

Royal Academy of Moral and Political Sciences, of Spain

THE
NATIONAL MOVEMENT
IN THE LIGHT OF LAW
AND JUSTICE



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THE first act of the Royal Academy of Moral and Political Science after its revival has been to proclaim its fervent allegiance to Spain's leader. That primary duty being fulfilled, the members of the Academy fully realize the need of resuming their labours within the province of research assigned to them. They desire to proceed in consonance with the exalted principles of the Movement which, bringing together so many persons formerly separated by political differences, constitutes a momentous event not only in the annals of our own country but also in the course of world history. The entire life of Spain is at present concentrated on its great internal war which, at the same time, is a prominent theme of international concern. It is true that statesmen are bent upon confining the civil war to our frontiers with the aim of preventing it from spreading abroad; but the glare of the conflagration must reach the outer world because the fuel that feeds it comes from many parts, and the issues involved also affect the whole world. Judging the panorama by the false vocabulary with which it has been deliberately deformed, it appears to be a purely domestic affair. On one side, groups of military officers dissatisfied with the young and audacious Republic of 1931, rebel against the «Liberal» and «Democratic» spirit in order to set up the Autocratic «Fascism» in its place. On the other, stands a «legality» established by the will of the people resolved to defend its «constitutional liberties». Apparently, that is all. Yet were such the case, in the present perspective of a Europe shaken by doubt and unrest, «the Spanish question» would surely not be so conspicuous nor would the problem of our belligerence, really a reflection of the justice or the injustice of or cause, be the subject of such impatient consideration daily increasing in its gravity.

Here, then is the requisite thesis for our first deliberations after the inevitable interruption now brought to a close by the clear vision of our Leader in restoring us to our normal activity. As the subject offers divers aspects we purpose to examine them successively

and with the calm objectiveness that distinguishes our calling to consider: 1) What is the «legality» of the Power which still defies National Spain; 2) What is the «legitimacy» of that same Power; 3) What is the situation *de facto* and *de jure* in regard to sovereignty in both zones in Spain at present; 4) What view of that sovereignty would be held abroad. These four headings fully develop the idea contained in the title given to the work in hand: «The National Movement in the light of Law and Justice».

I. PROBLEM OF LEGALITY

By «legality» we understand the orbit of attributions which, through certain pre-established juridical realities, correspond to the juridical subjects—those who govern and those who are governed—within a determined State. «Legality» encompasses, therefore, the «rights» or juridical faculties inherent in the citizens and in the public Authorities of a country as defined in «positive law», in the legal system at present in force which in modern States is fundamentally contained in their Constitutions. To inquire into the «legality» of a *régime* is equivalent to investigating its fidelity to the juridical bases of fellowship constituting it. In the Spanish Republican *régime*, these are proclaimed in the Constitution of december 9, 1931 although, for the most part, they did not prevail until the abrogation on July 27, 1933 of the Law of the Defence of the Republic, an appendix that, hitherto, had kept the Constitution in abeyance.

It is true that our investigation might go further. We could ask the present spokesmen of the said *régime* who show themselves such zealous defenders of «legality», how far they could justify in the case of the Republic itself, brought into being by mere municipal elections; for it should be borne in mind that, besides the success gained by the Royalist candidates in the majority of rural councils, the confidence of the electors was gained by a promise of a moderate Republic, an undertaking that was never honoured and actually led to the resignation of the President of the first provisional Government. But it is scarcely worth while taking our thesis so far back while there are more than sufficient features of the Republic from its establishment to the present day.

For the purpose of testing the sincerity with which the shibboleth of «Republican legality» is to-day paraded about Europe, it would, likewise, not be out of place to recall that instructive yet distressing episode of October 1934 when the parliamentary group that had obtained preponderance by its triumph at the polls, claimed from the Government the modest participation of three Ministers in the Cabinet, an aspiration well below that which, in perfect democratic orthodoxy, should have been its due. The Socialist Party replied by launching a sanguinary revolution, prodigal in death and destruction, a revolution of which, later, the Republican Parties known as «of the Left» signified their approval theoretically and practically by joining the revolutionaries in the so-called «Popular Front», the self-same organism now feigning to be scandalized by the presumed illegality of the National Movement. But we will set aside this too retrospective survey in order to consider the legality of the Republican situation created in February 1936 as a result of the elections which gave victory to the afore-mentioned «Popular Front». This will be done by discriminating between the problem of the said legality before and during the National Movement.

1) BEFORE THE NATIONAL MOVEMENT

The primary incontrovertible title of legality of the Public Authority in a democratic *régime* is that of popular election. It appears to have been established that the elections held on February 16, 1936 under the more or less active presidency of the «Centrist» type of Government of Señor Portela Valladares, showed a certain majority in favour of the candidates of the «Popular Front», in spite of the greater total number of votes—about 354,000—which, apart from the «Centrists», were in support of the coalition of the Right Parties in union with Republicans of highest standing and tradition. Yet such a majority did not perhaps offer a guarantee of stability sufficient to sustain a governing situation. However, the fact is that a Government emanating from the «Popular Front» was formed even before the constitution of the Parliament from which normally it should have proceeded. All investigation and resolution in regard to the validity

of the polls which the Constitution in its Article 57 entrusts to the House itself, not yet complete, remained at the mercy of the majority and of the Government representing the «Popular Front». The cancellation of numerous returns favourable to the opposition Parties quickly ensued. Worthy of particular memory are those of Coruña, Cuenca, Cáceres and Granada, the edifying discussion of which took up a considerable part of the time of the sittings during that period. No less edifying was the holding of the elections summoned with the object of filling vacancies. An incipient majority of members soon became an instrument that made the «Popular Front» proof against any surprise.

If the origin of the electoral victory of the «Popular Front» appears enveloped in vagueness, the legality of its conduct in questions of supreme importance is still less transparent.

The first of these was the granting of the amnesty, a sentimental theme fully exploited in the electoral campaign and which, in view of its success, was the object of expeditious solution. As a result, not only those under sentence for participation in the revolution of October 1934 were at once set free without any distinction of crimes committed, but the re-admission of all workers legally dismissed for taking part in illegal strikes during the previous political situation was sternly enforced. The order went further. Employers were compelled to pay retroactive compensation involving also the discharge of employers who, under the protection of the strictest legality and refusing to support the revolutionary activities underlying the strikes, had substituted those who were now free to return to their posts.

