

**THE SPANISH PARLIAMENT AND THE LEGISLATIVE
DELEGATION DURING THE MODERATE DECADE
(1844-1854)**

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The reign of Isabel II in Spain witnessed the consolidation of various political practices which have proved particularly revealing to understand the real structure of the nineteenth-century Spanish State. Among them stood out the legislative intervention of the government, to the detriment of the Parliament Assembly, during the period in which the Moderate Party ruled the country.

The present study seeks to highlight how, regarding the law preparation process, the silence in the 1845 moderate Constitution and the parliament practice favoured, on the one hand, the emergence of the legislative initiative as an essential attribute of the Government, and, on the other hand, the option for the executive to ask the Parliament for legislative delegations or authorisations in its favour.

A paradigmatic illustration of the way in which the legislative delegation was used by the Spanish moderate-party governments is the Spanish Penal Code of 1848. Firstly because of the scope of its contents ; it must be remembered that this was the Code that brought the *ancien régime's* penal system to an end, and also that it had a structure and a scientific orientation which were going to exert a recognised influence not only in Spain's subsequent Spanish penal codes, until reaching the one that is currently valid – which came into force in 1995 – but also in Latin America. Secondly, because it clearly shows how the Chambers themselves enlarged the legislative initiative of the Government by conferring upon the latter extraordinary powers for its future reform by decree, with the only condition that the Government had to inform the Chambers once the reforms were completed.

This study has been carried using the documents available in the Archive of the Spanish Parliament, the interpretation of legislative delegation made by the jurists of the time and, above all, the wealth of documentation, unpublished and handwritten, about the process of preparation and passing of the 1848 Penal Code can be found in the

Archive of the General Coding Commission (Ministry of Justice) and the most significant works of its commentators.

I. Interrelationship between the legislative and executive powers in the moderate decade

As is well known, the expression Moderate Decade in Spain corresponds to the period comprised between 1844 and 1854, during which the capacity to exercise the government powers was in the hands of the Moderate Party¹.

The new moderate political system took its final shape in the 1845 Constitution, which served the economic and political interests of owners as well as those of an enlightened minority that should rule the country². Comparing it to the constitution of 1837³, in force until then, the 1845 Constitution meant a step forward in a purely monarchical sense and a step backward in the purely constitutional sense⁴. Concerning the statement about the double representation or shared sovereignty, Mr. Rey-Cortes allowed the moderate party to shape a political regime, within the representative system, based on monitoring Crown's control over political actions through political actions⁵.

¹ During this period, the State's primary role revolved around four basic pillars : law and order ; security and protection of the property ; an overall centralising, standardising policy ; and, finally, as an ideological foundation of this new phase, doctrinarism. About this, see López Puerta, L. *Moderados y progresistas, (1833-1868)*, Madrid, 1971. Comellas, J. L. *Los Moderados en el poder (1844-1854)*, Madrid, 1979. Canovas Sánchez, F. *El Partido Moderado*, Madrid, 1982. Terron, E. *Sociedad e ideología en los orígenes de la España contemporánea*, Barcelona, 1969, p. 157. Díez del Corral, L. *El Liberalismo doctrinario*, Madrid, 1945. Garronena Morales, A. *El Ateneo de Madrid y la teoría de la Monarquía liberal (1836-1847)*. Madrid, 1974, p. 520.

² Aranguren, J. L. *Moral y sociedad. La moral social española en el siglo XIX*, Madrid, 1974, p. 63 and 96-97.

³ The constitutional texts can be found in Sevilla Andrés, D. *Constituciones y otras Leyes y Proyectos políticos de España*, Madrid, 1969. Vol. I.

⁴ For a general perspective, see Valera, J. *Historia General de España* de Modesto Lafuente, Vol. 23, Barcelona, 1890, p. 1. Tomás Font de Mora, M. A. « La preparación de la Constitución de 1845 », in *Revista de Estudios Políticos* (REP), 73 (1991), p. 229-241. Medina Muñoz, M. A, « La reforma constitucional de 1845 », in REP, 203 (1975), p. 75-105. Canovas Sánchez, F. *El moderantismo y la Constitución española de 1845*, Madrid, 1982.

⁵ As stated by Sánchez Agesta, shared sovereignty « means [...] that both institutions are at the same level ; a situation which later evolved into the primacy of

A. The legislative initiative as an exercise of the government function

Within the legislative context, the 1845 Constitution established the concurrence of the Crown and the Parliament in the development of laws (Art. 12). The legislative initiative corresponded to the King and to each one of the co-legislating bodies (Art. 35), but there was also the capacity for an absolute, unlimited veto of the former following legal agreements reached by the latter (Art. 36). The executive power was also vested in the Crown (Art. 43), with a prerogative to issue the decrees, regulations and instructions for the enforcement of the laws (Art. 45, 1st), through the Ministers, appointed and separated by the King (Art. 45, 10th).

But, in fact, the legal initiative was exercised by the Government. In that sense, the Crown Ministers of the time assumed the government role understood as an eminently political function, one of the most outstanding acts being the exercise of the legal initiative through the proposal of Bills of Law¹. On the other hand, the Parliament took a secondary role, focusing on the debates, the presentation of amendments, and their approval or rejection. To all of this must be added the frequency with which governments decided to ask the Parliament Assembly to give them legislative delegations or authorisations, which were relevant not only by their frequency but also by the type of issues covered².

The exercise of the legal initiative and the utilisation and significance of legislative delegations consequently become two

the Crown, as a stable body», which was helped by the King's prerogative to appoint and dismiss Ministers, the unlimited capacity to dissolve the Low Chamber and the growing election fraud levels (Sánchez Agesta, L. *Historia del constitucionalismo español*, p. 232-35). See also Artola, M. *Partidos y programas políticos. 1808-1936*, Madrid, 1947, Vol. I, p. 119-127 and 182. Garrorena Morales, A. *El Ateneo de Madrid. Op. cit.*, p. 607-671. Marcuello Benedicto, J. I. *La práctica parlamentaria en el Reinado de Isabel II*, Madrid, 1986, p. 28. «La práctica del poder moderador de la Corona en la época de Isabel II», in *REP*, 55 (1987), p. 197-236. «La Corona y la desnaturalización del parlamentarismo isabelino», in *Ayer*, 29, Isabel Burdiel, ed. (1998), p. 15-36, p. 29-30.

¹ Sánchez Agesta, L. «Gobierno y responsabilidad», *REP*, 113-4, (1960), p. 35-63, p. 37.

² The analysis of the sessions held between 1845 and 1853 reveals an absolute majority of bills of law as opposed to proposals of law. See Enrile Aleix, J. A. *El Senado en la Década Moderada (1845-1854)*, Madrid, 1980, p. 269. Marcuello Benedicto, J. I. *La práctica parlamentaria en el reinado de Isabel II*, p. 83-88 and 249.

essential factors when one is trying to have a faithful image of the position held in the law development process by the governments during the reign of Isabel II¹. This is equally indicative of the way in which the behaviour of the actors participating in the moderate system disproved or reinforced its characteristics².

