subject to the concurrence of the Chief of State".

B. The Legislative Power of the People

The Law on the Referendum of October 22, 1945, in certain cases connects the people with legislative procedure. The following is taken from the introductory explanation to this Law:

All Spaniards are entitled to co-operate in the tasks of the State through the natural institutions constituted by the family, the municipal corporations, and the syndicates, and the basic laws, which are to give new life and greater spontaneity to these institutions within a system of Christian life in common, having been published with the object of protecting the nation against the error observed in the political history of peoples which cause the will of the nation to be supplanted by the subjective judgment of its rulers in matters of major importance. The Head of the State, invoking the faculties conferred upon him by the Acts of the thirtieth of January, 1938, and the eighth of August, 1939, has thought fit to institute a direct consultation of the nation by public referendum when he considers such consultation opportune and advisable owing to the exceptional importance of the laws or the uncertainty of public opinion.

Also Article 1 of the Law states:

When the exceptional importance of any law makes it advisable or the public interest so demands, the Head of the State shall be empowered, in order to serve the nation more faithfully, to submit to referendum a bill drafted by the Cortes.

Obviously, the exercise of this right by the citizens is at the discretion of the Chief of State. Nevertheless, an obligatory legislative referendum for a certain category of laws has been introduced by the Law of Succession of 1947. Article 10 of this Law states as follows:

The fundamental laws of the nation are: the Charter of the Spanish people, the Labor Charter, the constituent Law of the Cortes, the present Law of Succession, the Law of National Referendum, and whatever other law shall be latterly promulgated as fundamental.

To repeal or modify these laws, a national referendum shall be required, as well as the approval of the Cortes.

It may be noted that the obligatory referendum is only destined for the abrogation, or the total or partial revision of these laws, and not for the passage of new fundamental laws. Thus, the most recent of the laws, the Law on the Principles of the National Movement of May 17, 1958, was not submitted to a referendum. It was decreed by the Chief of State without even consulting the Cortes. He confined himself to reading it before the Solemn Assembly of the Cortes on May 17, 1958, introducing it with the formula: "I, Francisco Franco Behamonde, Caudillo of Spain, conscious of my responsibility before God and History, do promulgate the following in the presence of the Cortes of the Kingdom . . ."

The Law on the Referendum was only applied on one single occasion, on July 6, 1947, when the Law on the Succession to the Chief of State was submitted for national approval.

Of the votes cast, there were 12,628,983 votes for and 643,501 against, with 320,877 spoilt papers.³

³ Salvador de Madariaga, *Spain: a Modern History* (New York: Frederick A. Praeger, 1958), p. 599.

C. The Participation of the Cortes in the Making of Laws

1. COMPOSITION, NOMINATION AND ELECTION OF THE CORTES

Article 8 of the Law on the Principles of the National Movement lays down the representative character of the State and submits as a principle that "The participation of the people in the work of legislation . . . shall be effected through the family, the commune, the syndicate and other organizations endowed with an inherently representative nature and recognized for that purpose by the law." The rules governing the composition and election of the Cortes reflect this principle.

The composition of the Cortes has been established definitively by the Law of March 9, 1946, at the time of their first reelection. By virtue of this law, the *procuradores* are divided into three categories:

(a) The members whose function in law in this capacity derives from the nature of the office they fulfill, the duration of their term being dependent upon the exercise of these functions. They are: the Ministers; the national councillors of the Falange; the Presidents of the State Council, the Supreme Court, and the Supreme Court of Military Justice; the mayors of the 50 provincial capitals in addition to those of Ceuta and Melilla; the Chancellors of the Universities; the presidents of the Spanish Institute and of the Supreme Council of Scientific Research; the president of the Institute of Civil Engineers; and the chiefs of the twenty-four syndicates.

(b) The members appointed by the Chief of State are from among the most eminent persons in civilian, ecclesiastical, and military life. They are fifty in number.

(c) The elected members. These are divided into syndical members, not to number more than one third of the total number of the members; members representing the municipalities, 52 in number (one for each province); members representing provincial deputations (general councils), also 52 in number; and members representing certain corporations (lawyers, doctors, members of the academic profession, etc.), 18 in number.

The 52 representatives of the provincial deputations and the 52 representatives of the municipal councils are in fact the only ones who might—at least to a certain degree—be said to represent the population at large: The Executive is indirectly associated with the election of the members listed in category (a) above, because it appoints them to the offices and positions by virtue of which they become *procuradores*.

2. THE JURISDICTION OF THE CORTES

As Luis Sanchez Agesta, professor at the University of Granada, puts it:

The Cortes does not correspond to the type of parliamentary assembly, from which a government, controlled by it, originates. On the contrary, one has downright to ascertain a power of direction and control exercised by the Chief of State over the Cortes, through the mediation of the President of the Cortes (convocation and adjournment of the meetings, establishment of the agenda, appointment of the Committees, see Standing Orders of the Cortes of December 26, 1957, Section 14, Subsections 2, 4 and 19; Section 61, Subsection 2).⁴

The President need not be a member of the Cortes.

Therefore, he is a heteronomous organ, who is appointed by the government for an unlimited time, an organ directing the activities of the Cortes . . . In discharging his most important functions he must act in accordance with the government.⁵

The Cortes is essentially an advisory body. First of all, its jurisdiction is also limited *ratione materiae*. Following Article 10 of the above-mentioned Law, its advice is confined to Laws relating to one of the following matters:

- (a) Ordinary and extraordinary budgets of the State;
- (b) Important economic or financial bills;
- (c) The creation or amendment of the system of taxation;
- (d) Bank and currency regulations;
- (e) The economic activity of the syndicates and legislation fundamentally affecting the national economy;
- (f) Basic laws regulating the acquisition and loss of Spanish citizenship and the rights and duties of Spaniards;
- (g) The political-legal organization of the institutions of government;
- (h) The regulation of local government;
- (i) Fundamental aspects of civil, mercantile, social, penal, and procedural law;
- (j) Fundamental aspects of the judiciary and public administration;
- (k) The regulation of agriculture, commerce, and industry;
- (l) The laws affecting national education;
- (m) Any other law which the government on its own initiative, or on that of the respective committees of the Cortes, should decide to submit to a full session of the Cortes. The government may also submit to full session measures which do not have the character of law.

The Cortes is also competent in the ratification of treaties which affect the items listed above (Article 14). The drafts of laws are

⁴ Luis Sanchez Agesta, "Constitutional Developments in Spain since, 1936", in *Yearbook of the Public Law of the Present Time*, (Tübingen, J. C. B. Mohr), New Series/Vol. 10, pp. 410-411.

⁵ *Ibid.*, p. 412.

normally prepared by the government. Before being submitted to the plenary assembly, they should have been previously "studied and reported on by the respective committees" (Article 11). The actual examination of law drafts is carried out by these committees, which also discuss and decide upon possible amendments.

In this way they exercise a certain influence upon the regulation of matters submitted to them. It is therefore of considerable importance to the government not to lose all control over the composition of the parliamentary committees. For this reason the law has provided that the committee members be appointed by the President of the Cortes.

The text of a draft law is rarely discussed after it has been deliberated upon by the committee. With very few exceptions it is always adopted by the plenary assembly. According to the terms of Article 16 of the Law, "the president of the Cortes shall send Laws drafted by the same to the government for their approval by the Chief of State". The latter is under no obligation to grant this approval; he may alternatively return the draft law to the Cortes for further study. So far, General Franco has normally sanctioned the draft laws as amended by the respective committees of the Cortes. The Chief of State may legislate without consulting the Cortes in matters not enumerated in Article 10 of the Law. Then, he exercises the legislative power provided for by the Laws of January 30, 1938, and August 8, 1939, which are not limited in any way. The self-limitation mentioned in the preamble to the Law creating the Cortes does not apply here.

Neither is consultation of the Cortes obligatory in the case of war or emergency. At such a time the government may settle by decree those matters on which it is obliged to consult the Cortes in normal times. Immediately after the promulgation of the decree it must submit the decree to the Cortes (Article 13 of the Law: In the original text, this sentence was completed by the following words: "for study and to be turned into a law with suggested modifications which might be thought necessary"; this part of the sentence was suppressed by the Law of March 9, 1946). A State of Emergency and a State of War are declared by means of a decree by the Government who must then inform the Cortes without delay (Law on Public Order of July 30, 1959; Sections 25, 26, 36).

D. The Legislative Power of the Government

Spanish law contains certain provisions providing for the delegation of legislative powers to the government. Thus, in the Law on the Legal Structure of State Administration of July 26, 1957, Section 10 states the following:

The Council of Ministers has the power of submitting the draft of a Law to the Chief of State, if this power has been delegated to the Government, by

a legislative act of the Cortes and if the draft of this law has been approved by the State Council at a plenary assembly.

In order to understand this provision, it must be recalled that the Law of July 26, 1957, presupposes that the functions of Chief of State and President of the Council are exercised by two different persons. This is evident from the introductory explanation where it is stated that: "The present text does not devote any of its provisions to the Chief of State, because the powers and prerogatives of the latter, respected as they are in their entirety and considering their essential character, must be defined by a fundamental law." Inasmuch as the functions of the President of the Council are performed by the Chief of State, and inasmuch as the latter is invested with the legislative powers defined by the Laws of January 30, 1938, and September 29, 1939, the delegation of legislative powers to the government by a decision of the Cortes would be an extremely rare occurrence. In practice, we note examples of delegation of power in the two following cases:

1. The so-called organic laws contain a clause bestowing upon the Executive the right not only of making rules and regulations but also of legislating, in complete independence, within the area delimited by the fundamental laws.

2. The legislative acts adopted by the Cortes occasionally authorize the Executive to revise and combine different legal texts into a single text. A typical example is the Decree of September 21, 1960, which will be analyzed below.



V. THE POWERS OF THE EXECUTIVE

A. Organization and Powers

The Law on the Legal Structure of State Administration of July 26, 1957, lays down the manner of organization of the Executive and upper administrative authorities (Council of Ministers, interministerial committees, President of the Council of Ministers, Under-Secretaries of State, Directors-General, i.e., Heads of Departments) and defines their powers.

According to Section 2 of the Law, "the highest executive powers of the administration are: the Chief of State, the Ministerial committees, the President of the Council and the Ministers. All other State administrative bodies and authorities are subordinated to the Chief of State or the respective appropriate Minister."

The Law does not define the position and powers of the Chief of State. According to the introductory explanation his prerogatives and powers are to be the subject of a fundamental law. For the time being, they are governed by Laws and Decrees passed during and immediately after the civil war and which have already been mentioned on several occasions, e.g., the Decree of September 29, 1936, appointing the Chief of State, and the Laws of January 30, 1938 and August 8, 1939. Inasmuch as General Franco is both Chief of State and Head of the Government, the two offices are now virtually one and the same. On the basis of the Law of July 26, 1957, cited above, it may be inferred that the powers conferred thereby on the President of the Council were amalgamated with those attributed to the Chief of State by earlier legislation.

The Chief of State appoints Ministers who are responsible to him. He alone has the power to dismiss them. It seems appropriate to list the powers attributed to the Council of Ministers, as set out in Section 10 of the Law of July 26, 1957:

1. To approve the over-all planning of government action and the major policy lines that govern all action entrusted to the Ministries.
2. To establish the definitive text of draft laws, especially budgetary laws on the basis of draft projects submitted by the competent Departments, either directly or after previous consultation with the Ministerial committees; to send draft laws to Parliament (The Cortes) and to withdraw them when appropriate.
3. To propose decree-laws to the Chief of State in time of war or by reason of a state of emergency. The Chief of State will evaluate the proposal in

consultation with the appropriate committee as provided in Article 12 of the Law Creating the Cortes.

4. To submit to the Chief of the State all projects for statutory provisions, whenever the government is vested with special powers voted by Parliament and the opinion of the Council of State in plenary session has been obtained.

5. To authorize the negotiation and signature of international treaties, agreements or conventions, or adherence to existing ones.

6. To ask the Chief of State to consent to the regulations needed to implement parliamentary enactments, subject to the opinion by the Council of State.

7. To debate proposals—after they have been submitted to the Chief of the State—for appointments and revocations of high functions within the framework of public administration, e.g., for posts like that of Ambassadors, High Commanders of the Armed Forces, Under Secretaries of State, Heads of Departments, Governors of the Provinces, Administrators, and the Governors, Administrators, and Secretaries of State for the African provinces.

The proposals shall be made by the Head of the appropriate Department of a Ministry, without neglecting the provisions delegated to the military commanders as under the organizational laws of the army.

8. To establish or dissolve Ministerial committees according to the requirements of the administration.

9. To concede a total or partial suppression of Articles 12, 13, 14, 15, 16, and 18 of the Charter of the Spanish People, determining the extent and duration of this disposition, and to declare or waive it in accordance with the Law on Public Order, a state of emergency, alarm or war.

10. To call general elections as provided by law.

11. To concede the non-performance or the total or partial suspension of the verdicts given by Administrative Disputes tribunals in the form and instances provided for by the law governing the said jurisdiction.

12. To decide such appeals which, under the provisions of the law, are set before the Council of Ministers.

13. To give a decision in all matters in which a Minister having sought the mandatory opinion of the Council of State or the Council of National Economy disagrees with such opinion, and to decide on the proposals put by those Councils to the Minister.

14. To determine the restrictions placed on currency transfers and take such steps as may be dictated by the economic situation of the country, without prejudice to the powers of Parliament.

15. To authorize outlays of more than one million pesetas, provided they are effected from credits relating to an initial outlay or investments.

16. To authorize transactions in which the Treasury is concerned after hearing the opinion of the Council of State.

17. Any other power conferred by law or government edicts; and in general to debate those matters which should be settled by a statutory decree, or those whether by reason of importance or repercussions upon the life of the nation require the knowledge and opinion of all members of the government.

B. Maintenance of Law and Order

The maintenance of law and order is one of the main duties of any government. Under the provision of the Law on Public Order of July 30, 1959, the Spanish Government has been given very broad powers for carrying out this duty. This Law will be discussed in greater

detail in the chapter dealing with the defence of the regime. Suffice it to say here that only the government is empowered to declare war or a State of Emergency. According to Section 25 of the Law on Public Order "the government has power to decree a State of Emergency in the whole, or part, of the National Territory if law and order is threatened and can no longer be maintained by ordinary means". Only the government can decide when law and order has broken down and when the legal means are no longer able to cope with the situation. Its sole duty is to bring to the notice of the Cortes the Decree declaring the State of Emergency.

If the government decides to resort to Section 25 of the Law on Public Order, it acquires a large number of special powers. It may, for example,

- prohibit pedestrian and vehicular traffic in the streets;
- prohibit gatherings;
- restrict the free movement of persons;
- establish safety zones which the public is forbidden to enter or leave;
- arrest an individual without having to comply with the procedure laid down by the Penal Code;
- decree the compulsory notification of any change of address or residence;
- order the temporary deportation of suspects;
- subject suspects to enforced residence in a specified zone;
- institute censorship of the press, television, radio, films and any public spectacle, or to suspend them if it considers that they may directly or indirectly lead to a breach of public order.

C. Administrative Law

The two important enactments on this subject are the Administrative Procedure Law of July 17, 1958 (*ley de procedimiento administrativo*) regulating the relations between the administration and individuals and the Administrative Justice Law of December 27, 1956 (*ley reguladora de la jurisdicción contencioso administrativa*) regulating the organization of the Administrative Disputes Divisions of the ordinary courts and the procedure to be followed before these courts.

1. The Administrative Procedure Law of July 17, 1958, which was inspired by advanced ideas, was passed with a view to modernizing the administration by simplifying it and improving its efficiency. At the same time, the Legislature endeavoured to associate the people with the activities of the administration and to strengthen their legal position before the latter. When introducing the Bill before the Cortes, the government spokesman stated in this connection:

One of the great objectives of this Law is to win the cooperation of the population. The German Professor Forsthoff said, that administrative law has, in recent years, followed a trend towards substituting for the system of restrictions a policy of collaboration with the population. This is found to be the guiding principle of many Sections. E.g., Sections 33 and 34 provide for the establishment of an information, suggestions and complaints section in every non-military Ministry. The functions of such sections are the giving of information and the receiving of suggestions and complaints; they are to study and evaluate proposals put forward by officials and the public, and also to attend to complaints which might result from delay, negligence and other anomalies of officialdom. All autonomous organizations and all administrative agencies are to have such a section.

Here special mention must be made of Section 87, which provides for a public hearing, whenever the nature of the proceedings is suitable for publication or if the matter in question affects organized professional, economic or social groups; there is also Section 130—dealing with the drafting of rules and regulations—which determines that: ‘whenever possible, and when the nature of the subject matter makes it advisable, a syndicate organization or any other entity which is designated by the law to represent or protect the interests of organized groups, must be given an opportunity to expound its views in a detailed report.’

The procedure to be followed before the adoption of new administrative regulations or before making an administrative decision involving an individual is laid down in detail in Section 67 to 91 of the Law. Section 91 guarantees to persons who are parties to proceedings the right of being heard before an administrative ruling is made.

But, in fact, owing to the extreme complexity of the administration and of its activities, a large number of special forms of procedure have come into being alongside this general procedure. A list, which is not exhaustive, of these special forms of procedure may be found in the Decree of October 10, 1958. Among these special forms of procedure attention is particularly directed to those concerned with expropriation, free pardons, the acquisition or loss of nationality, the reimbursement of taxes and prosecution for tax frauds. In these special forms of procedure, the appearance of the parties is always provided for.

2. The main rules governing disputes with the administration are laid down in the Administrative Justice Law of December 27, 1956. The basic principle is that all decisions made by the Executive and by the administration, whether concerned with the adoption of new regulations or with individuals, are subject to the control of the Judiciary (Administrative Disputes Divisions of the Courts of Appeal and of the Supreme Court). This system is theoretically more liberal in Spain than in most other western European countries.

As regards decisions concerned with the adoption of new regulations, these can be challenged in two distinct ways:

(a) Either the applicant challenges directly the new regulations adopted by the administration, in which case the challenge must be entered within two months from the date of publication of the new regulations in the Official Gazette; challenges may be entered by corporations or institutions representing the general interest affected

by those new regulations. However, should the application of the new regulations not give rise to the making of administrative decisions concerned with individuals, they may be opposed by any individual or by any corporate body.

(b) Or the interested party waits for a decision to be made by the administration under the new regulations, and then opposes this decision.

As regards administrative decisions concerned with individuals, the principle of control by the Judiciary over the actions of the administration admits of some exceptions. Only the two most important ones will be mentioned here.

According to Section 2, paragraph 1, of the Law of December 27, 1956, civil law or penal law matters which come under the jurisdiction of ordinary courts are not subjected to the jurisdiction of the Administrative Disputes Divisions, nor are matters which, although by their nature would normally come under the jurisdiction of Administrative Disputes Divisions, have been subjected by law to the jurisdiction of special tribunals. These provisions are especially concerned with those cases in which the administration acts in a private capacity; for example, when purchasing a building through one of its Departments, or else those cases in which a civil servant or an agent of the administration commits a penal offence.

Moreover the Law of December 27, 1956, especially excludes from judicial control a series of administrative actions of a political character. It should, however, be added that no legal provision defines the meaning of the words "administrative actions of a political character", and the administration by giving them the broadest possible interpretation, thus succeeds in placing many actions, often among the most important, beyond judicial control.

The Law only mentions a few examples of "political actions":

- decisions associated with the government's political activities, such as those concerned with the defence of the national territory, international relations, the internal security of the State, and the organization and leadership of the army;
- decisions concerned with the scope of the administration's ordinary and emergency powers;
- measures taken in exercising police powers against the press, broadcasting companies, cinemas and theatres;
- decisions made under the Code of Military Law (comprising military penal law and penal procedure);
- actions which an express provision of the Law places outside the jurisdiction of Administrative Disputes Divisions.

It is thus mainly the actions of the Chief of State and of the Council of Ministers that the Law qualifies "political actions" and places outside the control of the administrative tribunals. In practice,

judicial control over the decisions of the local government authorities and of the central administration is exercised in an effective manner. A large number of appeals are made each year against decisions of this kind and the appellants have often been found to succeed. Decisions made by the Chief of State or by the Council of Ministers however enjoy *de facto* immunity, inasmuch as they can almost always be qualified “political actions”, thereby avoiding any form of judicial control.



VI. THE JUDICIARY AND THE BAR

A. The Ordinary Courts

1. BASIC LAWS

The main statutes concerned with the Spanish judicial system are:

- The Organic Law on the Judiciary of September 15, 1870;
- the Supreme Court Law of July 17, 1945;
- the Decree of November 2, 1945, approving the regulations governing the Judicial School;
- the Law of December 18, 1950, concerned with the Re-organization of the Judicial School;
- the Law of December 20, 1952 providing for the inspection of Justice, of the Public Prosecutor's Department and of the Supreme Court;
- the Decree of December 11, 1953, providing for the inspection of courts and tribunals;
- the Decree of February 10, 1956, promulgating organic regulations governing career judges; and
- Article IX of the Fundamental Principles of the National Movement (Law of May 17, 1958).

2. APPOINTMENT OF JUDGES

In Spain, the preparation for judicial office is obtained nowadays at the Judicial School, admittance to which is by way of competitive examination open to lay Spanish male citizens holding a law degree and over 21 years of age. In fact, candidates must also be supporters of the National Movement and be able to prove their sympathy for this organization; otherwise, their qualifications are likely to be overlooked. The government means to appoint to judicial office only citizens who are devoted to the regime and to bar those known for their independent turn of mind. In this, the government has only fully succeeded in the upper ranks of the Judiciary. In general, the Judiciary is jealous of its traditions of independence. It is because of its desire to influence recruitment to the Judiciary that the government has founded the Judicial School to which it has entrusted the selection and training of law graduates who embark on a career on the Bench or as public prosecutor.

Judges in courts of first instance (*de primera instancia y instrucción*) are appointed by the Minister of Justice from among graduates of the Judicial School. Judges of the Courts of Appeal (*audiencias*) and of the Supreme Court are appointed by the Council of Ministers' Decree on the advice of the Minister of Justice.

Judges of the first, second and sixth Divisions of the Supreme Court, these being the Civil, Criminal and Labour Divisions, belong to the Judiciary and are appointed by the government from among Courts of Appeal judges proposed by the Council of Justice. Judges of the third, fourth and fifth Divisions of the Supreme Court, those constituting the Administrative Disputes Division of the Supreme Court who control the legality of the administration's actions, are appointed under the conditions prescribed by the Administrative Justice Law of December 27, 1956. According to Section 20 of this Law, one third of the members of the Administrative Disputes Division of the Supreme Court are selected from among career judges, one third from among magistrates who are permanent members of the lower Administrative Disputes Divisions and who have been sitting on these tribunals for over ten years, and one third from among law graduates who belong to the administration or are members of the Bar.

Rules introduced on July 25, 1956, have altered the wording of the oath taken by judges being sworn into office. The oath now runs as follows: "I swear before God and the Holy Gospels to obey unconditionally the commands of the *Caudillo* of Spain, and also the laws and provisions attached to the exercise of my office, with no motive other than the accomplishment of my duty and the good of Spain."

It seems difficult to reconcile such an oath with the requirements of a sound and impartial administration of justice.

The conditions for promotion are laid down in the Law of December 20, 1952, and in the Organic Decree of February 10, 1956. The judges of Courts of Appeal, other than those of Barcelona and Madrid, are promoted according to seniority. In theory, the same rule applies also to the Courts of Appeal of Barcelona and Madrid, but in practice, in addition to the seniority requirement, the approval must also be obtained of a special body known as the Council of Justice whose members include the President and Public Prosecutor of the Supreme Court, and the President and one other judge of each Supreme Court Division. The Council of Justice not only controls the promotion of judges, but can also play a decisive part in their careers and pronounce on their incapacity without having to give reasons. Its origins go back to the days of General Primo de Rivera's dictatorship. The present body was created by the Law of December 20, 1952, for essentially political ends.

The appointment of the President and Public Prosecutor of the Supreme Court is entirely within the government's discretion. The

Presidents of Divisions are selected from among the Supreme Court judges.⁶

3. DISCIPLINARY MEASURES AGAINST JUDGES

The main rules concerning professional discipline are laid down in the Law of September 15, 1870, as amended by the Law of December 20, 1952. Reference should also be made to the Law of February 19, 1939, which relates to the purging of State officials and which specifies that judges may be dismissed on political grounds.

These Laws provide for two kinds of sanction: dismissal and *separación del servicio* (dismissal on political grounds).

(i) *Dismissal*

Under the provisions of Section 224 of the Law of September 15, 1870, as amended by the Law of December 20, 1952, a career judge can be dismissed on any of the following grounds:

- when he finds himself in one of the six classes relating to incapacity⁷, or incompatibility⁸, listed in the Organic Law;
- when he has committed grave faults which, even though they do not constitute penal offences, are detrimental to the dignity of the Judiciary;
- when his civil liability has been recognized on one or more occasions in the course of a lawsuit;
- when he is found guilty of loose living or of repeated negligence which renders him unfit to exercise his profession.

Dismissal is by a decree signed by the Minister of Justice with the approval of the Cabinet. The grounds for dismissal listed above have existed since the Organic Law of 1870 came into force. But the amendment of 1952 releases the government from having to consult the Council of State beforehand, whereas before such consultation was made compulsory.

(ii) *Separación del servicio*

This measure must not be confused with dismissal. It is governed by the Law of February 19, 1939, which was intended to enable the government to exercise control over the attitude of State officials

⁶ Among the Presidents of the six Divisions now in office, five have held, before their present appointments, essentially political positions in the regime.

⁷ A judge is declared incapacitated if he suffers from a physical or mental infirmity; if he has been convicted and has not been given a complete remission of his sentence; if he is being prosecuted for any misdemeanour; if he has been sentenced to a penalty involving loss of civil rights; if he has been declared bankrupt and has not been discharged; if he is being sued for debts without being charged with an offence, if he has vices of a depraved kind, or if he has committed acts which degrade him before the public (Law of 1870, Section 10).

⁸ There is incompatibility if he holds other public offices or political offices, or if he holds a junior position before the courts (Law of 1870, Section 11).

towards the National Movement.⁹ It can affect all classes of State officials, including career judges.

According to Section 2 of this Law there is discretion in considering the taking of disciplinary measures in regard to the conduct of State officials. All the circumstances have to be taken into account, in particular their past records, the conditions in which the office has to be carried out and the requirements of the administration. It is therefore not possible to give a specific list of grounds which would justify suspension; only some examples can be given, for instance:

- (a) all actions which have led to a sentence by military courts;
- (b) the fact of having benefited from abnormal promotion or of holding a position or carrying on work inconsistent with the normal functions of a judge;
- (c) the fact of having deliberately remained aloof from the National Movement;
- (d) generally, all actions or inactions which indicate an unpatriotic attitude or opposition to the National Movement.

(iii) *Dismissal and Suspension Procedure*

Both of these disciplinary measures are outside the jurisdiction of the courts. The decision is made by the government at the outcome of an enquiry handled, in a case involving dismissal, by the central inspector of courts and tribunals, and, in a case involving suspension, by the bureau for purging State officials. This latter procedure is secret, the only formal requirement being that the respondent must be heard and be permitted to submit documentary evidence in his defence.

A dismissed judge may lodge an appeal before the fifth Division of the Supreme Court. But since this Division has the reputation of being the judicial authority most amenable to the regime, potential appellants usually avoid resorting to this alternative. A suspended judge only has the right to apply for a fresh hearing before the Minister of Justice. He can then learn of the charges laid against him, answer them and resort to all available means in support of his defence, but at no time is he allowed to examine the file.

B. Special Courts

1. LABOUR TRIBUNALS

The main statutes relating to the activities of these tribunals are the Law of October 17, 1940, on labour tribunals, and the Decree of November 14, 1958, on labour tribunal judges and registrars.

⁹ This Law was essentially passed to carry out a purge of the administration after the civil war. It has, however, remained in force. A Law passed in 1941 has made possible certain rehabilitations.

The setting-up of labour tribunals is founded on the doctrinal principles which form the basis of the Spanish syndicalist organization.¹⁰

It was logical for national syndicalism to bring about the setting-up of a large judicial machine, known as the *Magistratura del Trabajo*, which is independent of the ordinary Judiciary. These tribunals are totally different, both in structure and operation, from the ordinary courts and tribunals. Once appointed to labour tribunals, career judges leave the ordinary courts and henceforth depend exclusively on the Ministry of Labour and no longer on the Ministry of Justice.

Judges of the labour tribunals are professional judges and form a separate judicial corps. Recruitment is made by competitive examination open to Bench and public prosecutors having served for over five years. Successful candidates are posted by the Minister of Labour. They are appointed for life but their activities are tightly controlled by inspectors.

Labour tribunals are considered to be tribunals of high intellectual and moral standing. Proceedings before these tribunals are free in the case of employees; they are mainly oral and less formal than civil proceedings.

The structure of the labour tribunal system is as follows: at the lower level come the tribunals of first instance. Each of these, termed *Magistratura del Trabajo*, covers a given area. The judges move around within their areas and hold itinerant hearings at the most important centres. At the upper level comes the Central Labour Tribunal which is the appeal tribunal. The Central Labour Tribunal is presided over by a Director-General appointed by the Minister without prior competitive examination. Finally as a last resort, and only in certain cases, a further appeal can be made to the Supreme Court.

The powers of the labour tribunals are determined either by the legal relationship between the parties involved (employers and employees), or by the subject of the action. According to Section 1 of the Decree of July 4, 1958, setting out the procedure to be adopted in labour matters, labour tribunals may be called upon to deal with:

- the settlement of claims arising out of injuries incurred during work;
- disputes between employees and various State insurance bodies; and
- disputes between employees and employers about the terms of an employment contract.

¹⁰ See above p. 14 ff.

2. TRIBUNALS FOR THE PROTECTION OF THE SYNDICAL ORGANIZATION

In addition to the labour tribunals, the Spanish judicial system provides another kind of jurisdiction in the field of labour, i.e., the tribunals for the protection of the syndical organization or *tribunales de amparo de la organización sindical*, set up by an Ordinance of January 12, 1948. These tribunals deal in the first place with appeals against decisions made by the syndical hierarchy. The Spanish syndical organization has very broad powers; it is this organization which, for example, gives or refuses permission to start a new business undertaking or to found an agricultural cooperative; it is this organization also which decides whether or not a contract for the distribution of commercial films is valid. These tribunals can moreover exercise a prerogative on matters of civil law; these are the *reclamaciones con carácter facultativo*. Supposing that an individual has been wronged by a syndical decision, he can appeal to the ordinary courts and claim damages; the Ordinance of January 12, 1948, authorizes him to refer the matter to a protection tribunal. *Prima facie*, these *reclamaciones con carácter facultativo* appear to have only little practical value. However, it must be remembered that the single syndical organization has great *de facto* power. A litigant who refuses to refer a civil action to the protection tribunal is likely later to get into trouble with the syndical organization. As a result, civil lawsuits are practically unheard of in certain parts of the Spanish economy; this is, for example, the case in the film industry to which the syndical organization is able to impose the settlement of disputes before these special tribunals.

The provincial protection tribunals are chaired by the provincial labour delegates whereas the chairmanship of the Central Protection Tribunal is assumed by the national secretary of the syndical organization. Syndical officials thus pronounce judgment in complaints and appeals against their own syndical organization. It is difficult to see how such tribunals can be regarded as truly impartial.

3. MILITARY COURTS

In other countries of western Europe, military courts play in peacetime only a secondary role which is restricted to trying purely military offences, e.g., damage caused to military installations, desertion and common law offences committed by servicemen. In Spain, the position is quite different. Military courts constitute one of the pillars of the existing regime, which regime was itself brought into being by a military uprising. Their jurisdiction is very broad in ordinary penal law matters and even more so in penal law matters of a political character. The government has resorted to rather odd devices for extending the jurisdiction of the military courts to fields which are normally quite alien to them. Special

laws, in particular the Decree of September 21, 1960, have assimilated to military penal law offences, certain common law offences and political offences committed by civilians (see page 71).

At the lower level operate the courts-martial. Their members are appointed by the competent judicial authorities (*Autoridades Judiciales*), e.g., Captain-Generals of Regions, army Generals and Admirals (Section 49 of the Code of Military Law). At the upper level comes the Supreme Court of Military Justice which is the appeal court. Its members are appointed by governmental decree. The following also form part of the military justice organization:

- the special military judge for the suppression of extremist activities, who is an examining judge, and
- the special judge dealing with illegal propaganda.

C. Independence of the Judiciary

The absolute independence of judges is a fundamental principle in any society based on legality and the Rule of Law. According to Section IX of the Law on the Principles of the National Movement of May 17, 1958, every Spaniard is entitled to an independent Judicature, "the access to which shall be free to all who are without sufficient resources". Yet this requirement is not in practice fully complied with. The Executive, i.e., in the final resort the *Caudillo*, exerts a definite influence on the Judiciary. This is achieved in two ways. First, as already pointed out, the government appoints at its discretion the holders of some of the key offices in the ordinary courts. Secondly, and in particular, the government has set up a large number of special tribunals which it tightly controls; as a result, some essential fields of social activity escape the jurisdiction of ordinary judges. The most important of these special tribunals are, as has just been pointed out, the military courts which have jurisdiction over penal law matters.