The second problem to be dealt with by the Chamber and the Government was the deposition of the President of the Republic. It had been proposed to get rid of him by utilizing Article 81 of the Constitution which authorises the President «to dissolve Parliament at most twice» always submitting himself, in the case of a second dissolution, to the judgement of the new Parliament «respecting the necessity of the decree dissolving the previous legislature». The doubt which arose as to whether the dissolution of the previous Parliament was the second and not the first—bearing in mind the constitutional and extraordinary character of the first Chamber—was, of course, settled in a manner favourable to the intentions of the dis-

gruntled politicians of the «Popular Front». In consequence, during the sitting on April 7, a resolution was passed showing «the unfavourable vote of the absolute majority of Parliament carrying with it the deposition of the President». It should be observed that these politicians were the very men who, on being opportunely consulted by the President, had unanimously advised him to countenance the dissolution that was to bring them the indispensable triumph which they required for the proper regulation of Spanish politics. The only explanation of such singular inconsequence is that the «Popular Front» did not find it wise to depose the President by appeal to Article 82 of the Constitution, which also concerns the case, because it could not count upon the support of «three fifths of the members composing the Congress» whose concurrence was essential, according to the said article, for the initiation of the procedure of deposition. While it is undoubtedly true that the Constitution does not expressly forbid this chicanery, extravagant as it is, we remark upon it as an index of the scruples of legality felt, at that time, by those who now vaunt their deference to the legal order. The upshot of this duplicity was the election of D. Manuel Azaña, at present known as President of the Spanish Republic, which took place under the moral coercion consequent upon the political and social situation then created and with the entire abstention of the opposition Parties.

2) DURING THE NATIONAL MOVEMENT

Let us now observe the march of political life in the zone opposite to that of National Spain during the process of the war, with the object of recording its features of Constitutional legality or illegality.

Considering the nature and the magnitude of an event like the National Rising, nobody could expect that the enemy Power facing it could maintain the fullness of Constitutional normality; it was anticipated that use would be made of the resources which the Constitution itself and the law of Public Order of July 27, 1933 offered for the purpose of breaking the «mbryonic «rebellion». Further, in view of the duration and the discouraging outlook for the presumed «Republican legality», it seemed logical that the Authority representing the same should proclaim the «State of War» provided by the

aforesaid law in its Article 48. But this was not so, for since July 1936 there has been, on the other side, a monthly declaration of the «State of Alarm» regulated by the law of Public Order in a series of articles. For reasons no doubt known to those directing affairs, the entirety of power was not to be placed in the hands of the military officers, «loyal» to «Republican authority». Moreover under the «State of Alarm» the working of the essential parts of the Constitutional mechanism are left intact, and the Government is only authorized to repress with some severity the individual or political activities referred to in the Articles 26, 31, 33, 34, 35, 38, 39 and 41 of the Constitution, declaring the suspension of the rights guaranteed in Articles 29, 31, 34, 38 and 39 of the Constitution as laid down in Article 42. Beyond this, under the «State of Alarm», the organs of the legislative, executive and judicial Authority as also the Court of Constitutional Guarantees continue to function with the correlative order essential to them. We shall see how far these operations have been maintained during the war within the requirements of Constitutional legality.

A) LEGISLATIVE AUTHORITY: The concern of the Madrid-Valencia-Barcelona Government for the summoning of Parliament on the first days of the months of February and October as enforced by Article 58 of the Constitution, is obvious to all. But it has not yet succeeded in obtaining: 1) The number required for normal procedure. Of the 476 members, only 165 to 185 have been reported as in attendance. According to the regulations of the Chamber of November 26, 1934, the requisite quorum for the definite sanction of a law is that of 200 members on a demand of 15 members, (Article 91). This does not take into account the law of expropriation without compensation which requires the absolute majority of Parliament according to Article 44 of the Constitution. Regarding the other members absent from the Parliament at Valencia, it is known that 101 are in the National zone supporting its Government; 27 have been murdered, 18 figure as having disappeared, and an indefinite number are in prison or in voluntary or compulsory exile. 2) The condition of representation of groups also required by the said regulations which in Article 11 makes it binding upon members to state the group to which they desire to be ascribed; and the obligation enjoined by Article 52:

«the permanent Committees shall be appointed in proportion to the numerical strength of the different political fractions». 3) Neither has it been possible to contrive the operation of the so-called Parliament during the «three months in the first period and two in the second», the minimum time stipulated by the Constitution in its Article 58. The assemblies that have taken place have barely exceeded the opening sitting. In these circumstances, the regular proceedings indispensable in deliberation and resolution are not possible. This is especially so in the case of urgent business or in the revision of legislative authorizations given to the Government by Parliament. Actually, the regulations state, in Article 69, that in normal procedure the reports of committees be printed and distributed 24 hours before debate and that a declaration of urgency cannot be adopted except by a real majority of the members of the House.

When Parliament is not acting, the Constitution confers certain faculties on what is called the «Permanent Deputation» of the Cortes. (Art. 62). These faculties, in so far as they interest us at the moment, in the case of a dissolution of Parliament, consist in determining the suspension of Constitutional guarantee for one month and declaring, if opportune, a «State of Alarm» (Art. 42). Furthermore, in the event of Parliament being closed, the Government is authorized to «legislate by decree in matters reserved to the competence of the Cortes» until Parliament again assembles (Art. 80). In any case the said «Deputation» will be composed «as a maximum, of 21 representatives of the different political fractions in proportion to their numerical strength» (Art. 62), and in order to authorize the Government to decree in legislative matter, «the approval of two-thirds of the «Permanent Deputation» will be required (Art. 80). Now, it is a fact that 1) the said «Deputation» has not succeeded in reaching its normal constitution either by number or by the representation of its members attending and voting at Valencia or Barcelona, and 2) that in spite of Parliament not having been dissolved, the «Deputation» issues a monthly order declaring a suspension of guarantees thereby encroaching upon the prerogative of Parliament.

B) EXECUTIVE AUTHORITY: In consistence with all the anomalies pointed out, we find a Government 1) acting under a «State of Alarm» with suspension of Constitutional guarantees illegally prorogued eve-

ry month by the so-called «Permanent Deputation» of the Cortes; and 2) decreeing in legislative matter without being duly authorized by the Cortes or by its «Permanent Deputation». The sanction of Parliament could not be forthcoming because, apart from the irregularity of its operations, according to Article 61 which controls such authorizations, «they may not be of a general character, and the decrees issued by virtue of the same shall be strictly adjusted to the bases established by the Congress for each specific matter. So far, in the shortlived gatherings summoned by the Congress, it has not been possible to fulfil this condition. Neither could authorization proceed from the «Permanent Deputation» the function of which in regard to empowering the Government to decree in legislative matter, apart from referring to periods when Parliament is legally closed, requires the approval of two-thirds of that «Deputation» (Art. 80), a circumstance that has also been absent. In these conditions, even granted the legality of the suspension of guarantees which the «State of Alarm» implies, the action of the Government, in accordance with Article 35 of the law of Public Order, should not have exceeded the adoption of «surveillance and preventive measures considered suitable for the securing of public order» but «without affecting the guarantees not suspended by the Government». Far from this, the said Government has overstepped its powers to an extent that can only be described as an invasion of the legislative sphere. In proof of this, we shall distinguish two kinds of rights: those touching real estate and those of a personal character. Finally, we shall refer to attempts at dispossession of landed property.

a) *Real State* includes everything concerning *property in general* and, in particular, the *gold of the Bank of Spain, stocks and valuables* deposited in Banks or found in private houses, the State exchequer and the national art treasury, and Church property.