During the Moderate Decade, the process of discussion and passing of the laws was subject to the legislative procedure foreseen in the Regulations of the co-legislating bodies³. In accordance with the Senate Regulations of March 10, 1847 and the Congress Regulations dated May 4 of the same year, the bills of law presented by the Government had to be submitted to the Sections of the latter, which had to become familiar with the contents of the Bill. Next, each Section had to choose a member among its staff in order to create a special Commission entrusted with the preparation of a report. In that way, the Commission managed to reflect the criteria existing beforehand in the plenary meeting of the Chamber, through which both the debates and the final vote during the plenary sessions became more agile and better focused ; the drawback in this system was that it went to the detriment of the views defended by the minorities. The Commission in charge of drawing up a report thus became a specialised body in the matter dealt with in the Bill⁴.

Once the report had been elaborated, it was discussed and voted in the corresponding Chamber in a public session. It must be highlighted that the debate was not about the bill or the proposal of law presented by the Government, but on the report on it prepared by

¹ Marcuello Benedicto, J. I. *La practica parlamentaria en el reinado de Isabel II*, *op. cit.*, p. 83-85 and 88.

² Pro Ruiz, J. « La práctica política de los gobiernos antiparlamentarios del final de la Década moderada (1851-54) », *Revista de las Cortes Generales* (RCG), 12 (1987), p. 7-55 and 8.

³ Congress regulations dated May 4, 1847 (*Reglamentos del Congreso de los Diputados y de las Cortes*, Madrid, 1977). Regulations for the internal government of the Senate, dated March 10, 1847 (*Reglamentos del Senado (1834-1993)*, Madrid, 1993). Marcuello Benedicto, J. I. « Los Reglamentos de las Cortes en la época de Isabel II », RCG, 4 (1985), p. 155-196. Artola, M. *La burguesía revolucionaria (1808-1874)*, *op. cit.*, p. 134-135.

⁴ Paniagua Soto, J.L. « El sistema de Comisiones en el Parlamento Español », in *Revista de la Facultad de Derecho de la Universidad Complutense de Madrid*, 10 (1986), p. 141-173, p. 114. Santaollala López, F. *Derecho Parlamentario Español*, Madrid, 1984, p. 141. Marcuello Benedicto, J. I. « Los Reglamentos de las Cortes en la época de Isabel II », *op. cit.*, p. 169.

the special Commission¹. After being officially issued by the Commission, the report went through three reading sessions: A discussion of the report in its entirety; another detailed discussion about the part containing the provisions; and a vote about the whole report so that it could be finally approved. The debates could not be closed until at least three members of parliament who supported the report and another three who were against it had taken part in them², and there were no restrictions on the number of interventions by either the members of the report-elaborating Commission or the Ministers³. For the specific case of codes, there could be several general discussions about the different books or titles⁴. Finally, the passing of a law required an absolute plurality of votes, with the presence of half plus one of the total number of members of the Chambers, and the King's sanction⁵.

B. Meaning and scope of legislative delegations

Legislative delegations were not explicitly regulated in the 1845 Constitution. Although they were conceded through a legal agreement reached at the Parliament, the constitutional silence actually facilitated the concession of several types of legislative delegations according to the range and limits of the transfers requested by the Government and depending on the guarantees provided by the latter for their subsequent monitoring by the Parliament. The Government could request a legislative delegation to publish a Bill of Law as a Law on its own initiative. In this type of delegation, the bill of law in question was presented to the Parliament attached to the Bill of Law for Legislative Authorisation, not to be treated in accordance with the Regulations, but for the Parliament to authorise the executive to publish it as a law, without having to discuss the part containing the provisions. The Bill of Law did not have to go through the three readings required in a public plenary meeting in each Chamber, the discussion and vote referring to the Bill of Law for Legislative Authorisation. In other cases, the Parliament was informed about the

¹ Art. 88. Senate Regulations, 1847.

² Art. 110, Congress Regulations. 1847.

³ Art. 132, Congress Regulations. Art. 77. Senate Regulations.

⁴ Art. 112, Congress Regulations.

⁵ Arts. 37 and 44 of the 1845 Constitution.

matter to be legislated, and finally, only a confidence vote could be requested¹.

The sense and scope of legislative delegations was interpreted differently by the moderate and progressive parties. The latter considered them unconstitutional on the basis of the legislative authority shared by the Parliament and the King and the principle of regulation self-normativity, a guarantee of autonomy for the Parliament, which could not delegate the legal procedure to the executive. A different stance was defended by the moderate Governments. They argued that there was no unconstitutionality on two grounds : the absence of an explicit constitutional prohibition and the lower value given to the binding nature of Parliament regulations, which in their opinion did not have the force of a law, although they deemed it necessary that the legislative delegation should be awarded through a law passed by the Parliament. This opinion, which came to be known as « parliamentary omnipotence » at the time, implied a clear limitation of the representative system, as it did not only mean that the Parliament relinquished its legislative powers but also that the opposition minorities, which found a guarantee in the public thorough discussion of the parts of the laws containing the provisions, were silenced².

The significance and utility of ruling through legislative authorisations or delegations was already described at the time. Mr. Juan Rico y Amat, defined them as follows : « A message of attention that the Ministers send to the members of parliament at the end of December. Its objective is to harvest in the villages for the following year, without the licence in writing they have to obtain before from the vineyard administrator, as is foreseen in the rural ordinances³ ». And in his description of the Parliament Assembly held in 1846 (with a Moderate-party majority), Mr. Sánchez de Fuentes pointed out that : « We recognise the abuse that has been made of authorisations, we admit their inconvenience...and, nevertheless, there is not enough moral strength to identify the source of this, to attack it at its roots, in order to give a new direction to the always illegal

¹ Marcuello Benedicto, J. I. *La Práctica parlamentaria en el reinado de Isabel II*, op. cit., p. 98-99. Virgala Foruria, E. *La Delegación legislativa en la Constitución y los decretos legislativos como normas con rango incondicionado de ley*, Madrid, 1991, p. 11-33.

² Marcuello Benedicto, J. I. *La Práctica parlamentaria en el reinado de Isabel II*, op. cit., p. 95

³ Rico y Amat, J. *Diccionario de los políticos*, op. cit., p. 118-119.

functioning of governments... It is undoubtedly very convenient to rule with the system of authorisations and it is even more convenient to award them to all governments regardless of opinions or political nuances ...Oh, blessed kind parliament majorities¹ ! ».

The resort to the legislative delegation was used by the Government presided by Mr. Narváez, in 1848, to obtain the passing of the Penal Code in the Legislative Chambers. In this way, the all-important reform of penal legislation in Spain did not have to go through the set debate procedure. This decision was the object of strong criticism ; among these attacks stands out the one made by the progressive politician Mr. Ruiz Canejares : « the Congress is only busy with authorisations, authorisations for everything. It seems as if nothing could be done unless it is through these authorisations² ».

II. The Spanish penal code of 1848 as a paradigmatic example of legislative delegation

One of the most relevant legal texts approved by the third Moderate government of Mr. Narváez (1847- 1851) is, without the shadow of a doubt, the 1848 Penal Code³. This penal text, drawn up by the General Coding Commission, which had been created in 1843, put an end to a long period characterised by the absence of a systematised penal legislation, because it was merely replacing the old-fashioned penal legislation inherited from the *Ancien Régime*. Its structure and scientific orientation was going to have a recognised influence not only on later Spanish Penal Codes (until the one

¹ Sánchez de Fuentes, J. *Fisonomía de las Cortes de 1846*, Madrid, 1850, p. 138.