It is a fact that in Spain there is strong opposition to the regime, which opposition is only kept under by means of restrictions on the freedom of association and expression. This underground opposition includes a large number of groups of highly differing tendencies ranging from Carlist traditionalism to communism. The regime thus has to keep a close watch on this opposition. Moreover, it must have resilient and effective means at its disposal for repressing subversive activities. Accordingly, it has introduced a set of extremely complex penal regulations. The application of the special laws which have been passed to this end has been entrusted to the military courts, and the *Caudillo*, in his capacity of Commander-in-Chief of the Spanish Army, enjoys great authority over officers of military justice.

D. Organization of the Bar

1. THE " COLEGIOS "

Advocates practising in one area form a body known as a *colegio*. From a disciplinary point of view, they depend on the sole authority of this " college ". Only university graduates in law may be admitted to the profession. Each college freely administers its own affairs and enacts its own bye-laws and regulations. A General Council, based in Madrid, coordinates the activities of these various colleges. The statutory basis for practising at the Bar rests on the Decree of June 28, 1946, defining the general status of the Bar, and on the Decree of February 3, 1947, defining the status of these colleges.

A college of advocates frequently has in its midst practitioners holding positions in the regime. They are numerous and their voices are often decisive; principally they are advocates employed in the syndical organization. Since they are largely dependent on the regime, they will naturally be inclined to defend it. Their action often succeeds in thwarting within their college moves which do not meet with the approval of the regime. The failure of the petition presented by the Madrid College of Advocates for the abolishment of the Decree of September 21, 1960, is significant of this state of affairs.

Many advocates nowadays consider that the profession should be thoroughly reorganized by new laws which would amalgamate existing statutory provisions in possibly recast form bearing in mind the conclusions approved at the Bar's third annual Congress held in Valencia in June 1954. In this connection several drafts have already been submitted and others are being prepared.

2. PROFESSIONAL DISCIPLINE

Each college of advocates has disciplinary powers over its members. The exercise of these powers is delegated to a body termed " Council of Governors ". Each college formulates its own bye-laws and regulations which define the powers of the Council and lays down the sanctions which it may inflict. The courts may also take disciplinary action against advocates who commit serious breaches of the rules of proper conduct in court.

The following disciplinary action can be taken against advocates:

- (i) warning;
- (ii) severe warning;
- (iii) a reprimand;
- (iv) a fine;
- (v) total or partial forfeiture of fees or rights derived from the acts that gave rise to the offence with which they are charged; and

- (vi) suspension for a period not exceeding three months, or in the case of a repeated offence, not exceeding six months.

3. INDEPENDENCE OF THE ADVOCATES

Prima facie, the independence of Spanish advocates is not subjected to restrictions other than those laid down in the rules of professional conduct. In addition to these rules, however, there are various provisions in the Penal Code which should be mentioned. Under the Penal Code, legal proceedings can be taken against an advocate who commits a breach of professional secrecy (Section 361) or commits a grave professional fault which has caused direct prejudice to his client (Section 360). There is nothing unusual in these provisions; identical provisions exist in most other countries. In court, Spanish advocates make it a practice to express their opinions quite freely and seldom does this give rise to direct or immediate repercussions. Thus, at the Ceron trial,¹¹ the leader of the Spanish Christian Democrat opposition Party, Sr. José Maria Gil Roblés, was able to unfold before the Supreme Court of Military Justice at a session open to the public what was virtually a political programme for the opposition to the regime. At other more recent political trials, such as the Pujol trial and the Babiano trial, similar demonstrations of almost complete freedom of expression occurred. But the work of the advocate is made difficult by the fact that he cannot take part in some stages of legal proceedings. In particular, he is completely excluded from the preliminaries of a penal enquiry. As long as his client remains in the hands of the police, the advocate cannot get in touch with him nor intervene in any way whatsoever. This is a far cry from the Anglo-Saxon system which enables a prisoner, both at the police and the magistrate stage, to answer questions only in the presence of his lawyer. Moreover, an advocate is not allowed to plead in summary proceedings before military courts. It has already been said that a large number of political offences are tried before military courts in summary proceedings.

Spanish advocates, however, play nowadays an important role. The Bar is making a courageous stand against various abuses of the present regime with certain colleges of advocates taking vigorous action, and is patiently waiting for a progressive return to a true Rule of Law system. A recent example shows the astonishing courage of Spanish advocates and the effectiveness of their concerted efforts. On June 18, 1959, the government issued a Decree relating to the expenses of judicial proceedings. According to this Decree, all financially solvent parties engaged in court actions were required to pay certain taxes. The object of the Decree was to pass on to litigants the extra expenses incurred by the salary increases given to judicial staff, whose salaries had hitherto been notoriously inadequate. The

¹¹ See Appendix 7.

consequences of this reform were likely to be deplorable: people of modest means, yet considered solvent, would practically be prevented from going to court to exercise their rights if they were required to deposit large sums of money with the clerk. As soon as this Decree was published, all colleges of advocates and in particular those of Madrid and Barcelona, went up in arms. In July and August 1959, the colleges of advocates of almost all provinces met and addressed protests to the Ministry of Justice, the secretary of the office of the President of the Council, the members of the Cortes and other authorities. The text of these protests was widely diffused throughout the country thereby starting an extensive opposition movement. On November 30, 1959, Dr. Escobedo, President of the Madrid Bar and an important personality in the regime, was forced to resign for having made a stand in favour of the Decree in face of a majority of his colleagues. The Madrid advocates then elected on December 30 an advocate of independent views to the office of president to replace Dr. Escobedo.

VII. CIVIL LIBERTIES AND POLITICAL RIGHTS

On July 13, 1945, the Cortes approved the " Charter of the Spanish People ", which defined the duties and rights of the Spanish. Among the rights granted to the Spanish people are the following: freedom of expression (which includes freedom of the press); freedom of peaceful assembly and association; freedom of belief and religion (but forbidding external ceremonies or manifestations other than those of the Catholic religion); freedom and privacy of correspondence (but only on national territory); freedom of movement and residence on national territory; inviolability of domicile; and the prohibition of retroactive penal laws.

Civil liberties are normally asserted having regard to the State. They set a limit to the intervention by the public authority in the sphere of individual activity. Nevertheless, it is recognized that individuals only enjoy their Fundamental Rights to the extent that these are compatible with the demands of public order and the country's internal and external security. However, it is also recognized that the limitations placed upon the exercise of public freedoms must be materially justified. If a constitutional provision authorizes the regulation by law of a civil liberty, the legislator should respect the essence of that freedom. " If the freedoms should be conceived in terms of order, then order, in its turn, should not be understood except in terms of those freedoms whose exercise it guarantees."¹² Order cannot and should not be anything more than a safeguard of the freedoms.

In order to restrict or regulate the freedoms, the State may have recourse either to *repression* or *prevention*. The repressive regime (regime of laws) is more readily compatible with the conception of civil liberties than the preventive regime (police regime). The restriction of individual freedoms by police measures of a preventive character is only justified in exceptional circumstances. In a free society, preventive measures are considered legitimate when they are " indispensable in order to re-establish law and order, if the latter has been disturbed, or in order to ward off grave dangers which menace it in a direct and imminent fashion ".¹³

¹² Georges Burdeau: *Les Libertés publiques* (Paris: Pichon and Durand-Auzias, 1961), p. 32.

¹³ *Arrêts du Tribunal fédéral suisse* (Law Reports of the Swiss Federal Tribunal), Vol. 67, Part I, p. 76.

By virtue of Article 35 of the Charter of the Spanish People, the enforcement of Articles

12 (freedom of expression and of the press),

13 (inviolability of correspondence),

14 (freedom of residence),

15 (inviolability of domicile),

16 (freedom of assembly and association), and

18 (immunity from detention, except in those cases and in the forms prescribed by the law)

may be temporarily suspended by the government, totally or partially, by means of decrees which strictly limit the application and duration of such a measure. The Charter does not impose a single condition governing the application of this Article by the government. In particular, it does not specify that suspension of the Fundamental Rights is inadmissible, except when a state of siege or State of Emergency has been declared. The government is free to suspend the fundamental freedoms whenever it sees fit to do so. An instance of this was seen when the government suspended Article 14 of the Charter by the Decree of June 8, 1962, thus depriving the Spanish people for two years of the right to establish freely their place of residence on national territory. This Decree was passed as a response to the participation of 80 members of the internal opposition in the Congress of the European Movement, which took place on June 7 and 8, 1962, at Munich. Upon their return from Munich, the Spanish participants in the Congress were apprehended by the police and forced to choose between exile and assignment of a fixed domicile in one of the Canary islands. Several eminent persons, such as Gil Roblés, Prados Arrarte, Dionisio Ridruejo, chose the path of exile. The comportment of the participants in the Munich Congress with which the government found fault was defined in the preamble to the Decree of June 8, in the following terms: " the campaign directed from abroad against the prestige and reputation of Spain has found an echo in certain persons, who have abused the rights accorded by the Charter, in associating themselves with such unworthy intrigues ". In fact, the 80 members of the internal opposition within the country had met 38 delegates of exiled Spaniards in Munich. Together they agreed upon the draft of a resolution to be submitted to the Congress, the tenor of which is as follows:

The Congress of the European Movement which met in Munich on June 7 and 8, 1962, considers that the integration of every country with Europe, either in the form of membership or in the form of association, demands that the country in question possess democratic institutions. This requires the recognition of the following privileges in Spain, in accordance with the European Convention of Human Rights and the European Social Charter, to wit:

- (1) the establishment of truly representative and democratic institutions, which guarantee that the Government be founded upon the consent of the governed;
- (2) the effective guarantee of all the Human Rights, in particular those of personal liberty and freedom of opinion and the suppression of government censorship;
- (3) recognition of the legal personality of various groups and communities;
- (4) the exercise of the right to organize trade unions on a democratic basis and the right of the workers to defend their fundamental rights, notably by strike action;
- (5) the opportunity of organizing different currents of opinion and political parties, as well as respect of the rights of the opposition.

The Congress expresses the profound hope that the evolution which follows the application of these points will make possible the incorporation of Spain within Europe of which it is an essential part. The Congress records the firm conviction, expressed by all the Spanish delegates present at the Congress, that the immense majority of Spanish people desire that this evolution take place according to the rules of political wisdom and as rapidly as the circumstances will permit, with the sincerity of all concerned and their commitment to refrain from all active or passive violence before, during, and after this process of evolution.

In addition to Article 35, which authorizes the government to suspend certain Fundamental Rights according to its pleasure, the Charter contains another provision which contributes to the precariousness of its guarantees. This is Article 33, the tenor of which is as follows:

The exercise of the rights that are recognized in this Charter may not affect the spiritual, national, and social unity of the community.

This signifies that the State may restrict a Fundamental Right as soon as it alleges that the exercise of such a freedom injures the spiritual, national, and social unity of Spain.

It is evident that "the spiritual, national, and social unity of Spain" is a much wider and more elastic notion than the reservations, based on law and order or internal and external security, with which the fundamental freedoms are guaranteed in a free society.

A. Freedom of Association and Assembly

Article 16 of the Charter guarantees freedom of association and assembly in the following terms:

Spaniards may assemble and associate freely for lawful purposes and according to law.

The same Article goes on to formulate the following reservation:

The State may create and maintain such agencies as are deemed necessary for the accomplishment of its service.

1. FREEDOM OF ASSOCIATION

Freedom of association entails the right to unite in order to achieve a common goal by means of collective effort. Complicated or difficult formalities governing membership, the constitution of associations, and even more so, the requirement of an authorization, are opposed to this freedom of association. This freedom further supposes the right of a citizen not to belong to an association, or group (freedom of adherence), and the right of the association to draft its statutes freely as well as to designate its officers.

The domain of freedom of association is singularly limited in Spain due to the fact that it is not applicable to the formation and activity of political parties and unions. These latter come under the ruling of the second Paragraph of Article 16 of the Charter according to which the State may "create and maintain such agencies as are deemed necessary for the accomplishment of its service". It was recalled above (page 6) that the political movements which supported the military rebellion—to wit, the *Falange Española y de las JONS* and the Carlist Loyalists—were merged by General Franco's Decree of April 19, 1937, and incorporated into the State by subsequent legislation. The formation of any other political party was forbidden. Furthermore, a single syndical organization was created by the State. Thus, groups, whose actions are likely to take on a political significance because they pursue ideals which are in no way as yet sanctioned by official legal thinking, have been subjugated by the State. In this way the regime has put an end to that pluralism which, "to the extent to which it effects those sources which inspire the law, is a necessary condition of modern liberty. Without it the whole legislative process of the State would be threatened by a negative conformism excluding not only progress in legislation, but also the role of opinion in the formation of the law."¹⁴

In principle, the laws in force make the formation of an association dependent upon State authorization. The fundamental text on this subject is the Law of June, 30, 1887. This was modified by the Decree of January 25, 1941, which specified that no association whatsoever may be constituted without preliminary authorization by the Ministry of the Interior (*Ministerio de Gobernación*), or by its representatives in the provinces, the Governors. After having laid down this general rule, an exception is made in favour of the following associations:

- (i) associations formed for the purpose of economic profit subject to civil or commercial law;
- (ii) Catholic Associations, constituted for purely religious motives;
- (iii) institutions and corporations subject to special laws;

¹⁴ Burdeau, *op. cit.*, p. 177.

- (iv) cooperative associations subject to legislation of the Ministry of Labour;
- (v) associations subject to syndical legislation and the control of the *Falange*.

Inasmuch as some associations are subject to special laws, it is impossible to decide whether or not they enjoy "freedom of association" without examining the legal texts which apply to them. We have already explained that the associations listed after (v) above, are subject to a system that is not one in which freedom of association prevails.

The Decree of January 25, 1941, contains in its Section 4 the list of documents which the founders of associations, subject to ordinary legislation, must submit to the competent authority in the locality where they wish to establish the seat of their association. These authorities are the Governors, in the provinces, and the Directorate of police, in Madrid. This list specifies:

- (i) two copies of the statutes, regulations and conventions;
- (ii) two copies of a list bearing the names and private addresses of the directors, representatives, and of all the administrative personnel;
- (iii) a membership list, also indicating nationality;
- (iv) an inventory of assets;
- (v) a copy of the last balance-sheet.

All associations which fail to respect the conditions laid down by this Decree are considered illegal (Penal Code, Section 172, Sub-section 4), and its founders are liable, under Section 174 of the Penal Code, to severe penalties (6 months and a day to six years' imprisonment and a fine of 10,000 to 100,000 pesetas).

The Governor of the province in question enjoys great power of discretion in the matter of granting authorizations. He may either grant or refuse a permit, according to whether he judges the activities of the proposed association to be useful or dangerous. After having given his approval, he may oppose the appointment of the Chairman or of any one of the officers proposed. In this way, he is able to exercise an indirect but effective control over the destiny of the association.

2. REGULATIONS GOVERNING RELIGIOUS ASSOCIATIONS

The provisions of the Decree of January 25, 1941, according to which purely religious associations may be formed without demanding authorization from a State authority, have been ratified in the form of a Treaty by Article 34 of the Concordat of August 27, 1953, between the Holy See and Spain. The text is as follows:

The Associations of the Spanish Catholic Action may freely exercise their apostolate, depending directly on ecclesiastical authority, providing they

keep within the spirit of the general legislation of the State, in all that relates to activities of other kinds.

On the subject of this provision, the following is an extract from the "message of Chief of State on the occasion of submitting the text of the Concordat (October 26, 1953) to the Cortes for ratification".

One of these [provisions] refers to the submission of the Associations of the Spanish Catholic Action to the discipline of the Concordat. This Association is conceived as a lay organization for the apostolate in immediate dependence on the ecclesiastical authority. Its Associations shall enjoy full freedom to exercise their apostolic activities. However, they must submit to the general legislation of the State all other activities, should it be necessary for them to engage in such.

It is evident from these texts that the organizations to which they refer enjoy a genuine freedom of association. Their constitution is not dependent upon State authorization. No provision whatsoever infringes upon their right to freely elect their directors and administrators. Their activities are not subject to State control, as long as they keep within the limits of the apostolate. It is obvious that the notion of apostolate may give rise to differences of interpretation. These, in turn, are liable to incite conflicts between State and Church with regard to the extent of the freedom of association granted to Spanish Catholic Action. Such a conflict arose on the occasion of the strikes in the spring of 1962. Since it revealed opposing views with respect to the freedom of action of the Associations for Catholic Action, it deserves description.

Among the Associations of Catholic Action, there exist several workers' associations, notably the "Brotherhoods of Catholic Action Workers" (*Hermandades des Obreros de Acción Católica*, abbreviated to HOAC) and "Young Catholic Workers" (*Juventud Obrera Católica*, abbreviated to JOC). Adherence to these groups, which are not Christian trade unions, does not discharge members from the obligation of enrolment in the vertical syndicates.

The HOAC and JOC supported the claims raised by the workers on the occasion of the strike of the Asturian miners in April 1962. In The Manifesto of May 8, 1962, which has since become famous, they proclaimed on the one hand the right to a fair wage "sufficient to permit dignified human life in accordance with the level attained by the society of our times" as well as the right to resort to a strike in case of need. On the other hand, they proclaimed the necessity for a truly active share for the workers in the undertaking, in which they were engaged, and its profits, and even in its property. Finally, they demanded for workers the right to free association. In conclusion, The Manifesto affirmed that life within a society and the social relations which this involves should not be founded upon force, but upon law for the realization of justice inspired by love of one's fellowmen.

The regime's counter measure was not long in coming. First, it took the form of an editorial in *Arriba* (the Falangist Newspaper) entitled "Render unto Caesar what is Caesar's" where, among other things, it was stated:

The Spanish Government has always lent spiritual and material aid to the Church in order to favour the growth of Christian virtues. The doctrine and actions of the Church are always well received. But it is sad to see the Church intervening, either consciously or unconsciously (and the latter is the most deplorable), in social, political, or government matters which belong entirely to the jurisdiction of the State.

Arriba at the same time accused the Church of "making common cause with those who, either from within or from the outside, perpetuate the convulsion which rocks the world of today".

Two leaders of Catholic Action were arrested. They were sentenced to pay a fine of 50,000 pesetas for violating the legal provisions regarding associations. In the government's opinion, the distribution of the HOAC and JOC Manifesto was not within the limits of the "exercise of their apostolate" and therefore was not covered by Article 34 of the Concordat. This dispute furnished the occasion for a series of talks between General Franco and the Cardinal-Primate of Spain, Monsignor Pla y Deniel. The tension was finally reduced by a letter from the Cardinal-Primate addressed to the Foreign Minister. In this letter, Monsignor Pla y Deniel proclaimed his fidelity to the government and gave the assurance that the Spanish Church would remain true to the principle of non-intervention in the affairs of State. However, he maintained his personal approval of the HOAC and JOC Manifesto and stuck by the assertion that The Manifesto was not in contradiction with Article 34 of the Concordat. He argued as follows:

Is it not applying the secular criteria of the partisans of State control, to maintain that it is not the work of the apostolate to cite literally a doctrine contained in the encyclical *Mater et Magistra*—just because it is in contradiction with State legislation? Would it not be more logical, on the contrary, to reform that which ought to be reformed in order to bring it into harmony with this encyclical, in a State which calls itself Catholic and Social, and whose Leader has declared in numerous speeches that it follows the social doctrine of the Church?

3. FREEDOM OF ASSEMBLY

The exercise of the freedom of assembly is subject to very strict preventive control and is meaningless as far as this control is put into effect. A Circular, dated July 20, 1939, forbids all demonstrations or assemblies which are not organized with the consent of the Ministry of the Interior. In filing their applications, the organizers must specify the purpose of the assembly or meeting; the speakers who are to be present; and the topics to be presented.

The government authorities have a discretionary power in refusing or granting the authorization requested. All meetings which are not authorized are dispersed and their organizers are liable to be fined.

This regulation also includes under the heading of assemblies meetings for commemorations, opening ceremonies, inaugural and similar ceremonies, including meetings for collections, subscriptions, or for charity purposes. Illegal public meetings and demonstrations constitute an act against the public order within the meaning of Section 2(e) of the Law on Public Order of July 30, 1959.

The only associations exempt from these restrictions are the statutory assemblies of legally constituted associations and Catholic Church processions.

According to reputable sources, the Ordinance of July 20, 1939, is frequently diverted from its original purpose — the control of public meetings — and made to serve as a means of keeping under observation persons suspected of harbouring ideas against the Franco regime. Armed with these powers, the police sometimes enter private houses where meetings of families or friends take place; no action can be taken against such intrusions made without warning.

By virtue of an Ordinance of April 18, 1940, all speeches and lectures, and all other forms of oral expression of thought which are not held under the auspices of the Church, the university, or of the *Falange* are subject to preliminary approval by the Directorate-General of Propaganda.

B. The Free Expression of Ideas and Especially Freedom of the Press

1. In pursuance of Article 12 of the Charter of the Spanish People, "All Spaniards may freely express their ideas so long as they do not advocate the overthrow of the fundamental principles of government". Among the freedoms of thought, an important place is occupied by the *freedom of the Press*. "If we are to judge by the anxieties it causes governments, then the freedom of the press must be one of the fundamental freedoms, because it makes their task more difficult. It is right that it should be so, because a power which met with no resistance would be on the verge of becoming an irresponsible power, both in the moral as well as in the political sense of the term."¹⁵ It is therefore not surprising that certain governments have been tempted to curb the press and have evolved a considerable number of administrative police measures to this effect: government authorization, special directives, preliminary censorship, seizure, suspension of publication, etc. Unless these measures are substantially justified in order to ward off dangers which directly and imminently threaten public order, they are incompatible with freedom of the press. "In the free countries there cannot be a preventive regime with regard to the press."¹⁶

¹⁵ Burdeau, *op. cit.*, p. 202.

¹⁶ Georges Scelle, *A propos des accords de presse, Cahiers de la Presse 1938*, (Paris: Librairie du Rucueil Sirey), p. 204.

2. The newspapers and reviews in Spain are regulated by the Law on the Press of April 22, 1938, supplemented by the two Ordinances of April 24, 1940, and February 24, 1942.

In the words of the introductory explanation of the Law on the Press:

The existence of a fourth estate cannot be tolerated. It is inadmissible that the press can exist outside of the State. The evils which spring from 'freedom of the democratic kind' must be avoided . . . The press should always serve the national interests; it should be a national institution, a public enterprise in the service of the State.

Section 1 of the Press Law also states: "The organization, supervision, and control of the national institution of newspapers and reviews is incumbent upon the State." In the exercise of these functions it is charged, according to Section 2, with the following duties:

- (i) to regulate the number and circulation of newspapers and reviews;
- (ii) to intervene in the choice of the editorial staff;
- (iii) to regulate the profession of journalism;
- (iv) to supervise the activity of the press;
- (v) to practise censorship as long as it has not been decided to abolish it.

In spite of the enactment of the Charter of the Spanish People, censorship has not been abolished. The control of the press has not been modified, although Article 12 of the Charter guarantees the free expression of ideas.

The Ministry of Information and Tourism, the provincial delegations of this Ministry, and the Governors of the provinces are responsible for putting the Press Law into effect.

3. *Censorship and Directives* (Section 2, Subsections 4 and 5 of the Press Law). Censorship is practised, in accordance with directives issued by the Ministry of Information and Tourism, by the Ministry's provincial delegates. When provincial or local information is involved, this duty is carried out by the Governors of the provinces. In Madrid, the newspapers must submit their final proofs to the Directorate-General of the Press.

Here are some of the topics forbidden by the directives of the Ministry of Information: the regime, the succession of the *Caudillo*, certain activities of members of the government, separatist activities, strikes and other forms of political and social agitation, offences against morals, and in general anything likely to be disapproved of by the censorship of the Roman Catholic Church. It is also forbidden to spread scandal, to report a trial in which government officials are implicated, or to publish information of the kind which would place the national situation in an unfavourable light.¹⁷

¹⁷ IPI Survey No. 5, *The Press in Authoritarian States* (Zurich: International Press Institute, 1959), p. 146.

At the Spanish Press Congress of 1952, it was revealed that a journalist had found himself in difficulties for having reported a deficit in the orange harvest. It was also reported that the editor of a daily paper in Malaga had been arrested and subsequently released upon payment of a fine for having published information on an epidemic of poliomyelitis in Andalusia. In Barcelona, a journalist was arrested for having criticized the defects in the construction of workers' houses—a construction project which was placed under the responsibility of the Governor of the province. Released after having been able to prove his good faith and service in the *Falange*, he was nevertheless forced to publish a humiliating correction.

The authorities responsible for the control of the press do not confine themselves to preventing the publication of opinions and news which seem undesirable to the regime; they also issue directives to editors to pass over certain internal or external events in silence or to treat them in a special way. By means of these instructions they are able to orchestrate the entire Spanish press, if need be. According to the study made by the International Press Institute special instructions are regularly given to inspire the editorials which ought to celebrate July 18, the anniversary of the outbreak of the "national revolution". The same system is followed whenever there is a particular circumstance to which the government attaches special importance and which it wishes to control, down to the smallest detail. Thus following the death of Ortega y Gasset, the Ministry of Information and Tourism issued the following order: "Each newspaper may publish up to three articles relative to the death of Ortega y Gasset: a biography and two commentaries. Every article on the writer's philosophy must underline his errors in religious matters. It is permissible to publish photographs of the mortuary on the front page, of the death mask or body of Ortega, but no photographs made during his lifetime."

The Directorate-General of the Press also makes use of the technique of "obligatory insertion". The Ministry of Information and Tourism edits a text and sends it to a newspaper which is obliged to insert it in the place and on the page indicated by the Ministry without any mention whatsoever of the source. This procedure misleads the public as to the opinions of the paper. The article thus published is often no more than a simple piece of information which all newspapers must report in a perfectly uniform fashion, such as a student demonstration, for example. But it may also constitute a leading article forced upon a single newspaper. In this way, the weekly, *Destino* de Barcelona, whose editors are journalists known for their admiration of Ortega y Gasset, was forced to publish an editorial condemning the latter and accusing him of being responsible for the misfortunes of Spain.

Lastly, there exists a still subtler technique which consists of issuing a warning to a newspaper, in the form of a supposedly private telephone conversation. One of the Ministry of Information and Tourism's officials under the guise of sympathizing with the newspaper in question

amiably warns the editor that the political orientation of the newspaper is displeasing to the government which plans to impose penalties upon it. Few indeed are the papers which refuse to heed these warnings.

4. *Immunity from Censorship.* A memorandum dated May 1, 1941, exempted the Falangist press from censorship. As the *Falange* is controlled by the State, this immunity obviously causes the regime to run no risk.

An immunity which, on the contrary, deserves special mention is that enjoyed by the weekly, *Ecclesia*, the official organ of Catholic Action. By virtue of a gentleman's agreement between the Cardinal-Primate and the *Caudillo*, *Ecclesia* is exempted from all censorship. Taking advantage of this immunity, the weekly in question has raised its voice, on several different occasions, against the abuses of censorship. It protested especially against censorship exercised by the Directorate-General of the Press and demanded a reform of the legislation in this sphere. In an article which appeared in May 1954, the Reverend Father Jesus Iribarren, at that time the editor of *Ecclesia*, wrote: "How can one hold up as ideal a government press policy which obliges one to search outside the newspapers for that which should be their *raison d'être*, that is to say, for information?" This article caused such discontent among the ruling circles that it led to the resignation of its author several months later. An editorial published early in 1955 under the direction of the Reverend Iribarren's successor demanded the abolition of the system of directives, by which "the newspapers are obliged to present the opinions of the rulers as though they were their own, an act which is an outrage against Human Rights". At the time of the strikes in the spring of 1962, when the Church took a stand in favour of the right to strike, the position defended by the Church furnished the topic for a long editorial in the May 12 issue of *Ecclesia*. Although strikes are strictly illegal in Spain, they were described in this article as "the ultimate measure to which the working classes should resort when it believes that its rights are scorned". Mention was made of the "justified anomaly of a strike" as supplanting "the unjustified anomaly of abuse and injustice".

The doctrine of the Church was stated in the following terms:

Natural Law and Christian morals, which reject the Marxist dialectic of systematic class struggle and mass abstention from work, recognize as a lawful weapon the decision to cease work, after the efforts to reach a direct settlement by means of the syndicates has failed to produce an equitable result, and providing the general interests of society are safeguarded as far as possible. In the name of these interests, the government may at a given moment, declare a strike to be illegal either before or after it has taken place. Such restriction of a social right permitted by Catholic Doctrine and recognized by the majority of non-Marxist codes may only be invoked in order to defend the national commonweal or in order to avoid evils even greater than the strike, itself, or the deficiencies which have motivated it.

5. *Editorial Staff and the Profession of Journalism.* In pursuance of Section 2 (Subsections 2 and 3) of the Press Law, the State intervenes in the choice of editorial staff of the newspapers and controls the profession of journalism. The editor of each newspaper must be approved by the Minister of Information and Tourism (Section 8). The latter may discharge him whenever he believes "that his continuation as head of the newspaper is dangerous to the State" (Section 13).

In order to practise the profession of journalism, the diploma of the National School of Journalism is required. This institution is under the direction of the Directorate-General of the Press and its professors are appointed by that institution. Students are admitted on presentation of the *baccalauréat* (a certificate giving access to the university), their police record, and a certificate of adherence to the regime. In order to practise his profession a journalist must also be enrolled on the official register of journalists, kept by the Ministry of Information and Tourism. The Minister has the right to refuse this enrolment.

A corporate control of the press exists independently of the administrative control. The Federation of Press Associations, together with the Directorate-General of the Press, has drawn up a code of professional morals for journalists, which has been labelled the "Ten Commandments for a Journalist", and was ratified by the government on April 28, 1955.

Honorary tribunals composed of journalists ensure its application. The most serious sanction which it can impose upon a journalist is removal from the professional register, which signifies exclusion from the profession.

Here are a few of the principles contained in the "Ten Commandments":

As Spaniards of the Catholic faith and as defenders of the principles of the glorious National Movement, we have the duty to serve this religious truth as well as this political truth with fervour in our task of information and orientation . . . The journalist owes allegiance to the newspaper to which he lends his services within the framework of those principles previously declared. Service to the interests of the newspaper is obligatory. Service to the personal interests of the journalist is lawful, providing that these interests are not incompatible with the ethic inspired by the Catholic faith, the doctrine of the Movement, and the general needs of the community . . . Each news item should be judged at its proper value. In its manner of presentation and in the title under which it is published, truth and justice must be respected and prudence must be exercised on account of the power of the press upon public opinion. All conscious changes of the content of the news item, all equivocal playing up of news, all sensationalism must be avoided.

6. *Other Means of Administrative Control.* According to Section 2 (Subsection 1) of the Press Law, "The State is responsible for the regulation of the number and circulation of newspapers and and reviews." It is apparently under this heading that the State

determines the number of copies of a newspaper printed; its number of pages and the amount of paper to be allocated to the publisher. It is notably through the allocation of supplies of newsprint that the government is able to bring strong pressure to bear upon those papers which lack enthusiasm with regard to the regime.

The study already mentioned made by the International Press Institute furnishes a revealing example : ¹⁸

... At the beginning of the summer of 1958, the traditionalist monarchist paper of Madrid *Informaciones* was advised by the Ministry of Information that its ration of newsprint for the month of July would be reduced by ten per cent, representing a cut of 6,000 tons of newsprint for the paper. The Ministry justified the measure by claiming that the paper's " political nuances " were offensive to the government. It went on to say that the 6,000 tons of newsprint denied to *Informaciones* would be equally divided between two other papers, ABC (monarchist) and *Madrid* (independent), which were carrying out a policy of which the government " highly approved ".

7. *Repressive Regime.* Inasmuch as a regime which is preventive *vis-à-vis* the press is incompatible with the concept of freedom of the press, it follows that the abuses of this freedom should be curbed by penal laws applied by an impartial and independent judge. Spanish penal legislation includes a considerable number of provisions which affect the free expression of ideas and thought and thus also the freedom of the Press. Before going into these, we should like to draw attention to a singular provision which confers power of criminal jurisdiction upon the Minister of Information with respect to certain " writings ". This provision is Section 18 of the Press law, the first Subsection of which runs as follows:

Independently of specific misdemeanours or faults in penal legislation, the Minister in Charge of the National Press Service shall have the power to punish administratively all writings which, directly or indirectly, cast a slur upon the prestige of the Nation or of the regime; slander the work of the government in the new State; or spread pernicious ideas among the weak intellectuals.

By " misdemeanours and faults specified in the legislation ", mentioned in Section 18, one must include the offences committed by means of the press and completed by the publication itself. The number and definition of these offences is such that it seriously hampers the freedom of the press. Freedom of the press is only real " if all opinions may be heard, even those which are hostile to the parties in power ".¹⁹ However, it is evident from several provisions to be cited below that the regime has secured itself against all manifestations of hostile ideas and against all serious criticism. Thus Section 251 of the Penal Code of 1944 provides for a fine of 10,000 to 100,000 pesetas, as well as imprisonment from 6 months to 6 years, for all persons engaged in propaganda, in whatever form, with the object of " ... destroying or lessening the national sentiment ...

¹⁸ *Ibid.*, p. 149.

¹⁹ Burdeau, *op. cit.*, p. 232.

discrediting or damaging the prestige or authority, harming the interests, or offending the dignity of the Spanish Nation ”.

Section 2 of the Decree of September 21, 1960, assimilates to the crime of military rebellion, as it is defined by Section 286 (Subsection 5) of the Code of Military Law, the act of spreading “ false or tendentious news with a view to disturbing law and order and prejudicing the security of the State or to damaging the prestige of the State, of its institutions, of its government, of its army, or of its public authorities ”.

