

## Public Assistance under Spanish liberalism: its normative-constitutional formulation and major transformative features

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I should warn you, however, that my contribution will be rather more instrumental its approach to the subject, coming as it does from a specialist in a different field – the history of social welfare and regulations – who will try to link his analytical experience of the institutional construction of public welfare to the normative field and even to the parliamentary debate taking place under Spanish liberalism.

The greater part of my talk will be taken up with the balance of existing research, both in terms of its aims and in terms of its conclusions, the presentation of a study outline and a request for collaboration. Hopefully, the whole will seem less wordy than the text I have here.

On a historiographical note I should stress that Spanish research has by no means neglected the vicissitudes of charitable and philanthropic institutions, social intervention and even the problem of contemporary pauperism. Less common, however, are analyses of the origins and the social and political factors that account for the transition from compassionate charity to today's solidarity.

An analysis of that kind needs to address not only the ideological motivations driving the changes but also the historical background to public welfare in Spain, charting its legislative development and the uneven process of institutionalisation.

This last consideration requires investigation at two levels.

The first is the normative level, encompassing theories and proposals, but also the parliamentary debate. The second involves a positive analysis, through a detailed study of the method actually adopted in institutional practice.

With regard to the importance of the welfare model in Spain, suffice it to say that up until only 30 years ago certain welfare institutions and initiatives were still operating whose ideological underpinning had already disappeared from much of Western Europe. I am referring to the existence in Spain of municipal registers of those eligible for poor-support, censuses of the poor as well as poorhouses and orphanages operating within a legal charity-welfare framework. All of us over a certain age can still remember that the welfare system was essentially a *discretionary* means of attending to those deemed to be poor, contrasting starkly with current benefits which are claimed as of right, such as those deriving from the modern *Ley de la Dependencia* (Care of Dependents Act) or the laws currently applied to the social services by autonomous regional governments. The principle of right enjoys constitutional backing: articles 1, 10 and 41 guarantee the defence of personal dignity and social protection of all Spanish citizens.

Though many features of this political issue remain to be explored, we can safely state that its earliest historical origins are to be found in two fundamental procedures used in nineteenth-century Spain to foster the transformation of the earlier charity-based model: the *public centralisation* of pre-existing char-

itable institutions and the *disentailment* of church properties. These twin concepts together embrace the most major features of the development of welfare provision under Spanish liberalism, and therefore provided the theoretical scaffolding for earlier on this issue in the Andalusian context.

Let us focus first on the epistemological significance of these concepts.

The term “public centralisation” refers not only to the secularisation of charity, and the attempt to unify the institutional variety that had hitherto prevailed. The concept also refers to a handover of the governance of welfare institutions, in favour of the two major seats of power under Spanish liberalism: the city authorities and the provincial authorities. It was through these two administrative bodies, thanks to central legislation – and in many cases as the outcome of parliamentary debate – that the Baroque and Enlightenment approach to charity and welfare came to be “instrumentalised”, to the extent that their traditional palliative function was eroded and they gradually turned into a new public service, more suited to the needs of the urban centres and, to a lesser extent, those of rural municipalities.

The second of the crucial debates to emerge in nineteenth century Spain surrounded the ending of the property disentailment process which had prevailed in charitable institutions up until that point. This was a long-running process which culminated, as is well known, in the passing of the disentailment law of 1 May, 1855.

Yet the concept should not be confined to the public auction of properties held at the behest of Pascual Madoz, the minister then responsible for disentailment. It also encompassed other equally-significant mechanisms, such as the disentailment of property itself, ecclesiastical confiscations, the suppression of tithes and the dissolution of religious institutions, to mention only some of the most important measures. All of these also had enormous parliamentary impact.

The consequences of all this, as may be supposed, were not entirely circumscribed to economic and administrative areas, but in fact shaped the very welfare model that was being introduced. Once the expropriations and amalgamations had been completed, the welfare foundations were deprived of the central position they had managed to occupy – they were, in a sense, “decontextualised” as soon as they lost control of their own assets. In short, they became bodies dependent on funding from the public purse, payment of which was extremely irregular throughout the second half of the century.

The legislative framework for the public welfare reforms and its parliamentary progress, the process of drafting the legal regulations and the surrounding debate lasted through much of the nineteenth century. Efforts were made to introduce wide-ranging and modernising legislation during this period, though they were erratic and sometimes failed to overcome the resistance of the deeply-conservative traditionalists whose opposition was ever-present at a time when Spain was evolving into a bourgeois society.