1) Regarding *property in general*, it is true that the Constitution, in its Article 44, foresees possible expropriation without compensation and even possible socialization but only through the medium of «a law passed by Parliament and approved by the votes of an absolute majority». Now it is well known that from one end of the Red Spain to the other, an extensive socialization of urban, rural, industrial and commercial property has taken place without such

authorization under pressure of Socialist, Communist and Syndicalist organizations to which the Government is subservient. This is plain from decrees like that of July 25, 1936 establishing direct intervention in all industries controlled or directed by the «Committee of Intervention», or that of October 24, 1936 in Catalonia on «the application of collectivism to trades and industries and the control of private enterprises».

2) *The gold of the Bank of Spain* possesses the double character of belonging to the said Bank as a limited company and of being attached to the service of the State as a guarantee of fiduciary circulation. Under the first conception, the Government cannot dispose of it without the consent of the shareholders; under the second, it cannot operate with the said gold except for the purpose of regulating the international exchange of the *peseta* and always subject to the reservation set down by the law of «Banking Regulation» of November 26, 1931 on account of its essential function as a guarantee. Let us now see how «The Times» of August 30, 1937 sums up what has occurred to the gold of the Bank of Spain. «The Bank of France checked, reckoned and weighed the gold, turned the result into francs and credited it to a special account which the Bank of Spain had long had open at the Bank of France. Then the dance began. Huge transfers were made to the orders of Spanish Ambassadors and the Commissioners who arranged for armaments. A list could be given showing in detail the dates on which such transfers were made, the Banks at which accounts were opened, and the names of those for whom they were opened. It goes without saying that those people enjoyed the fullest confidence of the Valencia Government. Account were opened during October at big American, French, and English Banks in Paris, at an English Bank in London, and at a Russian Bank in London. A large cheque was drawn to the order of the Mexican Embassy in Paris and another large cheque sent to Brussels. The amounts involved range from 5.000.000 to 150.000.000 francs at a time, and in October alone over 600.000.000 francs (L 6.000.000) was in this way transferred». Respecting the destination of these sums «The Times» does not conceal the fact that they were employed in the purchase of war material. It adds: «France and Russia provided a very large amount and much came from across the Atlantic. The

Mexican Government openly proclaimed its intention of supplying the Valencia Government with arms, particularly small arms which it had long been well equipped to produce». It is pointed out that it seems quite likely this was the means of sending arms from the United States to the value of not less than 16.000.000 dollars. It is right to add that, according to the same newspaper, a semi-official note from Valencia dated January 20, 1937 denied that the gold reserve of Spain had been sent to France or to any other country. France, on its part, by a law dated March 10, 1937 declared the circulation of and trade in gold to be free, without accrediting its origin, thus abrogating the restrictive clauses of the monetary law of October 1, 1936 which subordinated all negotiation to the authorization of the Bank of France which, in its turn, could only be accorded by the demand of industrial and mercantile needs.

3) With reference to *stocks and valuables* deposited in Banks or found in private houses, the following may be affirmed: 1) Throughout the whole of the campaign in the North, the Banks and Savings Banks of San Sebastian, Bilbao, Santander and Gijón were dispossessed of their stocks on deposit, of stocks, cash, jewels or other objects of value enclosed in private safes, and of almost all their account books. All these formed consignments that were shipped to foreign ports where the Government of Valencia or of Barcelona is at present engaged in law suits claiming, by reason of its sovereignty, the possession of the said objects that were taken away from their lawful owners without consent. 2) In regard to objects equally valuable removed from private residences, a relevant instance may be seen in the following extract from the Madrid journal *Politica* of August 5, 1937 referring to the transferring from Madrid to Barcelona of several cars loaded with bags full of valuables: «All the valuables (6.000 pieces) which were deposited at Police Headquarters in Madrid have been recovered. The control patrols of Barcelona had appropriated them during the conveyance». It is admitted that an inventory was made before departure from Madrid, and that a considerable portion was lost on arriving at Barcelona; but it is not explained how these objects came to be «entirely recovered».

4) *National State* is safeguarded by the Constitution in its Article 117 according to which «the Government, in order to dispose

of State property and receive money as loans on the credit of the Nation, must be authorized by law. Every operation infringing this precept will be null and void and will entail no obligation on the State in regard to security or payment of interests». In view of more or less reliable information showing that the Valencia Government was preparing operations of this nature, General Franco, with a certain purpose, has made haste to denounce them to the world and to declare them beforehand to be null and void. They could hardly be otherwise even from the point of view of the said Government itself on account of its inability to obtain the indispensable legislative authorization without which the party making the offer would have no legal capacity for the sale or the loan in question, and the property referred to would not be idoneous to support the undertaking.

Concerning the *national art treasure*, apart from its generic condition of State patrimony and as such, under the afore-mentioned Article, inalienable by the Government without legal authorization, it is placed under the special «safeguard of the State which may prohibit its exportation and alienation»—(Art. 45). However it is a matter of common knowledge, and is referred to by Mr. Kenyon, an eye-witness, in his articles in «The Times» of August 1937, that many works of art, and among them the best, have been removed from the Prado Gallery. Likewise, it appears to be proved that part of these work of art have been or are about to be prepared for exportation to foreign countries on loan. Others, we are assured, have taken the road to Russia. Similarly, the contents of the National Museum in Barcelona have been deposited in France. All this, even under the most favourable hypothesis, cannot easily be made to agree with the Constitutional articles mentioned.

5) *Ecclesiastical property*, including churches and adjacent and allied-buildings with objects used in worship, according to the law of religious Confessions and Congregations, also remained «under the safeguard of the State» (Art. 11). It is true, nevertheless, that the same law, in its Article 12, lays down that this property should continue «in possession of the Catholic Church for its preservation, administration and use according to its nature and destination», adding that «the State alone for reasons justified as of public neces-

sity and through the authority of a special law, may dispose of such property for a purpose other than that indicated in the previous paragraph. Again, the Constitution, in its Article 26, acknowledges the right of the Religious Orders to acquire and to keep... the property that... may be used as their dwelling place or may be devoted to the direct fulfilment of their specific ends. Once more, it is an unquestionable reality that from the very first day of the National Movement down to the present, from one end of Red Spain to the other, all buildings of a religious character have been violently occupied, and with no respect for their original sacred purpose, put to profane uses by their new possessors. The constitutional infringement is flagrant here.

b) *Personal rights*: As we remarked previously, while the exercise of personal rights is restricted by the «State of Alarm» and the consequent suspension of constitutional guarantees, this should not exceed the limits imposed by the requirements of the maintaining of public order nor the terms in which these rights are interpreted by the law bearing this denomination. Yet the Government of Red Spain has made such use of this that, although the pressure of events may explain much, there can be no justification in face of the unmistakable precepts of the Constitution it declares to be in existence. We shall see this by briefly considering the most important points of constitutional infringement to be observed.