The provisions of penal law tending toward the protection of the regime will be examined in greater detail in the following chapter.

8. *The Free Expression of Ideas other than through Periodical Publications.* Besides the legislation governing periodical publications, the free expression of ideas is also curbed by the following texts.

The Ordinance of April 29, 1938, places under the control of the Minister of Information and Tourism the publication, distribution, and sale of books of all kinds, and of pamphlets and all other printed matter or even of simple reproductions, whether Spanish or foreign.

The Ordinance of July 15, 1939, initiates State censorship of all scenarios, plays, reprints of patriotic works, words in opera and operetta, and the manuscripts of all musical composition dedicated to an official personality or based upon an “ official theme ”.

The Ordinance of April 18, 1940, provides that all speeches, lectures and “ all other forms of oral expression of ideas ”, presented other than under the auspices of Church, university, or Party, or which are not the responsibility of these institutions are subject to preliminary approval by the Directorate-General of Propaganda.

The Decree of March 21, 1952, created a specialized authority for the classification and censorship of all films, Spanish or foreign according to their “ moral, political, and social ” content.

C. Religious Freedom

Article 1 of the Law of Succession of June 7, 1947, specifies that, “ Spain, as a political unit, is a *Catholic* . . . State . . . ” (Emphasis added.) The Law on the Principles of the National Movement of May 17, 1958, lays down in Article 2:

The Spanish nation considers it a rule of honour to respect the law of God, according to the doctrine of the Holy Catholic Apostolic and Roman Church, the sole depository of truth—Faith inseperable from the national conscience. That Faith shall inspire the nation’s law.

The relations between State and Church were regulated by the Concordat of August 27, 1953, which bestowed noteworthy powers

and privileges upon the Catholic Church. Canonical marriage, for example, "is a civil law marriage if at least one of the parties concerned is Catholic" (Section 42 of the Civil Law Statutes). Civil marriage may only be contracted if neither of the two parties is Catholic. Those wishing to contract civil marriage must furnish written proof that they are not members of the Church. In the event that they are unable to furnish such proof, they must solemnly swear that they have never been baptized. The validity and effect of the marriage thus contracted depends upon the veracity of this oath.

The Catholic Church intervenes in public education in a pronounced manner. Religious instruction which has been compulsory in primary schools since 1937, became obligatory in secondary education in 1938, and was similarly introduced, in 1944, at the university level. The Church has the right to control school textbooks. Article 26 of the Concordat expressly stipulates:

In all centres (of education) of every sort, whether State institutions or not, instruction shall conform to the principles laid down by the dogma and morality of the Catholic Church.

The ordinaries will freely fulfil their mission of supervising the said educational institutions, with respect to purity of faith, high moral standards, and religious education.

These ordinaries may demand that books, publications, or educational materials, be banned or withdrawn from circulation, if they are contrary to Catholic dogma and morality.²⁰

By virtue of Article 29 of the Concordat.

The State shall see to it that a suitable place be given to the teaching and defence of religious truth in the institutions and services engaged in forming public opinion, and in particular in radio broadcasts and television programmes. This work shall be carried out by priests and members of the religious orders designated by agreement with the ordinary in question.

The Catholicity of the Spanish State and the position which it bestows upon the Church inevitably weaken the constitutional guarantee of religious freedom. This guarantee is worded in the following terms (Charter of the Spanish People, Article 6):

The profession and practice of the Catholic religion, which is that of the Spanish State, will enjoy official protection.

Nobody will be molested because of his religious beliefs or the private exercise of his creed. No external ceremonies or manifestations will be permitted except those of the Catholic religion.

In the free countries, it is generally, recognized that religious freedom is not just an inner freedom, but that it implies the freedom

²⁰ The term "ordinary" designates a religious authority vested with power of jurisdiction within his province. If the school Chaplain is a member of the secular clergy, it is the Bishop who fulfils this "mission of vigilance". If the Chaplain is a member of a religious order, the Prior of the Order occupies the place of the ordinary, in the sense of the Concordat.

of each individual to profess his faith through freedom of worship.

Freedom of worship consists in the right of each person to practise outwardly the religion of his choice in performing its rites and conducting its ceremonies. This right postulates the opportunity of *public* worship, since private worship does not answer to all the exigencies of a true freedom.

According to the terms of the Charter of the Spanish People (Article 6, paragraph 2), freedom of public worship is guaranteed to none except the Catholic Church. Other religions, therefore, only enjoy limited freedom of worship. Something that is even more open to criticism, is that freedom of conscience—"nobody shall be molested on account of his religious beliefs"—is not firmly respected. In a report published in 1961, the Ecumenical Council of Churches called attention to a series of troublesome incidents endured by the Protestant minority, which does not constitute more than 30,000 persons. Here are a few examples taken from the report.

A few years ago during the week of prayer for Christian unity, the police, accompanied by the Reverend Father Sánchez de León, made an inspection of the building known as *El Porvenir*, belonging to the Spanish Evangelical church and including the church, the residence of several pastors, the parish centre, the school and the seminary. This building, which was located in Madrid, at 85 Bravo Murillo Street, was subsequently closed down along with the *Sociedad Bíblica*, at 2 Flor Alta Street, and the doors barred with an official seal. The stock of books of the *Sociedad Bíblica* (a subsidiary of the London Bible Society) which included around 5,000 Bibles, 9,000 New Testaments, and 5,000 Hymnals was seized by the police authorities and converted into paper pulp. This action of the police was approved *post factum* by the Minister of the Interior who pointed out that the seminary functioned "without an authorization". However, at the time the seminary was founded some 80 years ago no law existed requiring a special authorization for the creation of a new educational centre. Whatever the case may be, the Spanish Government opposed all diplomatic protests which it received with the argument that there had been no authorization. Among the countries which protested were the Federal Republic of Germany, Switzerland, the United States, and the United Kingdom. The Lutheran Bishop, Dibelius, intervened with Cardinal Frinks of Cologne and with His Holiness Pope John XXIII. The Spanish Minister of Foreign Affairs responded to the various protests by saying that the measure had been taken up by the Council of Ministers repeating that the seminary had not been registered among the centres authorized by the Ministry of Education and was considered as functioning clandestinely.

Another example: the Concordat of 1953 adopted Article 3 of the former Concordat of 1851, which provides that the Governors of each province and, if need be, the government itself should support

by every means at their disposal the supervision exercised by the Bishops over protestant activities.^{20a} With this purpose the Commission for the Defence of the Catholic Faith was created by the Bishops, with branches, in the principal cities of Spain. Its director is the Reverend Father Sánchez de León. This office is concerned with the study of protestantism and the supervision of protestants. In fact, it is a semi-official body which enjoys the benefit of assistance from the State Police. Among the numerous instances in which the police have acted under pressure from this organization, the case of a protestant doctor, Villa de Rubí, of Barcelona, was cited. Dr. Rubí was at first forbidden to exercise his profession; later he was obliged to close the private school which he directed.²¹ In the end, he was forced to emigrate.

The Commission for the Defence of the Catholic Faith, owns a personal filing index on the 30,000 Spanish protestants, containing information on their private as well as their professional lives and on their political opinions.

D. The Right of Petition

“To speak truthfully,” wrote Professor W. E. Rappard on the subject of the right of petition, “there is no need to be a partisan of natural law in order to see in the freedom to complain, or protest, the inalienable right of every citizen of a free country.”²² Moreover, the right of petition is only mentioned in so many constitutions for historical reasons. For, in the XVIIIth century, in the time of European Absolutism, the presentation of petitions was often considered as an unlawful interference of the subjects in the jurisdiction of the public authorities, even as a sort of rebellion. By guaranteeing constitutionally the freedom of petition, all illegal character was removed from the act of presenting a petition.

Article 21 of the Charter of the Spanish People guarantees the freedom of petition in the following terms:

Spaniards may address individual petitions to the Chief of State, to the Cortes and to public authorities.

Corporations, public officers and members of the Armed Forces and institutions may only exercise this right according to the laws by which they are ruled.

^{20a} The words of the Concordat are to the effect that the Government shall bring its powerful protection to the Bishops when the latter so request, principally when they have to withstand those who try and pervert the faithful and corrupt their morals.

²¹ This was the result of intervention by the authorities in question, who acted on the strength of an unfavourable police report.

²² W. E. Rappard, *La Constitution fédérale de la Suisse, 1848-1948* (Neuchâtel Editions de la Baconnière, 1948), p. 184.

Exercise of the right of petition is governed by the Law of December 22, 1960. It will be recalled that, in pursuance of Article 34 of the Charter, "the Cortes . . . will vote the necessary laws for the exercise of the rights recognized in this Charter."

According to Section 2 of the Law, of December 22, 1960, "all Spaniards of more than 21 years of age may present a petition. The petition must be addressed to the Chief of State, to the Council of Ministers, to the Cortes, to the Ministerial Committees, to the President of the Council of Ministers, and to the Ministers; it may also be addressed to the local authorities; the Governor, Mayor, President of the deputation or any other local head of administration." A petition may only be presented by physical persons *individually*; collective petitions are illegal. The authority to whom the petition is addressed must make out a receipt. He may also make an investigation of the facts presented in the petition, if these fall within his competence. The Law specifies that no detriment shall result to the signatory because of his request, particularly in the case where a misdemeanour should be committed by means of the petition—e.g., if the latter should constitute an act of defamation. As a result of the petition, the authority may either make a decision in respect of the individual or issue an order applicable to the general public.

Already before the adoption of the Law of December 22, 1960, the Cortes had inserted provisions into their statutes, relative to the petitions addressed to them (Section 80 and 81). Section 80 lays down that "in agreement with Article 21 of the Charter, every natural person or artificial *persona juridica* may address a petition to the Cortes, bearing on a matter within their jurisdiction, through the mediation of their president." Fraga Iribarne has written that "this Section contains a very interesting stipulation. Article 21 of the Charter recognizes individual petitions, which excludes collective petitions; here, however, it is specified that petitions from corporate bodies are receivable, which of course include a great number of natural persons". The astonishment of this pro-Franco author is significant for, apart from the exception which we have just mentioned, the Spanish legislator has taken care to forbid collective petitions, wishing, doubtlessly, to place an obstacle in the way of all movement of opinion to which a collection of signatures might give rise. Also certain ways of presenting petitions have been subjected to penalties under Sections 152-154 of the Penal Code:

Section 152

Those members of the Armed Forces, who attempt to penetrate into the Chamber of the Cortes in order to present petitions, either in person or collectively, shall incur the penalty of banishment.

The penalty of banishment *extranamiento* is defined in Section 86 of the Penal Code: "He who is condemned to banishment shall be expelled from Spanish soil for the duration of his sentence."

Section 153

Those who, without being members of the Armed Forces, attempt to penetrate into the Chamber of the Cortes in order to present a petition, in person and collectively, shall incur the penalty of confined residence.

He who attempts to penetrate, alone, into the same place in order to present, in person and individually, one or several petitions, shall incur the penalty of interdiction of residence.

Section 154

All those who are members of the Armed Forces and who present, or attempt to present, petitions to the Cortes, collectively, even if not in person, shall also incur the penalty of confined residence.

A similar penalty shall be incurred by those who are members of the Armed Forces, and who present, or attempt to present, them [petitions] individually without following the disciplinary rules relative to the matter.

The maximum penalties indicated in this Section and in Section 152 shall be imposed, respectively, where persons are concerned who occupy positions of command in the Armed Forces.

The penalty of confined residence (*confinamiento*) and interdiction of residence (*destierro*) are defined in Sections 87 and 88 of the Penal Code, as follows:

Section 87

Those who are condemned to confined residence shall be conducted to a locality or district situated on the Peninsula, the Balearic Islands, or the Canaries, where they shall live at complete liberty under supervision of the public authorities.

In deciding upon the place where the condemned person shall serve his sentence, the tribunal will take into account the occupation, social position, and manner of life of the condemned, in order that he may assure his subsistence.

Section 88

He who is sentenced to interdiction of residence, will be forbidden to enter one or several localities which shall be designated in the sentence or to enter within a certain radius determined by the latter. This radius will comprise a minimum of 25 and a maximum of 250 kilometres from the place designated, which area shall include, if the plaintiff so demands, the place in which the misdemeanour was committed and the normal place of residence of the guilty person and of the plaintiff and his close relatives.

E. Suffrage

Universal suffrage of adults is allowed in two cases:

(1) " All the men and women of the nation of more than 21 years " have the right to take part in a referendum ordered by the Chief of State, by virtue of the Referendum Law of October 22, 1945.

(2) All legislative acts which modify, abrogate, or replace one of the fundamental laws of the Nation are submitted to an *obligatory* referendum. These laws are mentioned in Article 10 of the Law of Succession of June 7, 1947 as follows: " The Charter of the Spanish People, the Labor Charter, the Constituent Law of the Cortes, the

present Law of Succession; the Law of National Referendum, and whatever other law shall be latterly promulgated as fundamental." The only Law so far promulgated in this way is the Law on the Principles of the National Movement of May, 17, 1958.

As far as local suffrage is concerned, the right of suffrage has been conceded to heads of families who cooperate in the election of one third of the municipal councillors. The Organic Law on Local Administration, of July 17, 1945, stipulates that the municipal councillors must be elected as follows. One third by the heads of families; one third by the syndicates of the community; and one third by the municipal councillors previously elected, who will choose their candidates from a list prepared by the Governors of their province.

In order to be eligible, the voters must be at least 23 years of age. The heads of families may only vote for other heads of families. Those who are not eligible are all those stipulated by the Law of August 5, 1907, (concerning loss of civic rights by reason of judicial sentences, bankruptcy, or because of debt to the State).

The Mayor, the President of the Municipal Council and the government delegate, is appointed:

- (a) by the Minister of the Interior in communities having a population of over 10,000 inhabitants;
 - (b) by the Governor of the province in communities having a population of less than 10,000 inhabitants. He may be dismissed by the Minister of the Interior.
-

VIII. DEFENCE OF THE REGIME

All States have penal legislation for protecting their security. It is legitimate, even essential, for the State to regard actions directed against its internal and external security as crimes or offences, and to punish those plotting against or undermining its constitutional institutions, its national defence and its independence. The principle on which such legislation is founded cannot be disputed. The problem, however, is where to draw the line beyond which individual liberty may be subjected to restrictions by the State—i.e., when repression is directed against actions which, although dangerous for the security of the State, nevertheless constitute the exercise of fundamental human liberties. The Spanish Legislature has not been unduly concerned about this problem. In Spain, the penal legislation for the protection of the State is in fact, legislation for the defence of the regime, which tends to repress any activity that is oppositional in character.

A. Law on Public Order of July 30, 1959: A Penal Law Enforced by the Administration

The concept of law and order has a dual aspect. It is invoked to justify restrictions on individual liberty, first in the interests of social equilibrium (protection of society and, in particular, of individual rights and interests), and secondly, in the interests of State security. The Law on Public Order of 1959 has been framed to cover both of these aspects. It will be examined here insofar as it is concerned with the protection of the State, or, to be more exact, with the defence of the regime.

Section 1 defines law and order as "the normal operation of public and private institutions, the maintenance of internal peace, and the free and peaceful exercise of the individual, political and social rights recognized in the fundamental laws of the nation". Section 2 enumerates the actions that are deemed contrary to law and order, to wit:

(a) actions that interfere or tend to interfere with the exercise of rights defined in the Charter of the Spanish People and other fundamental laws of the nation, or that are prejudicial to the spiritual, national, political or social unity of Spain;

(b) actions that affect or tend to affect public security, the normal operation of public services and the regularity of supplies or prices by abusive exploitation or circumstances;

(c) organized strikes, illegal shut-downs of, or lock-outs by, manufacturing or business concerns, and causing or making possible the occurrence of one or other of these actions;

(d) actions liable to create agitation on the public highway, and the act of committing or attempting to commit disturbances by means of violence, threats or force, with arms or explosives;

(e) public demonstrations and meetings that are illegal or which give rise to disturbances and violence, or holding public spectacles in similar circumstances;

(f) activities by means of which subversion is propagated, encouraged or caused, or which defend the use of violence or any other means for achieving it;

(g) actions directed against public health and the violation of sanitary arrangements which have been prescribed for preventing the break-out and spread of epidemics;

(h) the incitement to break regulations for the maintenance of law and order and the disregarding of decisions made by the authorities or their representatives for preserving or restoring law and order;

(i) any other action, not included in the preceding Sections, which fails to comply with the requirements of the present Law or which would constitute a breach of the peace or of social harmony.

These actions constitute offences for which their authors are punished with fines imposed by the authorities unless they violate special provisions prescribing severe penalties. The authorities having the right of penal jurisdiction are the Council of Ministers, the Minister of the Interior, the Director-General of Security, Civil Governors and Mayors. The Council of Ministers may impose fines of up to 500,000 pesetas, and the Minister of the Interior fines of up to 100,000 pesetas.

In the matter of appeals, Section 21 of the Law on Public Order makes the following provisions:

1. Only the interested party may lodge an appeal against these administrative penalties. This appeal will have the dual characteristic of being both a request addressed to the authority having imposed the penalty and an appeal before the higher administrative authority immediately above this authority.

2. When the penalty imposed by the administrative authorities consists of a fine, the appellant is required to make a deposit amounting to one third of the fine. This requirement may be dispensed with if the authorities having imposed the fine are satisfied that the appellant manifestly has inadequate financial means.

The following example may serve to illustrate the spirit in which the Law is enforced and the manner in which the authorities interpret the concept of law and order:

On May 1, 1960, the HOAC and JOC held a meeting at the Arriaga theatre in Bilbao in celebration of Labour Day. This meeting was attended by Sr. Alzola, the Diocesan Bishop, the president of the JOC national committee, and by Sr. Martinez Conde, a member

of the HOAC national committee. The two last mentioned made speeches before the gathered assembly. Both were later punished for disturbing the public order. Among the charges levelled against the president of the JOC national committee, who was fined 10,000 pesetas, was that of having "incited workers to protect themselves from the loss in purchasing power of wages". As for Sr. Martinez Conde, he was sentenced on May 6, 1960, by the Governor of the province of Biscay to a fine of 25,000 pesetas and to be detained until the fine has been paid. This unusually heavy sentence was based on a finding of guilty on the following counts:

1. of having placed the prelate who was present at the meeting in an embarrassing position;
2. of having attacked the country's social institutions and the measures taken by the government in implementing its stabilization policy;
3. by his attitude, for having incited his listeners to break the rules and regulations on public order, and by his speech, for having created an atmosphere favourable to subversive activity contrary to the maintenance of peace and
4. of jeopardizing the social unity of Spain.

In order to demonstrate to what extent these charges were unfounded, the full contents of a note addressed by the Bishop to the Governor are quoted below:

We, Doctor Pablo Gurrupide Beope, Bishop of Bilbao by the grace of God and of the Holy Apostolic See, believe it to be our duty to address your Excellency with all due respect, and to transmit to him this note in the accomplishment of our sacred duty of Bishop in order to defend the works of the Church, because they form a part of the Church itself, as in the case of the HOAC which is an apostolic movement of the Catholic Church in Spain and in the entire world and which is therefore a part of the apostolate of the Diocese.

As regards the meeting held at the Arriaga theatre on May 1, 1960, and the charges brought against Sr. Victor Martinez Conde who is a member of the HOAC national committee, which charges have led to his arrest in Madrid and to a fine of 25,000 pesetas imposed by the civil government of Biscay, we would like to bring the following points to the attention of your Excellency by means of this communication:

1. That we were surprised by the charge according to which an embarrassing situation was created for our person by the contents of the speech, whereas in fact we did not give the slightest indication of disapproval and we followed this speech with the greatest of interest, since it contained nothing that was contrary to doctrine and since we considered that the concepts of the inalienable rights of man and of the functions of the social institutions to which reference had been made were in full conformity with the doctrine of the Church.
2. That the meeting was held with our consent and approval and that we were present at said meeting.
3. That at no time in the course of the speech had there been any kind of exhortation to break the rules and regulations on law and order or any threat to the peace, the meeting having taken place without incident and without the slightest breach of law and order or of the peace, both inside and outside the theatre.

4. That the social contents of the speech in no way changed the apostolic nature of the meeting.
5. That as regards the statements made by the speaker, we do not consider that these constituted a harsh criticism of any of the social institutions of the State, but rather constituted a mere outline of the practical aspects of syndical and professional life, questions which are in no way alien to the apostolic aims of the Church.
6. That, furthermore, we expressed our approval by our applause and by the few words spoken at the end of the meeting.
7. That to our great surprise and disapproval, we observed that a detachment of police had been posted on the occasion of an apostolic meeting of the Church, a meeting organized and presided by the ecclesiastical authorities.
8. That, in our opinion, he deserves neither a fine nor the strong measures which have been taken against him.
9. That we were also surprised by the fact that sanctions had been taken against an activity of the Church without our having been warned beforehand, and that this should have been brought to our notice through public rumours and by our counsellors.
10. Consequently, we believe that our appeal should be accepted and that a favourable decision should be made.

The concept of law and order, as defined in the Law on Public Order, and which is as broad as it is imprecise, has also been adopted by the courts when they are called upon to pass judgment in a matter involving a penal provision that includes a reference to law and order (for example, Section 2 of the Decree of September 21, 1960, according to which any person who spreads false or tendencious news with a view to disturbing law and order will be considered guilty of military rebellion).

B. Law on Political Responsibilities of February 9, 1939

Immediately after the civil war, the victorious side undertook a vast settling up of old scores with its former adversaries by passing the Law on Political Responsibilities, which was retroactive in effect. This Law attached "political responsibility to persons both natural and artificial who contributed between October 1, 1934, and July 18, 1936, to the subversions of every kind that occurred in Spain, and to those persons who after the second of the said dates, opposed or oppose the National Movement by positive action or by marked passivity".

In order to appreciate the meaning and scope of this Law, a few dates will be recalled. On April 14, 1931, Spain was proclaimed a Republic. On February 16, 1936, general elections were held at which the Popular Front scored, as is well known, a great victory: 163 Republicans, 90 Socialists and 16 Communists totalling 269 seats for the Popular Front, as opposed to 142 seats for the Right-wing parties. On July 17, 1936, General Sanjurejo started the military uprising against the legal government of the Republic. That is why the date of July 18, 1936, marks the beginning of the

period in which the insurgents' opponents are held politically responsible. As from that date, any kind of opposition to the military insurrection is liable to penal sanctions. As regards actions that took place between October 1, 1934 and July 17, 1936, only those persons who "contributed in bringing about or aggravating subversions of every kind that occurred in Spain" can be prosecuted. According to Section 4 of the Law the following persons were considered to fall into this category:

- those having held leading positions in the parties, groups and associations listed in Section 2, and those having represented the same in any kind of public or private corporation or body. (Under Section 2, "all political and social parties and groups that had formed part of the so-called 'Popular Front' since the call for the elections held on February 16, 1936; parties that were allied with or supported the Popular Front; and separatist organizations that opposed the triumph of the National Movement" were outlawed.)
- those having figured, by virtue of an entry made before July 18, 1936 and maintained up to the said date, on the membership lists of those parties, groups and associations listed in the preceding paragraph, with the exception of ordinary members of trade unions.
- those who have publicly distinguished themselves by the intensity or the effectiveness of their activity for the Popular Front or those parties and groups covered by Section 2, or those who have contributed to the activities of these parties and groups by means of freely and voluntarily provided economic assistance with the deliberate object of favouring them, although they did not hold leading positions or have representative functions, nor carry out confidential assignments or missions, nor were members thereof.
- those having called for the 1936 parliamentary elections, or who had been members of the government that ran them, or who had assumed important functions in the said government, or who had been government candidates or candidates of any one of the Popular Front parties or of their allies or supporters, or who had been delegates of these parties for the election of the President of the Republic in that same year.
- those who belong or have belonged to the freemasons, with the only exception of those who had left the sect before July 18, 1936 of their own volition or have explicitly broken off with them or have been expelled for having acted against their principles or their appointed ends.
- those having incited or caused any one of the activities mentioned in the preceding paragraphs to be carried out, whether it be

by word of mouth, the press, the radio or any other broadcasting means, or by writings addressed to different people.

The penalties prescribed by the Law on Political Responsibilities were imprisonment (maximum: 15 years), the total or partial seizure of property, fines, the loss of civil rights, exile, and relegation to Spain's African possessions. The Law was administered by Political Responsibilities Tribunals "composed of representatives of the army, of the Judiciary, of the *Falange*, who shall set by their common action the tone that inspires the National Movement" (preamble of the Law).

The enforcement of the Law on Political Responsibilities gave rise to an era of massive repression. Statistics reveal that the penal population, which before the civil war fluctuated between a minimum of 6,000 prisoners and a maximum of 12,500 (in 1934 after the revolt of the Asturias), numbered 250,719 on December 31, 1939. The number of prisoners was still 213,373 on December 31, 1940. As a result of remissions of sentences, this number was reduced to 139,990 in 1941, to 95,601 in 1942, to 46,661 in 1943 and to 28,077 in 1944.

A Decree issued on April 13, 1945, put an end to the enforcement of the Law on Political Responsibilities ("the provisions of the Law of February 9, 1939, and February 12, 1942, are declared null and void insofar as they relate to the institution of fresh proceedings concerning political responsibilities"). The Minister of Justice was directed to make the necessary arrangements for the dissolution of the special Responsibilities Tribunals.

The relationship between the victors and the vanquished of the civil war has been very accurately depicted in 1951 by Fernandez Cuesta, then Minister Secretary-General of the *Falange*, when he declared: "Between their Spain and ours there is an abyss that can only be crossed by repentance and submission to our doctrine. Otherwise, may they remain on the other side of the abyss, and if they attempt to cross it surreptitiously, may they perish."

This attitude of the victors prompted Salvador de Madariaga to make the following observation: "How could the body of Spain be healed when her soul was still cut in two?"²³

C. Penal Legislation for the Protection of the State and the Defence of the Regime

Under this heading, *that* legislation is considered which is administered by the Judiciary, as opposed to the Law on Public Order which is administered by the Executive. In particular those provisions

²³ Salvador de Madariaga, *op. cit.*, p. 559.

are listed which protect the security of the State and the stability of the regime by means of restrictions on the freedom of expression and on the freedoms of association and of assembly, and by outlawing strikes. These provisions appear notably in the following enactments:

- the Penal Code of December 23, 1944;
- the Code of Military Law of July 17, 1945;
- the Decree of September 21, 1960; and
- the Law for the Repression of Freemasonry and Communism of March 1, 1940.

1. THE PENAL CODE²⁴

The provisions which are particularly worth mentioning are:

(a) *Treasonable offences*

Section 123: Gross insults to the Spanish nation, to the feelings of its unity, to its symbols and to its emblems shall be punished with sentences of minor imprisonment; if they are made publicly, they shall be punished with sentences of major imprisonment.

(b) *Offences that compromise peace and the independence of the State*

Section 129: Subsection 1: Those who in any way keep up an understanding or a relationship with foreign governments, with their agents or with international or foreign groups, organizations or associations with the object of damaging the authority of the State or compromising the dignity or vital interests of Spain.

Section 132: The Spaniard who, outside national territory, communicates or causes to circulate documents or false, spurious or tendentious rumours or commits any kind of act liable to cause prejudice to the credit or authority of the State or to compromise the dignity or interests of the Spanish nation shall be punished with imprison-

²⁴ The classification of liberty-depriving sentences of imprisonment introduced by Section 78 of the 1944 Penal Code is as follows:

<i>Sentence</i>	<i>Length</i>
major solitary confinement with hard labour	20 years and 1 day—30 years
minor solitary confinement with hard labour and banishment	12 years and 1 day—20 years
major imprisonment, interdiction of residence	6 years and 1 day—12 years
minor imprisonment	6 months and 1 day—6 years
major arrest, interdiction of residence	1 month and 1 day—6 months
minor arrest	1 day —30 days

ment, absolute legal incapacity and fines ranging from 10,000 to 50,000 pesetas.

The same penalties shall be incurred by aliens who commit on Spanish territory any one of the acts listed in the preceding paragraph.

(c) *Offences committed during the exercise of individual rights recognized by law*

Section 172: The following associations shall be considered illegal:

1. those that are, by their object or their nature, contrary to public morality;
2. those whose object is to commit an offence;
3. those that are banned by the competent authority; and
4. those that are formed without complying with the conditions and formalities prescribed by law.

Section 173: The following fall under the provisions of the preceding Section:

1. groups or associations apt to destroy or weaken national feelings;
2. groups or associations, whether or not they are formed on national territory, whose object is to attack in whatsoever manner the unity of the Spanish nation or to promote or spread separatist activities. Persons incriminated under the present Subsection shall be liable to fines of 10,000 to 100,000 pesetas in addition to the prescribed penalties;
3. proscribed associations, organizations, political parties and other groups, and all those of similar tendencies, even when they are reconstituted in a different form and under a different name;
4. those who attempt to introduce a regime based on the division of Spaniards into political groups or classes of whatsoever kind; and
5. formations having a para-military nature expressly banned by law. When the convicted person belongs to the Armed Forces, he shall be penalized with the immediately higher ranking sentence.

Section 174: The following shall incur minor imprisonment, special incapacity and a fine of 1000 to 5000 pesetas:

1. the founders, leaders and presidents of associations against which the preceding Section and Subsections 1, 2 and 3 of Section 172 are directed.

If the association could not be formed, the penalties shall consist of longterm arrest, suspension and a fine of 1000 to 3000 pesetas.

If the object of the organization is the overthrow by violence or the destruction of the political, social, economic or judicial organization of the State, its founders, organizers or leaders shall be sentenced to minor solitary confinement with hard labour, and its ordinary members shall be sentenced to minor imprisonment.

When the actions with which the preceding paragraph is concerned are not grave or when the association could not be formed, the court shall pronounce the immediately lower ranking penalty or interdiction of residence and impose a fine of 1000 to 5000 pesetas.

2. those, who, by their economic assistance, even when it is indirect, facilitate the foundation, the organization, the reconstitution or the activity of the associations, groups, parties and formations mentioned in the last paragraph of the preceding Subsection. In this instance, when the convicted person can afford it, the courts can increase the fine to 250,000 pesetas, bearing in mind the circumstances in which the act was carried out and its consequences.

Section 175: The following shall be liable to major arrest:

1. the founders, leaders and presidents of associations covered by Section 172, Subsection 4;
2. the leaders, presidents and ordinary members of associations who do not permit representatives of the authorities to enter the premises in which their meetings are held or to attend such meetings;
3. the leaders and the presidents of associations that do not break up their meetings at the express request of representatives of the authorities, and ordinary members who in such an event do not withdraw; and
4. the ordinary members of associations covered by Section 172, Subsections 1, 2 and 3, and Section 173.

(d) *Insurrectional offences*

Section 222: The following shall be punished as crimes of insurrection:

- ...
3. workers' strikes;
- ...

Section 223: Those found guilty of offences enumerated in the preceding shall be punished with:

1. major imprisonment if they have been the promoters, organizers and leaders, or if they have resorted to violence or intimidation in carrying out their offences;
2. minor imprisonment in other cases.

In addition to the enumerated penalties, the court may impose a fine of 5000 to 50,000 pesetas having regard to the circumstances of the case, the offender and, especially, his economic situation.

(e) *Illegal propaganda offences*

Section 251: Those who carry on propaganda of any kind inside or outside Spain for any one of the following purposes shall be punished with minor imprisonment and fines of 10,000 to 100,000 pesetas:

1. the overthrow by violence or destruction of the political, social, economic or judicial organization of the State;
2. the break-up or destruction of national feeling;
3. the disruption of the Spanish nation's unity, the promotion or propagation of separatist activities;
4. the committal or planning of an attempt on the security of the State, damaging its good name, prestige or authority, or harming its interests, or offending the Spanish nation's dignity.

By propaganda is meant the printing of any type of book, leaflet, pamphlet, poster and periodical, and of any kind of typographic or other publication, as also their distribution and stocking for distribution; speeches; radio broadcasts and any other means of spreading publicity. When the acts of propaganda that are punishable under this Section are committed through abusive exercise of a teaching appointment, in addition to the sentences enumerated the convicted person shall be deprived of the right to exercise his profession.

Section 253: He who in any way communicates or causes to circulate false, distorted or tendentious news or rumours with the intention of causing prejudice to the credit or authority of the State, or commits any kind of action tending to achieve the same purpose, shall be punished with major solitary confinement with hard labour and with absolute legal incapacity.

If the facts are not serious, the court may, after taking into consideration the personal circumstances of the offender, limit the penalty to one of minor solitary confinement with hard labour or interdiction of residence, and to a fine of 2000 to 20,000 pesetas.

2. CODE OF MILITARY LAW

Reference should be made to the following three types of offence:

(a) *Espionage offences*

Section 274: Any person who has kept up any kind of relationship with a foreign power or with an international organization or association with a view to procuring data or information which, while not necessarily being of a confidential or military character, could relate to national defence, and any person who furnishes the said data or information, shall be punished with imprisonment in peacetime and with solitary confinement with hard labour in wartime. A sentence of death may be passed in the latter case if the facts are obviously grave.

The scope of this Section has been commented on, in the introductory explanation in the following characteristic terms: "The legal provisions are so broad in their field of application that they can cover any informational activity which, by virtue of its extent or of its regularity, in peacetime as in wartime, can be considered to constitute a possible danger to the interests of national defence, even when concerned with non-secret and non-military information and news."