The general procedure governing state intervention in the nineteenth century was, initially, the so-called “Right of Protectorate” (*Derecho de protectorado*). This was a generic principle by which first the Crown and then the liberal State claimed the powers required to enforce the will if original founders of charitable institutions, thus ultimately paving the way for the replacement or takeover of those early institutions by other – now public – welfare bodies, in specific circumstances<sup>1</sup>.

Most of the initiatives started to come into effect with a certain degree of historical continuity around the second third of the century<sup>2</sup>. This period was particularly significant in that it provided the backdrop

<sup>1</sup> For the conceptual development of this right see F. HERNANDEZ IGLESIAS, *La Beneficencia en España*, Madrid, Establecimientos Tipográficos de Manuel Minuesa, 1876, II, p. 709-720.

<sup>2</sup> For an overview of the legislative development of Spanish welfare see E. MAZA ZORRILLA, *Pobreza y asistencia social en España, siglos XVI al XX: aproximación histórica*, Valladolid, Ediciones Universidad de Valladolid, 1987, p. 175-188. For a more concise summary see J. SERNA ALONSO, *Presos y pobres en la España del XIX. La determinación social de la marginación*, Barcelona, Promociones y Publicaciones Universitarias, 1988, p. 145-154. Other leading researchers in this field include J.

for the now-irrevocable secularisation of social welfare in Spain. Over the course of Isabel II's reign, the inadequate system of religious and private charity identified with the *Ancien Régime* was progressively replaced by welfare conceived as a public service – a responsibility and an attribute of the State.

The 1812 constitutional movement and the so-called Liberal Triennium laid down the pattern that was to be followed, even though in practical terms their significance was relatively minor.

The 1812 Constitution was the first charter to set out the welfare plans designed by Spanish liberal thinkers<sup>3</sup>; the same degree of parliamentary prominence must therefore be accorded to the Cádiz Parliament. With the ratification of the rules and regulations agreed at this time, local and provincial authorities were entrusted with the task of implementing the secularisation process. But it should be noted that, of all the administrative bodies mentioned above, it was the local councils that were given direct control of welfare institutions<sup>4</sup>. This served to underline the importance of, and the central role played by, the local authorities in adapting the Enlightenment welfare and charity sector to the new tenets of early liberalism.

In the event, the rapid return of absolute monarchy in 1814 would soon put paid to most of the initiatives arising out of the Cádiz Parliament. Yet the 1812 welfare regulations were in fact reintroduced during the next period of liberal rule: the “Triennium”.

It was during this period that Spain's first general welfare law was passed – on 6 February 1822 – establishing the pattern of governance that was thenceforth followed<sup>5</sup>. This general law set out the fundamental principles which were later to provide the underpinning for the policies implemented under the new trend towards centralisation.

Centralisation was advocated in parliamentary debate as the best way of overcoming the institutional chaos that had prevailed up to that point, thereby improving the quality of the assistance given to the poor and needy. The centralised approach clearly had the joint backing of the welfare commissions both of Parliament and of the Government, which were merged in 1820 with a view to putting forward a plan for reorganisation<sup>6</sup>.

It has been claimed that parliamentary debate also gave rise to a new current of political thought, evident in the exchanges in Parliament, which stressed the need to construct centralised organisational systems with the ability to plan for the future, because proposals such as these were put forward not only as a way of organising welfare but were also extended to all other branches of public administration. Similar measures had already been adopted in other areas, such as the public education reform implemented during the same 1820 legislature, a key element of which was the appointment of a General Board of Management, charged with the task of regularising education throughout the entire country.

POSADA HERRERO, *Lecciones de administración. Estudios sobre la beneficencia pública*, Madrid, Imprenta de la Sociedad de Operarios del mismo Arte, 1845; J. ARIAS MIRANDA, *Reseña histórica de la beneficencia española: principios que convendrá seguir para enlazar la caridad privada con la beneficencia pública...*, Madrid, 1862 and E.M. NENCLARES DE, *Legislación española de Beneficencia desde Isabel I la Católica hasta el año 1869, recopilada y anotada*, Madrid, 1869.