1) One of the capital principles of the Constitution consigned in its Article 25 as not subject to suspension, is that «birth, membership, sex, social class, political tenets, or religious beliefs cannot be the foundation of legal privileges». Note, nevertheless, this plain acknowledgement of the *freedom* of «political ideas» in the decree of September 19, 1936, published in the official «Madrid Gazette» next day, cancelling all studies and refusing the registration of students not vouched for by the «University Scholastic Federation» or by the «Popular Front», in order to prevent official scholastic bodies from becoming centres of hostility and conspiracy against the Republic «thereby giving application to the principle that the enemies of the Republic are not worthy to receive instruction from it nor may they aspire to academic degrees raising them to positions of direction or responsibility within the same». In harmony with this judgement.

the «Gazette» of 22 and 23 of the following month of November published an Order prescribing that for the purpose of continuing attendance at or of obtaining entrance to the Institute of Valencia, even the parents of the pupils must be «supporters of the régime». The significance of this in relation to those responsible for such an order cannot be doubted;

2) *Servants of the State*, as citizens, are subject to a possible suspension of guarantees; but they are favoured by Article 41 of the Constitution which, free from suspension, protects them from displacement, except in the cases provided by law. Above all, it states that «no public servant may be molested or persecuted on account of his political, social or religious opinions». Notwithstanding this, the «Gazette» of September 29, 1936, published a decree suspending the entire personnel of the State services and compelling each one to apply in writing for re-admission and to answer a list of questions of which the fundamental part is to prove loyalty to the régime. Besides this, the pages of the «Gazette» abound, since the beginning of the war, in dismissals and penalties imposed upon public servants caused by «non-conformity with the régime» which nobody undertakes to define or prove.

3) The code of Commerce, in force during the Republic, lays down in its Article 121 that *mercantile companies* shall be governed by the clauses and conditions of their contracts. Other articles describe persons qualified to manage, to rule and to represent them. Joint-stock companies, limited companies and other bodies are dealt with in Articles 125, 127, 128, 145, 148 and 155 enacting that governors and managing directors be appointed according to contract, and allowing, in Article 168, the possibility of structural alterations only through the General Meeting of Shareholders. On the other hand, the Government of Valencia, in October, 3, 1936, has replaced the Boards of Directors of Commercial bodies and especially of banking concerns by «Directing Committees» constituted by representatives of the Treasury, of the share-holders, of the holders of current accounts and of the National Federation of Banks. It is emphasized that only «the managers who have fulfilled the duty of collaborating with the régime by not deserting their posts», may form part of these Committees. On behalf of this new organization

thrust upon the Companies, their property has been disposed of, their order of business has been changed and even their headquarters removed, particularly when domiciled in the National zone. In November, 29, 1936, this war extended to the Bank of Spain itself in spite of Article 67 of its Statutes according to which, only in the case of a special legislative decision, can new Statutes be drawn up or the existing ones be reformed without the consent of the General Meeting of Share-holders. The illegality of the Government's action was so glaring that even its legal Councillor to the Embassies in London and Paris, D. Felipe Sánchez Román in a letter to D. Luis Nicolau d'Olwer, Governor of the Bank of Spain in the Red zone, in May, 21, 1937 points it out to him, though vainly, proposing rehabilitation by means of a resolution of approval by the «Permanent Deputation» of Parliament.

4) One of the Constitutional articles liable to suspension is N.º 31 by which it might be said the *abode of the subject is declared free and inviolable*. Regulated by the law of Public Order in its Article 41 under the «State of Alarm», it authorizes the Government «to compel those persons who may be considered dangerous or against whom there may exist reasonable suspicion of participation in acts prejudicial to public order, to change their place of residence». This removal, however, must not exceed a distance of 150 kilometres nor, if the Government should decide to apply the penalty of banishment covered by Article 42 of the Constitution, must the distance be beyond 250 kilometres. It is clear from the plain meaning of the article in question that this has nothing to do with the proceedings adopted by the Government in the Red zone touching the inhabitants of towns closely affected by the war who are prevented from leaving semi-besieged cities like Madrid, or, on the contrary, driven out under pain of death or the burning of their homes because of the approach of the «enemy». This has happened through the course of the whole of the campaign, causing those lamentable scenes of the exodus of masses of people in a state of utter privation, a spectacle one would have thought impossible in the present century. A singularly tragic feature of these emigrations has been the expeditions to foreign countries, not excluding Russia, of children taken from their homes and families.

5) The subject of the legality of the Government of the Republic in regard to *religious life* deserves particular attention. Here we encounter, at the outset, the paradox of the first illegality being found in the Constitution itself, for the least that can be expected is that the fundamental code be consistent with itself, and that promulgated in 1931 certainly is not. Its complementary law entitled «of religious Persuasions and Congregations», proclaims in its Article 2, the general principle accordant with the Constitutional bases that «no privilege or restriction of rights can be founded upon the religious state or religious beliefs». Later, however, in its precise application, the inequality of treatment between religious institutions and activities and those we might describe as lay or even anti-religious. To the latter, the unlimited recognition of liberty of association (Art. 39), of assembly and demonstration (Art. 38), of propaganda (Art. 34), and of teaching (Art. 48) are granted. The former are denied an untrammelled personality while their association is restricted, their worship curtailed, their preaching censored, their scholastic work reduced to the purely religious sphere with stipulations and their property limited. (Article 26 of the Constitution interpreted by the law of Confessions and Congregations). Even so, Article 27 of the Constitution not liable to suspension recognises «liberty of conscience and the right to profess and to practice freely any religion» establishing also that «all confessions may perform their worship privately» i. e., inside their churches. Nevertheless, actually, these churches have been sequestered as already stated, and there is no place in Red Spain where divine worship may be carried out. Although we are not aware whether any precept forbidding worship outside the churches is in existence, it is widely known, practically, it can only take place in the greatest secrecy. An occasional timid attempt at some restoration of religious liberty and worship on the part of the Government of Valencia has been immediately stifled by the surrounding hostility.

c) *Alienation of territory*. Brief mention should be made of a document circulated in the Press in February 1937 as signed by Álvarez del Vayo, representative of the Valencia Government in the League of Nations, and presented to the Governments of France and England. After lengthy considerations about the desirable as-

sistance and collaboration of the said Powers in relation to «Republican» Spain, reference is made to North Africa stating that «the Government is ready to make some sacrifices —the Spanish zone of Marocco— and to act so as to enable the country to decide upon the abandonment of its policy of neutrality to which, until now, the majority of the Parties had assented. This would be done only on condition that the people should be saved from a future conflict». Obviously, this is a case of *do ut des*, of a clear demand for help in the present war in exchange for the cession of our rights in Morocco. The legal and constitutional procedure by which this object should be attained is not explained, but it may be safely affirmed that there is none visible in the perspective of the so-called Valencia Government, self-appointed liquidator of territories forming part of our Nation.