(b) *The crime of rebellion*

Section 286: Subsection 5: Those shall also be considered offences of military rebellion which are defined as such in the special laws or in decrees issued by the military authorities.²⁵

(c) *Insurrectional offences*

Section 302: Any person who by word of mouth, by writings or by mechanical publication or broadcasting or in any other way causes rumours to circulate among troops liable to create discouragement or a lessening of their zeal for military service, or criticisms directed against the latter, shall be punished with a prison sentence of up to 6 years.

²⁵ See, for instance, the Decree of September 21, 1960, considered below at pp. 71-72.

3. DECREE OF SEPTEMBER 21, 1960

This enactment has revised, combined and revived provisions which had been contained in the Law of March 2, 1943, and in the Decree of April 18, 1947, on the repression of banditry and terrorism. This Decree assimilates a series of offences having a political character to military rebellion, which is the central notion of the whole of the present regime's political penal law. Section 2 is worded in the following terms:

The following shall be considered guilty of military rebellion, in accordance with Section 286, Subsection 5, of the Code of Military Law, and liable to the sentences prescribed in the said Code:

(a) any person who spreads false or tendentious news with a view to disturbing law and order and prejudicing the security of the State, or to damaging the prestige of the State, of its institutions, of its government, of its army or of its public authorities;

(b) any person who by whatsoever means conspires or takes part in meetings, conferences or demonstrations having as their object those cited in the preceding paragraph.

The following shall also be considered acts of military rebellion: mutiny, strikes, sabotage and any other similar act, if they are inspired by political motives or seriously disturb law and order.

The inclusion in this Section of the phrase *any other similar act* (to mutiny, strikes and sabotage) has practically the effect of directing the judge to apply a penal enactment by analogy, which is contrary to the principle of *nullum crimen sine lege* and penalties covered by Sections 1 and 2 of the Penal Code and confirmed by the consistent decisions of the Supreme Court.

The penalties prescribed by the Code of Military Law for offences of military rebellion are as follows:

Section 287: The leader of the rebellion, senior commanders of rebellious forces or elements, and rebels having a command equivalent to that of a company or other larger unit in the army, navy or air force shall be sentenced to death.

Section 288: The court can inflict at its sole discretion penalties ranging from a sentence of death to a sentence of twelve years and one day upon those, not covered by the preceding Section, who exercise a subordinate command in the rebellious forces or who have merely taken an active part therein.

Section 289: Those who, although they did not take part in the rebellion or were not identified as rebels, have given assistance to rebels for whatsoever reason shall be

punished with penalties ranging from imprisonment of six months and one day to twenty years of solitary confinement with hard labour.

The Decree of September 21, 1960, gives moreover preferential jurisdiction to military courts in the matter of political offences. According to Section 8, "military courts shall be competent to determine whether offences enumerated in the present provisions are to be dealt with by them. They shall try the cases by summary proceedings. If the circumstances surrounding the offence are such that it is found to be of no real gravity or that they do not permit the application of the Decree, and if at the same time the matter is concerned with common law offences, the military courts may refer the matter to the ordinary courts".

4. LAW FOR THE REPRESSION OF FREEMASONRY AND COMMUNISM OF MARCH 1, 1940

Section 3 of this Law, purporting to prohibit propaganda, practically outlaws freemasonry and communism. This Section reads as follows:

Section 3: Any propaganda which exalts the principles or the alleged benefits of freemasonry and spreads corrupting ideas against religion, the fatherland and its fundamental institutions and against social harmony, shall be punished by the suppression of the journals and organizations that carry it on, the sequestration of its assets, and with major solitary confinement with hard labour for the principal offender or offenders and of minor solitary confinement with hard labour for accomplices.

The offence of membership of a freemasonry or of a Communist organization and the penalties attached thereto are defined in Sections 4 to 7 of the Law:

Section 4: All those persons are freemasons who have joined the freemasonry and who have not been expelled therefrom, or who have not resigned or have not explicitly broken off relations therewith. Those to whom the sect has permitted under whatsoever form or means to simulate their estrangement, shall still be deemed freemasons. Under the provisions of this Law, the leading proponents in building up the Soviet way of life or in spreading propaganda, Trotskyists, anarchists and the like will be considered Communists.

Section 5: From the date of publication of this Law, the offences of belonging to freemasonry and to communism as defined in Section 4 shall be punished with minor solitary con-

finement with hard labour. If one of the aggravating circumstances listed in Section 6 should also apply, the penalty shall be major solitary confinement with hard labour.

Section 6: The following are considered aggravating circumstances for the masonic qualification: the fact of having held a rank between the 18th and the 33rd, inclusive of both, or of having taken part in assemblies of the International Masonic Association, in national assemblies of the Spanish Grand Orient, of the Spanish Grand Lodge, or of other masonic organizations established in Spain, or of having carried out an assignment or a commission such as to presuppose special trust on the part of the sect in the person to whom the assignment or commission was given.

The following are considered aggravating circumstances for communism, the fact of having figured in leading agitation groups, in central committees and committees for liaison with foreign organizations, and the fact of having actively participated in national and foreign Communist congresses.

It is apparent from the details given above concerning offences against the State and the regime that their definition is often vague and unprecise, thereby increasing the scope for penal prosecution. This is particularly so in the case of offences constituted by the expression of an opinion: insults to the Spanish nation (Penal Code, Section 123); false, spurious or tendentious rumours that prejudice the credit or authority of the State (Penal Code, Section 132); propaganda aimed at destroying or weakening national sentiment (Penal Code, Section 251); false or tendentious news spread with a view to damaging the prestige of the State, of its institutions, of its government, of its army or of its public authorities (Decree of September 21, 1960, Section 2); acts that violate the spiritual, national, political or social unity of Spain (Law on Public Order, Section 2).

It will also be observed that the same action can come under several penal provisions. Thus, under Section 2 of the Law on Public Order, "organized strikes" are an offence for which the right to punish belongs to the administrative authorities; Section 222, Sub-section 3, of the Penal Code assimilates "workers' strikes" to an insurrectional offence; Section 2 of the Decree of September 21, 1960, assimilates "strikes" to acts of military rebellion.

As a result of this situation, identical offences can be dealt with by different courts or tribunals and tried under different procedures. Speaking from personal experience, eminent Spanish lawyers have pointed out that the author of a few lines of poetry criticizing the

regime or working conditions can be brought before the following courts or tribunals:

- the ordinary courts that try the offence under the Penal Code in accordance with ordinary procedure;
- courts-martial that try the offence under the Code of Military Law or the Penal Code in accordance with procedure laid down in the Code of Military Law; and
- courts-martial that judge the offence under the Decree of September 21, 1960, and under summary procedure as laid down in Sections 918-937 of the Code of Military Law.

Finally, the police may entrust the investigation to the special military judge in Madrid for the repression of extremist activities.

IX. THE PENAL PROSECUTION OF POLITICAL OFFENCES

A. The Predominant Role played by Military Courts

The particular character of the political penal law of the present regime is also clearly revealed in the type of procedure adopted. An examination of the various phases of penal procedure is therefore relevant, especially with regard to the regulations which discriminate against the political offender by comparison with the non-political criminal. The first thing that is noticeable is the predominant role assigned to military law in the suppression of offences against the State or the regime. The offenders, whether military or civilian, are prosecuted before a military court, in the majority of cases. They must answer for the offences of which they are accused before the military court, within whose jurisdiction the case falls. The investigation in the cases which are tried by courts-martial is assigned to the examining military judge.

By the Decree of January 24, 1958, the government appointed a special examining judge, the "military judge extraordinary for the repression of extremist activities", charged with the investigation of "the recently discovered extremist activities". A Decree of April 25, 1958, extended the scope of this judge's power to the investigation of "punishable acts of a later date, if they are connected to those which justified the Decree of January 24, 1958".

In virtue of the Decree of April 25, 1958, the special judge — a position occupied at the present time by Colonel Eymar — may demand that any case be investigated by himself, if he believes it to involve "extremist activity", whether a new case is involved whose investigation he initiates under his own authority, or whether it is a case investigated by another authority which he thus places under his own jurisdiction. The term "extremist activity" is a very vague one which easily lends itself to a highly elastic interpretation. Actions of the most varied kind—demands presented by a group of workers to the head of an undertaking, holding up a placard requesting amnesty for political prisoners, or taking up a collection among the personnel of a concern for the benefit of the family of an imprisoned fellow worker—may suffice to arouse the suspicion of extremist activity and set in motion the agency under control of Colonel Eymar. The latter decides, once the affair has been investigated, to which jurisdiction it shall be referred. For reasons which are easy to guess, Colonel Eymar generally commits to a military court those offenders with whom the

regime intends to deal severely. The Code of Military Law has a scale of punishments which is much more severe than that at the command of the judge under ordinary penal law. Moreover, certain political offences—as, for instance, the offences alluded to in the Decree of September 21, 1960—must be judged according to a summary procedure (Code of Military Law, Sections 918-937) which considerably limits the rights of the accused. Notably, he may only be defended by a serving officer—to the exclusion of all lawyers. Furthermore, the decision pronounced under summary procedure does not permit any appeal on the part of the defendant. At the most, it may be the subject of fresh debates before the Supreme Court of Military Justice, in the event that the Captain-General of the Region in which the trial takes place refuses to countersign the decision.

B. Arrest and Preventive Custody

The fundamental principle in this field is laid down by Article 18 of the Charter of the Spanish People, according to which:

No Spaniard may be arrested except in the cases and in the form prescribed by law. Within a period of 72 hours all arrested persons will be set free or turned over to the judicial authorities.

The ruling according to which every person held in custody shall be released or transferred to the judicial authorities *within a period of seventy-two hours* also applies to the arrests carried out in accordance with the Law on Public Order of July 30, 1959 (Section 2).

According to Section 490 and 492 of the Code of Penal Procedure of September 14, 1882, the following persons may be arrested:

- Whoever prepares to commit an offence;
- Whoever is caught *in flagrante delicto*;
- Whoever escapes from a prison while he is serving a sentence;
- Whoever escapes from a prison while awaiting transfer to a penitentiary;
- Whoever escapes during his transfer to a penitentiary;
- Whoever escapes following his arrest, or while he is in custody;
- Whoever has been condemned in his absence;
- Whoever is about to be accused of an offence punishable by a prison sentence of more than 6 years;
- Whoever is suspected of having committed an offence punishable by a less severe penalty, whenever there is reason to fear that the accused will attempt to evade justice.

An individual suspected of being an accomplice to an offence may be apprehended under the same conditions as the principal.

The conditions of arrest are more flexible under the provisions of the Law on Public Order. Under the terms of Section 12 (which is only directed against acts constituting misdemeanours):

The government authority or its agents may arrest whoever commits or intends to commit acts contrary to law and order, and whoever disobeys the orders which are addressed to him directly with relation to the said acts, by the authority or the agents thereof.

In accordance with Section 28 of the same Law, if the government has declared a State of Emergency or a state of siege, anyone may be arrested, providing administrative authorities, and in particular the police, consider such a measure to be necessary in order to maintain law and order.

The police may make an arrest without a warrant delivered by a judicial authority. Individual freedom is protected by the rule according to which every person apprehended by the police, must either be released within a period of 72 hours or else transferred to the judicial authorities. However, when dealing with offences of a political character, this rule is not always respected. Frequently, the police detain a person well beyond the authorized 72-hour limit, and do not bring him before the judge for a month or more. In other cases, persons may be released from custody after several weeks without ever having appeared before the judges, because no charge whatsoever can be sustained against them. There is no provision at all for an appeal either military or civil, against extension of illegal detention by the police. However, a complaint based on Section 184 of the Penal Code may be lodged against the police officer or authority who has illegally arrested someone or held him in custody. In practice, there have been several instances of complaints lodged against illegal arrests. Their effect has been to prompt the police to bring before the courts very rapidly the arrested persons who have been held in custody for more than 72 hours. Usually the deposition of a complaint has not given rise to the opening of an enquiry. Nevertheless in a few isolated cases, an enquiry has been opened and has resulted in a *nolle prosequi*.

In many cases the police have not hesitated to resort to threats, acts of violence, bodily injury, etc., in order to extract from the prisoners the confessions which are deposed and are included in the defendant's file. Depositions obtained by illegal means often constitute the essential element of the file and are the deciding factor in the court decisions—especially when the case is judged according to the summary procedure provided by the Code of Military Law, which is applied in the case of numerous political prosecutions. Although under Spanish legislation no decisive weight is attached in court to the statements gathered by the police in the course of the investigation stage, nevertheless the courts, both ordinary and military, tend to place their confidence in the files prepared by the police, especially when political offences are to be tried. This is true even when the judges have the private conviction that the confessions of the defendants have been obtained by illegal means.

The judge to whom the police have referred the case, first of all, decides the immediate future of the defendant. The latter may be imprisoned or released. In the first case, the defendant is placed in custody and transferred from police headquarters to the prison. The judge may also order the temporary release of the defendant, with or

without bail. According to Section 529 of the Code on Penal Procedure, the judge may release the accused providing that the offence for which he is being prosecuted is not punishable by a sentence exceeding minor imprisonment.

A Decree of March 22, 1957, considerably restricts the application of this regulation when the offence in question is an offence committed against the State's internal security. According to Section 1:

The following provisions are added to Section 503 of the Code of Penal Procedure: "If the offence being prosecuted is one of those dealt with and forbidden under the second chapter of part two of the Penal Code, the defendant must be maintained in custody, whatever the sentence incurred and as long as law and order have not been restored."

In the introductory explanation to the Decree it is stated that, "If it was thought necessary to release persons not yet tried, before law and order has been restored, the result would be the lowering of the public morale and the encouragement of inveterate criminals to persist in their attitudes. The efforts on the part of the State to reestablish law and order would thus be seriously compromised".

Section 503 of the Code on Penal Procedure has been further complemented by the Decree of November 23, 1957, Section 1 of which states:

The following provisions are added to Subsection 4 of Section 503 of the Code of Penal Procedure: the offender who has committed an act against the Chief of State, the Council of Ministers or its members, or the regime, or any other act implying illegal propaganda—may not benefit from provisional release.

The Decrees of March 22 and November 23, 1957, thus created a special system of dealing with all offences, which either directly or even remotely, affect the Chief of State, the political regime, or State security.

Lastly, persons accused of having committed the offences enumerated in the Decree of September 21, 1960, may not benefit from the provision of provisional release. The prosecution of these offences comes within the competence of military justice and the procedure of the Code of Military Law is used. Now, according to Section 922 of the Code of Military Law provisional release may not be granted in those cases tried under the summary procedure.

C. Defence

As long as he is held in custody by the police a person does not have the right to communicate with a lawyer. Thus he may not benefit from a lawyer's counsel when he is being questioned. The same applies if the person is held in custody by order of the judge. However, in practice, persons indicted for offences under ordinary law may be authorized to communicate with their lawyers before making a state-

ment. Furthermore, under ordinary penal procedure, each defendant may freely choose his own counsel, communicate with him and receive assistance from him from the moment he has been notified of his bill of indictment.

This principle of the free choice of lawyer on the part of the defendant, also applies to ordinary procedure before a military court. On the other hand, it ceases to apply when summary procedure is adopted before the same military courts. In this case, an officer defends the accused (Code of Military Law, Section 927). In principle, the defendant may choose the officer who is to defend him. However, in most cases, counsel for the defence is appointed since the choice must be made from the list of officers of the military region where the trial is to take place. As soon as he is notified of his nomination, the officer must contact his client "at least once". He then prepares his defence, sometimes with the help of a professional lawyer. In practice these "officers for the defence" often work with zeal and true professional conscience. But for them, it is a matter of *ad hoc* duty and a temporary function. The defending officer is on duty when he appears before the court. Face to face with a General who presides over the court, the defending officer hesitates before launching himself into a defence that is too energetic or eloquent, even if only for the sake of his career. This conflict of interests runs the risk of harming the defendant. Moreover, it is obvious that the fact of being defended by someone who is not a lawyer, is not to the defendant's advantage. The exclusion of lawyers from summary procedure is therefore a very serious measure.

At this point a digression is appropriate. It appears that the present regime has frequently resorted to summary procedure in order to be able to exclude lawyers from the proceedings. The Spanish lawyers have shown exceptional courage before all courts, as is proven by their speeches for the defence in the course of the political trials which aroused world-wide interest in the last few years (Cerón, Babiano, and Pujol). The present regime avoids frontal attacks on lawyers and allows them complete freedom of speech, but it excludes them from a procedure frequently employed in the prosecution of political offences.

The defendant has no appeal of any kind against the verdict delivered as the result of summary military procedure. The State, on the contrary, has an appeal: if its representative, the Captain-General of the Region, refuses to countersign the court decision, the case is referred to a higher authority, the Supreme Court of Military Justice, which conducts the trial according to ordinary military procedure. This procedure permits the participation of lawyers. But the latter are obliged to work under conditions which are often unfavourable. Generally, the lawyer only receives the client's legal file a short time before the trial. He has had no part in the preliminary investigation of the case which has proceeded entirely independently of him; he has not been able to question the witnesses or require expert opinions to

counter those of the prosecution during the investigation. He must therefore defend his client on the basis of a file which is perhaps incomplete and without having had time to study the case thoroughly. The Julio Cerón case is an eloquent example of this anomaly. On November 9, 1959, the Military Court of Madrid tried—under summary procedure—seventeen Spaniards with liberal-Catholic leanings, who were accused of military rebellion. They were accused of having transported pamphlets and tracts in their baggage in June of the same year, inciting workers to strike. The principal defendant, Julio Cerón Ayuso, 31 years of age, member of the Spanish delegation to the International Labour Conference in Geneva, was condemned to 3 years imprisonment. The others were sentenced to terms ranging from 6 months to 2 years. General Miguel Rodrigo, Captain-General of the Madrid Region, refused to countersign the judgment, since the penalties imposed seemed to him too lenient. The case was brought before the Supreme Court of Military Justice. On December 23, 1959, this tribunal overruling the first, lengthened the sentences of imprisonment to 8 years for Cerón, and terms from 1 to 6 years' imprisonment for the other defendants. Now, the lawyers of the Madrid Bar who defended the convicted persons before the Supreme Court of Military Justice, notably Messrs. Gil Roblés, Ruiz Gallardon and Zulueta, only received the file 24 hours before the trial.²⁶ The cases submitted to military jurisdiction are often very complex, and this case was particularly so. This kind of restriction on the rights of the defence is liable to cause serious detriment to the accused.

D. Admission of the Public to Trials

Although the investigation stage is secret, the proceedings before the courts—whether civil or military—are public. Nevertheless, an ordinary court may order a session *in camera*, either on its own authority, or at the request of the prosecutor, “ whenever public morale or order demands ”, or “ out of respect for the injured party or his family ” (Code on Penal Procedure, Section 680). A military court may order a session *in camera* in the interest of the public morality, discipline, or to protect secrets regarding the national defence (Code of Military Law, Section 722). It is rare that a session *in camera* is ordered, even in a military court or when it is a political trial. But public attendance at the trials is often no more than an appearance. In actual fact, in order to avoid the presence of too large a crowd at the proceedings of a political trial, the government has adopted a system, on several occasions, which is as ingenious as it is effective: well before the beginning of the session, policemen in civilian dress fill the benches reserved for the public, so that when the curious spectators arrive, there is no place for them left.

²⁶ An abstract of this file—which is of great importance—is given in Appendix 7.

As to the reports of court cases in the press, it is once more necessary to draw the distinction between political trials and ordinary trials. Censorship allows commentaries on ordinary penal cases to get by—if they are sober, objective, and preferably moralizing. In this matter, censorship accomplishes a beneficial task: every careful reader of the Spanish press must admit that it does not contain news items which play up the sensational, gory accounts, and the glorification of certain criminals which constitute the commercial value of the reports of trials in other countries. However, the use of censorship is entirely different when political trials are involved. Thus, as was mentioned above, the government may easily control the news and commentaries spread by the press by the system of directives, and by compulsory insertions. The newspapers, inasmuch as they are obliged to publish texts edited by the government on the editorial page, play an important part in reporting political trials. The government is certainly able to deliver its own version of the facts to the public by means of the press.

E. Appeals

Spanish legislation on penal procedure, whether civil or military, provides a highly evolved system of review and appeal. This system may hardly be distinguished from those of democracies. There is only one blot in this picture: the absence of any appeal whatsoever available to the defendant in the case of a court-martial under summary procedure—a procedure which is applied in a large number of prosecutions involving offences against the State and the regime. In this way, the regime deprives persons against whom it has initiated legal proceedings of a political nature, of those guarantees essential to their defence.

X. CONCLUSIONS

Modern Spain rests upon foundations that were laid at the time of the civil war. The Commander-in-Chief of the rebelling segments of the army was appointed Chief of State in the third month of a civil war that raged for almost three years. In this capacity, he was given full powers (Decree of September 29, 1936) including the unlimited power of making laws. The concentration of power in the person of General Franco, in spite of certain self-imposed limitations, is the most prominent feature of the modern Spanish State. Luis Sanchez Agesta stresses the exceptional character of the office of the Chief of State who is provided with extraordinary powers, and describes it as the consequence of the charismatic authority attributed to General Franco. "His office constitutes a personal ascendancy belonging to a specific personality and is based on faith in the individual competence of its bearer; it will expire with his death or incapacity."²⁷ When, in the year 1937, Franco made the political platform of the *Falange* party into a State ideology, he wanted, according to his own words, to transform Spain into a totalitarian State. Subsequently, especially after the second World War, he moved away from totalitarianism in certain statements. He did not, however, abandon the intolerance and subjugation of all opposition which characterize a totalitarian system. After the victory of the civil war party under his command he ruthlessly settled accounts with the opposition, on the basis of a retroactive penal law (Law on Political Responsibilities of February 9, 1939).

The numbers of the opposition from the time of the civil war—numbers which run to six figures—who were thrown into prison will be found on p. 65 of this Report. According to a communication received by the Associated Press correspondent, Charles Foltz, from an official of the Spanish Ministry of Justice, the number of death sentences carried out between April 1939 and June 1944 amounts to 192,684,²⁸ "though this was probably a considerable exaggeration".²⁹ It is nevertheless hardly possible to deny the bitter

²⁷ Luis Sanchez Agesta, *op. cit.*, p. 403.

²⁸ Stanley G. Payne, *Falange* (Stanford, California: Stanford University Press, 1961), p. 242.

²⁹ *Ibid.*

phrase "render immortal the frontier traced in blood".³⁰ Moreover, Luis Gonzales Vicén, a leading Falangist, wrote to his friend fellow party member, Arrese, in 1956, saying that one of Spain's fundamental political problems was due to the fact that it had failed to end the civil war.

In this very moment, the difference between being a Red or a non-Red, between having supported the Movement or not, in other words between conquerors and conquered, is a reality in national life and in the administrative decisions of the government. The accessibility of power which is perfectly delimited between conquerors and conquered, the treatment of citizens in which the difference is equally marked, the chance for social influence and many other factors, clearly indicate that this most grave problem still lacks solution. If this is so obvious from our camp you can easily imagine how it appears from the other side. They not only regard themselves as defeated and politically unsatisfied; they see themselves treated as second-class Spaniards and exaggerate the injustice which they receive, building up hatred against the other half whom they think the cause of the evil.³¹

The Law on Political Responsibility was abrogated in the year 1945. However, already earlier, on March 29, 1941, a State Security Law comprising 66 Sections was issued. This was followed by other special laws whose purpose was the protection of the regime. These are nowadays no longer in force because their provisions have largely been taken over by the regular penal legislation. The present penal legislation which serves to protect the State and the regime is mostly to be found in the Penal Code; in the Code of Military Law; in the Law on Public Order of July 30, 1959; and in the Decree of September 21, 1960. Spanish political penal legislation contains numerous offences constituted by the expression of an opinion. It is hardly possible to find a single form of opposition activity which is not threatened by legal sanctions. According to the Decree of September 21, 1960, the following activities are punishable as military rebellion: spreading false or tendentious news capable of damaging the prestige of the State, its organization, the government, the army or the officials; strikes, sabotage, and any other "similar act", to the extent to which they are based on political motives. Political offenders are often placed at a great disadvantage in judicial proceedings, especially whenever they are tried under the summary procedure of the Code of Military Law.

The Law of July 17, 1942, re-established the Spanish Cortes, but in a new form; the members are no longer representatives of a people organized into political parties. Moreover, their powers are so limited, that it is completely justifiable to designate them as merely consultative bodies. They draw up law drafts relative to certain

³⁰ E. de la Souchère, *Explication de l'Espagne* (Paris: Ed. Bernard Grasset, 1962), p. 221.

³¹ Payne, *op. cit.*, p. 253.

areas which are definitely enumerated in the legislation of the Cortes. Without ratification by the Chief of State the projected laws elaborated by the Cortes do not become law. The preamble of the Law Creating the Cortes recalls the Laws of January 30, 1938, and August 8, 1939, which vested the Chief of State with unlimited powers of legislation. It goes on to characterize the new Cortes as an "instrument of legislative cooperation" created according to the principle of "self-limitation" (of Franco's power). Laws which do not concern one of the topics enumerated in the Cortes Law, are laid down by the Chief of State without the collaboration of the Cortes. Moreover, the Cortes does not exercise its consultative powers when the government has declared a State of Emergency or siege. The declaration, continuation, or termination of the State of Emergency or siege is not under control of the Cortes.

After the end of the second World War, General Franco deemed it opportune to play down the authoritarian dictatorial character of his regime through the introduction of several laws having a democratic and liberal appearance. This was brought about chiefly through the establishment of the Charter of the Spanish People of July 13, 1945, and the Referendum Law of October 22, 1945. The latter provides that the Chief of State may, "in order to serve the nation more faithfully", submit to a referendum certain laws which have been elaborated with the collaboration of the Cortes, if their importance or the commonweal make it seem advisable. While the initiation of such a referendum is left completely to the judgment of the Chief of State, the Law of Succession of June 7, 1947, introduced a compulsory referendum for the abrogation or change (not, however, for the introduction) of any of the so called fundamental laws. This obligatory referendum is the only genuinely democratic institution in Spanish Public Law. Thus, for example, the annulment or alteration of the Charter of the Spanish People is subject to a referendum. Nevertheless, this is devoid of practical significance, since the most important Fundamental Rights contained in the Charter have already been undermined by legislation and administrative practice.

Already in the text of the Charter a reservation is to be encountered, which is capable of "legalizing" various interferences with Fundamental Rights. The exercise of Fundamental Rights must not compromise the spiritual, national or social unity of Spain. This condition goes significantly further than the reservations of public order, health, morality, etc. Another provision, also contained in the Charter, further empowers the government to suspend temporarily such important Fundamental Rights as the freedom of speech, freedom of association and assembly, freedom of residence, inviolability of correspondence, and the inviolability of domicile—and this without the necessity of a State of Emergency or siege having to exist. An illuminating example is furnished by the Decree of June 8, 1962, through which the freedom of residence was suspended for a period

of 2 years within the entire national territory. This Decree was issued because 80 Spaniards from inside Spain met 38 exiled fellow citizens in Munich and participated with them in the Congress of the European Movement, where they submitted the resolution cited on pages 41-42. According to its preamble, this Decree was issued because "The campaigns directed from abroad against the prestige and reputation of Spain" which found "an echo in certain persons, who have abused the rights accorded by the Charter [of the Spanish People]". This event was regarded by the Spanish Government as sufficient grounds for depriving all Spaniards living on national territory of their freedom of residence for a period of 2 years.

The exercise of certain freedoms contained in the Charter has for years been rendered impossible by the respective legislation. This is especially true of the legislation governing the press, through which the press is completely gagged. Freedom of association is in a similar predicament. Freedom is not granted in precisely that area in which there is the most urgent need for an organized and autonomous union of individuals, namely in the creation of political parties and labour unions, activities which are forbidden and punishable by law. Even the single party which is permitted, the *Falange*, or National Movement, does not enjoy freedom of association.

It would be erroneous to designate Spain as a "one-party" State. It is true that the *Falange Española*, the JONS, and the Carlists had freely evolved and organized themselves as political parties or movements, under the Spanish Republic. Subsequently, however, they were so to say "nationalized" to a certain extent by Franco through the Decree of April 19, 1937, which merged them. The organizational structure of the new party was determined by State decrees. The Chief of State made himself leader of the party and empowered himself with the prerogative of appointing the members of the highest collective organ of the party, the National Council. In order to consolidate his position in the *Falange* by altering its original composition, General Franco even resorted to the compulsory recruitment of members. In this way, all army officers and non-commissioned officers were forcibly incorporated as members. Similarly, in pursuance of the Law of October 1, 1938, everyone who had been sentenced to deprivation of personal liberty for political reasons within republican territory, became a member of the *Falange*. The heterogeneous character of the *Falange* which had become the State party was clearly revealed in the composition of the first National Council of the Falange appointed after "nationalization". Of the 50 National Council members, not more than 20 were members of the original *Falange Española* and 8 were Carlists, 5 were Generals. The remaining 17 members represented a selection of monarchists, conservatives, and opportunists. "The Falange, far from controlling the state, was no more than an instrument for holding the state

together".³² It has remained the instrument of the dictatorship of the Chief of State and leader of the party.

These circumstances are not denied by the original Falangists (*camisas viejas*). When in 1956, a committee presided over by the Secretary-General of the party, received the commission from General Franco, of preparing a reform of the fundamental laws and the party statutes, Luis Gonzalez Vicén, who has already been alluded to, expressed himself very forcefully on the subject. In his letter of June 8, 1956 to the Minister and party secretary, Arrese, he wrote with great emphasis against the maintenance of the *Führerstaat* and dictatorship, and for the following reasons:

1. Because of the mortality and mutability of men.
2. Because it [dictatorship] bears within itself an absolute rule that can, in some cases, result in tyranny.
3. Because in it is employed the personal and direct method of naming the commander, with its grave consequences of coercing leaders, [promoting] servility, and denying liberty to men who fulfill functions of judging and acting, and with the danger that when the commander errs (and the commander errs since he is a man, even though he may err less than other men), the error is automatically supported by everyone and can take the dimensions of a cataclysm.
4. Because, unfortunately, men are capricious, above all, the men who are more highly placed, and the country cannot be forced to suffer the caprice and fickleness of any one man no matter how high he may be.
5. Because this procedure of force and command from the top downward unleashes in the nation the activity of all the incorrigibles of unmerited ambition, since one arrives at a position of influence through personal connection and not through work, political service, knowledge, or personal qualities.
6. Because there is no way, in this type of command, to take advantage of a country's wealth of talent, since all nominations have to be made among those who are known by or visible to the one who makes the appointment, and one man, however exceptional he may be, can never have before his sight or imagination more than a limited number of persons, and no filing system can replace personal acquaintance.
7. Because a selection of the worst is made, since only those are seen whose temperament, economic ambition, or lack of employment lead them to make themselves seen.³³

These considerations and opinions of Vicén, reproduced above, are the result of observations and experiences on the part of a person who by reason of his position was permitted to see behind the scenes. To this extent they are illuminating a self-portrait as well as a self-criticism of the regime.

Doubtlessly, the *Falange* is one the main stays of Franco's power, like others—especially the army. Inasmuch as it represents a power factor, it serves as a counterweight against other power factors,

³² Payne, *ibid.*, p. 200.

³³ *Ibid.*, p. 254.

since its weight—as has been shown repeatedly—may be regulated according to the needs of the moment.

The fact that the Spanish regime happens to call itself “National Syndicalist” proves that the corporative organization of its economy is one of the foundation stones of the constitutional organization of Franco’s Spain. The representational character ascribed to the Spanish State by various fundamental laws is chiefly derived from the function and organization of the vertical syndicates. These syndicates are official unions which workers and employers are obliged to join; they are directed by the State by means of the *Falange* which is itself incorporated into the structure of the State and subject to its authority. As far as representation of the labouring classes and their vital interests by the syndicates is concerned, the legal organization of the unions described above already makes the effective fulfilment of this task highly questionable. In the section of this Report devoted to the syndical organization, mention was made of the letter written on November 15, 1960, by the Cardinal-Primate of Spain to the Minister Secretary-General of the Movement, Sr. Solis. In this letter it was pointed out that the contemporary organization of the syndicates granted no “genuine representation” to the working classes. The 339 Basque priests expressed themselves even more clearly in their letter of May 30, 1960, to the four Basque Bishops: “The Spanish syndicate . . . is ‘neither a trade union nor Christian’. It is the creation of the State, and it defends the interests of the State. . . genuine trade unionism, i.e., free trade unionism, springing from the working class and enjoying its confidence, is not only a right of the masses, but still more it is the most effective and suitable means in existence to-day by which the masses can exercise their responsibilities in social and economic life, responsibilities which involve both rights and duties.”³⁴

The available data on salaries and the distribution of income seem to justify the opinion of the Basque priests. The monthly wages earned by the majority of Spanish workers vary between 1,000 and 1,500 pesetas. The legal minimum daily wage is 36 pesetas, whereas, according to a declaration of the Archbishop of Seville on March 3, 1962, a married industrial worker with two children should earn at least 110—120 pesetas a day in order to live decently. The periodical *Ecclesia* published a pastoral epistle of the Bishop of Bilbao in its February 10, 1962, issue, containing the following passage:

Recent statistics show that Spain is one of the countries with the lowest popular income in the whole of Europe. On the other hand, with regard to unnecessary expenditure it is third highest of all the countries in the world. The luxury and urge to extravagance of the wealthy classes is a provocation to those who lack the essential necessities in order to lead a dignified human

³⁴ The text of this letter is reproduced in Appendix 8.

existence, and they give rise to a pathological condition within the social organism.