<sup>3</sup> The liberal principles of the 1812 Constitution address the matter (which will be dealt with below) in the following terms: «Article 131. The powers of the Cortes. Twenty-third: To approve all general regulations covering the public order and health of the kingdom». «Article 321. The following will be the responsibility of the town halls. First: The administration of wellbeing and comfort... Sixth: The care of hospitals, hospices, orphanages and other welfare establishments, according to the relevant regulations». *The Political Constitution of the Spanish Monarchy: Promulgated in Cádiz, the nineteenth day of March*, Valladolid, Maxtor, 2001, (Facsimile edition).

<sup>4</sup> Cfr. Article 321 of the 1812 Constitution.

<sup>5</sup> The French influence on this legislation is well known; cf. M. BLANCO HERRERO, *De la Beneficencia pública en España, su actual organización y reformas que reclama*, Madrid, Imp. de José María Pérez, 1869, p. 9-10.

<sup>6</sup> *Diario de las sesiones de Cortes. Legislatura extraordinaria 1821-1822*, Madrid, Printed by J. A. García, 1871, I, p. 268 e 270, Session of 16 October 1821.

The need for this systematic institutional reorganisation was linked to another key notion, also emphasised by Members of Parliament: the value of specialisation within the public administration, assigning people with specific knowledge and interest to each area, enabling them to impose administrative order and address the inadequate protection of the needy.

The success of these measures also led to the irreversible weakening of traditional local powers, based to a large extent on class privileges and the support of the church hierarchies. Indeed, the passing of this law on public welfare clearly revealed the centralising intentions of Parliament in the Spanish Triennium.

From a more ideological standpoint, it should be borne in mind that the Cádiz Constitution and the law of 1822 established neither a right to welfare nor an obligation to provide it, and were thus a long way from more radical liberal approaches of the kind expressed in the *Declaration of the Rights of Man and the Citizen* of 1789, which claimed that public assistance constituted a sacred duty.

It is also important to note that voices objecting to the existence of large hospitals were openly heard in the midst of the parliamentary debate during the Triennium, with the suggestion that they be replaced by home care. For example, one Member of Parliament, Señor Gasco, argued in one of the sessions that «at all events these establishments, veritable graveyards for humanity, should undergo reform, because I believe the number of people who have died in them through incompetence and inadequate care is infinitely greater than those who have regained their health»<sup>7</sup>. The assistant Bishop of Madrid, also a Member of Parliament, spoke in similar terms at an earlier session<sup>8</sup>.

Despite all the various options submitted to Parliament, the final outcome over time was the creation of a real public-welfare administration system with an unprecedented degree of organisation. In this particular case, therefore, it was the scope of the law that really determined the orientation of the reforms.

The importance of these regulations – the outcome of parliamentary debate – is evident in their subsequent revival after the well-known restoration of absolutist rule in 1836<sup>9</sup>.

It must be admitted, however, the law of 6 February 1822 introduced a serious deficiency, never fully to be remedied in what remained of the nineteenth century: it neglected to defend the interests of rural populations in those establishments that fell under provincial control and were now the direct responsibility of the provincial capitals. This particularly affected villages located close to provincial capitals, which until then had made use of the specialised resources of those capitals – above all, orphanages and treatment hospitals – as places to send their sick and needy. Sufferers from dementia and syphilis and, as indicated above, orphaned and abandoned children from rural areas were the main victims of this legislative shift, which clearly favoured the interests of larger towns; this situation prevailed until around the middle of the nineteenth century, when regulations better adapted to the general interest were introduced<sup>10</sup>.

To reiterate, it was not until half-way through the century that the regulations governing welfare services were again overhauled, in a reform that was to last for what remained of the nineteenth century<sup>11</sup>.

<sup>7</sup> *Ivi*, p. 352, Session of 1 August 1820.

<sup>8</sup> *Ivi*, p. 563, Session of 18 August 1820.

<sup>9</sup> Cfr. J.M. NIEVA DE, *Decretos de S.M. la Reina Doña Isabel II, dados en su Real Nombre por su Augusta Madre la Reina Gobernadora, y Reales Ordenes, Resoluciones y Reglamentos Generales expedidos por las Secretarías del Despacho Universal desde 1º de Enero hasta fin de Diciembre de 1836...*, XXI, Madrid, Imprenta Nacional, 1837, p. 85-107.

<sup>10</sup> For a detailed and descriptive account of the legal content and scope of the law see F. VIDAL GALACHE, *De la caridad privada a la beneficencia pública en España. La Ley General de Beneficencia de 1822* in *Materiales para el estudio de la Constitución de 1812*, Seville, Parlamento de Andalucía and Tecnos, 1989, p. 765-778.