C) JUDICIAL AUTHORITY: The Constitution of the Republic organizes, in its title VIII, the Judicial Authority as an autonomous power, declaring in its Article 98 that «judges and magistrates may not be forced to retire, be removed, suspended from their function or transferred from their posts unless by authority of the laws which shall contain the necessary guarantees for the effective independence of the Courts». Again, Article 108 lays down that «the people shall participate in the Administration of Justice through the institution of the Jury, the organization and operation of which shall be the object of a special law». What the Constitution did not foresee at all was that a day would come when magistrates, judges and jury would be displaced by the so-called «Popular Tribunals» created by a decree of August 24, 1936, on the basis of delegates from syndical organizations with a representative of judicial connection. The said «People's Courts» were particularly concerned with cases of «relation with the Fascist Movement» generally punishable by sentence of death; they do not dwell upon definitions of the offence nor are hampered by scruples of procedure or by exceptions of retroactivity. They reduce to a minimum the guarantee of defence of the accused and they form their conviction of guilt on the basis of «moral proofs». To these «Popular-Tribunals» were added, in the following month, the so-called «Courts of Urgency» which, in like manner, dealt with cases of «disaffection for the régime». Even then, the ex-convict

Garcia Oliver, Minister of Justice of the Government of Valencia was not satisfied; he believed that Justice should be something more than «popular»; it should be «primitive». It is not easy to guess the degree of regression concealed beneath this word but it is clearly far removed from the spirit of our Constitutions of the twentieth century.

D) TRIBUNAL OF CONSTITUTIONAL GUARANTEES: Finally, the Constitution of 1931 in article 121 disposes: «A Tribunal of Constitutional Guarantees is established with jurisdiction in the whole territory of the Republic, with competence to deal with a) recourse against unconstitutional laws. b): recourse of protection of individual guarantees when reclamation before other authorities should have proved ineffectual». This tribunal, practically dissolved, has neither acted at all nor could possibly be required to act in the red zone in spite of its being an essential piece in the dynamics of the Constitution of the Spanish Republic.

II. PROBLEM OF LEGITIMACY.

We have purposely commenced our study with the so-called «Constitutional legality» because it is displayed by the Barcelona Government to the world as a caption in favour of its cause. But it is time to remark that the result of such investigation has brought us must be perforce superficial in relation to the deep significance of the Spanish problem at the present moment. For, above *legality*, there stands *legitimacy*, and if the former is the normal condition of all justice, the latter constitutes its intimate essence and is the key as it were, to its transcending value. Legality is based upon a system of juridical facts and of juridical attributions of rulers and subjects in mutual equilibrium; legitimacy refers rather to the use or abuse which each and every one, within their legal rights, may make of their activity. Legality embraces and defines the area of rights; legitimacy judges the fulfilment of duties. Legality is concerned not to overstep the courses of law called positive; legitimacy is inspired rather upon the requirements of the law and natural right and upon the supreme demands of the ideal right for the progressive realization of the human ends.

When one passes from the generic concept of legality to the specific idea of *Constitutional legality*, one sees that the kind which predominated throughout the course of the XIXth century is reduced to proclaiming, in the organic sense, the supremacy of an individualistic democracy: «one man, one vote»; in the functional sense, to the abdication of all doctrinal and juridical views, and to leaving the course of life to the spontaneous play of liberty recognised, without limit, on a wave of ingenuous optimism, in spite of the suspicious restrictions by which it is sometimes limited as in the case of religious or scholastic matters. But in the face of such a *legality*, we are this time confronted with *reality*: the social reality, organically, under hierarchy, and functionally saturated with a national tradition striving to make way for its future destinies across doctrinal rivalries and economic antagonisms. There then arises a sort of reaction of the real over the legal, of social life over political artifice, which ends by adapting itself in a series of normative laws complementary to the Constitutional code regulating culture and national economy with positive doctrinal and judicial discernment, but with the consequent shrinkage of original freedom that finds itself daily more limited and, as it were, imprisoned by such laws. When the impetus of that reaction grows, there comes a day when the problem of Constitutional legality presents itself, denounced by both sides as illegitimate, unjust and condemned to a more or less superficial revision or to a total and definite subversion. This subversion may be attempted in a double manner: by the peaceful means of legality itself —democracy and liberty end in devouring each other as has occurred in several countries of present-day Europe— or by the violent means of rebellion and revolution: such is precisely the pass to which Spain has been brought.

Indeed, the Republican Constitution of 1931 did not really satisfy any of the Parties. It was certainly not acceptable to those of the section commonly known as «the Right», who were irritated by the tendency to socialization and the thinly veiled aggression towards everything connected with religion. Neither did «the Left» enthuse over the Constitution for they considered it a kind of transaction with their rivals, or a provisional régime of «political revolution» destined to be uprooted sooner or later by the true and definite «social

revolution». What was meant by this was no secret; it was nothing less than exchanging Constitutional liberty for the dictatorship of the proletariat imposing upon Spain a Socialist or Communist cast of the life of the Nation submissive to the «International», or a chimerical «new order» of things based upon Libertarian or Syndical Anarchy: in each and every case sweeping away all trace of the traditionally religious and catholic spirit of the country. So, on the Right and on the Left, there were yearnings for reform or for transformation of the Constitution. But while, on the former side, it was explicit, and the majority believed in obtaining it through the legal instrument of the suffrage, those on the latter side, at least those in the extremist and incomparably more numerous section, were led by their impatience quickly along the road of violence. But one violence provokes an opposite one, notably so when there is no Public Authority over them with sufficient capability and resolution to insist on a system of true justice. Here we come to the threshold of the Spanish tragedy in which it cannot be said that the initiative of violence came from the present leaders of the National Movement, nor that the employment of violence on their part, when it became necessary, partook of the character of the brutal cruelty of the opposing revolution. It is here that the National Movement is profoundly justified, and equally clearly there stands condemned the illegitimacy of the Power, which, whatever its legality may be, could not or would not defend efficaciously the demands of the most fundamental justice: the care of life and property. This, before and during the National Movement, we shall now proceed to examine.