An attempt, initiated by the Falangist syndicates officials to improve the position of the workers through a structural reform, was decisively defeated in the second Congress of Syndicates in March, 1962.

Franco declared in a speech made before an earlier National Congress of Syndicates on January 24, 1945, that Spain was a Catholic Welfare State and that the Catholic spirit, which permeated the whole of life, was the best guarantee against the misuse of State power. There is a grain of truth in this statement, as is revealed today. In the foregoing sections of this Report, we have repeatedly pointed to the strong position of the Catholic Church and those rights accorded by the Concordat and by legislation. Associations with a religious purpose enjoy freedom of association. The periodical, *Ecclesia*, is not subject to State censorship of the press. The associations of Catholic Action are permitted to freely carry out their apostolate under supervision of the Church hierarchy, etc.

The Church, today, makes use of the freedom of expression of ideas in speech, writings and in associations—namely by means of the HOAC. It does so in order to criticize State social policy including the structure of the syndical organization. The Church did not even hesitate to postulate the act of striking, under certain circumstances, as one of the rights of the workers, even though the legislation for the protection of the State had equated strike with military rebellion. The Church's intervention in the discussions on social policy is based upon the social philosophy propounded in the encyclical *Mater et Magistra*. This encyclical, which met with an enormous response in Spain, enables the Church to claim the undisturbed propagation of the Catholic social doctrine as part of the apostolate, the free exercise of which was guaranteed by Article 34 of the Concordat.

LABOUR CHARTER

DECREE TO PROMULGATE THE LABOUR CHARTER
DATED MARCH 9, 1938 *

Chapter I. Status of Labour

1. *Definition.* Labour is the participation of man in production by the voluntary exercise of his intellectual and manual powers according to his individual vocation, in harmony with the dignity and comfort of his existence and the satisfactory development of the national economy.

2. *Dignity of labour.* Labour is essentially personal and human and shall not be regarded as a mere commercial commodity nor be the subject of any transaction incompatible with the personal dignity of the worker.

3. *Right to work.* The right to work is the consequence of the duty imposed on man by God, for the achievement of his individual aims and for the prosperity and greatness of his country.

4. *Protection of labour.* The State shall esteem and dignify labour as the fertile expression of the creative spirit of man and with this conception shall protect it with all the authority of the law, bestow upon it every possible advantage and make it compatible with the achievement of the other aims of the individual, family, and community.

5. *Social duty required of all Spaniards.* Work shall be regarded as a social duty and as such shall be exacted in one form or another from every Spaniard capable of performing it, as a compulsory contribution to the national wealth.

6. *The State as the guardian of the worker.* Work is one of the most noble attributes of rank and honour and constitutes a sufficient claim to the assistance and protection of the State.

* Source: International Labour Office (Geneva, Switzerland), *Legislative Series*, 1938, Sp. 1; based on text found in *Boletín Oficial del Estado*, March 10, 1938, No. 505; errata: *B.O.*, March 11, 1938, No. 506.

7. *Conditions and aims of work.* Service is work performed under conditions of heroism, unselfishness and self-sacrifice, with the object of contributing to the higher good represented by the Spanish State.

8. *Right to work.* All Spaniards shall be entitled to work. The satisfaction of this right shall be the primary duty of the State.

Chapter II. Regulation of Employment

1. *Hours of work; prohibition of night work for women and children; homework; prohibition of employment of married women in workshops and factories.* The State shall assume responsibility for constant and efficacious action for the protection of the worker, his life and his labour. It shall place suitable restrictions upon hours of work, in order that the working day shall not be excessive, and shall safeguard labour by affording it every possible guarantee of a protective and humanitarian character. In particular, it shall prohibit night work for women and children, regulate homework and set married women free from the ties of the workshop and factory.

2. *Sunday rest.* The State shall maintain Sunday rest as an inviolable condition in the performance of work.

3. *Religious festivals and civil holidays.* With due consideration for the technical needs of the undertakings concerned, the law shall require observance of the traditional religious holidays and statutory civil holidays and attendance at the ceremonies ordered by the national authorities of the Movement, without loss of remuneration.

4. *Labour Day.* The eighteenth day of July is hereby declared a national holiday in commemoration of the glorious Revolt and shall be celebrated as the National Labour Day.

5. *Annual holidays with pay.* Every worker shall be entitled to annual holidays with pay, in order that he may enjoy a well deserved rest; for this purpose institutions shall be set up to ensure the best application of this provision.

6. *Workers' spare time.* The necessary institutions shall be set up to provide workers during their spare time with facilities for the enjoyment of all benefits of education, recreation, military training, health and sports.

Chapter III. Remuneration

1. *Minimum wage.* The remuneration for work shall not be less than the amount sufficient to enable the worker and his family to live a fitting and honourable life.

2. *Family allowances.* Family allowances shall be introduced by means of suitable organisations.

3. *Standard of living of workers.* The workers' standard of living shall be raised gradually and steadily, in so far as the superior interest of the nation may permit.

4. *Mutual duties of employers and employees.* The State shall lay down principles for the regulation of employment and the relations between employees and employers shall be established on the basis of these principles. The fundamental basis of these relations shall be the performance of work and remuneration therefor and further the mutual duties of loyalty, assistance and protection on the part of employers and faithfulness and obedience on the part of employees.

5. *Conditions under which work is performed.* The State shall take steps to ascertain through the industrial associations that the economic and other conditions under which work is performed satisfy the just claims of the workers.

6. *Guarantee of stability of employment.* The State shall take measures to ensure stability of employment.

7. *Information to be given by employers to their employees respecting the progress of production.* Employers shall inform their employees of the progress of production in so far as may be necessary to strengthen in them a sense of responsibility in the work of the undertaking, under the terms and conditions laid down by law.

Chapter IV. Handicrafts

1. *Encouragement and protection.* Handicrafts, the living heritage of a glorious corporative past, shall be encouraged and efficaciously protected, as being the complete reflection of the human personality of the worker in his work and a form of production having as little in common with capitalistic concentration as with Marxist collectivism.

Chapter V. Agriculture

1. *Principles of work.* The principles governing work in agricultural undertakings shall be adapted to the special characteristics of this form of work and the seasonal variations imposed by nature.

2. *Technical instruction.* The State shall pay special attention to the technical instruction of the farmer to make him capable of performing all the various processes necessitated by the operation of a farm.

3. *Revaluation of agricultural products.* The prices of the principal products shall be regulated and revised for the purpose of ensuring minimum profits for the farmer in normal circumstances, and consequently requiring him to pay to the workers rates of wages which will allow them to improve their living conditions.

4. *Small holdings.* Every peasant family shall be granted a small holding or family plot which will enable the family to meet its essential needs and will provide occupation in case of unemployment.

5. *Rural housing.* The standard of rural life shall be raised by improving rural housing and health conditions in the villages and hamlets of Spain.

6. *Stability of employment in agriculture.* The State shall ensure stability of employment in agriculture by means of long-term contracts which will guarantee the farmers against unjustified notice and ensure them the full benefit of any improvements made in the land farmed by them. The State is desirous of providing suitable means for the transfer of the land on equitable terms to those who are directly engaged in its development.

Chapter VI. Maritime Workers

1. *Protection of seamen.* The State shall devote special care to maritime workers and shall provide them with suitable institutions to prevent the depreciation of merchandise and help them to acquire the means necessary for the exercise of their calling.

Chapter VII. Labour Judicature

1. *Transfer of judicature to the State.* A new labour judicature shall be set up based on the principle that the State is responsible for social justice.

Chapter VIII. Organisation of Undertakings

1. *Definition of capital.* Capital is a means of production.

2. *Hierarchy of elements of production.* The undertaking as the producing unit shall organise its component elements in a hierarchy which shall subordinate material requirements to the human elements and both to the common weal.

3. *Management of undertakings and responsibility therefor.* The head of the undertaking shall himself assume the management thereof and shall be responsible thereof to the State.

4. *Distribution of profits.* The profits of the undertaking, after deduction of an equitable interest on capital, shall be utilised primarily for the constitution of the reserve necessary for the stability of the undertaking, the improvement of production and the amelioration of the conditions of employment and standard of living of the workers.

Chapter IX. Credit

1. *Credit.* Credit shall be organised so as to contribute to the establishment and maintenance of small undertakings in agriculture, fishing, industry and commerce, while at the same time fulfilling its task of developing the wealth of the nation.

2. *Prosecution for usury.* Honesty and confidence based on competency and work shall constitute effective guarantees for the granting of credit. The State shall prosecute relentlessly every form of usury.

Chapter X. Social Welfare and Insurance

1. *Purpose of social welfare.* The social welfare system shall give the workers the certainty of protection in case of misfortune.

2. *Social insurance.* The various branches of social insurance, namely, insurance against old age, invalidity, maternity, industrial accidents, occupational diseases, tuberculosis and unemployment, shall be developed with a view to the organisation of a complete system of insurance. In the first place measures shall be taken to ensure the provision of adequate superannuation allowances for aged workers.

Chapter XI. National Production

1. *Economic unity; subordination of production to the national interest.* National production shall constitute an economic unit in the service of the nation. It shall be the duty of every Spaniard to defend, improve and augment production. All factors of production shall be subordinated to the supreme interest of the nation.

2. *Interference with the normal course of production.* Individual or collective action which tends in any way to disturb or impede the normal course of production shall be deemed to be a crime against the nation.

3. *Reduction of output.* The fraudulent reduction of output shall be suitably punished.

4. *Lack of private enterprise.* As a general rule the State shall not engage in production unless this is necessary owing to lack of private enterprise or in the higher interest of the nation.

5. *Unfair competition.* The State, acting directly or through its industrial organisations, shall prevent unfair competition in the field of production and also any activities which hinder the normal stability or development of the national economy, and on the other hand shall encourage all efforts which tend to promote improvements in production.

6. *Private enterprise.* The State recognises private enterprise as the perennial source of the economic life of the nation.

Chapter XII. Private Property

1. *Recognition, protection and limitation of private property.* The State recognises and protects private property as the natural means for the fulfilment of the functions of the individual, the family and the community. All forms of property shall be subordinated to the supreme interest of the nation, of which the State is the embodiment.

2. *Facilities for ownership and the extension thereof.* The State assumes the task of multiplying and making accessible to all Spaniards the forms of ownership which are vital to the individual as a human being, namely, the family home, inheritance of land and the tools and implements of work for daily use.

3. *The family heritage exempt from attachment.* The State recognises the family as the natural nucleus and foundation of society and at the same time as a moral institution endowed with inalienable rights superior to any positive law. As a further guarantee of its maintenance and continuity the family heritage shall be exempt from attachment.

Chapter XIII. National Trade Union Organisation

1. *Fundamental principles.* The national trade union organisation of the State shall be based on the principles of unity, totality and graduated authority.

2. *Vertical unions.* All factors of economic life shall be incorporated in vertical unions according to branches of production or services. The liberal and technical professions shall be organised in a similar system, in conformity with the provisions to be laid down by law.

3. *The vertical union.* The vertical union shall be a public body incorporating in a single organisation all elements which are engaged in the economic process in a specified service or branch of production; the union shall be organised in hierarchic grades under the direction of the State.

4. *Trade union authority.* The direction of the unions shall devolve necessarily upon the militant members of the Spanish Traditionalist Falange and the Young Workers' National Trade Union Movement.

5. *Subordination of the unions to the State. Powers and duties of the unions.* A vertical union shall be an instrument in the service of the State and shall constitute the principal medium through which the State will put its economic policy into effect. It shall be the duty of the union to study problems of production and recommend solutions, in accordance with the national interests. The vertical union may take part in the regulation, supervision and application of conditions of employment, through bodies specially equipped for the purpose.

6. *Bodies dependent on the unions.* A vertical union may set up, maintain or supervise institutions for research, for moral, physical and vocational education, for welfare and relief and for other social purposes affecting persons engaged in production.

7. *Employment exchanges.* Employment exchanges shall be set up with a view to providing employment for workers according to their ability and merits.

8. *Production statistics.* It shall be the duty of the unions to furnish the State with the data requisite for the compilation of statistics of production.

9. *Incorporation of economic and industrial associations.* The law respecting the organisation of trade unions shall specify the manner in which the existing economic and industrial associations shall be incorporated in the new organisation.

Chapter XIV. Protection of National Labour

1. *International treaties. Spanish workers abroad.* The State shall issue the necessary provisions for the protection of Spanish labour in Spain and shall take steps by means of labour treaties with other Powers to secure protection of the conditions of employment of Spanish workers resident abroad.

Chapter XV. National Renaissance

1. *Equality of rights and duties of all engaged in production.* At the time of the promulgation of this Charter Spain is waging a heroic struggle in which she is upholding the spiritual and cultural values of the world at the sacrifice of no small portion of her material riches.

It shall be the duty of all citizens in every branch of economic life to manifest the same spirit of gallant self-sacrifice as is shown by the youth of Spain on the battlefield and by Spain herself.

Accordingly, in this Charter of rights and duties the State has enumerated, as being the most urgent and imperative, the rights and duties of those elements of production which must make a just and resolute contribution towards the rebuilding of Spain and the laying anew of the foundations of her might.

Chapter XVI. Honour to the Fighting Forces

1. *Preference to be given to members of the fighting forces in posts of labour, honour, and command.* The State hereby undertakes to appoint the youthful combatants to the posts of labour, honour and command, to which they have a right as Spaniards and which they have won as heroes.

Appendix 2

ACT OF JULY 17, 1942, CREATING THE SPANISH CORTES AS AMENDED BY ACT OF MARCH 9, 1946. *

Art. 1. The Cortes are the superior body through which the Spanish people participate in the tasks of government. The principal mission of the Cortes consists in the preparation and elaboration of laws, subject to the concurrence of the Chief of State.

Art. 2. The members (*procuradores*) of the Cortes are ex officio or elective, to wit:

(a) The Minister [of State];

(b) The national councilors;

(c) The presidents of the council of state, of the Supreme Court of Justice, and of the supreme court of military justice;

(d) Representatives of the national syndicates (guilds and labor unions) not to number more than one-third of the total number of the members;

(e) The mayors of the fifty provincial capitals, those of Ceuta and Melilla (Morocco), and a representative for each of the other municipalities within each province, elected by the municipalities from among their numbers; a representative for each provincial deputation and interisland communal council of the Canary Islands, elected by these corporations from among their numbers;

(f) The presidents of the universities;

(g) The president of the Spanish Institute and two representatives elected from among the members of the royal academies of which it is composed; the president of the higher council for scientific research, and two representatives of the same elected from among its members;

(h) The president of the institute of civil engineers and one other representative of the same, elected by the president of the association of engineers; two representatives of the bar associations; two representatives of the medical association; a representative of the pharmacists association; a representative of the veterinarians association; a representative of the architects association; a representative of the association of bachelors and doctors of arts and sciences; a representative of the public notaries association; a representative of the national corporation of registrars; and one representative of the association of solicitors—all elected by their respective associations; three representatives of the official chambers of commerce, elected by their respective chambers;

* Source: Amos J. Peaslee, editor, *Constitutions of Nations* (The Hague: Martinus Hijhoff, 2nd ed., 1956), pp. 285-287; texts based on translations provided by the Spanish Embassy in Washington, D.C.

(i) Those persons who through their ecclesiastical, administrative military, or other public rank, or through their outstanding service to Spain, should be nominated by the Chief of State, in a number not to exceed fifty.

Art. 3. To be a member of the Cortes, the following qualifications are required:

- (1) To be a Spanish citizen and of age;
- (2) To enjoy full civil rights and not to be under civil and public inhabilitation consequent to penal sentence.

Art. 4. Members of the Cortes shall establish before the president of the same the election, nomination, or office which entitles them to membership. The president of the Cortes shall swear them in, seat them, and issue the corresponding titles.

Art. 5. The members of the Cortes cannot be arrested without previous authorization by their President, except in cases of *flagrante delicto*. In this case, the president of the Cortes shall be notified.

Art. 6. Ex-officio membership of the Cortes shall be predicated upon the tenure of office to which a member was elected or chosen. Those nominated by the Chief of State shall lose their membership through his revocation. Otherwise, the term of membership shall be for three years, and members may be re-elected; but if during these three years, a representative of a deputation, municipality, or corporation ceases in such office, he shall cease to be a member.

Art. 7. The president, the two vice-presidents, and the four secretaries of the Cortes shall be nominated by decree of the Chief of State.

Art. 8. The Cortes may meet in full session and in committees. The committees are created and appointed by the president of the Cortes, with the government's agreement. The President also establishes, with the government's agreement, the agenda for both full sessions and committees.

Art. 9. The Cortes shall meet in full session for the study of laws which so require, and whenever called by the president, with the government's agreement.

Art. 10. The full session of the Cortes shall be required to pass upon laws bearing on any of the following matters:

- (a) Ordinary and extraordinary budgets of the State;
- (b) Important economic or financial bills;
- (c) The creation or amendment of the system of taxation;
- (d) Bank and currency regulations;
- (e) The economic activity of the syndicates and legislation fundamentally affecting the national economy;
- (f) Basic laws regulating the acquisition and loss of Spanish citizenship and the rights and duties of Spaniards;
- (g) The political-legal organization of the institutions of government;
- (h) The regulation of local government;

- (i) Fundamental aspects of civil, mercantile, social, penal, and procedural law;
- (j) Fundamental aspects of the judiciary and public administration;
- (k) The regulation of agriculture, commerce, and industry;
- (l) The laws affecting national education;
- (m) Any other law which the government on its own initiative, or on that of the respective committees of the Cortes, should decide to submit to a full session of the Cortes. The government may also submit to full session measures which do not have the character of law.

Art. 11. Proposed laws to be submitted to the full session shall previously be studied and reported on by the respective committees.

Art. 12. The committees of the Cortes have jurisdiction over all other legislation not included in Article 10, but which has the character of law, either because it is established in a law subsequent to the present, or because it is ordered by a committee composed of the president of the Cortes, a minister appointed by the government, a member of the political council, a member of the Cortes with a law degree, the presidents of the council of state and of the Supreme Court of Justice. This committee shall report by request of the government, on the initiative of the latter, or on that of the president of the Cortes.

Art. 13. In the event of war or emergency, the government shall be empowered to regulate, by decree-law, matters covered by Articles 10 and 12. Immediately after the publication of the decree-law, the government shall inform the Cortes of the same.

Art. 14. The Cortes in full session or in committees, according to the circumstances, shall be heard for the ratification of treaties affecting matters within the competence of the Cortes, as specified in the above articles.

Art. 15. The legislative committees, apart from passing on projected laws of the government, may propose laws to the president of the Cortes, who, by agreement with the government, shall include them in the agenda.

The legislative committees may be empowered by the president of the Cortes to study special subjects, carry out investigations, and draft petitions or suggestions. For this purpose, they may establish special committees as distinct from legislative committees.

Art. 16. The president of the Cortes shall send laws drafted by the same to the government for their approval by the Chief of State.

Art. 17. The Chief of State may return laws to the Cortes for further study.

Additional Articles to 1942 Act

1. The Cortes shall establish with government agreement their rules of procedure and by-laws.

2. Elections for those members who hold elective seats shall be announced during the first fifteen days of October.

Additional Articles to 1946 Act

1. The members elected by the municipalities and deputations, to which reference is made in Article 2(e), shall lose their mandate when elections are held for renewal of municipal and provincial government.

2. The present elective members of the Cortes shall continue to hold their mandates until the first of May of this year, when the new members shall be elected.

Appendix 3

CHARTER OF THE SPANISH PEOPLE OF JULY 16, 1945 *

converted into a basic law of the nation by the Referendum of July 6, 1947 and by the Law providing for Succession to the Office of Head of the State of July 27, 1947.

Art. 1. The Spanish State proclaims as a guiding principle of its acts, respect to the dignity, integrity and liberty of the human person, recognizing man as bearer of eternal values and member of the national community, to be holder of titles of duties and rights, the exercise of which it guarantees for the common good.

FIRST PART DUTIES AND RIGHTS OF THE SPANISH PEOPLE

Chapter I

Art. 2. Spaniards owe faithful service to their country, loyalty to the Chief of the State and obedience to its laws.

Art. 3. The law protects equally the rights of all Spaniards without class preference or discrimination of persons.

Art. 4. The Spaniards have a right to the respect of their personal and family honour. He who should offend it, whichever be his condition, will be made responsible.

Art. 5. All Spaniards have a right to receive education and instruction and the duty of acquiring them either in the family circle or in private or public centres of their own free election. The State will see that no talent is wasted because of lack of economic means.

Art. 6. The profession and practice of the Catholic religion, which is that of the Spanish State, will enjoy official protection.

* Sources: *Yearbook of Human Rights for 1947* (New York: United Nations, 1949), pp. 286-288, based on the Spanish text in *Leyes Fundamentales*, as edited by the *Boletín Oficial del Estado* (Madrid: 1959), which gives the date of the Charter as July 17, 1945.

Nobody will be molested because of his religious beliefs or the private exercise of his creed. No external ceremonies or manifestations will be permitted except those of the Catholic religion.

Art. 7. It is a title of honour for Spaniards to serve in the armed forces of their country.

All Spaniards are obliged to this service when they are called to it according to law.

Art. 8. On a statutory basis, and always with a general character, those personal services that the interest of the nation and public welfare require will be obligatory.

Art. 9. Spaniards will contribute to the maintenance of public charges according to their economic capacity. Nobody will be obliged to pay taxes that have not been established by law voted by the Cortes (Parliament).

Art. 10. All Spaniards have a right to participate in public office of a representative character, through the family, the municipality and the syndicate (without barring other representation that the laws may establish).

Art. 11. All Spaniards may hold office and public functions according to their merits and capacity.

Art. 12. All Spaniards may freely express their ideas so long as they do not advocate the overthrow of the fundamental principles of government.

Art. 13. Inside the national territory, the State guarantees the liberty and inviolability of correspondence.

Art. 14. Spaniards are at liberty to fix their residence inside the national territory.

Art. 15. Nobody may enter the home of a Spaniard or effect a search in it without his permission, unless with a warrant from the competent authority and in the case and form established by law.

Art. 16. Spaniards may assemble and associate freely for lawful purposes and according to law.

The State may create and maintain such agencies as are deemed necessary for the accomplishment of its service. Fundamental rulings which will have the character of law, will co-ordinate the exercise of this right with that recognized in the preceding paragraph.

Art. 17. Spaniards have a right to legal security. All organisms of the State will act according to a hierarchical order of pre-established rulings, that may not be interpreted arbitrarily or altered.

Art. 18. No Spaniard may be arrested except in the cases and in the form prescribed by law. Within a period of 72 hours all arrested persons will be set free or turned over to the judicial authorities.

Art. 19. Nobody may be condemned except under a law issued prior to the act, under sentence by a competent tribunal, and after hearing and defence of the interested party.

Art. 20. No Spaniard may be deprived of his nationality except for treason, as defined in the penal laws, or for entering the armed services or exercising public office in a foreign country against the expressed prohibition of the Chief of State.

Art. 21. Spaniards may address individual petitions to the Chief of State, to the Cortes and to public authorities.

Corporations, public officers and members of the armed forces and institutions may only exercise this right according to the laws by which they are ruled.

Chapter II

Art. 22. The State recognizes and protects the family as a natural and fundamental institution of society with rights and duties prior and superior to all human positive law.

Matrimony is one and indissoluble.

The State will specially protect families with numerous children.

Art. 23. Parents are obliged to provide for, educate and instruct their children. The State will suspend the exercise of *patria potestad* or will deprive of it all who do not exercise it with dignity, and will transfer the custody of minors to those who are legally entitled to it.

Chapter III

Art. 24. All Spaniards have a right to work and the duty to occupy themselves in some socially useful activity.

Art. 25. Work because of its essentially human character, cannot be reduced to the idea of merchandise, or be the object of a transaction incompatible with personal dignity. It constitutes in itself an attribute of honour and a sufficient title to demand guardianship and assistance from the State.

Art. 26. The State recognizes in an undertaking a community of efforts of technique, labour and capital in their different forms, and consequently proclaims the right of these elements to participate in its gains.

The State will see that relations between them shall be maintained in the strictest equity and in an order that subordinates economic values to human values, to the interests of the nation and the exigencies of the common good.

Art. 27. All workers will be protected by the State in their right to a just and sufficient return, which will as a minimum provide them

and their families with well-being sufficient for a moral and dignified existence.

Art. 28. The Spanish State guarantees the workers security in distress, and recognizes their rights to assistance in the cases of old age, death, sickness, maternity, accidents, invalidity, unemployment and other hazards that are the object of social insurance.

Art. 29. The State will maintain institutions of assistance and will protect and foster those created by the Church, the corporations and private enterprise.

Art. 30. The Spanish State recognizes and protects private property as a natural means for the fulfilment of individual ends.

All forms of property remain subordinated to the necessities of the nation and to the common good.

No source of wealth will be allowed to remain unproductive, unduly destroyed or applied to illicit ends.

Art. 31. The State will make available to all Spaniards access to those forms of property more intimately connected with the human person, the home, inheritance, implements of production and goods of daily use.

Art. 32. In no case will a sentence of confiscation of property be passed.

Nobody may be expropriated except in the interest of public and/or social welfare, subject to prior appropriate indemnification and according to the terms of the law.

SECOND PART

ON THE EXERCISE AND GUARANTEES OF THE RIGHTS

Art. 33. The exercise of the rights that are recognized in this Charter may not affect the spiritual, national and social unity of the community.

Art. 34. The Cortes (Parliament) will vote the necessary laws for the exercise of the rights recognized by this Charter.

Art. 35. The enforcement of Articles 12, 13, 14, 15, 16 and 18 may temporarily be suspended in part or in whole by the Government by means of a decree which must define and limit the scope and duration of this measure.

Art. 36. Any violation of any of the rights proclaimed in this Charter will be punishable by laws which will determine, in each case, the actions that may be taken in its defence before the competent jurisdiction.

REFERENDUM ACT

OCTOBER 22, 1945 *

All Spaniards are entitled to co-operate in the tasks of the State through the natural institutions constituted by the family, the municipal corporations, and the syndicates, and the basic laws, which are to give new life and greater spontaneity to these institutions within a system of Christian life in common, having been published with the object of protecting the nation against the error observed in the political history of peoples which cause the will of the nation to be supplanted by the subjective judgment of its rulers in matters of major importance. The Head of the State, invoking the faculties conferred upon him by the Acts of the thirtieth of January, 1938, and the eighth of August, 1939, has thought fit to institute a direct consultation of the nation by public referendum when he considers such consultation opportune and advisable owing to the exceptional importance of the laws or the uncertainty of public opinion.

In virtue of which, I declare:

Art. 1. When the exceptional importance of any law makes it advisable or the public interest so demands, the Head of the State shall be empowered, in order to serve the nation more faithfully, to submit to referendum a bill drafted by the Cortes.

Art. 2. The government is hereby authorized to issue complementary orders for the compiling of the register of voters and the execution of the present act.

* Source: Amos J. Peaslee, editor, *Constitutions of Nations* (The Hague: Martin Hijhoff, 2nd ed., 1956), pp. 287-288; texts based on translations provided by the Spanish Embassy in Washington, D.C.

LAW OF SUCCESSION TO THE CHIEF OF STATE *

JUNE 7, 1947

Art. 1. Spain, as a political unit, is a Catholic, social, and representative state which, in accordance with its traditions, declares itself to be a kingdom.

Art. 2. The office of Chief of State is held by the Caudillo of Spain and of the Crusade, Generalissimo of the Spanish Armies, Don Francisco Franco Bahamonde.

Art. 3. Should the Office of Chief of State fall vacant, its powers shall be exercised by a council of regency composed of the president of the Cortes, the highest prelate of the hierarchy [of the Church], the councillor of the kingdom, and the captain-general of the land, sea, and air forces or the highest ranking lieutenant-general, in that order. The president of the council shall be the president of the Cortes and its decisions, to be legal, must be passed upon by two of its three members and always by the president.

Art. 4. A "council of the kingdom" shall advise the Chief of State on all matters and resolutions which are of importance and proper to this office. Its president shall be the president of the Cortes and its members the following:

- The highest ranking prelate of the hierarchy, member of the Cortes;
- The captain-general of the land, sea, and air forces, or the highest-ranking lieutenant-general on the active list, in that order;
- The president of the council of state;
- The president of the Supreme Court;
- The president of the Spanish Institute;
- A councillor elected by each of the groups represented in the Cortes:
 - (a) Syndicates (trades-unions and labor-unions),
 - (b) Local government,
 - (c) University presidents,
 - (d) Professional associations;

* Source: Amos J. Peaslee, editor, *Constitutions of Nations* (The Hague: Martin Hijhoff, 2nd ed., 1956), pp. 288-290; texts based on translations provided by the Spanish Embassy in Washington, D.C. The date of this Law, according to *Leyes Fundamentales* as edited by the *Boletín Oficial del Estado* (Madrid: 1959), is given as July 26, 1947.

Three councilors named by the Chief of State from the membership of the Cortes, one from the ex-officio members, one from those named by him, and one from the elective members.

Membership of the council shall be predicated on the tenure of the office to which the councilor was elected or chosen.

Art. 5. The Chief of State shall necessarily consult the council of the kingdom on the following:

- (1) Return for further study to the Cortes of laws prepared by it;
- (2) Declaration of war or signing of peace;
- (3) Submission of the name of the successor to the Cortes;
- (4) All matters stipulated by this law.

Art. 6. At any moment the Chief of State may submit to the Cortes the name of the person he believes should succeed him, either as king or as regent, and according to the conditions stipulated by this law; he may also, likewise, submit to the Cortes the repeal of any previous proposal of succession, although this last may have already been accepted by the Cortes.

Art. 7. Should the office of Chief of State be vacant and the successor appointed as by the previous article, the council of the regency shall assume the powers of this office to call a joint session of the Cortes and the council of the kingdom to take the successor's oath of office as prescribed in this law and to name him king or regent.

Art. 8. Should the Chief of State die or be declared incapable of exercising office without a successor having been named, the council of the regency shall assume full powers and, within a period of three days, shall call a meeting of the members of the government and the council of the kingdom who, in an uninterrupted and secret session, shall decide, by a minimum of two-thirds, on the person of royal blood whom, possessing the conditions stipulated by this law, and in consideration of the superior interests of the nation, they shall propose to the Cortes as king.

If in judgment of this session there exists no person of royal blood fulfilling the necessary requirements, or if their proposal shall not be accepted by the Cortes, they shall propose as regent that person who, on the basis of prestige, qualifications and possible services to the nation, should hold the office. On making this proposal, the session may fix a time limit and other conditions to the regency, and the Cortes shall pass on each of these.

A plenary session of the Cortes shall be held within eight days, and the successor, having obtained the approval of the Cortes, shall take the oath of office stipulated by this law, in virtue of which the council of regency shall immediately cede its powers to the successor.

Art. 9. To exercise the office of Chief of State as king or regent, it shall be necessary to be male, Spanish, to be thirty years of age, to profess the Catholic religion, to possess those qualities necessary to

fulfill the high office, to pledge respect of the fundamental laws and to swear to uphold the principles of the national movement.

Art. 10. The fundamental laws of the nation are: The Charter of the Spanish People, the Labor Charter, the Constituent Law of the Cortes, the present Law of Succession, the Law of National Referendum, and whatever other law shall be latterly promulgated as fundamental.

To repeal or modify these laws, a national referendum shall be required, as well as the approval of the Cortes.

Art. 11. Once the person of the king has been named, the regular succession will be that of primogeniture and representation, with preference to the older over the younger line; within the same line, to the closer over the more distant grade of relationship; within the same grade, to the male over the female, who shall not be able to reign but who shall, in such cases transmit her rights to her male heirs; and within the same sex, the older over the younger; all without prejudice to those exceptions and requisites set forth in the articles of this law.

Art. 12. All delegation of rights before assuming the throne, abdication once the successor has been named, renunciation in any case, royal marriage and marriage of the immediate successor must be approved by the Cortes after report from the council of the kingdom.

Art. 13. On the advice of the council of the kingdom, the Chief of State may submit to the Cortes the exclusion from succession of those persons of royal blood who lack the necessary capacity to govern or, because of their noted indifference to the basic principles of the State or because of their actions, have forfeited their rights to succession as established by this law.

Art. 14. The incapacity of the Chief of State, appraised by two-thirds of the members of the government, shall be communicated by report to the council of the kingdom. Should the council agree to this report, by two-thirds majority, its president shall submit it to the Cortes which, meeting within eight days, shall adopt the necessary measures.

Art. 15. Any act taken under this law by the Cortes must be approved by a majority of two-thirds of the members present who must form an absolute majority of the total membership of the Cortes.

Appendix 6

PRINCIPLES OF THE NATIONAL MOVEMENT LAW OF MAY 17, 1958 *

I, Francisco Franco Bahamonde, Caudillo of Spain,

Conscious of my responsibility before God and History do promulgate the following, in the presence of the Cortes of the Kingdom, as principles of the National Movement, which are understood as a Communion of Spaniards in the ideals which gave birth to the Crusade.

I

Spain is a unity with a world mission. It is the sacred and collective duty of all Spaniards to contribute to the greatness, unity and freedom of the fatherland.