² Record of Parliamentary Proceedings. Congress (from now on RPPC), 1847-48, 3-14-1848, n° 82, p. 1779.

³ See Pacheco, J. F. *El Código penal concordado y comentado*, 3 vols., Madrid, 1st ed., 1848. Antón Oneca, J. « El Código penal de 1848 y Don Joaquín Francisco Pacheco », *Anuario de Derecho Penal y Ciencias Penales* (ADPCP), 18 (1965), p. 473-495. Candil Jiménez, F., « Observaciones sobre la intervención de Joaquín Francisco Pacheco en la elaboración del Código penal de 1848 », in *Anuario de Derecho Penal y Ciencias Penales* (ADPCP), 28 (1975), p. 405-441. Lasso Gaité, J. F., *Codificación Penal. Crónica de la Codificación Española*, V, I, and II, Madrid, 1970. Sánchez González, M. D., *La Codificación penal española : los Códigos de 1848 y 1850*, Madrid, 2004. Iñesta Pastor, E., *El Código Penal Español de 1848*, Doctoral Thesis, University of Alicante (Spain), 2005.

currently valid -which came into force in 1995) but also on those developed in Latin America¹.

The penal text ensured the defence of the legal values created by the organisation of the moderate State, although it is necessary to point out that the Penal Code was a technical type of reform, the need of which was felt by every representative of liberalism ; after all, the General Coding Commission was created with no political biases².

A. The method chosen for the presentation and passing of the Penal Code in the legislative Chambers

The moderate-party Government utilised the legislative delegation to present the project of penal code and have it approved by the Parliament Assembly. In accordance with this strategy, an Authorisation Act was presented before the Senate on February 13, 1847, in which there was a request for the attached Penal Code to be passed. Its examination is of special interest because it provides an exceptional example of how the Chambers not only did not limit the Government's legislative initiative but even enlarged it by conferring extraordinary powers on the Government for its later reform.

The use of the legislative delegation was supported by the General Coding Commission³ and by the doctrine of the time. Thus,

¹ About the influence of Spanish penal codes on Coding in Latin America, see Iñesta Pastor, E., « La proyección hispanoamericana del Código Penal español de 1848 », *Estudios, Proceedings of the XIII Congress of the International Institute of Indiano Law History*, San Juan de Puerto Rico, 2003, II, p. 493-521. « El Código Penal chileno de 1874 », *Revista Chilena de Historia del Derecho*, 19 (2003-2004), Santiago de Chile, (2006), p. 293-328. « La reforma penal del Perú independiente : El Código Penal de 1863 », *Proceedings of the XV Congreso of the Internacional Institute of Indiano Law History*, Cordova (España) 2005 (still not published).

² This opinion was expressed by Mr. Manuel Seijas Lozano, editor of the Code at the Congress : « When the Codes Commission was formed ... there were in it men of all convictions, of all doctrines, so that no single party was in control, that no political opinion prevailed over another ». (RPPC, 1847-48, 3-10-1848, p. 1714). Similarly, it is necessary to underline the efforts of the successive Governments to get the project of Penal Code passed by the Chambers, efforts that were affected by the turbulent political life of the time. Valera referred to a « host of intrigues and events behind the scenes » (*Historia General de España, op. cit.*, p. 52-53). Comellas, J. L., *Los Moderados en el poder (1844-1854), op. cit.*, p. 213-252.

³ It is important to bear in mind that, already during the process of preparation of the draft for the Project of a Penal Code, the then first Government presided by Narváez contacted the General Coding Commission in September 1844 to get advice on whether or not it would be convenient to obtain the authorisation of the Parliament

Mr. Francisco de Cárdenas, in the journal *El Derecho Moderno*, considered that it was in tune with the « spirit of the Constitution, which demands the passing of the laws... but discussing them is not necessary¹ ».

1. The Authorisation Act presented by Mr. Juan Bravo Murillo

During the 1847-48 period, Mr Juan Bravo Murillo, Minister of Justice at the Cabinet presided by Mr Carlos Martínez de Irujo, the Duke of Sotomayor, promoted a Bill of Law of Legislative Authorisation for the publication of the Penal Code before the Senate on February 13, 1847².

The Bill of Law for the Authorisation was accompanied by a Motive Support in which the choice of the method selected for the passing of the Code was justified on such grounds as the pressing need for a penal reform, the technical complexity and length of the work and, above all, the repeated use of legislative delegations during that period: « ... a method which in countless similar cases has been followed by the Parliament Assembly, the history of which offers multiple examples of authorisations conceded to the Government to

Assembly in order to publish and implement the Codes. The Commission objected to their discussion at the Assembly « because the unity of thought and order would be endangered ». (Archive of the General Coding Commission of the Ministry of Justice (*ACGCM^oJ* by the Spanish initials), Organisation File 1 of the Commission, 3rd Folder, Organisations and Commission works, single document : Secretary's Office Summaries, fol. 27).

¹ If the Government requests authorisation to propose a law and the Parliament Assembly gives it « this law is made with the intervention of the powers that are entitled to form it : the Crown is present ... and it is the Crown that sanctions the law ; and the Assembly is present too, because when it gives the Government the authorisation, it is in fact passing it categorically ». On the other hand, it explains that Parliaments are not a suitable body for the preparation of a Code : « what they can and must do... is judge the Code in its entirety,... decide whether it is in accordance with the ideas prevailing in the country, and that is why it becomes convenient to ask it for advice about the need and urgency for its publication », but not about the details because « they may as well render the most perfect legislative work useless ». (Cárdenas, F. de, « De la autoridad competente para hacer la reforma penal », in *El Derecho Moderno, Revista de Jurisprudencia y Administración*, I, Madrid, 1848, p. 116-119).

² Record of Parliamentary Proceedings. *Senate* (RPPS from now on) ; term of office 1846-47, 2-13-1847, N° 17, p. 177-178. The Bill of Law can be found in the Appendix, p. 179-216.

publish and even to prepare laws that are shorter and equally or less important than the Penal Code¹ ».

The document subject to the passing of the Assembly Meeting was a Bill of Law, signed by Mr. Juan Bravo Murillo and formed by three articles² :

a) Art. 1 : « The project of Code that is presented by Her Majesty's Government, and the provisional law that accompanies it, whereby are established the rules for the application of the provisions contained in the same Code, for now and until the code of procedures and the law about the constitution of the courts are published, will be issued and observed in the Peninsula and in the adjacent Islands, coming into force since July 1 of the present year » .

b) Art. 2 : « All the laws, Royal decrees, Orders and opposite provisions are abolished from that same date » .

c) Art. 3 : Finally, the Government will adopt the measures required for the enforcement of this law » .

Following what is foreseen in the legislative proceedings at the Senate, the Commission entrusted with the tasks of informing about the Bill of Law for the publication of the Penal Code and writing the corresponding report, was appointed on February 20, 1847³. The task could not be completed, though, due to the fall of the government on March 28, 1847.