1) BEFORE THE NATIONAL MOVEMENT.

When the so-called «Popular Front» was about to take possession of the office of Government, the tone of violence with which it proposed to exercise that office was only too apparent. The first thing was to rake up in the Press, in meetings and lectures, the slogans of the Revolution of October 1943, glorifying it in the past and putting it forward as a measure for the future. The «Populist» Press of that period overflows with hatred and threats against its adversaries. The style of peaceful controversy which without deprecation

of energy, seems essential to a Democratic and Liberal *regime*, was nowhere to be seen. The real strength of the «Popular Front» was of course the large sector of workers organized on Socialist, Communist or Anarcho-Syndicalist lines, for the Republicans «of the Left», also included in the amalgamation, formed a very small minority. It is not then to be wondered at that the said «Democratic and Liberal» ideal was not deeply felt. At most it was admitted as simply a means or an instrument momentarily favourable to their plans ever concentrated on the rushing of capitalist and *bourgeois* society, on the annihilation of all religion, «the opium of the people»—. One leader, Indalecio Prieto, now Minister of Defence of the Government of Barcelona, who tried to introduce a note of moderation amidst such fanaticism, almost lost his life in the imprudent attempt. Amongst those masses daily inveigled by speakers and writers, exploiters of popular simplicity, everything destructive was enthusiastically welcomed, while anything constructive awakened suspicion and mistrust. The most chimerical utopias were always acclaimed so long as the sacrifices they entailed were not insisted upon. The workers were dazzled by seductive talk of exorbitant rights, of absurd forms of equality and even of exaltation. Nobody troubled to remind them of their duties in a disciplinary and orderly sense of life that alone holds the secret of a just, gradual and possible betterment of the popular class.

All this diffusion of mental explosives, on a large scale, among brains the least disposed to receive such matter without harm, increased a hundred-fold their destructive force when set in powerful organizations like the General Union of Workers, the National Confederation of Labour or the Iberian Anarchist Federation, all formed coercively and maintaining a unity of purpose by an iron discipline obtained by force of violence and threats and momentarily setting aside the ill-feeling and antagonism which separated them. This was reflected in collective action such as the public demonstrations so frequent at this time which may be considered actual experiment of military mobilization, and even in militia parades that did not attempt to hide their true character. In all of these, the spirit of revolution was the outstanding feature, a revolution, indeed, pitiless and of inflexible ruthlessness as the soul of the movement, Francisco

Largo Caballero, often enjoyed proclaiming. Connected with this war machine now ready for action, was the even more efficacious work of silent and careful preparation that, in the methodical manner of Soviet Russia, was being carried on inside the organizations already named. The French writer Jacques Barthoux has revealed details in his booklet *Stalin contre l'Europe: les preuves du complot Communiste*, in which he reproduces articles published in the *Revue des Deux Mondes* of October 1937, where the text of the instructions and the lists of people involved, drawn up by the Secretariate of the General Union of Workers of Madrid in June 1936, may be seen.

An agitation of this nature was bound to show itself almost simultaneously in deeds of violence, forerunners of the great subversion that was being prepared. From February 16 to July 17, 1936, from one extreme of Spain to the other, assaults on persons and property became a daily occurrence. The great majority of these crimes were committed by people connected with the Popular Front. A small minority must be put down to their adversaries, for it was not easy to expect that those who were the object of attack would always preserve an attitude of passive resignation. The Member of Parliament, D. José Calvo Sotelo, rose twice in Parliament not so much to denounce facts that were of public knowledge, but for the purpose of having them entered in the records of the Chamber. His relation, in very concise form, occupies from page 324 to 334 in N.º 17 (Session of April 15), and from page 630 to 638 in N.º 26 (Session of May 4), of the «Diario de Sesiones». The following is a summary, as given by Sr. Calvo Sotelo, of what took place during the first of the periods mentioned, i. e., until April 2.

A) *Assault and Destruction*: 58 Political Centres, 12 by fire, 72 Public and Private Establishments, 45 by fire; 33 Private Houses, 15 by fire; 36 Churches, 106 by fire (destroyed, 56); Total, 199; by fire, 178

B) *Other disorders*: General Strikes, 11; Killed, 74; Mutinies, 169; Burglaries, 24; Shootings, 39; Injured, 345; Assaults on person, 65

Meanwhile, what was the attitude of the responsible Government? What use did it make of a suspension of guarantees dictated by itself? It was characterized by systematic partiality in favour

of the offenders from its own ranks and in detriment of those who claimed the protection of authority and even more of those who, more numerous every day in face of the evident failure of legality, by opposing force with force, made ready to defend their persons, their property and their most cherished ideals. The quiescence of Public Authority in regard to these revolutionary outbreaks was so striking as to allow the Church of San Luis, which is but 200 yards from the Ministry of the Interior, to be set on fire with impunity. More than once, a demand for police aid in the protection of churches menaced with destruction was met with refusal while, on the score of alleged «secret assembly», people who had gathered to guard the interior of a church, were arrested. Excuses were found for the aggressors on the ground of supposed provocation or as a natural reaction of their victims, for the latter were even accused of preparing disorders with the object of stirring up public opinion against the Government. In view of the increase of anarchy in the country, in Parliament, where the Government was often questioned by the opposition members, the Minister of the Interior, Casares Quiroga, went so far as to say that «the Government means to be belligerent» against the menace of «Fascism». The elasticity of this word on the lips of revolutionaries is only too well known. The leaders of the Right Parties who always advised action within legality, emphasized that he did not say that the real source of Fascism in Spain was the disgraceful conduct of the Government in the face of the revolutionary avalanche. Finally, D. José Calvo Sotelo, after one of his energetic speeches, was indicated by the said Minister as responsible for any violence that his attitude might provoke. The threat was not in vain. In the early hours of July 13, the Member of Parliament, Sr. Calvo Sotelo, was dragged from his home and murdered on the way to the Cemetery by police agents in the immediate service of the Ministry of the Interior. It was the tragic drop of blood that caused the bursting out of the hardly contained national indignation.

