

# Early Spanish Liberalism and Constitutional Political Economy: the Cádiz Constitution of 1812<sup>1</sup>

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“Freedom, Sancho, is one of the most precious gifts that heaven has bestowed upon men; no treasures that the earth holds buried or the sea conceals can compare with it; for freedom, as for honour, life may and should be ventured ...” *Don Quixote de la Mancha*, Chapter LVIII, Miguel de Cervantes (1620).

## I. Introduction

The history of Spain is not usually associated with liberalism or constitutional innovation by most English or American historians. That is partly because other aspects of Spain’s history attract the most attention. American historians tend to focus on Spanish exploration and settlement in the New World. European historians tend to focus on wars against the remnants of the Islamic empire to the south, Turkish Empire to the east, and the roles that Spanish rulers, such as Charles V (Carlos I) and Phillip II, played during the Protestant reformation. Spain’s international policies had major impacts on Europe and the New World during the late Middle Ages and early modern period.

The neglect of early Spanish liberalism is also partly a consequence of the infamous Spanish inquisition developed during the sixteenth and seventeenth centuries. The inquisition was used to curtail the rise of Protestantism throughout the Hapsburg territories

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<sup>1</sup> This paper is written for a Festschrift honoring Jose Cases Pardo, whose nickname, like that of the constitution analyzed below, is Pepe.

and also to suppress political dissent. The failure of the inquisition and related military efforts weakened the Catholic Church in Northern Europe. It also led to the emergence of the Dutch Republic, which subsequently played important roles in the rise of liberalism (Congleton 2008). In these contests, the Spanish could be said to be the conservatives against whom early liberals rebelled, especially in the Netherlands. Yet both liberalism and liberal constitutional innovations had a relatively early start in Spain and played important roles in its history.

That liberal strands existed in Spanish thought is evident in many literary pieces written in the seventeenth and eighteenth centuries, as in the quote above from *Don Quixote*. However, political and religious censorship evidently pushed most liberal thought underground into private conversations and most writing into fiction, rather than academic works or political pamphlets. Liberal proposals for reform of Spain's constitution(s) were rare during the seventeenth and eighteenth centuries.

The Constitution of 1812, as developed below in this paper, demonstrates that liberal constitutional political theory, nonetheless, was relatively advanced and that liberalism had penetrated into relatively high levels of government and society in Spain. The 1812 constitution is clearly a liberal document and shows a sophisticated understanding of constitutional designs. Indeed, it provides the first written liberal constitutional framework for monarchy in Europe.

Liberalism emerged gradually in Spain, as also true elsewhere in Europe. The Enlightenment and liberalism were consequences of new rational perspectives on society, life on earth, and the natural world that emerged at about the same time as the Protestant Reformation. These secular theories challenged medieval views in many areas, including political and economic views that had long been espoused by the Catholic Church. This made the new perspectives congenial to Protestants, but did not prevent Catholics from contributing to their development or from incorporating the new ideas into their own world view. Moreover, the discovery of the New World by Catholic sailors from Italy, Spain, and Portugal clearly helped launch the Enlightenment by demonstrating that many long-held ideas about the world were incorrect. Liberalism emphasized reason over tradition, and civil

equality over privilege. These general ideas had broad implications for economic, education, and political reform.

Contemporary Protestants often argue that the Enlightenment and liberalism were Protestant phenomena, but this claim has little basis in fact, as the Spanish case demonstrates. Indeed, the use of the term “liberal” as a description of a political reform agenda is of Spanish origin (Payne 1984: 71). Spanish constitutional political economy and Spanish liberalism did not suddenly spring forth as a consequence of the king whom Napoleon imposed on Spain or the inspiration of the French or American Revolution, although these naturally had effects on Spanish liberalism, as elsewhere in Europe.

Liberals were a minority in Spain during that period, as elsewhere, but they were clearly politically active and influential. Of particular interest are their theories of sovereignty, citizenship, rights, and institutional design. These are analyzed from the perspective of contemporary constitutional political economy and from the perspective of nineteenth century liberalism as developed in Congleton (2011).

This paper provides a brief history of the rise of liberalism in Spain and uses the Constitution of 1812 as a window into the political liberalism of Spain in the early nineteenth century. Section II of the paper provides a brief historical overview of constitutional developments in Spain before 1800. Many readers will not be familiar with the political institutions of medieval Europe or the great transformation of those institutions that produced democracy in Europe. For example, Spain, as such, did not exist during the late middle ages. Governance in the Iberian Peninsula was highly decentralized. There were several small independent kingdoms and governance within each kingdom was substantially a local affair. Spain as a territory ruled by a single king or queen emerged gradually through marriage and conquest during the fifteenth, sixteenth, and seventeenth centuries. Spanish government emerged somewhat later. It was not until the eighteenth century that most of the regional parliaments of the formerly independent kingdoms were eliminated.

Section III provides a brief overview of the emergence of Spanish liberalism. Liberalism had an early start in Spain, but it was pushed underground during the seventeenth and eighteenth centuries. Section IV uses the Constitution of 1812 as a window into the

political and constitutional theories of Spanish liberals in the early nineteenth century. That document demonstrates that Spanish liberal thought was more sophisticated and influential at the beginning of the nineteenth century than might have been expected.

As in Congleton (2011), the historical analysis undertaken in this piece focuses on political and constitutional developments and neglects international entanglements and wars, except as necessary to shed light on those developments. Constitutional developments in late medieval Spain, as elsewhere, reflected internal bargaining among privileged families, which were influenced by preexisting political and legal institutions and by new ideas, interests, and external threats.