2. The Authorisation Act presented by the Reporting Commission of the Senate, January 31, 1848

In the new legislative period, starting on November 15, 1847, in the third Government presided by Mr. Narváez, and with Mr. Lorenzo Arrazola as the Minister of Justice, a second Senate Commission⁴ drew up the report authorising the Government to

¹ RPPS, 1846-47, 2-13-1847, Append. to n° 17, p. 179.

² *Ibidem*, p. 180.

³ The Commission was formed by Mr. Ángel Casimiro Govantes, Mr. Juan Nepomuceno Fernández San Miguel, Mr. Juan Nicasio Gallego, Mr. Juan Antonio Castejón and Mr. Claudio Antón de Luzuriaga ». (RPPS, 1847-48, 2-20-1847, N° 18, p. 219). The text of the Penal Code presented by the Commission can be seen in the Archive of the General Coding Commission in : File 3 of the Penal Code : *1848 Penal Code (works for its preparation)*, 3rd folder : *Three complete manuscripts, A, B, and C, of the Draft*, Doc. 3 : *Manuscript C, Draft submitted to the Minister on December 23, 1845*.

⁴ This second commission was formed by Mr. Olavarrieta, Mr. Gualberto González, Mr. Barrio Ayuso, Mr. Castejón, and Mr. Claudio Antón de Luzuriaga.

publish the penal Code. This report modified the text of the Authorisation Bill of Law of Mr. Bravo Murillo, making it even more favourable to the Government's interests¹.

The report was read at the High Chamber on January 31, 1848, highlighting the pressing need for a penal reform and the impossibility for the Chambers to debate on a penal code without threatening its structure. Nevertheless, « in order to overcome any scruples, it (the Commission) has concluded that the most advisable thing is to recommend the Government to be vigilant in the follow-up of the effects that are gradually produced by the application of the Code, leaving the Government in charge of presenting before the Parliament assembly the reforms or improvements demanded or suggested by the experience, and conferring upon the Government powers to carry out the ones which were urgent, though always informing the Assembly² ».

The comparison between the original text of the Authorisation Bill of Law presented by Mr. Bravo Murillo on February 13, 1847 and the later version of the Authorisation Act contained in the report of the Commission dated January 31, 1848, reveals significant variations³ :

1st) Two important modifications are easily identified in Art. 1 : the paragraph which established that the Code would come into effect since July 1 and the reference to the Procedures Act as well as the Courts Act to justify the fact that the Temporary Law was eliminated. The final drawing-up read like this : « The Project of a Penal Code presented by the Government as well as the accompanying Temporary Law which facilitates its implementation are published, of course, and will be observed as a law both in the Peninsula and adjacent Islands, from the day fixed by the Government within four months of the date on which the Royal sanction arrived ».

2^o) The derogatory clause from the previous text was removed from Art. 2, the new version being like this : « The Government will send a proposal to the Parliament Assembly before three years have gone by, or earlier if it is considered appropriate, with the proposals or improvements that must be done within the Code, accompanied with the remarks that the courts had to send at least once a year ».

¹ It seems that the Reporting Commission studied the Project of Penal Code seriously, since we know, from the Report of Parliamentary Proceedings at the Senate, that a question was made about the functioning of its works. (RPPS, 1847-48, 1-3-1848, n° 21, p. 311).

² RPPS, 1847-48. 1-31-1848, Append. 3, N° 27, p. 397-398.

³ *Ibidem*, p. 398.

3º) A new Art 3 : « The Government will carry out on its own any reforms proposed by the courts, if it were big, reporting to the Parliament as soon as possible ».

4º) Art 4 modifies the former Art. 3 : « The Government will adopt the measures or provisions required for the execution of this law ».

The Authorisation Act was accompanied by the Text of the penal Code, so that the latter could be passed as a law, and the Temporary Law for its application.

B. The parliament debates

The examination of the Record of Parliamentary Proceedings at the Senate and the Congress dedicated to the discussion of the Authorisations Act presented for the passing of the 1848 Penal code, provides an excellent source of knowledge to analyse the different positions held by moderate and progressive politicians concerning the legislative delegation as well as their different political ascriptions in the treatment of penal issues.

The lack of interest among their members was a general characteristic of the debates in both Chambers¹. This is proved by the speed in the discussion (only three sessions were used at the Senate and six at the Congress) and the absenteeism of senators and members of the Congress, even though it was an important area like penal issues². The social importance of the matter that did not go through the discussion was highlighted by the progressive politicians, who

¹ To find out the name of senators and members of the Congress, see Pastor Díaz, N. & Cárdenas, F. de, *Galería de Españoles célebres contemporáneos*, Madrid, 1841-1846. *Estadística del personal y vicisitudes de las Cortes de los Ministerios*, Madrid, 1858. Rico y Amat, J. *El libro de los diputados y senadores. op. cit.* Llanos Chinchón, *Biografías de Jurisconsultos españoles publicadas por la Academia de Jurisprudencia y Legislación*, Madrid, 1911. Lasso Gaité, J. F. *El Ministerio de Justicia. Su imagen histórica (1714-1981)*, Madrid, 1984. Ruiz Cortés, F. y Sánchez Cobos, F., *Diccionario biográfico de personajes históricos españoles del siglo XIX español*. Madrid, 1998.

² Mr. Barrio Ayuso said the following at the Senate « I see it almost deserted ; and ... it is quite strange, because ... this is ... a Penal Code, under which all of us will fall within a few days... » (RPPS, 1847-48, 2-14-1848, nº 30, p. 474. Mr. Cándido Nocedal, wanted to underline-how « deserted » the seats of the Congress were. The progressive Mr. Gómez de la Serna focused on « the few people that had taken part in this interesting discussion ». (RPPC, 1846-47,3-11-1847, nº 81, p.1757, 3-14-1847, nº 82, p. 1765).

emphasised its close relationship with individual rights and fundamental laws¹.

The lack of interest clearly had a twofold explanation : the fact that the majority in the Chambers was ascribed to the Government², and the way in which the passing of the Penal Code was carried out through an Authorisation Act, since it turned out to be obvious that the purpose was to give « a vote of confidence », something that the opposition criticised³. Finally, it must be remembered that the debates were taking place during a period of political upheaval in Spain that followed the revolutionary events occurred in Europe in 1848⁴. As it

¹ Mr. Fernández Baeza declared this at the Congress : a law that « is going the touch all that is the most sacred, the honour and the life of men... ». Similarly, Gómez de la Serna, who said that « a Code represents a whole moral system and a complete set of legislation ; it affects all political laws and touches the individual guarantees, which in turn are the guarantee of political laws ». (RPPC, 1847-48, 11-3-1848, n° 80, p. 1732. and 3-14-1848, n° 82, p. 1765-1766).