2. DURING THE NATIONAL MOVEMENT

It is not precisely General Franco, to-day Leader of National Spain, who could be given lessons of military discipline even under

the Republican *régime*. In these words does he express himself after suffering a hard blow, the suppression of the General Military Academy of Zaragoza of which he was the head. Earnestly counselling discipline to the 720 cadets to whom he bids farewell, he says: «that exalted virtue of discipline essential to the life of armies which you must preserve as the most precious of your qualities». But he warns them: «that discipline has not always been defined and understood», because «discipline is not meritorius when command is pleasant and mild; its real significance stands out when our own thoughts advise the contrary to what has been ordered us, when the heart struggles and secretly rebels, when the action of authority may be described as arbitrary or erroneous». «Here», he concludes, «is the discipline we teach you, the discipline we practise, the example we offer you». Later, in a letter published after the rising had taken place, he gave reasons for the date of its occurrence. To have caused the rising on an earlier occasion, apparently favourable, «would have entailed a lack of justification for the undertaking», and so, «of a lack of possibility of realization». Because the Army, he adds, «cannot appear as arbiter of political conflicts nor can it become the regulator of the conduct of Parties nor of the attributions of the Head of the State». A premature intervention in one of the critical junctures of the previous Republican political situation was not advisable «either as a duty of discipline, or by the pligh, of Spain which, though certainly difficult, was still not in imminent danger, but rather to strive for the salvation of Spain, if possible, though legal channels that would prevent these grave upheavals, indispensable and holy, but grievous». Only «when a cause so sacred as that of the motherland was in serious danger» was it inevitable «that the Army should rise to save Spain». This then is General Franco's view on the matter.

It would not be possible to express in better or fewer words what our most authoritative scholars in law taught in former times and would have applied to our time when treating of the question of passive or active resistance to tyrannical power. There are two considerations that surely weighed in the serene mind of the Leader when, on the morning of July 17, 1936, he took command of a Spain conscious of her historic destiny in order to restore her in her genuine spirit

of religion, social justice and national culture. It was the magnitude of the damage already done and about to be done not between rival Parties but on behalf of the common good and the vitality of the country, and it was the certain efficacy of the fight for liberation, now rendered inevitable by the aggression of the enemy, with the assurance that the harm caused would indeed be far less than that to be avoided. To these two considerations, whatever be adduced in justification of the national rising, little more important can be added.

The war broke out with all its severity, made worse by the civil character of the conflict in which the common life of the combatants is a constant temptation to the suppression of the enemy, even unarmed, on the grounds of prevention, reprisal or of simple hatred. We shall not attempt here any apologia for any kind of conduct in its entirety which will be determined and judged, in its day, by History with wider knowledge and calmer objectivity than would be possible to-day. But we may now state, in anticipation, that excepting every excess capable of proof and worthy of condemnation, there is an immeasurable distance between the practice of the war on the part of the National Movement and what, on the side of Red Spain, constitutes the title of greatest ignominy and therefore of redoubled justification of the continuance of the fight against it with the greatest energy and power.

The facts are notorious and here we need only recapitulate them. On the day following the outbreak of war, every part of Spain where the Army had not triumphed from the first moment, was the theatre of most dreadful sights that became implacably worse during many months. People of every age, sex and condition, in enormous numbers—estimated in Madrid alone at nearly seventy thousand victims, and half a million throughout Spain—, were daily dragged from their homes and sacrificed, not infrequently after incredible martyrdom, by irresponsible «popular» militia, on occasion egged on by the Press, without legal process of any kind. It would be useless to inquire the motives of such slaughter; under the accusation of «Fascism» was included, besides quite lawful political activities, all that ennobles or exalts a man's life: the profession of religion as a special title of hatred, intellectual or moral superiority,

family tradition, social rank, economic well-being. It was usual for the guilt to be extended to the family of the person suffering persecution. We would particularly point out the frequent mass assassinations of hapless prisoners committed as reprisals for any feat of arms accomplished by the enemy in the advance on Madrid or in the campaign in the North. A very eloquent indication of the proportions of this unprecedented calamity and of the reign of terror it involved, is the fact that, taking advantage of their extra-territorial privileges, the foreign Embassies in Madrid have revived, for thousands of persecuted Spaniards, the anachronous right of asylum. It should be noted that not even this was always safe from the unbridled ferocity of the mobs.

After the extermination of persons, came the assault upon goods and property. Countless private houses were sacked or burnt with the consequent disappearance of valuables and jewels and of libraries, archives and works of art. A similar fate overtook many firms who devoted themselves to the promotion of wealth, apart from those of the nature of propaganda, like the Press taken over by the Government itself and placed at the service of the Revolution. It goes without saying that the same occurred with houses of a religious character. Respecting the churches, apart from the very great number burned and totally destroyed even to their very architectural outline, all suffered the demolition and ruin of their altars and objects of worship without the least respect for their artistic or historical value. It is not surprising that the contemplation of such a catastrophe should lead foreigners like the American correspondent Walter Cook in the «New York Herald Tribune», (see «Le Temps» of August, 2, 1936), to describe it as «the greatest disaster to art that Spain has known». The eminent French illustrated review «L'Illustration» has just devoted a special issue to this subject.

Such are the facts in possession of the public at large. The Press of Red Spain also recognises them, and among these publications are to be found some who are proud of them. The more «governmental» elements seem to recall them blushing. A recent statement by Martínez Barrio, known as the President of the Cortes, in «La Vanguardia» of Barcelona on February 12, 1938, calling to mind the days at the beginning of the Revolution which he describes as «of mour-

ning» but excusing them because, at the time, «the State was deprived of the necessary organisms for carrying out its governing functions». Yet Martínez Barrio is one of the most outstanding witnesses of the little truth contained in those words. When he became Premier on the day following the national rising, having failed in his attempts to compromise with the «rebel» chiefs, and being replaced 24 hours later by the Cabinet presided over by Giral, the first act of the new Government was a declaration over the wireless to the effect that the Government stood for the most vigorous offensive against «Fascism in arms», and to that end, it had decided to «arm the people». This was immediately followed by a complete relinquishment of the reins of authority which was thus left to syndical militias entirely beyond control. The result could be foreshadowed and the responsibility of that Government clearly established. To the neglect of its duties was added complicity. From Police Headquarters came orders making it almost impossible for persecuted citizens to find refuge anywhere and so it became easier for the insatiable militias to search for and to capture them. It is also a fact that some of the most notorious *tchekas* of Madrid had a representative at Police Headquarters. But why should all this cause surprise when it is remembered that, before the war, these were the people who formed the real strength of the *soi disant* legitimate Government? Even now, when the thirst for blood has been somewhat appeased, in vain does Martínez Barrio boast that his State «has recovered the fullness of its powers and to-day acts efficaciously subjecting all classes of society to the law». It is true that, apparently, after stern repression, the Anarcho-Syndicalist sector that created the greatest difficulties has been subjugated; but the said State is basing itself on others no less fearful for a normal Constitution of political existence, and above all, the shameful past can never be obliterated.