II

The Spanish nation considers it a rule of honour to respect the law of God, according to the doctrine of the Holy Catholic Apostolic and Roman Church, the sole depository of truth—Faith inseparable from the national conscience. That Faith shall inspire the nation's laws.

III

Spain, founder of a great family of peoples with whom she feels indissolubly united by fraternal bonds, hopes for the establishment of justice and peace among nations.

IV

The unity of the people and lands of Spain is intangible. The integrity and independence of the fatherland are the highest requirements of the national community. Spain's armed forces, as the guarantee of her security and expressions of heroic virtues of our people, must possess the necessary strength to give the fatherland their best service.

* Source: *Leyes Fundamentales*, as edited by the *Boletín Oficial del Estado*, (Madrid: 1959).

V

The national community is based on man, heir to the eternal values, and on the family, the nucleus of social life; but individual and collective interests must always be subordinated to the common good of the Nation, which is related to past, present and future generations. All Spaniards are equal before the law.

VI

The nature units of social life are the family, the commune and the syndicate. These are also the fundamental structures of the national community. All institutions and corporations, of whatever nature, satisfying social needs of general interest will have the right to protection from the authorities in order that they may effectively participate in the pursuit of the national community's purposes.

VII

The Spanish people, united under a legally constituted order and inspired by the postulates of authority, liberty and service, constitute the national State. Its political form within the framework of the immutable principles of the National Movement and of the principles defined by the Law of Succession and the other fundamental laws, is the traditional, Catholic, social and representative monarchy.

VIII

The representative character of the State is the essential principle of our public institutions. The participation of the people in the work of legislation and other functions of general concern shall be effected through the family, the commune, the syndicate and other organizations endowed with an inherently representative nature and recognized for that purpose by the law. Any political organization, whatever its character, which lies outside this representative system, shall be considered illegal. Public appointments and offices are open to all Spaniards according to their merits and capabilities.

IX

Every Spaniard is entitled to:

- an independent Judicature the access to which shall be free to all who are without sufficient resources;
- a general and professional training which no one will be deprived of for lack of material means;
- the benefits of social assistance and security;
- an equitable distribution of the national income and taxation.

The Christian ideal of social justice expressed in the Labour Charter must inspire politics and the laws.

X

It is proclaimed that work is the basis of social hierarchy, a duty and honour for all Spaniards, and that private property, in all its forms, is a right, the exercise of which is conditioned by its social function. Private enterprise, the basis of economic activity, must be encouraged, directed and where necessary substituted for by State action.

XI

The business undertaking, which is an association of men and means organized for the purpose of production, constitutes a community of interests and a unity of aims. Relations between the elements making up the business undertaking must be based on justice and mutual loyalty and economic values shall be subordinated to human and social values.

XII

The State shall strive by all means at its disposal to lavish the best attention on the physical and moral health of Spaniards and to guarantee them worthy conditions of work; to encourage the nation's economic progress by improving agriculture, extending irrigation work and proceeding to social reform in the rural areas; to direct public funds towards the best possible use and distribution; to safeguard and encourage the prospecting and development of mining resources; to intensify the process of industrialization, patronize scientific research and foster maritime activities in a manner corresponding to the size of Spain's seagoing population and her nautical inclinations.

For these reasons I decide as follows:

1. The principles contained in the present law, which is a synthesis of those inspiring the fundamental laws approved by the nation on July 6, 1947, are by their very nature permanent and unalterable.
2. The strictest observance of these principles is required from all bodies and all authorities. The oath required from all persons invested with public office must refer to this present text of fundamental principles.
3. Any law or disposition of whatever nature which would violate the principles proclaimed in the present fundamental law of the Kingdom or derogate from it shall be null and void.

Given at the Palacio de las Cortes at the solemn session of May 17, 1958.

FRANCISCO FRANCO BAHAMONDE

EXCERPTS FROM THE CERON TRIAL

On November 9, 1959, the Military Court of Madrid passed judgment on seventeen Spaniards tried under summary procedure; their names were:

JULIO CERÓN AYUSO, IGNACIO RUIZ CORTES, DEMETRIO LUIS MARCOS PABLO, ESTEBAN PULGAR TORRALBA, ANDRES RIERA CORTES, MATIAS LOPEZ DELGADO, ANTONIO DIAZ YAGÜE, MANUEL GOMEZ OVEJERO, RAIMUNDO ORTEGA FERNANDEZ, LUCIANO FRANCISCO RINCÓN VEGA, JUAN GERONA PEÑA, ANTONIO MARTINEZ DELGADO, JUAN NICOLAS VIEJO GABILONDO, AGUSTIN MACARRON ISLA, ANTONIO ALONSO DIAZ, BONIFACIO LIZANA HERRADOR and MANUEL DEL CURA OLALLA.

These men had been prosecuted for starting an opposition movement and for cyclostyling and distributing leaflets inciting public demonstrations against the regime and inciting workers to strike. They were found guilty of the crime of military rebellion and sentenced to varying terms of imprisonment: Julio Cerón, the principal defendant received the longest term of imprisonment, 3 years. The others received terms ranging from 6 months to 2 years.

The Captain-General of the Madrid Region refused to countersign the judgment on the grounds that he thought the sentences imposed too lenient. The case was consequently brought before the Supreme Court of Military Justice and heard on December 2, 1959.

Below are given the following excerpts from the hearing before the Supreme Court of Military Justice:

Part A: Public prosecutor's indictment.

Part B: Speech of defence counsel for Cerón.

Part C: The Court's finding and sentence.

Public Prosecutor's Indictment *

The present case No. 783/59 of the First Military Region, tried under summary procedure with Julio Ceron Ayuso and 16 others as defendants, has been brought up before this Supreme Court by the Judicial Authority as a result of its disagreement with the sentence imposed.

The ordinary Military Court heard the case sitting in Madrid on 9 November of the present year; it passed sentence setting out under its various findings the facts that had been proved, and describing them as constituting the completed offence of subversive activities equivalent to rebellion, as set forth in Subsections 1 and 2 of Section 1 of the Law of 2 March, 1943, with penalties laid down in Paragraph 1 of the above-mentioned Section, when read with Section 290 of the Code of Military Law and for which certain accused were directly responsible, without modifying circumstances. By virtue of the foregoing the under-mentioned accused were condemned to the following terms of imprisonment: Julio Ceron, three years; Antonio Diaz Yague and Manuel Gomez Ovejero, two years each; Raimundo Ortega Fernandez, one year; Ignacio Ruiz Cortes, Esteban Pulgar Torralba, Demetrio Luis Marcos Pablo, Andres Riera Cortes and Juan Gerona Peña, six months and one day each, together with suspension from any public duty, profession or office and the right to vote for the duration of the penalty. For Ignacio Ruiz Cortes, in addition, loss of service and seniority for the duration of the penalty. The sentence stated that the time spent under arrest would count as part of the period of imprisonment, and decreed the forfeiture of the objects connected with the offence, and finally ordered the release of the following accused, considering that the acts alleged against them did not constitute infringement of the law: Matias Lopez Delgado, Bonifacio Lizana Herrador, Antonio Martinez Delgado, Manuel del Cura Olalla, Agustin Macarron Isla, Antonio Alonso Diaz, Luciano Francisco Rincon Vega and Julian Nicolas Viejo Gabilondo.

The sentence was notified to the parties, who did not appeal against it.

The judge advocate** in his opinion expressed his disagreement with the sentence on the grounds that, with regard to the facts, there were inconsistencies between the different facts set out under the findings of the Court and also between these and the considerations subsequently set forth, as well as because the concepts which formed the basis of the alleged offence were not literally included in the statements

* This document was copied from the official court record.

** The Spanish words *El Auditor* have been translated by judge advocate.

of proof; this was especially necessary for the purpose of juridical definition, and furthermore when referring generally to these concepts, without defining them, adjectives were added such as "false", "tendentious", "dangerous", etc. which thus anticipated the juridical definition and prejudged the nature of the definition. There were also errors in matters of law, first because the required reference to Section 286, Subsection 5 of the Code of Military Law and paragraph 1 of Section 1, of the Law of March 2, 1943 (which is only mentioned in the sentence in connection with penalties), were omitted. Both omissions gave rise to the improper and legally non-existent description of the offence as "subversive activities" instead of "military rebellion"; secondly, because the facts did not properly correspond to Section 290 of the Code of Military Law which penalizes provocation of, incitement to and approval of illegal acts, while in this case the acts were perpetrated by the accused themselves, and should have been dealt with under Section 287 and 289 on account of their importance and nature and of their similarity with other activities on which judgment had been passed, in particular those perpetrated by the Communist Party. All this leads to the conclusion that they should have been considered under Section 289 and that the penalties should have been fixed not only on the basis of the personal circumstances of the accused but also of the more or less close ideological or tactical relationship with the above-mentioned Party. For all these reasons, he proposed that this Court should not approve but rather increase the sentence to the end that the accused should be condemned to the following terms of imprisonment: Julio Cerón Ayuso, six years; the soldier Ignacio Ruiz Cortes, two years and six months; Esteban Pulgar Torralba, Demetrio Luis Marcos Pablo and Andres Riera Cortes, two years and two months each; the remainder of the operative part of the sentence being approved.

The Judicial Authority, on the basis of the same arguments and in agreement with the judge advocate, has expressed its dissent and remitted the case to this Supreme Court for decision.

Following this statement, the Public Prosecutor will examine separately the questions of fact and law raised in the dissent, in connection with the case, and will finally demand the appropriate sentence.

FACTS

In general, the contents of the statements of testimony in the sentence correspond with the summing-up and are correct. However, in some of the findings—I and IV—the Court does more than establish the facts; it expresses opinions about them which lead to arguments on which definitions can be based. Those arguments should have been contained in the grounds of judgment. Apart from the fact that the drafting is inadequate for the reasons stated, the foregoing could cause confusion and bring about inconsistencies with other findings, and also with the considerations mentioned in them as the authorities

putting forward the dissent very rightly judged. In fact, the references of a general character to the campaign of agitation “under the banner of a false pacifism”, the expressions “thoughtless”, “saboteurs”, “illusory triumphs”, “inspired by resentments and illusions”, “feeble forces”, etc. used in connection with the New Iberian Generation, the New University Left and the Peoples Liberation Front, together with the statements that these only “appear to exist”, that “their creators are the same”, that they “have a short life and few members”, in relation with the need to support the individual single activities of each accused, appears to indicate that these associations are not only without importance but also that it is they that are being judged, when in fact what is being prosecuted is the conduct of the persons who brought them into being. All these expressions, which no doubt tend to express the opinion of the judges with regard to the fixing of penalties, should appear in the grounds of the judgment, and are in any case in conflict with the activities carried out by the accused which may be deduced from the remaining findings of the Court. These demonstrate the determination of the accused and their purpose in drafting constitutions or statutes, publishing periodicals, making records of their meetings, publishing pamphlets and distributing them in public places where large numbers of people gather, making contact with exiles and foreigners, co-operating with the associations—to sum up, they joined together and through these associations which really exist they carried out activities which place them outside the law. The final statements in finding IV of the Court concerning the duty of loyalty which the accused Cerón violated are also improper because they should have been part of the argument in the grounds of judgment and are inconsistent with the judgment insofar as the status of a public official is not considered as an aggravating factor after it has been affirmed that the accused used the office which he was occupying for contacts with persons abroad. Moreover, finding VII is full of gross errors of fact since the accused persons named in it, except for one, were active participants and did not limit their contacts as is stated to merely personal relations.

Furthermore, as the judge advocate states, even though he does not specify the points to which he refers, it is necessary to determine, on account of the importance which this has in respect of the definition of the offence, which concepts were propagated by the accused since, through them, it will be possible to establish more clearly the purpose of their activities and to define that purpose properly from the point of view of the law; this omission on the part of the Court has to be remedied.

In reaching its verdict the court must bear in mind that the following facts were proved at the original hearing:

A) The Communist Party is notoriously in permanent conflict in different parts of the country with Spain’s historic mission and with the nation’s Government and basic institutions. It resorts now to

arms, now to acts of terrorism, now to subversive propaganda at home or from abroad, leaving out no means of mental or physical constraint which can be used to trick or persuade people into error.

B) The accused Don Julio Cerón Ayuso, a diplomat of secretarial rank, working at the Ministry of Foreign Affairs and also representing the Spanish Government at various international organizations, conceived the notion of creating a political organization for young students as a rival to the SEU (*Sindicato Español Universitario*) and in opposition to the regime. He accordingly set up an Association, or group, known as the New University Left. In collaboration with the accused Raimundo Ortega Fernández, Cerón distributed, through the post and by having copies passed round the Faculty of Veterinary Studies at the university, a manifesto entitled *Guipúzcoa*. In July 1958, when he was on an official mission to Geneva, Cerón had an interview with the exiled Miguel Sánchez Mazas and Antonio López Campillo, the latter having left Spain after the student demonstrations in January 1956. Sánchez Mazas was urging amalgamation of the University Socialist Group with the New University Left; Cerón, however, who thought the political unrest at the University had died down, agreed with López Campillo to set up a new organization, to be called the People's Liberation Front, later known as *Los Felipes*, which would absorb the New University Left. This new organization would rally middle and working class elements, thereby enlarging the field of operations. At Bilbao, Cerón and Ortega visited the accused Luciano Francisco Rincón Vega and instructed him to organize the New University Left in Biscay. They met Rincón Vega again at the house of Ignacio Fernández de Castro y Sánchez Cueto, lawyer, in Santander. Juan Massana Ronquillo, representing the Barcelona group of the New University Left, was present at these meetings. There they discussed the programme of the Felipes, and Cerón explained that the main thing was to establish contact with all the political parties, including the Communists, for the fight against the Government. This led to disagreement and it was decided that each man should do what he would or could in his town (p. 132 reverse and p. 133). *

Fernández de Castro and Massana, whose past records are dubious, have not been indicted in this case; nevertheless, the nonsuit ordered in their case is provisional (see their statements and those of Rincón and also the conduct reports pp. 101, 133, 136, 132, 348, and 362).

On behalf of the People's Liberation Front, Cerón wrote and duplicated on his own machine a work entitled "The Present Situation in Spain", in which, among others, such expressions as the following occur: "no one has the right to stand idle in face of the com-

* All such page references refer to original court records.

ing disaster”, . . . “ The Franco non-government is compromising the welfare and safety of Spaniards”, . . . “ The time has come to show the government that this is the unanimous will of the people”, . . . “ For a democratic Government!”, . . . “ For honest rulers!”.

Cerón, determined in his ideas and intentions, developed the ideas he had expounded at Santander, and also the instructions received from López Campillo. Through Ricardo López Delgado, who was living in France, his brother Matias López Delgado, Ortega, and Demetrio Luis Marcos, Cerón established relations with the New Iberian Generation Organization, which shall be mentioned later, and used its members to distribute Felipes propaganda and help him in his work. Lastly, he established relations through what was known as the University Coordination Committee with the University Socialist Group, the Christian Democrat group and the Communist Party, since the New University Left, which he had set up and directed, formed part of that Committee together with the other groups. A certain Carlos Morán Ortega, and later the accused Raimundo Ortega, represented the Cerón organization on that Committee. In accordance with the Committee's decisions, Cerón now drafted and distributed a manifesto starting with the words: “ It is now 20 years ”, in which he called on “ all Spaniards to devote an entire day to civil and peaceful protest by laying off work in all factories, workshops and offices, refusing to use public transport, closing premises for the day, boycotting markets and newspapers . . . so as to demonstrate our discontent with a bad government ”. Next, in leaflets signed by the People's Liberation Front, he called for “ a great protest demonstration in the form of a 24-hour peaceful national strike ” and caused these leaflets to be distributed by the members of the New Iberian Generation. The manifesto and leaflets appeared at the same time as those of the Communist Party. Through Rincón, Cerón sent some of these leaflets to Bilbao as well (p. 134 reverse).

In Madrid, Cerón and Ortega had talks with the Chilean Barros and the Swiss Reiser, members of the international students organization, (COSEC), who wanted to make sure that the group applying for membership, the SEU, was really representative. It was the exile López Campillo who recommended Barros and Reiser to get in touch with Cerón and Ortega for information.

Cerón kept in regular touch with the Spanish exiles and had talks with Alvarez del Vayo, a Minister in the so-called Spanish Republican and Basque Nationalist Governments in exile, and with López Campillo and others, from whom he used to receive instructions which he subsequently carried out in the way we have seen above. A great many of these contacts were made during official journeys in his capacity as a diplomat, when he undoubtedly took advantage of the many opportunities for private trips which this occupation gave him. (This emerges from the statements of Cerón himself, and from those

of Ortega, Marcos and Rincón among others, which will be found on pp. 52, 57, 15, 85, 124, 125, 119 and 133).

C) In 1957 or thereabouts, the accused Ignacio Ruiz Cortes, Esteban Pulgar Torralba, Matías López Delgado, Demetrio Luis Marcos Pablo and Andrés Riera Cortes, got in touch with the accused Antonio Díaz Yagüe and Manuel Gómez Ovejero. These people met fairly regularly and their confabulations led to the birth of the Association known as the New Iberian Generation, which was firmly founded when they drafted a constitution for it. They held meetings at regular intervals and kept minutes of these, levied minimum dues of twenty-five pesetas to cover expenses, and selected as their platform a monthly called *Libertad*, which had been edited by Díaz and Ovejero before their entry into the group, which had already come out seven or eight times and had a circulation of at least five hundred per issue. According to its constitution, the aim of the Association was "to coordinate the common struggle against the dictatorship and to use all means at our disposal to try and establish a federal democratic republic on the Iberian Peninsula". The constitution also advocated "collaboration with all parties fighting for the same ideals as ourselves", "all kinds of contacts with political parties in Iberia and abroad for joint action in a democratic struggle". "Propaganda and other action against the dictatorship". The articles in *Libertad* were approved by a Committee and some issues contained such phrases as: "Awake! The younger generation will never forgive your cowardice and unworthiness if you do nothing to overthrow tyranny" (Issue No. 1, July 1957); "In the present circumstances the fight against Franco is above all a patriotic or, more precisely, a national task" (Issue No. 2, February 1957)*; "Let us fight the dictatorship with every means at our disposal" (Issue No. 6, July 1958); "Against Franco-ism and Franco's retinue of thieves, table companions and myrmidons, Spaniards awake, wage universal and relentless battle for Spain's freedom!" (Issue No. 7, October 1958).

The New Iberian Generation printed and distributed, through its members, propaganda with such expressions as "Madrilenians, let us fight! Let us fight unflinchingly for a free and democratic Spain! The Franco scum must be destroyed" (January 20, 1958). "We believe it to be the duty of every group and party to conclude a firm alliance with the other groups or parties so as to save Spain from the Franco chaos and we are not held back by reservations about the people who can help us in this great task". The leaders of the group were Antonio Díaz Yagüe, the head of the group, Andrés Riera Cortes and Manuel Ovejero, its secretaries, and Matías López Delgado, its treasurer (pp. 10 and 12).

* The second issue is given as being published before the first issue (Ed.).

Through Demetrio Luis Marcos and Ricardo López (the treasurer's brother living in France) the New Iberian Generation made contact with Raimundo Ortega, Cerón and the People's Liberation Front, and undertook to distribute the manifesto on the " present situation in Spain ". A copy fell into the hands of the Communist Party, which then tried to make contact with its authors. Meetings for this purpose were arranged by Demetrio Luis Marcos himself, and Esteban Pulgar, Antonio Martínez Delgado and Luis Lucio Lobato, a Communist Party education officer, took part in these. In addition, Andrés Riera Cortes contacted the Communist Party on behalf of the New Iberian Generation and received strike propaganda material from it. The Felipes also sent him such material. Antonio Díaz Yagüe and Manuel Ovejero left the New Iberian Generation because they disapproved of collaboration with the Communists.

D) In the middle of 1956, before they met their spiritual brothers of the New Iberian Generation, the above-mentioned accused Antonio Díaz Yagüe and Demetrio Gómez Ovejero had been in regular touch with the former member of parliament Victoria Kent and had been sending articles to the foreign journal *Iberica* for which they each received ten or twenty dollars a month. In 1957, they were visited by a representative of the New York Group of exiles, who sent them a larger sum (apparently one hundred dollars) which enabled them to buy a duplicating machine for producing the revue *Libertad*. After this they founded the New Iberian Generation Association, which they later left for the reasons given above. They received propaganda material from abroad, addressed to the Progressive Friends Association, through Madrid P.O. Box No. 5012.

E) On June 7, the soldier Ignacio Ruiz Cortes, one of the accused, distributed leaflets, calling for a one day strike on June 18, of the same year at the metro stations of Atocha and Pacífico, and in the Districts of Tetuán and Ventilla and in the Chamartín stadium in Madrid. He was arrested that day in the stadium, where he had distributed 2,000 leaflets. Esteban Pulgar Torralba distributed his leaflets at the Norte metro station, the Plaza de Castilla and the District of Ventas. Demetrio Luis Marcos Pablo threw leaflets into the Norte and Argüelles metro stations, on the Extremadura road and at the Chamartín stadium, except for those which he distributed to his friends and acquaintances. Andrés Riera Cortes distributed on June 7, about one thousand five hundred copies of these leaflets at Ventilla, Tetuán, Estrecho and about two thousand at the Chamartín stadium. It was he who bought the entrance tickets, for which he received one thousand pesetas (p. 21 reverse).

F) At Cerón's request, the accused Don Juan Gerona Peña, a bachelor of laws, agreed to let Cerón use his apartment as his political headquarters. He joined the People's Liberation Front, attended its meetings and at one of these was appointed delegate for economic

affairs. The duplicating machine and typewriter used to produce the propaganda material, first of the New University Left and later of the People's Liberation Front, were installed in his house. He helped in writing the articles for these productions. Taking him for Cerón, members of the New Iberian Generation came running to him once contact had been established and used the duplicating machine (this emerges from his own statements—pages 48 and 123 and from that of Ruiz among others, p. 9 reverse and p. 16).

G) The accused Luciano Francisco Rincón Vega, the New University Left representative at Bilbao, established relations, as we have already said, with José María Vega Laso, a Communist leader who had been found guilty in another case, and with Fernando Claudín, an exile living in France, who went to Biscay to organize the Day of National Reconciliation. From a certain Meseguer he received French propaganda material, which he did not distribute, although later he distributed the Cerón leaflets carrying the incitement to strike (this emerges from his own and other statements (pp. 85 and 133).

H) The accused Don Julián Nicolás Viejo Gabilondo, a student at the School of Mining with a political record, was in close touch with the Biscay Communist leader Leoncio Peña. He took part in the Day of National Reconciliation and wrote for the Basque Communist paper *Aurrera*. After the arrest of José María Laso he made contact with José Meseguer, who had come from France, and introduced him to various members of the Communist Party. He also maintained contact with the accused Luciano Francisco Rincón Vega (pp. 106, 137, 368 and 371).

I) The accused Bonifacio Lizaña Herrador, who had been enrolled by Demetrio Luis Marcos and had received instructions and suggestions from him to stir up trouble in the Standard Electric factory where he worked, made contact with Andrés Riera and others of the accused at meetings which he attended with Lucio Lobato, the Communist Party education officer (p. 31 reverse and p. 39 among others). He thus played an active part in establishing relations between the New Iberian Generation and the People's Liberation Front on the one hand and the Communist Party on the other. The Communist Party gave him leaflets to throw on to the Vallecas Bridge on May 13, but because he was afraid he confined himself to throwing the packet of leaflets into the Vallecas metro station (pp. 36 and 120). Antonio Martínez Delgado, an active syndicalist who is also one of the accused, made the acquaintance of the Communist Party education officer Lucio Lobato mentioned above and received advice and instructions from him which he complied with. In addition, he passed on to Lobato People's Liberation Front propaganda which he had received from Lizaña, since Lobato wanted to build up relations with that group. Demetrio Luis Marcos, Riera and Matías López of the New

Iberian Generation, who were already in contact with the Felipes, helped him in this (pp. 38 and 146 among others).

The accused, Agustín Macarrón Isla, aged 47, about whom there is doubt as to whether he was acquitted or sentenced to 12 years and one day imprisonment for his participation during the Crusade,* although there is proof that he was in prison for 5 months, stirred up trouble in the Standard Electric works where he was employed. He distributed Communist Party leaflets in accordance with instructions from one of his sons who had gone to Moscow via France and taken part in the Sixth Youth Festival. In this matter the accused Antonio Alonso Díaz, to whom he had been introduced by his son when he was engaged in recruiting young people for the Seventh Youth Festival in Vienna, assisted him. Further, both Macarrón and Alonso distributed the instructions for the national 24 hour strike against the present regime (pp. 80, 128, 73, 188, 297 and 299).

J) The accused Manuel del Cura Olalla, although he was in touch with some of the other accused and received occasional propaganda material, does not seem to have belonged to the above mentioned organizations or to have taken an active part in distributing propaganda, issuing underground documents or inciting to strike; he seems, rather, to have allowed himself to become involved in such activities for reasons of friendship and through relations with his workmates (pp. 41-120).

In Law:

The facts established during the proceedings and related in the present plea constitute, except those facts mentioned in paragraph J, a criminal act of military rebellion within the meaning of Section 286, Subsection 3 of the Code of Military Law, punishable by Section 289 of the said Code. This crime was perpetrated every time the accused gave assistance to the Communist Party in its activities in Spain against the regime and the basic institutions thereof, a campaign which that party relentlessly pursues by keeping up the rebellion with which the facts related under paragraph A above are concerned. The said accused, in fact, with the intention of illegally changing the organization of the State, not only formed various illegally constituted associations among themselves and prepared propaganda material which they distributed by post or disseminated in frequented places, but also entered into relations with the said party, associating themselves, moreover, with its plan, in which they later assisted, by calling a 24 hour national strike.

The fact that the accused Antonio Díaz Yague and Manuel Gómez Ovejero disagreed about the date fixed by the said party

* The Falangist term for the Spanish Civil War.

for the strike and so came to leave the New Iberian Generation, makes no difference to the criminal nature of their actions. By their activities within that association and even before, by publishing the review *Libertad*, their contributions to foreign journals and their contacts with the exiled Victoria Kent, they did in fact serve the Communist plans. According to the principle already stated, it matters little whether they were or were not identified with the revolutionary activity of the Communists; the same argument applies to the other accused persons as well, even though their ideas or convictions may not have coincided with those of the Communist Party. The fact that they helped it is proved by their actions and the aims outlined above.

The accused are guilty of the said crime in that they personally and directly participated in it *as authors* within the meaning of Section 195 and Section 196, Subsection 1 of the Code of Military Law.

The facts mentioned in paragraph J do not constitute a penal offence.

In regard to the accused Don Julio Cerón Ayuso, the fact that he took advantage of his official status to commit the crime is a circumstance aggravating his offence under the terms of Section 187, Subsection 9 of the above mentioned Code. It is therefore proper that Cerón's official status be taken into account, particularly since he used the high and respected mission entrusted to him by the Service to which he belonged for purposes hostile to the regime he was officially representing and unquestionably prejudicial to the prestige of Spain.

The accused Luciano Francisco Rincón Vega was sentenced by the Bilbao Tribunal in case 251/52 of June 18, 1953, to two years minor imprisonment for theft and to four months major arrest for larceny. However, since on the police record which is attached to folio 336 it appears that these (sentences) had been quashed on December 31, 1958, the aggravating factor of repetition of offence, as under Subsection 12 of the aforementioned Section 187, cannot be applied to Rincón Vega, because of the rehabilitation granted to him and taking into consideration the different nature of the new crime and the provisions made under Section 255, last paragraph, of the Code of Military Law.

In view of the above mentioned considerations and by virtue of the discretion allowed to the Judge, under Section 192 of the Code of Military Law, in fixing the penalty, the individual circumstances of the accused, their past record and the crimes which they committed in connection with the facts recounted, the following sentences ought to be imposed:

For Don Julio Cerón Ayuso, 20 years solitary confinement with hard labour.

For the soldier Ignacio Ruiz Cortes, 10 years imprisonment.

For Demetrio Luis Marcos Pablo, Esteban Pulgar Torralba, Andrés Riera Cortes and Matías López Delgado, 12 years imprisonment.

For Antonio Díaz Yagüe and Manuel Gómez Ovejero, 10 years imprisonment.

For Raimundo Ortega Fernández, Luciano Francisco Rincón Vega, Juan Gerona Peña, Antonio Martínez Delgado and Juan Nicolás Viejo Gabilondo, 7 years imprisonment.

For Agustín Macarrón Isla, Antonio Alonso Díaz and Bonifacio Lizaña Herrador, 6 years imprisonment.

In the case of Manuel Del Cura Olalla, the prosecution asks for an acquittal.

The penalties indicated will entail, over and above solitary confinement with hard labour and imprisonment, loss of civil rights, the disability of entry to public office and from the exercise of a profession and the loss of the right to vote for the whole term of the main penalty. Furthermore it is demanded that Ignacio Ruiz Cortes be sentenced to the special military punishment of being sent to the Disciplinary Corps for the remainder of his military service, this period to be deducted from the term of the principal sentence (Section 219 and 222). The whole period of preventive custody will be deducted from the term of the above mentioned penalties and the objects used in committing the offence will be confiscated.

Further I submit that it has become apparent from this case that a certain Carlos Morán Ortega took part in the offences (pages 52, 53 reverse, 55, 58, 59 and 63 among others). Since the activities of the said individual have not been made the subject of a preliminary penal enquiry or of police investigation, the attention of the judicial authorities should be drawn to them in order that this omission be made good and that such procedure as the said authorities may deem appropriate be set in motion.

I further submit that the verdict challenged contains, on the one hand, inconsistencies between the statements of the accused and the description of the offence and consequently of the sentences pronounced and, on the other hand, technical inaccuracies in regard to the expressions used in the legal references cited in the operative part, to the extent that they do not indicate aggravating circumstances as distinct from the facts which they describe. Lastly, the name of the offence for which the sentences were pronounced has no legal existence.

By virtue of all that has just been said, the public prosecutor draws the Court's attention to the implications of the judgment handed down. In this respect the Military Court judges have not looked into matters sufficiently deeply; this applies particularly to the Judge Advocate,

if one takes into account his judicial training and his responsibility under the law for putting before the Court such observations and objections as are suggested to him by scrutiny of the proceedings and the text of the verdict.

In view of all the above considerations, it behoves the Court to pronounce a new judgment in accordance with the conclusions submitted in this memorandum.

The Court will nevertheless decide.

Madrid, December 2, 1959.

Public Prosecutor.

PART B

Speech of Defence Counsel for Cerón *

Counsel for the defence of Don Julio Cerón Ayuso in case No. 783/59 of the Military First Region, heard this day before the Tribunal of the Supreme Court of Military Justice, submits that:

On November 9, 1959, the Military Court met and, finding the accused guilty of having indulged in subversive activities, an offence considered as rebellion as defined in Subsections 1 and 2 of Section 1 of the Law of March 2, 1943, sentenced him to 3 years imprisonment.

On November 13, 1959, the judge advocate gave notice that he contested the above mentioned judgment on the grounds that the sentence pronounced was that envisaged in Section 290 of the Code of Military Law as the penalty for provoking, inciting or defending acts in violation of the Law; yet it appears from the record that the accused was not the instigator of those acts but committed them and so falls within the scope of Section 289. The judge advocate therefore demands for our client a sentence of 6 years imprisonment.

For the same reasons and in full agreement with the judge advocate the Regional Judicial Authority (the Captain-General) expressed disagreement with the views of the Military Court and referred the case to the Supreme Court of Military Justice.

On December 2, the public prosecutor pronounced his indictment and demanded for the accused Julio Cerón Ayuso 20 years solitary confinement with hard labour, on the grounds that the accused was guilty of the crime of military rebellion as defined by Section 286 Subsection 3 of the Code of Military Law, punishable under Section 289 of the same Code.

Consequently, there are two conflicting contentions:

* This document was copied from the official court record.

First there is the contention maintained by the public prosecutor, who sees in the aforesaid activities only an offence of rebellion as defined in Subsection 3 of Section 286 of the Code of Military Law and punishable under Section 289; from this it follows that there are no grounds for applying the Law of March 2, 1943.

Secondly there is the contention which gave rise to the sentence pronounced by the ordinary Military Court and the judge advocate's notice of appeal, approved by the Regional Judicial Authority. The supporters of this point of view consider that the actions forming subject of the charge constitute a military rebellion within the meaning of the Law of March 2, 1943. On the other hand, whereas the Court invokes Section 290, which refers to persons who have "spread false and tendentious news with a view to disturbing law and order or to damaging the prestige of the State, and who have conspired or held meetings or conferred to that effect", for the purpose of deciding the penalty, the judge advocate opines that Section 289 of the said Code of Military Law is the one that must be applied in this case, since according to the record the acts committed were in fact those envisaged under that section; as regards the duration of the sentence, not only the personal situation of the accused persons, but also their more or less pronounced affinities with the Communist Party, both ideologically and tactically, must be taken into account.

None of the aforementioned principles is applicable to this case:

(A) Section 286 of the Code of Military Law stipulates that "persons who take arms against the Chief of State, his Government or the basic institutions of the Nation are guilty of the crime of military rebellion if the conditions under which these acts are committed are the following:

. . .