² The Senate was described in the Constitution of 1845 as an assembly which supported the Queen, with an unlimited number of members that held their post for life. See Enrile Aleix, J. A., *El Senado en la Década Moderada (1845-1854)*, *op. cit.* Bertelsen Repetto, R., *El Senado en España*, Madrid, 1974. Sevilla Andrés, D., *El Senado de 1845* ». in *Homenaje a Don Nicolás Pérez Serrano*, Madrid, 1959, Vol. II, p. 3-28, p. 18. Medina Muñoz, M. Á., « La reforma constitucional de 1845 », *op. cit.* Campoamor, R. de, *Historia crítica de las Cortes reformadoras (Complete Works)*, Madrid, 1901, II, p. 115-156. Balmes, J., « La organización del Senado », (*Complete Works*), VI, Madrid, 1950, p. 980. The Congress, which submitted the Penal Code to a vote, was chosen after a census-based vote in accordance with the moderate Election Law of March 1846. Its composition resulted from the election held by Mr. Istúriz's cabinet on December 6, 1847. Although the results gave the moderate party a wide majority, 252 representatives, the progressive opposition experienced a spectacular growth, some of its most outstanding members being Manuel Cortina, Francisco Olózaga, Juan Álvarez Mendizábal, Evaristo Fernández San Miguel, Sancho, Francisco Lujan, and Pedro Gómez de la Serna. See Martínez Cuadrado, M., *Elecciones y Partidos políticos de España*, Madrid, 1969, I, p. 63. Artola, M., *Partidos y Programas políticos 1808-1936. Op. cit.*, I, p. 49-50. Fernández Almagro, M., « Las Cortes del siglo XIX y la práctica electoral », *REP*, 5 (1943), p. 383-416. Ull Pont, E. J. « El sufragio censitario en el Derecho electoral español », in *REP*, 195-196 (1974), p. 161-191, p. 165-169. Monselle Cisneros, M. F. & Pérez Díaz, R. L., « La práctica electoral en el reinado de Isabel II », *RCG*, 16 (1989), p. 143-177. Arturo Fernández Domínguez, *Leyes Electorales Españolas de Diputados a Cortes en el siglo XIX*, Madrid, 1992, p. 91.

³ Gómez de La Serna & Ruiz Canejares (RPPC, 1846-47, 3-15-1847, N° 83, p. 1779).

⁴ Mr. Narváez obtained the authorisation of the Parliament Assembly to suspend the constitutional guarantees and later ordered their abolition. It is necessary to clarify the reasons for the events that took place in Spain in 1848 because, although the revolutionary events occurred in Europe may be at the background, what happened

was a strong text in which crimes were heavily punished and penalties or sentences inevitably had to be imposed or served, the penal code, became an ideal instrument to maintain law and order¹.

The meaning and scope that the legislative delegation had for the moderate party became very obvious in the address to the Senate by the Minister of Grace and Justice, Mr. Lorenzo Arrazola, who focused the issue that was being debated on « There are two evident things, namely the authorisation and the reasons, let us say, for that same authorisation. The authorisation is followed by one of the most important projects that can be presented which, however, here appears only as a complement for the authorisation... What neither the Commission nor the Government can do, in the form with which it has been presented, is to admit amendments or additions, because in that case there would be a contradiction. Requesting that a project should be passed through an authorisation and admitting the modifications, would be contradictory..., the Government, taking into account the reasons..., will from now on be able to introduce, always with the consent of the Assembly, the modifications that it thinks advisable,...in order to calm the conscience of senators as well as that of the members of the other Chamber ». In conclusion, there are three basic aspects in relation to the authorisation requested : « First, the whole, and then it does not matter if there is a more detailed, in-depth discussion ; but as I have said, what issues should be raised when we are dealing with the authorisation in its entirety ? Firstly, if the need exists for this Code ; secondly, if the Code presented to the Assembly

in Spain is not directly related to the European situation. Additionally, the instigators of the riots that caused unrest in the country were groups with very different political affiliations. See Palacio Atard, V. *La España del Siglo XIX, 1808-1898*, Madrid, 1981, p. 267-273. Cabezas Sánchez Albornoz, S. *Los movimientos revolucionarios de 1820, 1830 y 1848 en sus documentos*, Barcelona 1998. Valera, J., *Historia General de España, op. cit.*, p. 83, 93 and 109. Garrido, F. *Historia del reinado del último Borbón de España*. Barcelona, 1868-69, III, p. 60-61. Eiras, A. *El partido demócrata español*, Madrid, 1961, p. 133-134 and 137. Rico Y Amat, J. *Historia política y parlamentaria de España*, Madrid, 1861, III, p. 527

¹ The influence of the Moderate approach gave the Code a certain tone of harshness that becomes particularly visible in the cases of crimes against the State and against religion. See Jimeénez De Asua, L., *Tratado de Derecho Penal*. Buenos Aires, 1964, Vol. I, p. 758. Antón Oneca, J., « El Código penal de 1848 y Don Joaquín Francisco Pacheco », *op. cit.*, p. 485. Núñez Barbero, L R., *La Reforma penal de 1870*, Salamanca 1969, p. 13. Barbero Santos, M., *Política y Derecho Penal en España*, Madrid, 1977, p. 28-29.

is the one that should be brought before it, and thirdly, if the way to present it is the most suitable one¹ ».

In the discussion of the Penal Code, the Moderates will mention again three of the arguments most commonly used by them to support legislative delegation : the Chambers' inability to understand properly the matter dealt with in the law (the complexity of penal legislation in this case), the pressing need for its reform², and, above all, its constitutionality. The progressive opposition was radically against this.

According to some contemporaries, the criticism was not too relevant³. However, it can be inferred from the examination of the record of parliamentary proceedings that the method used to present the Code did not prevent representatives from analysing many of its precepts ; there were replies and counterreplies ; i.e. the objections cannot be considered so irrelevant. Leaving aside the strictly penal issues⁴, the review of the interventions reveals that the largest proportion of criticism focuses on the way in which the text was presented and on its potential unconstitutionality. But the strongest attacks were undoubtedly directed at Arts. 2 and 3, which authorised the Government to reform the Code.

1. The debates at the Senate

Once the Authorisation Project had been passed, the debates started on February 14, 1848, and finished two days later.

The suitability of the system proposed for the Discussion of the Project was defended by the Reporting Commission, on the grounds that the lengthy, protracted article-by-article discussion was not

¹ RPPS, 1847-48, 2-15-1848, n° 31, p. 493.

² RPPS, 1847-48, 14-2-1848, n° 30, p. 474. The Minister of Justice and Grace, Mr. Lorenzo Arrazola, highlighted the fact that, in his opinion, the debates led to confusion : « nobody knows who they should be listening to or doing when, initially, there were some people who had faith and knew what they were going to vote, and that without having had a thorough discussion ; now they no longer know what to decide ». (RPPC, 1847-48, 3-15-1848, n° 83, p. 1800).

³ Joaquín Francisco Pacheco, *El Código Penal concordado y comentado, op. cit.*, I, p. LVIII. Tomás Maria de Vizmanos & Cirilo Álvarez Martínez, *Comentarios al nuevo Código penal*. Madrid, 1848, I., p. XLIII

⁴ The most common objections had to do with issues such as political or religious crimes, crimes against the property, those committed by civil servants or public officials, damages or injuries, the system of penalties/sentences and their measurement, the death penalty, suppressed crimes and a number of technical aspects strictly associated with the penal context.

compatible with the pressing need for a new Penal Code¹. This opinion was shared by the Members of the High Chamber that were politically close to the moderate party².