<sup>11</sup> This does not mean that changes of a lesser scope were lacking, as may be gathered from, for example, the work of the essayist BLANCO HERRERO, *De la beneficencia pública*, p. 3-10.

At this point, the exclusivity inherent in the law of 8 September 1836, which re-established the monopolistic 1822 regulations for welfare arrangements, gave way to more realistic and reasonable measures regarding individual welfare, involving the private sector. This involved a range of projects and provisions aimed at standardising welfare systems under the 1845 Constitution (which was moderate in tendency) and the new fundamental laws governing city councils and provincial authorities. The outcome of this revisionist and regressive policy, which was also reflected in other aspects of public life (for example, reconciliation with the Church, sealed with the signing of the 1851 Concordat), was the Welfare Law of 20 June 1849 and the regulations for its implementation of 14 May 1852<sup>12</sup>. This law consolidated the distribution of roles within the administration, adopting a pyramidal structure. Responsibility for welfare provision was entrusted to specific committees at national, provincial and municipal level. For their part, local councils managed to extend their influence through a plethora of subordinate committees which – both in cities and in the countryside – took the parish as the basic unit for operations.

The role of the state in the resulting structure was a relatively limited one; it took responsibility for a handful of establishments, identified as having a high degree of specialisation, and the supervision of private welfare; the town council assumed responsibility for home care (health and social services) as well as acting as a “gatekeeper”, controlling access to services at other levels; while the provincial authorities took responsibility for the bulk of residential services, in both the health and social areas. One outcome of this system was to grant a predominant role to provincial authorities: by 1909 they were responsible for almost half of spending on welfare.

The second step in the secularising process, as I indicated at the start of my talk, had an economic dimension. At the behest of Pascual Madoz it was unilaterally decided that the general law of 1 May 1855 and accompanying measures should include, among other irreversible outcomes, the disentailment of the assets of welfare institutions, and their sale to the highest bidder. Once they stopped earning interest payments on debt emissions, a development which ate into their inherited wealth, their dependence on the state and the public purse became complete. Having lost their economic self-sufficiency, and stripped of their rents and properties with scarcely any compensation, welfare institutions had no option but to turn to the public coffers. In the administrative realm, and now also in the financial realm, their fate was determined entirely by decisions taken in government offices.

Once the changes wrought during the six-year democratic interlude of 1868-1874 had been suppressed by those who regarded it as little more than a nightmare (administrative decentralisation, suppression of the Welfare Boards) the Restoration brought with it various laws which superficially modified the welfare system I have just outlined (in particular, the Royal Decrees of 27 April 1875 and 27 January 1885), without altering its fundamental tenets.

In the closing stages of the century, as the so-called “social question” came to the fore, so public finances started to run dry; this did not bode well for the structural reform of the welfare system, but gave fresh impetus to the notion of home care. This notion provided the underpinning for the Royal Decree of 14 June 1891 approving regulations for the provision of a health and welfare service for smaller villages.

Judging by the available research into the spending patterns of local treasuries, the compulsory nature of its wholesale implementation was on this occasion taken seriously. The sums invested in home care – in the case of Córdoba I have been able to check this personally – rose sharply in the closing years of the century, so that within a short time it became the key element of the town council’s welfare programme

<sup>12</sup> *Colección legislativa de España*, Madrid, Imprenta Nacional, 1850, XLVII, p. 203-209 and 1853, LIII, p. 49 *et ss.*

for the poor. Thought it was late in arriving, after decades of delay, it had all the appearances of wanting to make up for lost time<sup>13</sup>.

My aim here, as I said at the outset, is to draw attention to the project and the potential of some themes and interpretative approaches which, if not unexplored, are sometimes overshadowed by more topical subjects and by well-publicised commemorations. There is, as we have seen, much to be gained by a thorough investigation of the basis and key features of an issue that is perhaps less marginal than is sometimes assumed. It is, in any event, here that the process of state centralisation in social questions first originated.

<sup>13</sup> F. LÓPEZ MORA, *Pobreza y acción social en Córdoba: (1750-1900)*, Córdoba, Servicio de Publicaciones de la Universidad de Córdoba and Secretaría de Estado de Investigación, Desarrollo e Innovación, 2014.