3. If they constitute a group of less than ten persons, given that there are other organized groups or forces who have adopted the same aim in another part of the national territory. "

Consequently, for this principle to be applied in the case of the accused Julio Cerón Ayuso the following conditions would have to be fulfilled:

(1) that the accused had taken arms against the Chief of State, his Government or the basic institutions of the Nation: this condition is absolutely indispensable before any one of the circumstances enumerated in the Section 286 and in particular that under Subsection 3 can come into play;

(2) that there exists another organized group or force which has adopted the same aim in some part of Spanish territory.

Neither of these two conditions is mentioned in the documents constituting the record. It appears that neither the accused nor his friends took arms against the Chief of State, his Government or the

basic institutions, and the record contains no document giving grounds for such accusations.

In regard to the organization of the group or the force which would, in the opinion of the public prosecutor, fulfil the conditions enumerated in the Section cited above, namely that "the accused give their support to the activities conducted in Spain in the interests of the Communist Party against the regime and its fundamental institutions, activities which that Party is ceaselessly conducting and thereby perpetrating the revolt to which the acts cited in paragraph A refer: where it is stated that the Communist Party is in permanent conflict in different parts of the country with Spain's historic mission and with the nation's government and basic institutions. It resorts now to arms, now to acts of terrorism, now to subversive propaganda at home or from abroad, leaving out no means of mental or physical constraint which can be used to trick or persuade people into error";* we repeat that it has not been proved

(a) that the accused or his friends have given their support and collaboration to the cause of the Communist Party;

(b) that the accused or his friends have ever adopted an aim identical with that envisaged by the Communist Party; on the contrary, as we shall have occasion to see when we examine the facts at the basis of this case, the Catholic and liberal outlook of Cerón and his friends is in total opposition to the principle of setting up a dictatorship of the proletariat which is the fundamental aim of the Communist Party.

(B) As regards the Law of March 2, 1943, on which both the judgment pronounced by the Court and the opinion expressed by the judge advocate and approved by the Judicial Authority were based, the defence considers that its application is totally unjustified, quite apart from the debatable question of whether the said Law was or was not in force, since the acts for which the accused is indicted, on the grounds that they constitute a crime of military rebellion as defined in Section 1, Subsections 1 and 2 of the said Law taken in conjunction with Section 286, Subsection 5 of the Code of Military Law and in the Court's opinion covered by Section 290 of the said Code and in the opinion of the Judicial Authority covered by Section 289, have by no means been proved, as we shall show from what follows:

1. Don Julio Cerón Ayuso, a young man of deep and sincere Catholic convictions, felt acute concern, as should every believing Spaniard, when he saw young people at the universities slipping further and further to the left both in political and social matters and in regard to religion.

* See pp. 114-115 above.

With the aim of finding out how to avert this danger and in a truly religious and apostolic spirit, Julio Cerón Ayuso took various steps, at first trying to give the young university students a theological training and later coming to the conclusion that the best way of making contact with the students was to form associations; for, young and inexperienced as he was, his proselytizing zeal led him to believe that such undertakings were feasible at the present time.

2. The result of these disinterested efforts which, far from being revolutionary, betokened a deepfelt wish to do something constructive, was the semblance of forming two bodies, called respectively the New University Left or New University Institution, and the People's Liberation Front. I use the expression semblance of forming advisedly, for behind these suggestive and somewhat pompous titles there was no organized group, no real entity, no hub of activity, but purely and simply three or four persons—there were never so many as six—who shared Cerón's anxiety and concern.

I would emphasize that this group professed fundamentally anti-Marxist opinions, a point which the public prosecutor passes over in silence, yet which emerges time after time from the statements of Julio Cerón (pages 58, 59, 60, 124 and 162) and Raimundo Ortega (pages 52, 125 reverse, 155 reverse, 164 and 165).

3. The individuals belonging to the two above-mentioned bodies, more usually known by their initials, maintained contact in Spain and abroad with other persons of the same or similar outlook.

In this connection it is important to mention the essential fact that Cerón has never sought to establish liaison or co-ordinate action with the Communist Party and that neither he, nor anyone on his behalf has ever tried, even by chance, to make common cause with the Communists; if some of Cerón's and his friends' activities may have given the appearance, more illusory than real, of identity with communism, those activities were never the result of a common intention deliberately willed and sought. On the contrary, this superficial and passing phenomenon can and must be interpreted as an attempt by the Communist Party to intrigue its way to the head of a spontaneous social movement by taking advantage of the efforts and sacrifices of others and so to appear as having a hold on the masses which it does not have, for the latter at present have only a vague feeling of discontent, corresponding to no political label or shade of opinion.

The differences of opinion between the Communists and Cerón, which are noted in the records of the preliminary enquiry in connection with the date of the abortive peaceful strike scheduled for May, together with the denouncements—for no other word can be used to describe the performance of the Communist press and radio which gave prior notice from abroad of the attempted protest against the existing regime in Spain—prove irrefutably that there was neither

agreement nor connivance between Cerón and Russia's men of straw.

In this connexion, and in contradiction to the public prosecutor's assertion that at a meeting in Santander Julio Cerón had declared that the essential step was to reach agreement with all parties, including the Communist Party, we cite the depositions of the persons present at that reunion, Juan Massana (page 136 reverse) Julián Gómez del Castillo (page 135 reverse), Ignacio Fernández de Castro (page 135) and Julio Cerón (page 162), which prove precisely the opposite.

Further, the documents in the record state explicitly that when, at one of the meetings of the group pompously known as the University Co-ordination Committee, a student claiming to represent the Communist Party wished to register a protest supporting the strike, the accused Raimundo Ortega, Cerón's friend and a member of that committee, vigorously opposed the suggestion, believing that students' meetings should be concerned only with problems of a purely university nature. See pages 52, 60, 124 and following and 162 of the record.

The aims of Cerón and the aims of the Communists were and are incompatible. Cerón and his little group of friends did not aspire to overthrow by violence the existing regime in Spain, but wanted to form a nucleus round which all supporters of a movement of peaceful and democratic change might gather. The Communists, on the other hand, do not want change of that kind, for they are convinced that time is on their side and that Communist regimes have never come to power by democratic means but by force, through clever exploitation of latent but unorganized feelings of discontent.

Cerón and the Communists disagree fundamentally about objectives; they are even further apart as regards training and ideology.

Cerón is a practising and fervent Catholic, inspired by a profound and noble apostolic and proselytic spirit. His spiritual and moral training is profoundly incompatible with Marxist materialism and with the non-moralism and inhumanity characteristic of the Communist Party.

Against the total absence of proof that there was ever even temporary understanding between the Communists and Cerón, there are depositions, as numerous as they are authoritative, emphasizing the clearly anti-Marxist inclinations shown by the accused in his behaviour.

4. It also remains to be shown that Cerón really did have contacts with exiled revolutionaries and further, to prove that the object of such contacts would have been to start a subversive movement. The fact that one or other of the persons with whom Cerón has talked during the last few years may have in turn been in contact with one or other of these exiles by no means indicates that the accused had direct or indirect contacts with them.

When circumstances confer an underground character to relations which in normal times are regarded as lawful by substantive law it often happens that people find themselves in equivocal situations; but to use such situations as a basis for assumptions from which one lightly draws conclusions that seriously affect the honour and liberty of persons is as contrary to the inherent principles of justice as it is to the most elementary rules of logic.

It is strange that the public prosecutor described as a subversive contact the interview which Raimundo Ortega and Julio Cerón had with the foreign nationals MM. Barros and Reiser, members of the International Committee of COSEC, an international students' organization legally established in all except Communist countries, who were visiting Spain at the request of the SEU.

5. The leaflets written by Cerón to encourage the expression of opposition to the regime have no subversive intent and cannot be considered as manifestations of an act of rebellion.

These leaflets did not spread false or tendentious news with a view to disturbing law and order or damaging the prestige of the State, the Army or the authorities. They did not tend to obstruct the proper functioning of the public services or means of communication and transport; nor were they an incitement to the political strikes which are at the root of serious disturbances against the public order.

They merely called for a peaceful and as brief as possible expression of the feeling of discontent with a political system.

There is not a single word in these leaflets or manifestos to suggest incitement to violence, an attempt to disturb the peace, an effort to disorganize the public services or to injure the prestige of the State, Armed Forces or persons representing the public authority. It was merely, as we have said, a question of expressing a feeling of opposition, in itself lawful and in no way subject to repression according to the spirit or the letter of the Law of March 2, 1943, stipulating the conditions under which certain definite acts fall within the scope of Subsection 5 of the amended Section 286 of the Code of Military Law.

6. Still less can the ninth aggravating circumstance mentioned in Section 187 of the same penal Law be regarded as applicable to Cerón.

According to that precept the fact of "taking advantage of the public position enjoyed by the guilty person" constitutes an aggravating circumstance.

Cerón, a distinguished diplomat who has rendered his country great services despite his youth, did not take advantage of his situation in order to perform the acts for which he is indicted. He did not act in his official capacity; he did not present himself as an official;

he did not use for reprehensible ends the facilities which his post obtained for him abroad. The talks, which were mere conversations, which he had with people whose ideology was opposed to the system in force in Spain, sometimes coincided with official journeys and sometimes with holidays outside Spain.

At no point were his activities abroad in the nature of disloyalty to his own country when he assumed the responsibilities entrusted to him; nor did he ever exploit his official position for other ends; still less did he make use of the secrets and confidential information which he held in his capacity as an official.

A civil servant is such only in the course of performing his duties. Outside his work, and on condition that he does not use the particular means at his disposal by reason of his public office, he is only a private citizen, to whom special responsibility for alleged infringements of the law are not and cannot be attributed.

For all the reasons given above, counsel for the defence of Don Julio Cerón considers that the demands of the public prosecutor, contained in his indictment, should be dismissed.

The Court, however, will decide.

Madrid, December 5, 1959.

PART C

The Court's Finding and Sentence *

Don Federico Arroyo Prieto, Major in the Artillery, secretary of the special military court for the suppression of extremist activities, for which the special examining judge is Don Enrique Eymar Fernández, Colonel of the *Benemérito Cuerpo de mutilados por la Patria*.

We Certify that the following statements reproduced here verbatim occur in the pages mentioned in the record of case No. 783/59:

Pages 458 to 468. Don José Espinosa Barbera, Lieutenant-Colonel, Judge Advocate and Secretary to the Supreme Court of Military Justice, certifies that the Court of this high tribunal, composed of Sr. Rapallo Flórez, President, and Judges Redondo García, Sánchez Tembleque Pardiñas, Fernández Valladares, Abia Zurita, López-Fando Rodríguez and García-Bravo pronounced judgment at the end of the case in question.

In Madrid on December 23, 1959, this court, composed of the above mentioned persons, has met to pass judgment on case No. 783/59; this case is entrusted to the Supreme Court of Military Justice.

* This document was copied from the official court record.

The case came within the jurisdiction of the First Military Region and proceedings for the crime of rebellion were instituted against the following persons: Ignacio Ruiz Cortes, soldier in Leon Infantry Group No. 38, son of Joaquín and Beatriz, born January 2, 1937 at Saragossa, bachelor, in Government employment, no past record, in preventive custody since June 7, 1959; Esteban Pulgar Torralba, son of Esteban and Manuela, born May 5, 1938, in Madrid, bachelor, in Government employment, no past record, in preventive custody since June 16, 1959; Demetrio Luis Marcos Pablo, son of Jacinto and Quirina, born June 11, 1933, in Madrid, bachelor, teacher of commerce, no past record, in preventive custody since June 8, 1959; Andres Riera Cortes, son of Andrés and Hilaria, born October 27, 1927, in Saragossa, married, fitter, no record, in preventive custody since June 8, 1959; Antonio Diez Yagüe, son of Agapito and Victoria, born July 8, 1929, bachelor, clerical worker, no past record, in preventive custody since June 7, 1959; Manuel Gómez Ovejero, son of Manuel and Carmen, born February 28, 1933, in Madrid, bachelor, clerical worker, no past record, in preventive custody since June 8, 1959; Matías López Delgado, son of Federico and Rosario, born March 21, 1931 in Morales del Campo, (Valladolid), bachelor, clerical worker, no past record, in preventive custody since June 8, 1959; Bonifacio Lizana Herrador, son of Bonifacio and Petra, born August 24, 1931, in Cenicento (Madrid), bachelor, fitter, no past record, in preventive custody since June 8, 1959; Antonio Martínez Delgado, son of Francisco and Damiana, born May 1, 1932, in Madrid, bachelor, smuggler, no past record, in preventive custody since June 8, 1959; Manuel del Cura Olalla, son of Manuel and Juana, born April 25, 1916, in Madrid, married, fitter, no past record, in preventive custody since June 9, 1959; Juan Gerona Peña, son of Juan and Concepción, born November 30, 1930, in Sarrillena (Huesca), married, bachelor of laws, no past record, in preventive custody since June 10, 1959; Julio Cerón Ayuso, son of José and María del Milagro, born August 14, 1928, in Madrid, bachelor, diplomat, no past record, in preventive custody since June 10, 1959; Raimundo Ortega Fernández, son of Raimundo and María Presentación, a person who has reached the age of criminal responsibility, born in Madrid, student, no past record, in preventive custody since June 9, 1959; Antonio Alonso Díaz, son of Carlos Manuel and Rafaela, a native of Madrid, a person who has attained the age of criminal responsibility, student, no past record, in preventive custody since June 10, 1959; Augustín Macarrón Isla, son of Valentín and Innocencia, born October 5, 1912, in Madrid, married, metal worker, no past record, in preventive custody since June 10, 1959; Luciano Francisco Rincón Vega, son of Luciano and María de la Concepción, born January 9, 1931, at Santoña, (Santander), bachelor, journalist; his police record mentions that on June 18, 1933, he was sentenced to two years minor imprisonment for theft and to four months major arrest for larceny; these penalties were struck from the police record

on December 31, 1958; Rincón Vega has been under preventive custody since June 15, 1959; Julián Nicolas Viejo Gabilondo, son of Julián and Luisa, born December 24, 1928, at Sestao (Biscay), bachelor, mining engineer, no past record, in preventive custody since June 15, 1959.

It Ensues Therefrom:

First: That the accused Demetrio Luis Marcos Pablo, entertaining ideas hostile to the present system in Spain, in 1957, made contact in certain Madrid bookshops with the accused Antonio Díaz Yagüe and Manuel Gómez Ovejero, of the same ideology as himself and both of them contributors to the New York journal *Iberica*, run by Victoria Kent for discrediting the Spanish regime. The friendship of the three accused was based on their political opinions and they decided to collaborate and form a group. To this end they met regularly on Saturdays, first at the Bar Berde, Calle de Leganitos, then at Díaz Yagüe's home; later Esteban Pulgar Torralba and Ignacio Ruiz Cortes, at that time a soldier in the infantry, were enrolled by Demetrio and took part in the Bar Berde meetings. They were introduced to Yagüe and Ovejero. To mark their dislike of the regime they agreed to call the group they were forming the New Iberian Generation, a title suggested by Yagüe, who became head of the group and Ovejero its secretary. The accused Andrés Riera Cortes, recruited by Ruiz and Matías López Delgado, brought in by Demetrio, belong to this group. Demetrio was appointed business manager. An organization of seven members was thus formed. Yagüe and Ovejero drew up a constitution, to which the members swore loyalty. Within a few months there had been six meetings attended by all members; minutes of these meetings were kept. The constitution and other documents were drawn up by the accused Ovejero. To cover expenses they levied dues, which enabled them in addition to publish a bulletin, entitled *Libertad*; Ovejero was responsible for this bulletin, but they all worked on it together. Five duplicated issues were produced. In the issue dated July 1957, we read, among other things, that "a bunch of gangsters claims to rule us"; in the February 1958, issue, that "the fight against Franco is no longer a political party business but primarily a manifestation of Spanish nationalism"; and in the June 1958, issue that "Franco-ism has never been an expression of the people's will". Finally, the "Open Letter to the Youth of Spain", contained in the October 1958, issue, ends with the following exhortation: "Spaniards, your duty is to fight everywhere and at all times against Franco-ism and all that goes with it". Several hundred copies of this bulletin were produced and were distributed either by post or by throwing down in the metro by the accused Demetrio Luis. The group also indulged in other acts of propaganda, such as distributing leaflets against the regime to Madrid workers through Gómez and Pulgar, or leaving them in the metro. These leaflets, addressed to the Spanish workers and the

people of Madrid, protest against the regime and allude to the truceless fight for a free and democratic Spain and to "crushing the Franco scum". About 8,000 copies of this propaganda were also distributed in various districts of Madrid by Ruiz Cortes—2,000 copies—Pulgar, Demetrio Luis, Ovejero and others. In 1958, for the purpose of issuing a manifesto to the people of Madrid the accused also took part in the preparations for the "day of national reconciliation" at the Casa del Campo, which was to be a form of protest against the regime. It was proposed to hold in the course of that day a boycott of public transport, entertainment and shops, and hold also a labour strike. Lastly, Martínez Delgado, Demetrio Luis del Cura, Bonifacio Lizana and a certain Lobato, a Communist Party education officer who had already been sentenced once, took part in one or more other meetings at the Plaza de Santa Bárbara.

Second: That the members, bound in close friendship, collaborated closely with a view to promoting the New Iberian Generation a group of young intellectuals and workers coordinating their efforts to fight against the dictatorship "we are enduring"—as in the exact words of the group's constitution—and trying, by any means available, to set up a democratic federal Republic on the Iberian Peninsula, for which "it will collaborate with all parties fighting for the same aims". These young people tried to expand their organization by enrolling new members, either through personal interviews or chain contacts, and by trying to get in touch with political parties of all trends and with associations and other groupings inside or outside the Peninsula. This group indulged in propaganda and other similar activities and at Díaz Yagüe's place there were found numerous extremist writings, a small republican flag, the journal of republican democratic action and the 1957 manifesto to Spaniards issued by the New Iberian Generation which alludes to overthrowing the Franco regime and dictatorship and another manifesto to the people of Madrid asking them to demonstrate against the regime. Also were found leaflets addressed to the young workers and issues of *Libertad*, claiming that New Iberian Generation fights against this government which, it says, has betrayed the people's interests. This propaganda included Communist propaganda, taken from Pulgar's possession together with a protest signed by the Barcelona University Co-ordination Committee. All this documentation has been kept for inclusion in the record. It has further been proved that the group made contact with the Communist Party in 1959, specially Riera, Demetrio Luis, Matías López and Pulgar. The latter, in obedience to Communist Party directives, made propaganda for this purpose; hence the distribution, especially at the Bernabéu stadium, of leaflets in support of the 24 hour peaceful strike which was to be a protest against the Government; hence, too, the arrest of Ignacio Ruiz, who was caught red-handed in distributing these leaflets and whose arrest started the present proceedings.

Third: That the accused Bonifacio Lizana Herrador of Standard Electric, a friend of Demetrio and Matías, with whom he exchanged views on politics, agreed to stir up agitation among his workmates. He in turn joined the New Iberian Generation, that is the organization set up by the two persons mentioned above. He was drawn into this group by Riera Cortes, at the notorious Plaza de Santa Bárbara meeting, along with Demetrio Ruiz, Matías López del Cura and Martínez Delgado. He worked for the strike and for the People's Liberation Front by throwing an unopened packet of leaflets onto the Vallecas bridge in May 1959. The accused Antonio Martínez Delgado of Standard Electric, a member of the Metalworkers' Union, for which he acted as contact man, obeyed the orders of the Communist Party. With Bonifacio Lizana as go-between he maintained relations with the People's Liberation Front. He was present at the Plaza de Santa Bárbara meeting and was in contact with Demetrio Pulgar, Matías López and the Communist Lobato. Lobato advised him to do Communist propaganda work and so bring the Communist Party in touch with the People's Liberation Front. Lastly, the accused Manuel del Cura Olalla, also of Standard Electric, introduced Bonifacio Lizana to Antonio Martínez Delgado and at the Plaza de Santa Bárbara introduced Riera and Matías López. All these individuals decided to meet for the purposes already mentioned several times. Manuel del Cura Olalla sent Martínez Delgado People's Liberation Front leaflets which Lizana had sent him and so formed the link between the Communist Party and the People's Liberation Front and also put his friend Demetrio in touch with Lizana.

Fourth: That the accused Julio Cerón Ayuso, a career diplomat, moved by various considerations of a religious and social nature, arranged allegedly theological meetings at his flat at Calle Alonso Cano 5 in 1957 and 1958. These meetings were attended by priests, so as to create a Christian atmosphere and so attract the university students in order, as he said, to draw these young people away from the influence of extremist organizations such as the university socialist group and to oppose the SEU, whose purpose was hostile to the regime, as well as being in line with the political aspirations of the young people. The said Julio Cerón thus created the New University Left organization in the course of 1957 and 1958, thereby bringing the students into a group with a liberal label. The name of this group was also the work of the accused Raimundo Ortega Fernández. In January 1958, Cerón used a duplicating machine he possessed to produce a manifesto which he circulated at the Law Faculty in the university city through the accused Ortega, who in addition sought to recruit new members and discredit the Government. The above-mentioned organization had occasion to make contact with other student associations such as the University Socialist Group, the Christian Democrats and the university Communists at meetings attended by representatives of each of these groups. This activity

reached its peak when Ortega took part as representative of the New University Left in three or four meetings of the University Co-ordination Committee, with the result that this group decided to issue a manifesto calling on the students to strike. In 1958 Cerón, the founder and leader of the New University Left, created the People's Liberation Front, known as *Los Felipes*, in order to extend the scope of his subversive activities, although the accused himself cannot explain this transition from the religious sphere to political agitation, to which he gave himself up unreservedly. This new movement, inspired by the ideas of López Campillo, exiled in France, was outside the university and drew in people of all kinds. Its first public appearance took the form of four pages entitled "The present situation in Spain", ending with the words "For a democratic government"; a fresh peaceful civil protest against the Government then appeared, opening with the phrase "It is twenty years since . . ." These writings were approved by Demetrio Luis. In this way they developed their propaganda activities, levied their dues and held meetings, the character of which we know. Leaflets intended for the workers were written by Cerón and Demetrio Luis in the flat of another accused, Juan Gerona Peña, bachelor of laws. This was also how the tract "It is now 20 years . . ." was written. The accused Juan Gerona Peña, debarred from a diplomatic career because of his marriage to a foreigner, was brought by Cerón into a group which he could not but like since it professed ideas hostile to the regime. Juan Gerona consented to the holding of about four meetings where he lived to discuss the programme and the recruitment of new members to help write the tract entitled "The present situation in Spain". He looked after the duplicating machine and was appointed "delegate for economic affairs". One of his writings contains exhortations to demonstrate against the Government by strike action, closing shops, boycotting markets and public transport and by gathering in the parish churches to pray. All these incitements and exhortations were sent out through the ordinary post and were commented upon by Radio Independent Spain whose broadcasts were intercepted. Some of the manifestos appeared over the name of groups which did not exist. Cerón took advantage of some of his journeys abroad to Paris and Geneva, many of them on official business, to meet exiles, or political extremists, principally Alvarez del Valle and López Campillo, who supported his undertaking.

Fifth: That Cerón brought his friend, the accused Raimundo Ortega Fernández, into the New University Left and into the People's Liberation Front, to which he introduced him, and made him a partner in his activities. Cerón and Ortega went to Bilbao, where they got in touch with the accused Luciano Francisco Rincón Vega, Ortega's friend, and in collaboration with him decided to take some action, appointing Rincón Vega local representative of the New University Left. In Santander Rincón and Cerón visited the house of the lawyer

Don Ignacio Fernández de Castro Sánchez de Cueto, who worked at Radio Cantabria, the movement's broadcasting station. The student Juan Mesana was present at this discussion. Cerón stated that according to instructions received from abroad they were to get in touch with all the political parties, including the Communist Party. This was why Rincón made contact with the accused Julián Viejo Gabilondo, who took part in the Moscow Youth Festival. Vega received from Gabilondo and distributed Communist propaganda material consisting of leaflets inciting the "Day of National Reconciliation" strike. The accused Gabilondo, through friendship for the Communist Meseguer, took part in the latter's propagandist activities and gave him lists of possible recruits. Documents confiscated from Rincón Vega's place included writings hostile to the regime and supporting the strike, issues of *Mundo Obrero* and the manifesto *Nurrera* addressed to the Madrid University students by the Barcelona University students. In Cerón's flat the authorities found the leaflet intended for the workers of Spain and signed by the People Liberation Front, in which occur the phrases "Spain is governed by corruption alone" and "everyone is against the Franco regime", as well as an issue of *Libertad* and the tract "The present situation in Spain" calling for a democratic government.

Sixth: That the accused Demetrio Luis Marcos had several talks with Raimundo Ortega and received from him by letter information obtained from Julio Cerón on the establishment of *Los Felipes*. He approved of that organization and decided to collaborate with the People's Liberation Front. He worked for that movement, distributed several leaflets and took part in meetings at Gerona's place, attended by Cerón and Ruiz Cortes. Ruiz Cortes in turn made contact with the group in connection with the writing of propaganda documents. That was how the two groups, People's Liberation Front and New Iberian Generation, came into existence.

Seventh: That the accused Agustín Macarrón Isla, a Standard Electric worker, was in close collaboration with the accused Antonio Alonso Díaz, a student and friend of his son, Carlos Macarrón. Through the good offices of Isla, Díaz obtained a passport for visiting France. They corresponded and Díaz went over to communism, for Macarrón was trying to recruit young people of both sexes for the Communist Youth Festival in Vienna, which Antonio Alonso Díaz, persuaded by Carlos, was to attend. Agustín Macarrón gave instructions to Alonso Díaz and he put pressure on him to create unrest at his place of work by distributing Communist leaflets advocating the strike during the Day of National Reconciliation. At the same time he incited him to infiltrate into Catholic organizations. Alonso Díaz therefore acted on behalf of the trio and attended social-religious conferences for the purpose of carrying out strike propaganda among the workers, either directly or through others.

All these facts the Supreme Court of Military Justice declares proven;

Eighth: That the public prosecutor of the First Region described the facts which emerged from the record as constituting a crime of military rebellion as defined in Subsection 5 of Section 286 of the Code of Military Law taken in conjunction with Subsections 1 and 2 of Section 1 of the Law of March 2, 1943, and punishable under Section 290 of the said Code of Military Law. He considered that all the accused were guilty of the aforesaid crime and that there were no mitigating circumstances in favour of any one of them. Further, the aggravating circumstance named in Section 187, Subsection 12, of the Code of Military Law should be imputed to the accused Luciano Francisco Rincón Vega, who had been sentenced for two crimes regarded by the law as subject to a penalty lighter than that which he incurred in the present case. The public prosecutor therefore demanded a sentence of 10 years imprisonment for Julio Cerón Ayuso,

sentences of 6 years imprisonment for Ignacio Ruiz Cortes, Esteban Pulgar Torralba, Demetrio Luis Marcos Pablo, Andrés Riera Cortes, Antonio Díaz Yagüe, Manuel Gómez Ovejero, Raimundo Ortega Fernández, Luciano Francisco Rincón Vega and Julián Nicolás Viejo Gabilondo;

sentences of 3 years imprisonment for Matías López Delgado, Bonifacio Lizana Herrador, Antonio Martínez Delgado, Manuel del Cura Olalla, Juan Gerona Peña, Antonio Alonso Díaz and Agustín Macarrón Isla,

all these sentences entailing loss of rights. The defence, considering that the acts committed by each of the defendants did not in any way constitute a crime, and further considering that the Law of March 2, 1943, invoked by the public prosecutor to term those acts as crimes, was not in force at the time the acts were committed, had demanded the acquittal of the defendants.

Ninth: That on November 9, 1959, an ordinary Military Court met in Madrid to hear and judge the present case. The judgment pronounced by that Court refers to the facts termed acts constituting a completed offence consisting of subversive activities equivalent to rebellion as defined in Subsection 1 and 2 of Section * of the Law of March 2, 1943, and punishable under Subsection 1 of the said Section read in conjunction with Section 290 of the Code of Military Law, since there was dissemination of false and tendentious news with a view to disturbing law and order and to damaging the prestige of the State, as well as conspiracies and the holding of meetings and conferences to the same ends. The Military Court considered that the

* The source that has been used omits giving the Section number (Ed.).

accused Ignacio Ruiz Cortes, Esteban Pulgar Torralba, Demetrio Luis Marcos Pablo, Andrés Riera Cortes, Antonio Diez Yagüe, Manuel Gómez Ovejero, Juan Gerona Peña, Julio Cerón Ayuso and Raimundo Ortega Fernández were guilty of that crime and that the criminal responsibility of each of those persons was not in any way mitigated or aggravated; and it being understood that in passing sentence the Court enjoyed the discretion given it under Section 192 of the Code of Military Law taken in conjunction with Section 257, paragraph 2 of the said Code, the Military Court sentenced

- Julio Cerón Ayuso to 3 years imprisonment
- Antonio Díaz Yagüe and Manuel Gómez Ovejero to 2 years imprisonment
- Raimundo Fernández to one year's imprisonment
- Ignacio Ruiz Cortes, Esteban Pulgar Torralba, Demetrio Luis Marcos Pablo, Andrés Riera Cortes and Juan Gerona Peña to 6 months and 1 day's imprisonment

The persons sentenced were forbidden to hold any public office or employment or to enjoy political rights for the duration of the punishment. Ignacio Ruiz Cortes was not deprived of his civil rights but his seniority in the Service would be reduced by the length of his sentence.

Matías López Delgado, Bonifacio Lizana Herrador, Antonio Martínez Delgado, Manuel del Cura Olalla, Agustín Macarrón Isla, Antonio Alonso Díaz, Luciano Francisco Rincón Vega and Julián Nicolás Viejo Gabilondo, accused of the crime of rebellion, were acquitted, since their conduct could not be identified with the definition of the said offence or any other kind of crime.

Tenth: The judge advocate of the First Military Region expressed his disapproval of the sentence pronounced by the Military Court. He considered that the various points noted above were incompatible with one another and with Part 4 of the grounds of judgment on the one hand, and certain of the sentences inflicted, on the other; further he considered that there had been a number of flaws in the procedure: for example, no statement of the relevant legal precepts had been included in Part 1 of the grounds of judgment, as Section 790, Sub-section 4 of the Code of Military Law stipulates. As a result of those omissions, the crime in question had been inappropriately termed a crime of "subversive activities" instead of "military rebellion" the term used in our Laws. Section 290 of the Code of Military Law, which deals with the instigation and defence of revolt, does not mention this, but Section 289, which provides for the punishment of any act involving assistance to rebellion, even if its authors do not act in concert with the rebels, gives this term legal existence. The judge advocate considers, moreover, that the soldier Ruiz Cortes must be punished more severely, since, by reason first and foremost

of his military duties, he should have foregone any meddling in politics; further, the judge advocate considers that in the case of the accused Cerón, the fact that he took advantage of his official position must be imputed as an aggravating circumstance according to Section 187, Subsection 9 of the Code of Military Law. By virtue of all the above, the judge advocate contests the verdict given and demands 6 years imprisonment for Julio Cerón Ayuso, 2 years and 6 months imprisonment for the soldier Ignacio Ruiz Cortes and 2 years and 2 months imprisonment for Esteban Pulgar Torralba, Demetrio Luis Marcos Pablo and Andrés Riera Cortes. The Captain-General of the First Military Region associated himself with the aforementioned opinion and submitted the case to the Supreme Court of Military Justice.

Eleventh: That, the aforesaid higher court having received the records and having examined the public prosecutor's reports, the public prosecutor has asked for annulment of the verdict given by the Military Court. The facts of the indictment having been proved, they are declared to constitute a crime of military rebellion as defined by Section 286, Subsection 3 and punishable under Section 289 of the Code of Military Law; and the accused, with the exception of Manuel del Cura Olalla, appear responsible of committing that crime; as regards the accused Julio Cerón Ayuso, the aggravating circumstance mentioned in Section 187, Subsection 9 of the above-mentioned Code, namely, that he took advantage of his official position, is admitted. Consequently, the public prosecutor has demanded the following sentences:

- 20 years solitary confinement with hard labour for Julio Cerón Ayuso;
- 10 years imprisonment for the soldier Ignacio Ruiz Cortes;
- 12 years imprisonment for the accused Demetrio Luis Marcos Pablo, Esteban Pulgar Torralba, Andrés Riera Cortes, Matías López Delgado;
- 10 years imprisonment for the accused Antonio Díaz Yagüe and Manuel Díaz Ovejero;
- 7 years imprisonment for the accused Raimundo Ortega Fernández, Luciano Francisco Rincón Vega, Juan Gerona Peña, Antonio Martínez Delgado, Julián Nicolás Viejo Gabilondo;
- 6 years imprisonment for Agustín Macarrón Isla, Antonio Alonso Díaz, Bonifacio Lizana Herrador.

For Manuel del Cura Olalla the public prosecutor has demanded an acquittal.

These sentences carry loss of rights. Further, the accused Ignacio Ruiz Cortes shall complete his military service in the disciplinary corps.

Further, the public prosecutor draws the Court's attention to the participation of a person called Carlos Morán Ortega in the acts in question and asks for explanation in due course regarding this matter.

Secondly, the public prosecutor draws the Court's attention to the inefficient work of the members of the Military Court, in particular the *rapporteur*, as evidenced by the contradictions found in the sentence.

During the hearing, the public prosecutor developed the points on which he founded his indictment, emphasizing that the permanent state of war existing between the Communist Party and the Government and the relations which the accused maintained with that party, whether directly or by using as go-betweens illegal associations set up by them for the purpose of installing a federal republic, conferred on the crime the character of military rebellion. The public prosecutor insisted upon a number of counts in his indictment and introduced a correction in regard to the participation of Manuel del Cura Olalla in the acts mentioned in the record, considering that these also constituted the crime in question, and therefore demanded for this accused a sentence of 6 years imprisonment accompanied by the appropriate loss of rights.