Nevertheless, the way to present the Code before the Chambers was strongly criticised by the progressive senator Mr. Francisco Cabello : « Is it appropriate to bring to a discussion Codes that have already been made ?, is it the way to receive the correct illustration in the co-legislating bodies, to start saying : this cannot be discussed because it is too long ; this cannot be amended because it would render all that has already been done useless ; this must definitely be adopted, because it is better than what we used to have ? ». Mr. Cabello insisted on the fact that the discussion at the Chambers was absolutely essential³, and suggested that the period for the presentation of reforms should be established every year instead of every three years, as it was foreseen in Art. 2, and always with the inescapable requirement that those reforms should be brought before the Parliament Assembly⁴. He made it equally clear that the 3rd Article includes a delegation of the Assembly prerogatives to the Government : « it means renouncing to the right to enforce the law and conferring that right upon the government », and explained that he strongly objected to any reform being introduced without the Assembly⁵.

In response to this criticism, Mr. Claudio Antón de Luzuriaga, on behalf of the Reporting Commission, clarified that the 3rd article only authorised « partial reforms », and on the condition that they should be brought before the Parliament Assembly, which prevented the abdication by the latter in the Government⁶.

Of special interest is the amendment to the 3rd article presented by Mr. Manuel Pando, the Marquis of Miraflores, who suggested removing the condition that reforms had to be proposed by the Courts, as he considered that the Code was a matter of public interest. The amendment was admitted, after which the text of Art. 3 was rewritten

¹ RPPS, 1847-48, 2-14-1848, n° 30, p. 474.

² Two of them were Mr. Armendáriz, the Bishop of Cordova, and Mr. Manuel Pando, the Marquis of Miraflores, (RPPS, 1847-48, 14, 15 and 2-16-1848, N° 30, p. 471, N° 31, p. 488, n° 32, p. 504-505)

³ RPPS, 1847-48, 2-16-1848, n° 32, p. 503.

⁴ RPPS, 1847-48, 2-16-1848, n° 32, p. 503.

⁵ *Ibidem*, p. 503.

⁶ *Ibidem*, p. 510.

as follows : « The Government will make any reform, should it be urgent, informing the Parliament Assembly as soon as possible¹ ».

It is necessary to emphasise the relevance of the Miraflores amendment, because it meant increasing largely the powers requested by the Government, going far beyond what had been asked for. This justifies why the Government welcomed this amendment². After all, it authorised the executive power to reform the penal code, in urgent cases, exclusively on its own initiative and discretionality, the only requirement being that the reform should be presented to the Assembly. In fact, even this guarantee was extremely vague, as no time period or deadline was prescribed for that presentation ; neither was it specified if it consisted in a simple verbal communication to the Assembly without any other effects, or in the submission of the reforms decreed for the examination and approval of the Parliament³.

On February 16, 1848, the Minister of Justice closed the debates at the Senate, proclaiming the benefits that would derive from the enactment of the Code. He did not rule out the possibility of improving the Code at a later stage, but made it clear that the reforms were an exclusive competence of the Executive. The penal code was finally passed by the Senate⁴.

2. The Debates at the Congress

After the Senate gave its approval to the Bill of Law authorising the Government to present the Penal Code, it was submitted to the Congress on February 16, 1848⁵. In compliance with the legislation, the Reporting Commission was appointed on February 22, 1848⁶, and

¹ *Ibidem*, p. 505.

² The Minister of Justice expressed it like this : « The Government admits it with great joy because it thinks the amendment is very necessary ». *Ibidem*.

³ The Miraflores amendment can be placed within the framework of the attitudes toward legislative delegations shown by the Parliament during the reign of Isabel II. As has been shown by Marcuello Benedicto, one must realise that the Parliament Assembly invariably approved the delegations, not only in the conditions requested by the executive but also, on many occasions, enlarging the scope of delegation requested, an example of which would be the Authorisation Act for the Penal Code. (Marcuello Benedicto, J.I., *La Práctica Parlamentaria en el reinado de Isabel II*, *op. cit.*, p. 251).

⁴ RPPS, 1847-48, 2-16-1848, n° 32, p. 515.

⁵ RPPC, 1847-48. Append. to n° 65, p. 1263.

⁶ Formed by Mr. Pedro José Pidal, Mr. Ventura González Romero, Mr. Manuel Seijas Lozano, Mr. Gregorio de Miota, Mr. Fernando Calderón Collantes,

its Report, which endorsed the text presented by the Senate¹, was brought before the Low Chamber on March 3. The discussion at the Low Chamber started on March 10, 1848 and went on until March 16.

At the Congress, Mr. Francisco Muñoz Maldonado, the Count of Fabraquer, criticised the way in which the Penal Code had been brought before the Chambers². He objects to its reform without the participation of the Parliament Assembly because « once it has been passed, we abdicate all our responsibilities and put ourselves at the disposal and the mercy of the Government ». He does not understand the need to discuss the Code « if we later end up giving the Government an absolute vote of confidence so that it can change all that it thinks advisable³ ».

The answer came from Mr. Manuel Seijas Lozano, who pointed out that the legislative delegation was used by all countries ruled by a constitutional system, and also by the progressive party⁴; he defended the objectivity of the Coding Commission and finally referred to technical reasons⁵.

On the other hand, it is necessary to highlight the enthusiastic support given to the legislative delegation by those who were politically close to the Moderate Party. Some even requested the enlargement of its scope. This is the view of Mr. Federico Roncali, who said that it was a question of confidence⁶. Mr. Antonio María Coira proposed the extension of the legislative delegation to the

Mr. Cándido Necedal and Mr. Claudio Moyan° (RPPC, 1847-48, n° 65, p. 1358 and 1376).

¹ RPPC, 1847-48. 3rd Append., n° 76, p. 1591-1629.

² « The Congress has only two options; supporting it in its entirety or voting against it as a whole, because none of its provisions could be discussed separately ». *Ibidem*, p. 1712.

³ *Ibidem*.

⁴ Mr. Seijas referred to the Authorisation requested by the Count of Ofalia to the 1838 Parliament Assembly for the combination of the Codes of Civil and Criminal Procedure into a single text. On that occasion, even, the legislative delegation only referred to the matter, as the content of the Project was not made known and the progressive representatives answered with their majority vote. The Count of Fabraquer himself along with such outstanding progressive politicians as Mr. Olózaga and Mr. Landero formed part of that Assembly (RPPC, 1847-48, 3-10-1848, n° 79, p. 1713-14).

⁵ Mr. Seijas said: « in special matters, the laws must be created by special men; and when we are dealing with Codes, a principle of unity must prevail... in all their provisions... the discussion in the Chambers does nothing but vitiate it ». (*Ibidem*, p. 1714).

⁶ RPPC, 1847-48, 3-11-1848, n° 80, p. 1733.

Procedures Law for reasons of pressing procedural need¹. However, the Reporting Commission itself considered these proposals far-fetched².

The debates at the Congress on the constitutionality of legislative delegations equally showed the different positions of moderate and progressive representatives. Mr. Fernández Baeza and Mr. Pedro Gómez de la Serna argued for unconstitutionality, the reason adduced being that the capacity to discuss laws corresponded to both Chambers³. Finally, Mr. José Alonso Ruiz Canejares highlighted the importance of the legislative responsibilities of the Chambers that could not be waived : « we come here to legislate, to propose, to discuss bills of law... to look after the interests of our country, to prevent any harm being caused to its citizens », tasks that additionally were « duties, not rights that we can relinquish... so that the Government carries them out on our behalf⁴ ».