II. THE TRUE SITUATION

It is known that, in good legal doctrine, a fact is not a right yet the former is not foreign or indifferent to the latter. A fact without a right is usurpation but a right without a deed is a useless demand. Possession is not property but the former naturally and logically

accompanies the latter and when there is no other claim to the contrary the one creates the other. If this happens in the realm of private rights, it is even more current in political rights, and to be unaware of the decisive importance that accomplished facts have always exercised, would be to turn one's back on history. If such is the juridical value of the pure fact—in this case the exercise of Public Authority—it will be even greater when it comes to be inserted as a claim justifying a legitimacy already thoroughly well established.

Such is precisely the case of the sovereignty exercised in the national zone. To its juridical foundations previously considered, is added the undoubted success obtained by the Generalissimo Franco in his great undertaking. Already in July 1937 he ruled over 310.437 square kilometres of national territory while Red Spain was reduced to 194.339 sq. km., with approximately fourteen and eight million subjects respectively. Observe also the desertion by the Government of the city of Madrid, capital of the Republic according to Article 5 of the Constitution. From July until now, the provinces of Santander and Asturias have been recovered and also the province of Aragón towards the East.

But what is more interesting than the material facts of occupation, is the fact of normal political life in the occupied zone in so far as the requirements of war allow. There is a Government which enforces the laws existing before the war. Worthy of particular notice is the maintaining of all social and proletarian legislation. It presides over all branches of administration, it ensures the working of Courts of Laws, it keeps perfect public order, it protects monetary values and normal Economy, it collects taxes that have been scarcely increased, and it recruits an Army of exemplary organization as also the different corps of Police. All this argues not only an authority capable of exercising the power it has assumed but also—and this is more important—the tacit assent of the country to the authority that directs it.

IV. FOREIGN VIEWS

Sovereignty does not alone consist of the submission of subjects to authority; it is integrated or completed by recognition from other

sovereignties with whom it must participate in international life. We shall therefore end our study by briefly recording the attitude adopted by the various countries in regard to the Public Authority set up in national Spain against the Red zone.

Whatever be the terminology still in use by a certain Press or by some Radio Stations which continue to speak of «Government Spain» or «Loyal Spain» and of «insurgents» or «rebels», it is a fact that no respectable foreign Government uses such language in regard to the two Powers still operating in Spain. Besides the Holy See, the following eight Powers have recognised National Spain under the leadership of General Franco *de jure* to the absolute exclusion of any other authority: Germany, Italy, Japan, Manchukuo, Hungary, El Salvador, Guatemala, and Austria, Great Britain, Portugal, Switzerland, Poland, Yugoslavia, Nicaragua, Uruguay, and Chile have recognised the national administration *de facto* or being represented by a special Agent. To-day, the Balkan countries are on the point of taking a similar step. Some of these States, like Portugal and Uruguay, do not maintain relations with Red Spain. The remaining nations, in general, have not broken off these relations but have their Ambassadors outside Red Spain, with the exception of Russia, Mexico and France. It is worth noting that this last nation retains her Consul General in San Sebastian in official relations with the national authorities in matters pertaining to passports, railway or postal communications, etc. Actually both zones receive, down to the present, the same non-belligerent treatment accorded by the Non-Intervention Committee; they were not invited to the conference of Nyon but communications in reference thereto were received from France. Finally, the representative of Red Spain is still admitted to the League of Nations. Nevertheless at the penultimate meeting, Spain was not re-elected to a place on the permanent Council which she had kept since the foundation of the League.

There is nothing strange in this formal or virtual recognition of the Sovereignty of National Spain under General Franco by the Powers if we bear in mind the condition that since 1920 fix the criterion of the League of Nations as to the admission within its bounds of new requesting States.

Putting aside the first of these conditions on account of its for-

mularly character, we may remark that the second and fourth allude precisely to that recognition *de jure* or *de facto* and to the declarations and acting of the Government in question in order to its international engagements and more particularly to the prescriptions of the League which refer to armaments. But the third and fourth hit precisely on the organic and functional normality of the applying State in the following terms:

Third question: Does the country possess a stable government and well limited frontier?

Fourth question: Is it freely governed?

All that has been exposed above contains an answer to these questions in a sense quite favourable to the Spain ruled by General Franco and most unfavourable to the other one, which though every day more troubled and disconcerted in a territorial, political, and military point of view, still appears as the Spain officially recognised by the League of Nations, in spite of a palmary contradiction with its own criterion, which by analogy should be worth for all members of the League in the fixing of their attitude towards National Spain.

The suffrage of the great political and juridical authorities abroad is, at least, favourable to the recognition of the sovereignty of General Franco over the national zone and, in consequence, to his right of belligerence. M. Scelle, Professor of the University of Paris, and rather more in sympathy with the Government of Valencia, considers the recognition of belligerence and also as a new Government to be overdue, not only on account of the right of peoples to dispose of their destinies, but also because of the degree of the pre-State consistency obtained by the new situation on the triple base of the State: occupation of territory, a power of authority over a collectivity and, above all, an Army. Messrs. Wehberg, Professor of the Institute of High International Studies, of Geneva, Padelford, Professor of International Law of the School of Law and Diplomacy, of Massachusetts, and Le Fur, Professor of International Law in the University of Paris, as also the British statesman Mr. Eden all express themselves in similar terms with regard to the advisability of a recognition of belligerence. Another English politician, Mr. Churchill, has used the following words about Republican Spain before the Na-

tional Movement «The Spanish Republic was a reproduction, *mutatis mutandis*, of the Kerensky case in Russia. The parliamentary *régime* was a mere appearance. The crimes and outrages culminating in the murder of Calvo Sotelo made it impossible for any Party to consider itself within legality, and made citizens of all classes feel that the life of the country was in jeopardy». Again, Alfred Verdross, Professor of the University of Vienna, judging the subsequent situation of Red Spain, writes: «The so-called Government of Valencia is not legal because, constitutionally, it has no majority in Parliament, and above all, because it no longer exercises sovereignty over a large part of national territory». Consequently and bearing specially in mind the crimes with the complicity of which the said Government has dishonoured and denied itself, Professor Verdross understands that the duty of the nations in the light of the case of Spain is not that of Non-Intervention but that of Intervention on behalf of the authority represented and exercised by General Franco, and this for reasons of humanity in opposition to tyranny and for reasons of human solidarity and the maintaining of that moral universal order ordained by God. «In the name of such principles» —he adds— «Francisco de Vitoria pleaded the doctrine of Intervention practised by ancient Christendom and even by modern Powers for the protection of Christians in Turkey, but neglected in the face of events like those of Russia and Mexico, and to-day in Spain. The secularization», he concludes, «of the international Christian community and its absence from the political community in general, has led the world to a very grave moral crisis. Only a renovation of the spirit of solidarity based on the Christian principles of the Western nations can bring about a change and save Mankind».

Report approved by unanimity by the Academy in its sitting of march 1.st 1938.

Member reporter,
Juan Zaragüeta.

President,
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E. Sanz y Escartín,
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