Twelfth: That counsel for the defence, having examined the acts imputed to their clients, have stated that there was no crime of military rebellion since there had been no armed rising against the Chief of State, his Government or the basic institutions of the Nation and that there was not even any incitement to violence; by virtue whereof, they have asked for the acquittal of their respective clients, except that counsel for the defence of Juan Gerona Peña has proposed the alternative of acquittal or confirmation of the sentence of 6 months and 1 day imposed by the Military Court.

Following the public prosecutor's speech, counsel for the defence of Julio Cerón denied that his client and other accused persons had entertained relations with the Communist Party. Counsel invoked the evidence contained in the record to the effect that those persons were opposed to the outlook of the said party and affirmed that the act of merely having contacts with individuals of Communist allegiance could not be used to prejudge the ideology of the persons implicated. Counsel pleaded the peaceful character of the intended strike and stated that the evidence in the record showed that there was neither an armed rising nor incitement to violence. He considered that the aggravating circumstance held against his client, namely that he had taken advantage of his official position, could not be admitted, for Julio Cerón had not made use of facilities available to him because of his position, as had been repeatedly affirmed.

The other counsel for the defence then challenged the public prosecutor's arguments on behalf of their clients, giving details about the activities of the said clients and emphasizing the fact that the

acts imputed to them could not, in the opinion of counsel, be considered as constituting a crime of military rebellion, for there had been no armed rising against the Chief of State or the basic institutions of the Nation. All counsel concluded by asking for the acquittal of their clients.

Thirteenth: That in the conduct of the present case all the rules of procedure have been observed.

In Justice :

First, Whereas for there to have been a crime of military rebellion within the meaning of the Code of Military Law, Book II, Part IX, Chapter I, it is absolutely indispensable that there should have been an armed rising and that the other conditions envisaged in Sections 286 and 289 of the said Code should have been fulfilled, and whereas the essential condition of the crime, namely an armed rising, was not fulfilled, and whereas as regards the acts preparatory to the said crime given that there was neither conspiracy nor intention to conspire, neither provocation nor incitement, since to fulfil the conditions required those acts would have had to have precisely an armed rising as their object, a condition which, we repeat, was not mentioned in the record either in the form of simulation or in the form of intention;

Secondly, Whereas the idea of a crime of military rebellion having been once set aside, there is no plurality of crimes even though the activities of the accused Díaz Yagüe, Gómez Ovejero, Ruiz Cortes, Demetrio Luis Marcos, Esteban Pulgar Torralba, Matías López Delgado, Antonio Martínez Delgado, Manuel del Cura Olalla, Bonifacio Lizana Herrador, Julio Cerón Ayuso, Juan Gerona Peña, Raimundo Ortega Fernández, Luciano Francisco Rincón Vega, Julián Nicolás Viejo Gabilondo and Andrés Riera Cortes have been such as to cause their authors to incur the punishment provided for by illicit association and illegal propaganda under Section 174, Subsection 1, and Section 251 of the Penal Code; it is a question of a development of a criminal nature, in which the criminal operation develops from incitement to commit acts to the completion of acts aimed at illegally altering the form of the State and replacing the Government of the nation. These aims define the crime of altering the form of Government under the terms of Section 163, paragraph 1, of the Penal Code; and whereas since the groups called New Iberian Generation and People's Liberation Front were organized in a more or less formal manner to that end alone and conducted, as has been mentioned, subversive propaganda by issuing underground tracts and leaflets, activities reprehensible in themselves but of lesser importance, the formation of those groups is included in the offence for which the accused are prosecuted, namely, incitement to demonstrate against the regime, which was the main concern of the guilty parties;

Thirdly, Whereas given that there is no precise connection between possible acts committed against the Government and organization of the State, on the one hand, and those encouraged by the accused or by certain collective activities aimed at altering the political, social or legal structure of the State and discrediting the Government authorities on the other, the 15 persons cited are guilty of the offence for which they are prosecuted, which is a form of provocation under Section 4, paragraph 3 of the Penal Code, where the offence against the regime is defined, and Julio Cerón Ayuso, Antonio Díaz Yagüe and Manuel Gómez Ovejero appear as the persons principally responsible under Section 163, paragraph 1 mentioned above, and Section 268bis, paragraph 2 of the said Code;

Fourthly, Whereas the penalty inflicted on the instigators of a crime under Section 52, paragraph 3 of the Penal Code is one or two degrees lighter than that applied in the case of an offence committed; and the Court, using powers conferred by law in regard to the reduction of sentences, takes into account the reasons adduced in the case of each of the accused and the particular circumstances which accompanied their criminal acts;

Fifthly, Whereas the deeds imputed to the accused Agustín Macarrón Isla and Antonio Alonso Díaz constitute an offence defined in Section 251 of the Penal Code, namely the offence of illegal propaganda, consisting in receiving, distributing and disseminating subversive writings;

Sixthly, Whereas the accused Julio Cerón Ayuso, Antonio Díaz Yagüe and Manuel Gómez Ovejero are responsible for the crime of incitement against the form of Government in their capacity as promoters, and the accused Demetrio Luis Marcos Pablo, Raimundo Ortega Fernández, Ignacio Ruiz Cortes, Esteban Pulgar Torralba, Andrés Riera Cortes, Matías López Delgado, Bonifacio Lizana Herrador, Juan Gerona Peña, Manuel del Cura Olalla, Antonio Martínez Delgado, Luciano Francisco Rincón Vega and Julián Nicolás Viejo Gabilondo are responsible for executing that crime under Section 14 Subsection 1, Section 163, and Section 268bis of the Penal Code;

Seventhly, Whereas the accused Agustín Macarrón Isla and Antonio Alonso Díaz are also responsible for the offence of illegal propaganda under Section 14, Subsection 1 of the Penal Code;

Eighthly, Whereas no circumstances mitigating or aggravating the criminal responsibility can be found in the two cases mentioned above, for in our view the aggravating circumstance mentioned in Section 10, Subsection 10 of the Penal Code and declared by the public prosecutor to apply in the case of the accused Julio Cerón should be set aside, that aggravating circumstance requiring that the guilty person shall have deliberately used advantages deriving from his official position for criminal ends, and that condition not having been fulfilled in the case of Julio Cerón, for, although his official

stays abroad sometimes enabled him to establish contacts related to his plans, his reprehensible activities were undoubtedly performed mainly in Spain, where the illicit associations at the origin of the crime were organized, without the activities imputed to the accused having been stimulated or encouraged by acts actually committed by Cerón in the exercise of his profession; and whereas all this does not alter the fact that in deciding the penalty it should be taken into account that a State official is required to be of irreproachable conduct and to show the utmost loyalty to the State and all those who legitimately represent the State;

Ninthly, Whereas there are no grounds for depriving of the exercise of their civil rights any one of the 17 accused implicated in the present case; but nevertheless objects used in committing the crime must be confiscated in conformity with Section 48 of the Penal Code; and whereas under Section 33 of the same Code allowance will be made for the time the accused have passed under preventive custody;

Having examined Sections 3, 12, 46, 27, 49, 56, 61 Subsection 4, 73 and 91 of the ordinary Penal Code as well as Sections 231 and 232 of the Code of Military Law,

We judge

that we must annul and we do annul the verdict given by the Military Court which investigated and judged the present case, and that we must sentence, and we do sentence the accused Julio Cerón Ayuso to 8 years major imprisonment, the accused Antonio Díaz Yagüe and Manuel Gómez Ovejero to major imprisonment for 6 years and 1 day, the accused Raimundo Ortega Fernández, Demetrio Luis Marcos Pablo and Ignacio Ruiz Cortes to 4 years major imprisonment, the accused Juan Gerona Peña, Andrés Riera Cortes, Esteban Pulgar Torralba, Matías López Delgado, Luciano Francisco Rincón Vega and Julián Nicolás Viejo Gabilondo to 3 years minor imprisonment and the accused Manuel del Cura Olalla, Antonio Martínez Delgado and Bonifacio Lizana Herrador to 1 year's imprisonment, and lastly the accused Agustín Macarrón Isla and Antonio Alonso Díaz to 1 year's minor imprisonment and a fine of 10,000 pesetas, or to one month's additional imprisonment in case of non-payment. These penalties are accompanied by legal incapacity throughout the duration of the sentence in the case of major imprisonment and by suspension of the right to perform any public function or exercise any public profession or trade and of the right to vote throughout the duration of the sentence in the case of minor imprisonment. The soldier Ignacio Ruiz Cortes shall complete his military service in a disciplinary batallion once his sentence has been served. The period passed under preventive custody will be deducted from the length of the sentence

passed on each of the accused, all of whom will lose their civil rights; also the objects used in committing the offence, which have been seized, will be forfeited. The verdict is given.

We further declare. As regards the lawyer, Don Ignacio Fernández de Castro Sánchez Cueto, employed at Radio Cantabria, Santander, the movement's broadcasting station, and the citizens Juan Masana Ronquillo and Carlos Morán Ortega, all of whom have not been prosecuted, the Court stipulates that in view of their conduct and notwithstanding the fact that in their case the examination was adjourned, proceedings against them shall continue, as the Judicial Authority shall order. The documents in the case and the proof of sentence have been sent to the Captain-General of the First Region, from whom they were received, in order that he be informed thereof and may take appropriate measures. Such is our final sentence, to which we give obligatory force, and which we sign on the twenty-sixth day of December nineteen hundred and fifty-nine. Delivered with due formality of law and inscribed on official court paper series B under numbers 1,646,351 and 52, 1,646,393 and 1,646,354 to 61 inclusive: Antonio Martínez Delgado. Certified valid. Signed: Francisco Rapallo, Luis Redondo, Luis Sánchez Tembleque, Pedro Fernández Valladares, José Abia, José López Fando, Gonzalo García Bravo. Secretary José Espinosa.

Document initialled. Copy of original certified correct by us will be sent to the Captain-General of the First Military Region. We draw up and sign the present document, seen and approved by the President of the Court in Madrid on the twenty-sixth day of December nineteen hundred and fifty-nine.

Signed José Espinosa.

Seen, approved and signed by Francisco Rapallo (initialled).

We affix to the present document an oval stamp of violet colour bearing the inscription Supreme Court of Military Justice.

Records Office.

* * *

Postscript: It was reported in October, 1962 that Cerón had been released and was to be confined to the small town of Alhama de Murcia for a period of 19 months.

LETTER FROM THE 339 BASQUE PRIESTS

The collective letter dated May 30, 1960, reproduced below was signed by 339 Basque priests and addressed to the Bishops of Vitoria, San Sebastian, Bilbao and Pamplona. The letter in Spanish, Basque and French was circulated in secret throughout Spain by the signatories. It indicates the profound disquiet of the Catholic Church over the social injustice and the abuse of government authority that is found in Spain.

The Bishops to whom the letter was addressed refused to accept it. They replied by formally censuring the signatories, who appealed against the Bishops' decision to the Court of the Sacra Rota at Rome. The case is still pending.

It is some time since a document signed by a group of Basque priests has seen publication. There is a risk that this silence may be wrongly interpreted, and perhaps be attributed to a failure of our conscience and our sense of responsibility before actions and events which imperatively require a frank and unequivocal attitude on the part of men who, as we are well aware, are entrusted with the duty of proclaiming the principles of truth, justice, freedom and human dignity. We do not wish our silence to be construed as complicity.

We obey the dictates of our conscience in protesting in this document against the gulf which daily widens between us and the souls confided to our guardianship and our direction.

The accusations directed against us are so widespread and so violent that a veritable outcry has gone up against us. Those which reach our ears are based on a whole series of misrepresentations and varying responses which accurately reflect the hostile atmosphere surrounding us, and which presage ill for the spiritual future of our people.

We hope that our testimony—the testimony of priests moving daily among the people—cannot be impugned. To underestimate the gravity of a situation which may well compromise the future of the Church in our diocese for generations to come would be a fatal error.

To belittle the gravity of the present situation, to regard it as a set of fortuitous circumstances, which the Church is able to exorcise, would be to expose to grave dangers the spiritual future of the Christians confided to our care. What we propose to undertake here is a strict examination of conscience; calmly, objectively and dispassion-

ately to enquire into the ills afflicting us, recognize them publicly, for they affect the Christian life of our people, and strive with all our forces to find the needed remedy.

This is the position we have chosen, we, the priests who have signed this document, after calm and considered reflection, assuming full and exclusive responsibility for its contents.

RE-AFFIRMATION OF PRINCIPLES

The basis of our analysis is to be found in the well-known doctrine of the Church on the natural rights of men and peoples. It is not necessary to cite here the innumerable declarations put forth by the ecclesiastical hierarchy establishing and developing this doctrine. We shall only quote a passage from the collective Letter of the Bishops of the Dominican Republic, as one of the most recent statements and applying to a social situation very similar to that of our people:—

“The basis and foundation of all rights reside in the inviolable dignity of the human person. Every human person, even before his birth, is endowed with a body of rights taking precedence over and superior to the rights of the State. These are those intangible rights which cannot be forbidden their free exercise, nor find their field of action restricted, by the whole sum of human authority together.”

All natural rights derive from this inviolable dignity of the human person, of men as well as of peoples. They are the right to live, to found a family, to work, to emigrate. They are the right to freedom of conscience, of the press, of association, and so forth.

Freedom is one of the most sacrosanct and inviolable of rights, which the State is bound to recognize and respect.

We do not hesitate openly to proclaim that the full Christian conception of freedom is necessarily bound up with the inviolability of the human conscience. We affirm that it is not lawful to practise upon the human conscience either by using violence to penetrate its secrets, nor by submitting it to outside pressures working on the mind by methods contrary to all the proceedings of reason; it is not lawful to torture, nor make use of drugs or the procedures of “brain-washing”, nor subject public opinion to the pressures of a super-propaganda, based on psychological techniques which are an attack on the transcendental dignity of the human person.

In order to exercise his freedom of conscience man first needs to possess all the elements necessary for judgment. This need stems from the moral law: whence the right of man to the truth. Any one-sided limitation of the truth, any distortion of the truth, is in reality a distortion amounting to sacrilege: hence the declarations of Pius XII on the subject of public opinion. “Public opinion is in fact the common inheritance of any normal society composed of men who, conscious of their conduct as persons and as members of society, are closely linked to the community of which they form a part. It is,

finally and in the last resort, the echo of events and the situation of the day in the mind and judgment of men. . . .”, “ To stifle (the voice of) citizens, to reduce them to enforced silence, is in the eyes of every Christian an attack on the natural rights of man, a violation of the natural order as established by God. . . .”, “ We are of the belief that this Catholic concept of public opinion, its operation, and the services rendered it by the Press, is entirely just and necessary in order, in conformity with our ideal, to open the way to truth, justice and peace.” (Pius XII to journalists, 18. 2. 50).

In defending freedom as a sacrosanct right of all men, we are also defending the right to freedom and self-determination of all peoples, all ethnic groups, all natural persons or corporate bodies, in the way established both by natural law and the positive law of God. Respect for all moral values is a part of Christian doctrine, and for several years now genocide has been publicly and officially condemned by society.

ANALYSIS OF THE PRESENT SITUATION

After this brief recapitulation of grounds for the attitude we have adopted, let us turn to an analysis of the present situation.

We sincerely believe that neither the individuals, nor the classes or peoples who make up the Spanish political community, enjoy sufficient freedom.

A cursory survey is enough to convince one of this painful fact. We are continually hearing of men who have been arrested for temporal activities which are not in conformity with the political thinking—along one line only—imposed by the State. People are imprisoned for expressing in public, or indeed in private, political ideas contrary to those of the government, on questions which are in themselves matters of free opinion. And since the normal channels for the communication of the truth do not exist, what in fact is simply the exercise of a right becomes an offence. Thus certain people have been arrested for distributing unauthorized leaflets which contained nothing contrary to truth or justice, but a good many things which it was the duty of the government itself to say or allow to be said, and on which it has maintained silence for many years. The law these persons are breaking is an unjust law, and therein lies the whole problem.

In the twenty-four years during which the present regime has been in power, men have been imprisoned *sine die* for months and years, and brought, after a period of time depending on the arbitrary decision of a Governor, the Director of the Public Security Department, or some Minister, before a Special Court under the very serious charge of “rebellion against the State”, because they had the courage to believe that those who govern them are neither impeccable nor infallible. Once they have been taken to prison, their families live in a state of perpetual anguish, since they neither know where they are

nor when they may be tried. We have reached a point where there are many who dare not even visit the detainees for fear of being suspected in turn. And important persons and authorities of moral standing think they are being asked a great deal if they are begged to intervene on behalf of these detainees with the competent authorities.

Legal safeguards to ensure the delivery of impartial judgments are so truncated that every possible step has to be taken to prevent the commission of a grave miscarriage of justice through the caprice or sycophancy of the judge. The *Fuero de los Españoles* remains a dead letter, and the fact that the whole world was informed of its promulgation only reflects the atmosphere of hypocrisy reigning in Spain. The real truth is that all positions of responsibility, all post of authority or political influence, from Ministerial portfolios to the post of village mayor, from the position of University Rector to control of the lowest government office, are assigned through the exercise of a single, absolute will, against which there is no appeal. In such an atmosphere, in ordinary human terms, servility is inevitable.

Even a criminal, just because he has committed a crime, must not be denied his rights. He may indeed end by losing his claim to live, through a sentence sanctioned by every legal safeguard. But this must never happen without the full observance of a legal procedure in harmony with the claims of natural law. This procedure must incorporate the safeguards essential for the required end, which is "judicial security", that is, in the words of Pius XII, "a definite sphere of law protected against any arbitrary attack". This implies, among other things, "clear legal standards which can not be distorted" (Pius XII).

And yet we can affirm that in Spain the Executive intervenes in the administration of justice, adjusting and dictating judgments in accordance with the political standards of the Chief of State.

In the central police stations of our country torture is employed as a means of investigation, in order to discover the transgressor of a law, which is often unimportant and in certain cases unjust. Some ill-disposed suspicion is ground enough for a policeman or member of the Civil Guard to beat, torture or injure any citizen at will, who is often innocent of the offence of which he is accused. There is no question here of scattered incidents, but indeed, since the authorities are aware of these facts and tolerate them, of a whole system. A system which is clearly contrary to the most elementary Law. And let no one say that such methods are in common use in Europe and Algeria. Even if these methods have been in common use throughout the whole of history, they are no more legitimate for that, since they are immoral in essence. The right to the inviolability of his conscience is a right man can never lose. It is part of the heritage of the soul; and the soul belongs to God.

No one can deny the existence of the facts we mention in the life of Spain, and indeed we have been unable to look them all squarely in the face; we are, moreover, in possession of documents and concrete

evidence which prove their accuracy. They have stirred the feelings of the country, and not only the country, but the whole western world; several foreign delegations composed of members of the diplomatic corps or representatives of political parties have visited Spain to be present as observers at political trials, to visit the prisons, start investigations and enquire into the facts, restraining by their presence the attacks of the Spanish State on the human person.

If man is to be held responsible for his deeds, the moral law ordains that he must not only enjoy full liberty of action, but must also be in prior possession of all the factors necessary to form a judgment.

All forms of duress, whether physical or moral, constitute an attack on personal freedom, and deprive man's actions of their human essence. Brain washing procedures, super-propaganda, one-sided presentation of the facts, all prevent acquisition of the prior knowledge which it is essential for a man to possess if he is to be held fully responsible for his actions.

And in Spain the State is "totalitarian in the service of the unity of the Nation", the Nation is the "supreme reality", and the Chief of State has in fact concentrated all power in his hands and is the incarnation of the State and the national will. Plagiarizing the dogmatic prerogatives of religion, the State has set up the infallibility of the Chief of State, with all the consequences it entails.

This political programme, laid down by the regime from its very inception, has, we dare affirm, been realized to the fullest extent. Neither the bombastic speeches to the contrary, nor the written statements addressed to public opinion have been able to deny the facts of Spanish political life which are patent to all. The super-propaganda which monopolizes the press, the wireless, and all media for the diffusion of ideas, and the almost idolatrous cult of the Chief of State, are all facts. They explain how a delegate for press and propaganda is enabled to correct the ideas expressed by experts in economy, sociology, pedagogy, etc., as though the whole of Spain was nothing but an elementary school. They explain how, in a Catholic State, a Minister dare publicly dispute the authority of a member of the Catholic hierarchy on the teaching of morals, and that the Church enjoys no freedom to teach from publications, which are not listed in the Concordat.

"A public opinion is necessary to open for men the way to truth, justice and peace..." "And it is a fact that the press is among the principal factors which contribute to the formation of public opinion." (Pius XII.)

The fact is that in Spain those responsible for the present political situation have torn up the very roots of all public opinion, by seizing or subjugating all media for the public expression of opinion, and repressing, with the aid of the military courts, all endeavours to express

political opinions which fail to follow the line of thought imposed to the exclusion of any other. The press, with no laws to safeguard its true mission, subjected as it is to strict control and censorship, and entirely subordinate to the interests of the State, cannot, within normal human limits, fulfil its mission as it should.

Reversing, indeed, the order established by God, the press is an instrument for the distortion of public opinion. It does not educate the citizen towards due care for the commonweal; it forms a barrier to the expression of considered judgments on the activities of the political, economic or social organs of the country, to attempts to contend against one-sided propaganda, to the formulation of ideals consistent with natural and divine law. It imposes arbitrary restraints on the right to the free expression of opinion, and debars citizens from any public supervision of the administration of the public services. Instead of educating public opinion and assisting it to develop, "they cold-bloodedly stifle its spontaneous character and reduce it to a blind and docile conformity of ideas and opinions.

And what has been said of the press, we assert, may equally apply to the wireless.

These statements appear preposterous, but we can vouch for and guarantee their complete truth.

We reject these proceedings and this totalitarian system because they are unnatural and anti-Christian. Even if these methods were to be used to bathe the world in the waters of the Gospel, we should still reject them, recalling the "rationabile obsequium" of St. Paul.

And what shall we say of freedom of association in both its aspects, political and social?

When a country is living in conditions of political freedom, there are bodies in operation to protect them. Parliament, political parties, trade unions all take action against possible abuses and exert a control over the exercise of public authority. It has to be admitted that the actions of men are never perfect, but the free exercise of civil rights is a factor making for public honesty. But in Spain this effective instrument is absent. It may seem absurd, but no genuine Parliament, no genuine political or trade union freedom exists in Spain. The Single Party, the Single Syndicalist organization and a controlled Parliament make up the essential structure of the Spanish State, and all are entirely subject to the Chief of State. The Spanish Syndicate, as Mgr. Pildain* has declared, is "neither a trade union, nor Christian". It is the creation of the State, and it defends the interests of the State which it is representing, and that most effectively. In such conditions what sort of safeguards can collective agreements offer? What sort of safeguards can such syndicates offer for the defence of the interests and the just and natural demands of the workers?

* The present Bishop of the Canaries.

Genuine trade unionism, i.e., free trade unionism, springing from the working class and enjoying its confidence, is not only a right of the masses, but still more it is the most effective and suitable means in existence to-day by which the masses can exercise their responsibilities in social and economic life, responsibilities which involve both rights and duties. The present economic crisis, with the serious consequences it may entail for the future, only increases the urgent need for such trade unionism. We are unable to see how the workers of our country can be made to understand the need for certain austerity measures if this right and these means of action are denied them. Nor are we able to see how their reactions are to be held in check or guided when they feel themselves unjustly treated.

We could say the same where political freedom is concerned. Without political freedom, participation in public administration and free access to the public service are impossible.

What guarantees for the defence of the commonweal, what guarantees of respect for the human person can an administration offer which begins by making a divinity of the Chief of the State and the State itself, while it regards the human person as an instrument—nothing more—of that same State?

DEFENCE OF THE RIGHTS OF THE BASQUE PEOPLE

It is impossible for us to refrain from speaking more particularly of our own people, the Basque people, to whom we belong and among whom we exercise our apostolic mission. We, Basque priests, love our people, and have the same right to this love, the same duty of natural and Christian charity as the Castilian priest who loves Castile and the Bishops of Uganda who love the human family of which, by the grace of God, they are a part. We, Basque priests, believe that it is part of our attributions to hold opinions and entertain feelings on the temporal interests of our people. This opinion and this feeling is one which all the priests of the world have the right to profess for their respective peoples. We believe in addition that it is a duty and a natural biological necessity. We, Basque priests, know that the fact that we are consecrated to God and the Church, imposes on us, among other obligations, the duty of renouncing all intervention in temporal affairs. But from the very fact that we are part of the Church we retain the right—which is also a duty—to expose all attacks which may be made, by error or ill-will, against the natural rights of our people.

And it is this which we now denounce, to Spaniards and to the whole world, the policy carried out in Spain to-day of contempt, neglect, and on occasion bitter persecution of the ethnic, linguistic and social characteristics which God has given to us, to us Basques. And all, moreover, without profit to anyone, and to the obvious prejudice of our highest interests—our spiritual interests.

If attention is paid to the stones of a historic monument and to the beauty of its architecture because it mirrors the soul of an epoch, then the Basque language, which is the *euskera*, the requisite instrument for the evangelization and culture of the Basque people, possesses a right before God and civilization, the right to life and cultivation; and if this right is to be ignored, it becomes an absurdity and a presumptuous contradiction on the part of the Church, and a reactionary and anti-human policy, reaching to genocide, on the part of society.

And that is our position in Spain to-day. Nor are there any historical, social or political reasons justifying such a crime.

Here you see put before you, Your Excellencies, what is in our humble opinion one of the fundamental reasons why every day a wider breach opens between us and the souls confined to our care. This reason is no other than the contradiction which exists between Catholic doctrine on the human person, and the fact that this doctrine is ignored by a regime which officially calls itself Catholic and which is firmly supported by the Catholic hierarchy. This is the accusation of which we are the victims.

We have attempted to make a calm, objective and dispassionate investigation into the real situation in Spain.

We are confident that Your Excellencies will comprehend our bitterness and the profound concern which has driven us to this resolution.

It is very painful for us, priests that we are, to bear witness to these facts. But our priestly vocation will not allow us to keep silence.

There is doctrine, no aspiration more frequently voiced in Christian writings than the thought and desire of peace. In the great prophetic visions, the future kingdom of God appears as "the kingdom of peace, the work of justice". In a passage of overpoweringly lyrical force the world under the reign of the future Messiah is pictured at peace, when the animals and man shall live together in peace, and "the sucking child shall play on the hole of the asp, . . . they shall not hurt". (Isaiah, Chapter 11)

Christian reality is impregnated with the love and desire for peace. Jesus Christ is the "Prince of Peace".

This is our hope, this is our great desire; the pacifying of spirits. The pacifying of spirits through truth and charity. This is the need of our people; this is their desire.

Your Excellencies, for the love of God, who desired us all to be one in Him, we beg you, as Father, Pastor and Rector of our People, to search for the means to find a formula both effective and conciliatory to give back to our people the peace they have lost. Even though no more were gained, the greatest good that nations could desire would thus be achieved, since peace is the foundation of all good.

LETTERS OF PROTEST AGAINST THE CENSORSHIP FROM SPANISH INTELLECTUALS

In December 1960, a very large number of artists, philosophers, writers and intellectuals, including the most eminent representatives of the Spanish intelligentsia, addressed a letter to the Minister of Information and Tourism. The text of this letter is reproduced below.*

This letter, signed by men representing different branches of culture—by novelists, poets, dramatists, scholars, philosophers, essayists, film producers, journalists, etc.—and of varying ideological attitudes, is to a great extent motivated by the climate of anxiety bordering on exasperation in which our work is carried out, under a system of intolerance, confusion and uncertainty. We refer to the problem of censorship, a very serious problem since it hampers our work. It is this which has decided us to break the long and patient silence we have maintained until now, in the hope that the position would eventually be rectified by those with the power to do so.

Apart from problems raised on the legal plane by the very existence of pre-censorship, we are here more especially concerned with the causes of our anxiety, which consist in the fact that we never know our position on what may or may not be said, and therefore with the obvious need for an explicit and uniform set of regulations governing the various media of publication. Under present conditions, indeed, it frequently happens that a work is authorized to appear in one type of publication (reviews, for instance), and forbidden in another (in book form, or in a stage or film version), which we consider both unjustified and unjustifiable; and equally so the cases, quite as frequent, where permission for the publication of a work is given one day, and cancelled the next, and *vice versa*. All these difficulties are accentuated whenever the Catalan culture and language are in question.

Among other consequences of this state of affairs is the very dubious impression of the cultural life of Spain which is given in the international world, more akin to the picture presented by undeveloped civilizations, and quite inconsistent with the riches of our cultural tradition. Spanish writers and scholars live in a sort of exile, since

* The number usually cited is 350.

they have no alternative but to let their works go to foreign publishing houses, companies and research centres, a cultural flight which, in our opinion, the country is ill able to afford. This makes all intellectual activities a thankless task at a moment when it seems vital to put an end to stagnation and the failure in communication. To this should be added the deplorable effects that the frequent mutilation of foreign publications, plays and films published, played or presented in Spain exercises upon the development and state of information of the Spanish reader and student.

Faced with these problems, in circumstances which would certainly make it useless to press for our most profound desire, the abolition of pre-censorship, the undersigned are of the opinion that:—

1. It is both urgent and necessary to draw up a set of regulations on this subject, with legal safeguards making clear provision for the right of appeal.

2. That in any case officials responsible for the enforcement of these regulations should be personally answerable before the law, since the anonymity behind which the censors take refuge in carrying out their duties gives rise to many acts of an arbitrary nature.

We are confident, Sir, that you will receive this letter with comprehension, since the desire animating us is to see Spanish culture take the place to which it is rightfully entitled.

This letter has also been sent to the Minister of National Education; this communication in duplicate being warranted by the ambiguous atmosphere surrounding all our work, coming as it does under the authority of both the Ministry of National Education and the Ministry of Information and Tourism.

In the hope of favourable consideration on your part, we remain, Sir,

Your obedient servants,

Signatures

UNIVERSITY OF FLORIDA
LIBRARY

079

RECENT PUBLICATIONS
OF THE INTERNATIONAL COMMISSION OF JURISTS

Journal of the International Commission of Jurists

Volume IV, No. 1 (Summer 1962): The Rule of Law in the Contemporary Welfare State, by Fritz Gygi. The Lawyer in Communist China by Shao-Chuan Leng. The Ombudsman in New Zealand, by A. G. Davis. Freedom of Movement: Right of Exit, by Rudolf Torovsky. The Application of the European Convention on Human Rights in Municipal Law, by Philippe Comte. The Power of the Judiciary in East Germany, by Walther Rosenthal. Notes: Ombudsman for Britain? by A. A. de C. Hunter. Document: Inter-American Draft Convention on Human Rights. Book Reviews.

Bulletin of the International Commission of Jurists

Number 14 (October 1962): This number deals with the various aspects of the Rule of Law and legal developments with regard to the Congo, the Eichmann Trial, Kenya, Turkey, South Africa, UAR, USSR and Yugoslavia.

Newsletter of the International Commission of Jurists

Number 13 (February 1962): Outlook for the Future, New Members of the Commission, Missions and Tours, Observers, Press Releases and Telegrams, United Nations, National Sections, Essay Contest, Organizational Notes.

SPECIAL STUDIES

The Rule of Law in a Free Society (July 1960): A report on the International Congress of Jurists held in New Delhi, 1959.

The African Conference on the Rule of Law (June 1961): Report on the first African Conference on the Rule of Law, held in Lagos, Nigeria, January 1961.

Tibet and the Chinese People's Republic (July 1960): Report to the International Commission of Jurists by the Legal Inquiry Committee on Tibet, Introduction, the Evidence Relating to Genocide. Human Rights and Progress, the Status of Tibet, the Agreement on Measures for the Peaceful Liberation of Tibet, Statements and Official Documents.

South Africa and the Rule of Law (November 1960): Detailed inquiry into the problems of *Apartheid* in the Union of South Africa. Analysis of legislation and practice compared with pertinent provisions of the Universal Declaration of Human Rights. Statements by Commission's Observer, F. Elwyn Jones, Q. C., M. P., Legislative Texts, Affidavits.

The Cassell Case: Contempt in Liberia (August 1961): A study of the disbarment of Counsellor Christian A. Cassell of Monrovia for critical observations on the administration of Justice in Liberia.

The Berlin Wall: A Defiance of Human Rights (March 1962): The Report consists of four parts: Voting with the Feet; Measures to Prevent Fleeing the Republic; the Constitutional Development of Greater Berlin and the Sealing off of East Berlin. For its material the Report draws heavily on sources from the German Democratic Republic and East Berlin: their Acts, Ordinances, Executive Instruments, published Court decisions and excerpts from the press.

South African Incident: The Ganyile Case (June 1962): This Report records another unhappy episode in the history of the arbitrary methods employed by the Government of South Africa. In publishing this report the Commission seeks to remind its readers of the need for unceasing vigilance in the preservation and assertion of Human Rights.

Cuba and the Rule of Law (November 1962): A study of the legal situation in Cuba based on a detailed analysis of constitutional and criminal law legislation of the Castro regime and on statements of witnesses.

PRICE :

4.50 Sw.Fr.

\$ 1.00 U.S.

£0.7.6 U.K.

PRINTED BY H. STUDER S.A., GENEVA, SWITZERLAND