The Government, through Mr. Calderón Collantes, defended the opposite view, because « all that according to the Constitution must be done by means of a law can be done through an authorisation, freely and spontaneously conceded by the co-legislating bodies and sanctioned by the Crown⁵ ». Along the same lines, Mr. Arrazola explained that the « Constitution has not determined the way to discuss in these Bodies ; it has confided it to their prudence ; it has done what the Code does with its Courts, leave the mode of discussion to their prudent discretion. This is why each one of them organises its regulations and has power over it, and can vary it on every stage without incurring any responsibilities⁶ ».

It is worth considering the amendments presented during the discussion of the Authorisation Act. They are all related to the attempts to limit the scope of the reforming capabilities conferred upon the Government, and at the same time, to bring out for debate

¹ RPPC, 1847-48, 3-16-1848, n° 84, p. 1819-1822.

² Mr. Calderón Collantes curbed them : « the co-legislating bodies... must never go beyond what is being requested by the Government », because that would mean « being more ministerial than the Government itself and would have a certain spirit of servility that would not suit these bodies ». (*Ibidem*, p. 1819-1823).

³ RPPC, 1847-48, 11-3-1848, n° 80, p. 1733. Mr. Pedro Gómez de la Serna emphasised that using « this system one ignores the main base of representative government [...] that laws must be made through cooperation and taking into account everybody's wishes ». (RPPC, 1847-48, 3-14-1848, n° 82, p. 1765-1766).

⁴ RPPC, 1847-48, 3-14-1848, n° 82, p. 1779.

⁵ RPPC, 1847-48, 3-11-1848, n° 80, p. 1738.

⁶ RPPC, 1847-48, 3-15-1848, n° 83, p. 1801.

specific aspects of the Code, *e.g.* the regulation of political crimes, religious crimes or secret societies, all of them being issues in which the disparity of criteria between progressive and moderate representatives became clear.

For the purpose of reducing the severity of penalties in political crimes, an amendment was presented to Art. 1 of the Authorisation Act requesting that «the death penalty and life imprisonment sentences, mentioned in the first and second paragraphs of Art. 168 of the Penal Code, will be replaced with perpetual banishment and temporary banishment sentences¹ ». It was defended by Mr. Gómez de la Serna, making it clear that the time had come to say « no more blood for political crimes² ». But it was rejected by Mr. Seijas Lozano, who recalled the object to which the discussion had to be confined : the Commission cannot examine the Penal Code article by article, only the « authorisation to propose it³ ». After being submitted to a vote, the amendment was not taken into account⁴.

Another amendment was presented to Art. 3 : « Instead of the second rule of the temporary law for the application of the provisions contained in the Penal Code, one must observe the following rule » : « Should the trial provide certainty about the criminal behaviour of the defendant, the courts will impose the sentence foreseen in the Code, even in the absence of one or more circumstances which give full evidence according to the current legislation⁵ ». In its defence, Mr. Luis Mayans, highlighted the contradiction between Art. 3 and Art. 1, which had already been passed, « what are we going to vote

¹ It was signed by the progressive representatives Mr. Gómez de la Serna, Mr. Gálvez Canero, Mr. G. Gasco, Mr. Tomás Pérez, Mr. Jaén and the Marquis of Albaida. (RPPC, 1847-48, 3-11-1848, n° 80, p. 1726).

² RPPC, 1847-48, 3-13-1848, n° 81, p. 1742-1745.

³ *Ibidem*, p. 1745-1747.

⁴ Obviously, most of those who voted in favour were members of the progressive party in the opposition, *e.g.* Mr. Olózaga, Mr. Fernández Baeza, Mr. José Alonso, Mr. Pascual Madoz, Mr. Narciso de la Escosura, Mr. José Orozco, Mr. José Maria Orense, the Marquis of Albaida, Mr. Manuel Cortina, etc., but there were also names of independent representatives who were politically close to the moderate party, like Mr. Luis Mayans and Mr. Andrés Borrego. All of this highlights that there was not unanimity inside the Government as far as the treatment of political crimes was concerned. *Ibidem*, p. 1726.

⁵ The amendment was presented on March 13 with the signatures of Mr. Mayans, Mr. Pardo Montenegro, the Marquis of El Puerto, Mr. Piera, Mr. García Tassara, Mr. Lafuente and Mr. Gómez de La Serna. (RPPC, 1847-48, 3-13-1848, N° 81, p. 1751.

now ? Whatever the Minister wants, and this is very serious, I cannot conceive a complete abdication of legislative responsibilities ; so, do we have to leave the fortune, the life and the honour of Spaniards in the hands of the Government ?... who can assure that there will not be a change in the Ministry tomorrow with a new minister who thinks differently ... and who maybe will introduce variations in the Penal Code ?... who can tell me that if Mr. Gómez de la Serna was appointed Minister tomorrow, he would not remove from the code the application of death penalty for political crimes...and if Mr. Corzo were the Minister, would he not consider advisable to increase the penalties stipulated for religious crimes¹ ? ». Art. 3 was supported by Mr. Claudio Moyano, a member of the Reporting Commission. He highlighted the contradiction in Mr. Mayans' words, reminding him that when he formed part of the Government, authorisations were requested specifying only the matter to be legislated in such important areas as Town Councils, provincial administration and tariffs². The amendment was finally rejected³.

The session of February 16 witnessed the reading of another amendment to the 3rd article : « At the end of this article we will add : « But under no circumstances can the death penalty be extended to crimes other than those specified in this Code⁴ ». The amendment was defended by the representative Mr. Julián Huelves, who wanted to eliminate the possibility that the Government, while carrying out the reforms, could extend the death penalty to crimes that were not

¹ In his opinion, the method applied was irregular and did not follow the procedure used in the passing of other European Codes, in which the discussion in the Chambers was permitted. (RPPC, 1847-48, 3-16-1848, n° 84, p. 1809-1811, 1816).

² Mr. Luis Mayans was the Minister of Grace and Justice in the cabinet of Mr. Luis González Bravo in December 1843 and in the first Government presided by Mr. Narváez. Mr. Moyano was referring to the fact that the type of legislative delegation requested to reorganise the Administration was the broadest one that the Government could ask for, as it gave the authorisation to legislate in a specific matter without needing to enclose the text of the Bill of Law. Therefore, « Mr. Mayans, being a member of the Government asked for authorisations », and now, being a member of the parliament « raised his voice against an authorisation in which the representatives know what is going to be voted ». (*Ibidem*, p. 1816-1817).

³ *Ibidem*, p. 1818.

⁴ The amendment was presented by Mr. Félix Martín, Mr. José Pedro Muchada, Mr. José Orozco, the Marquis of Albaida, Mr. Luis Sagasti and Mr. Julián Huelves. (RPPC, 1847-48. Append. 3°, n° 76, and 3-10-1848, n° 79, p. 1705).

punished with it initially¹. The same as in the preceding cases, the amendment was not taken into account.

The last speaker was the representative Mr. Andrés Borrego, who maintained a position similar to that of Mr. Luis Mayans. His intervention referred to the treatment of issues of special political relevance such as the regulation of secret societies and the death penalty for political crimes of rebellion². The answer came from the Minister of Grace and Justice, who reminded him that the purpose of a Penal Code was the sanction of the established laws, therefore, only the Government had the competence to implement the provisions stipulated in them. As for the imposition of the death penalty in cases of rebellion, it was highlighted that extending the death penalty to cases other than those specified in the Code would exceed the Government's reform capability, which was confined to the elimination of possible inconsistencies and always with the limitation of having to listen to the Courts in order to report to the Parliament Assembly later ; only in urgent cases was the Government entitled to present them directly and, moreover, before the Code had been published³.

According to the documentation provided by the Record of Parliamentary Proceedings, the Bill of Law authorising the Government to present the Penal Code was passed on March 17, 1848⁴. Queen Isabel II sanctioned it on March 19. A Royal Decree of the same date enacted the Penal Code and the Temporary Law that accompanied it for its application as a law in the Peninsula and the adjacent Islands, the date for its coming into effect being July 1 of the same year⁵.

¹ « So that Ministers coming after those who occupy the «black» seat now cannot make a bad use of this authorisation » (RPPC, 1847-48, 3-16-1848, n° 84, p. 1818-1819).

² *Ibidem*, p. 1824.

³ Because, as Mr. Arrazola pointed out, « the Government must not make [afterwards] any reforms that can alter what has been established in it ». (*Ibidem*, p. 1827-1828).

⁴ It was signed by Mr. Alejandro Mon, Mr. Gabriel Tessara, Mr. Miguel Lafuente Alcántara, M. Julián de Huelves and Mr. Manuel Sánchez Silva. (RPPC, 1847-48, 17-3-1848. Append. to n° 85, p. 1849 (The text of the Penal Code, p. 1849-1887).

⁵ RPPC, 1847-48, 3-20-1848, Append. n° 87, p. 1929. ; handwritten copy in ACGCM^oJ, file 19, 3rd folder 3^a, Doc. 2 :

C. The reforms of the Code

By virtue of the authorisation awarded by the Law of March 19, 1848¹, the moderate Government presided by Mr. Narváez urgently proceeded to reform the Penal Code through a cascade of Royal Decrees ; and complying with the requirement specified in Art 3 of the Authorisation Act, which forced it to inform the Parliament Assembly about the reforms as soon as possible, sent the co-legislating Bodies simple Communications, without allowing any sort of debate. This once again showed clearly how Mr. Narváez's moderate Government understood the use of the legislative delegation².

Shortly after the enactment of the Code, it was reformed through successive Decrees dated September 21 and 22, 1848. Similarly, the application of some of its provisions was suspended by the decree dated 30 October of the same year³. The most ambitious reform of the Code was made by Royal Decree on June 7, 1850⁴.

Regarding the way to make the reforms, it must be noted that these reforms were carried out by the Ministry of Grace and Justice,

¹ Mr. González Miranda described the purpose of the provision dated March 19, 1848 as follows : « Based on the wish to achieve a short-term improvement of the law, focusing on the remarks that practice could suggest, worthy of consideration if we bear in mind that the penal law represented a real innovation in our territory and, consequently, harbouring the fear that there might be difficulties to apply in practice a law that had practically no antecedents whatsoever, the Law was not given a definitive character, but a temporary one, as is inferred from the 2nd article of the Law ». (González Miranda & Pizarro, J., *Historia de la Codificación Penal Española y ligera crítica del Código Penal vigente*, Madrid, 1907. p. 20).

² The Minister of Grace and Justice, Mr. Lorenzo Arrazola, sent the Congress a number of communications accompanied by copies of the corresponding Royal Decrees : Two communications during the 1848/49 period, dated December 21, 1848 and June 8, 1849, which justified the provisions contained in the Royal Decrees issued on October 21, 22 and 30, 1848 and on May 30 and June 2, 1849, to reform the Penal Code and the Temporary Law. (RPPC 1848-49, 12-27-1849, n° 7 and 2-1-1849, No 109). Another communication during the 1850-51 term of office, dated Thursday, November 9, 1850, in which the Congress was given information about the reforms carried out by means of Royal Decrees dated June 7, 8, 9 and 30, 1850. (*Ibidem*, 24-11-1850, n° 10). The Archive of the Congress keeps the original manuscript (ACD)

³ There is a brochure edited in Madrid which contains the provisions referring to the Penal Code enacted after its publication (ACGCM°J, file 19 of the Penal Code, 8th folder, Doc. 5).

⁴ *Colección Legislativa de España*, Madrid, 1850, n° 503, p. 356. The original is in ACGCM°J, file 19 of the Penal Code, 18th folder : Doc. 1.

Mr. Lorenzo Arrazola. Initially, they needed the support of the General Coding Commission, taking into account the remarks, the advice and the reports prepared by Courts, institutions, political, religious and military authorities ; but not all of them counted on such a wide participation¹.

The number of modifications introduced and their significance was going to lead to a second edition of the Penal Code, thus giving rise to the revised text of 1850, enacted by a Royal Decree dated June 30 of that same year².

In our opinion, the first editorial team in 1848 was the reflection of the attitudes existing within the 1843 General Coding Commission, which included individuals with different political affiliations. On the other hand, the reformed edition of 1850 can be linked to the moderate ideary, which means that a connection appears between the Constitution of 1845 and the Penal Code of 1850. Its politico-criminal orientation becomes clearly evident in the punishment for conspiracy and the proposal to commit an offence³, the higher level of rigorousness in the treatment of political crimes and the inclusion of some completely new types of crime, e.g. contempt of court and attacks against the authority. Mr. Pacheco defended the early formulation of 1848 and regrets the solution adopted in 1850 because it modified the politico-criminal orientation in the Code, which was rather the product of the fears raised by the revolutionary events occurred in Europe in 1848⁴.

¹ The reports can be found in ACGCM^oJ, Penal Code Section, files 5, 6, 7 & 8, and also between the Documents of the Coding Commission and its Organisation. (file 4 and 5).

² The original text of the Royal Decree dated June 30, 1850 in ACGCM^oJ, file 19 of *Código Penal*, 21st folder, Single Doc., *Gaceta de Madrid*, July 10-19, 1850. A copy of this second official edition with an appendix of all the Royal Orders and Royal Decrees reforming the Penal Code is kept in the ACD (Congress Archive), *Serie General*, file 62, Doc. n^o 3. The same decree forced the Government to « inform the Parliament Assembly during the first term of office » ; so it was done through a Communication dated November 9, 1850, enclosing authorised copies of the Decrees and Provisions of June 7, 8, 9 and 30, 1850. (RPPC. 1850-51, 11-14-1850, n^o 10, p. 125. ACGCM^oJ, file 19 of *Código Penal*, 14th folder, unique doc. ACD. *Serie General*, file 66, n^o 70).

³ The political significance and overall scope of this modification for all kinds of crime can be seen in Rodríguez Mourullo, G., « La punición de los actos preparatorios », ADPCP, 21 (1968), p. 277-304, p. 281.

⁴ This is the widespread opinion among penalists, who highlight that it reflects a slight nuance variation within the same policy, since both the appearance of the 1848 Code and the Reform of 1850 took place when Mr Narváez was the political