## **II. Setting the Stage: Late Medieval Governance in Spain**

During the thirteenth and fourteenth centuries, written agreements between kings and nobles were common throughout Europe. These agreements could be thought of as Medieval Constitutions insofar as kings or other similar regional rulers (often referred to as barons or dukes in English) acknowledged limits in taxation and law enforcement. To assure those limits were adhered to, representative councils or parliaments of major taxpayers were often established. For English readers, the *Magna Carta* will be the most familiar of the documents, but similar documents were negotiated in present-day Sweden, Denmark, the Netherlands, France, and Spain. These documents often described legal rights for nobles and commoners that included court trials, fiscal restrictions on the executive authority (relevant king, duke, count, etc.), and procedures for adopting new taxes. These were not simply copies of English innovations, but reflected older norms and institutions throughout medieval Europe. The Cortes—the usual name for Spanish parliaments—of the Kingdom of Leon was founded in 1188, several decades before the *Magna Carta* and about a century before the British parliament.

The early European parliaments nearly all had veto power over new taxes, which played a role in the development of political institutions throughout the late middle ages and early modern period. Rulers had a variety of standing sources of revenues, but were restricted from adopting new taxes without majority support in their parliament. These

included revenues from royal lands, sales of monopoly privileges, customary tariffs, and colonial enterprises. Majorities for new revenues were difficult to obtain except during times of crisis; so rulers called their parliaments into session only during fiscal crises. These were sufficiently common that kings would normally call parliaments into session every two or three years, at which time the parliaments would often temporarily increase taxes, often in exchange for changes in royal policies of interest. This was also true of the Spanish kingdoms during the sixteenth and seventeenth centuries (Livermore 1958: 268). Although new royal revenues from the New World reduced the need for Cortes-approved taxes, the cost of continental battles and colonization exceeded even those revenues.

On other matters, the medieval parliaments of Europe had relatively limited authority. They were not “self-calling.” They met when called by their respective “kings” and only as long as the kings required. They did not have significant legislative authority, although their veto authority over new taxes often allowed them to trade new taxes (normally granted for a short period) for policy shifts desired by parliamentary majorities and occasionally for additional policymaking authority.

Medieval parliaments were multicameral, often with separate chambers for nobles, commoners, and the Catholic clergy. In some cases, there were four chambers, as in Aragon where high and low nobles each had their own chamber, or two, as in England where the clergy were included in the noble chamber. Members of the commoner chamber were often elected through a wealth or tax-restricted suffrage, in which 5–10 percent of male voters were eligible to cast votes for representatives. In other cases, members of the commoner assembly were appointed by local governments (who were themselves often partly elected).

Seats in parliaments were normally held by members of privileged families, who were often from noble families, although they did not all personally hold noble titles. These elite families largely controlled government and commerce, except in those areas controlled by the king or church.<sup>2</sup> In practice, they also had considerable influence over the areas of royal

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<sup>2</sup> There were a surprising number of noble families in Spain. About 10 percent of the population, had noble privileges, although wealth and power were concentrated in the upper strata of the nobility (Payne 1973: ch. 15).

and church control, because most of senior bureaucrats and military officers came from those same families.

For day-to-day governance at the level of kingdoms, the king's royal council (or cabinet of ministers) and his bureaucracy were far more important than parliaments, because kings delegated a good deal of authority for making day-to-day policy decisions to their ministers. The members of the council were appointed by the king and served at his pleasure. They were often nobles and/or clergy who were also members of parliament, but this was not usually a requirement of office.

In 1400, there were many independent polities in Spain and most had their own "kings" and "parliaments" (the latter were called cortes in most Spanish polities). Except for the odd independent city, these independent polities were essentially family territories and were passed on to children through inheritance and amalgamated through marriage. Marriage did not automatically cause two polities to become one, but did mean that the same noble would rule several territories, although each territory would have its own cortes and councils. Marriages were thus normally arranged with such shifts of property and policymaking authority in mind (Livermore 1958: chs. 6–7).

During the fifteenth century, most of the territories of Spain were brought into a single family by the marriage of Isabella I of Castile and Ferdinand II of Aragon. As Catholic king and queen (both sovereign in their own territories) they continued the long war to drive the Moors (Muslims) out of Spain. They also funded the Italian Christopher Columbus on his famous trip to find a shortcut across the Atlantic to the spices of the "Far East." His distance calculations proved incorrect, but fortunately for Spain and his place in history, Columbus found an enormous, previously unknown, body of land about a third of the way to China and India. He and other explorers claimed most of the new lands for Spain.

Family politics continued. Isabella's second daughter, Juana, was married to Phillip the Handsome, of the powerful Austrian Hapsburg family. In this manner, the Hapsburg family obtained control of the royal office for Spain. Their son, Charles I (Carlos I) inherited both the Castile and Aragon titles and other properties associated with his grandmother's titles, including the Netherlands. Through his grandfather, he was elected to the throne of the

Holy Roman Empire (as Charles V).<sup>3</sup> In this manner, Charles became ruler of one of the largest territories ever assembled, through well-planned parentage, rather than wars or conquest.<sup>4</sup> He was the first sovereign of essentially all of Spain, having inherited both Isabella and Ferdinand's titles.

It bears keeping in mind that geopolitics during this period were familial, rather than national. Although the Kingdom of Spain was the largest and most important property ruled by the Hapsburgs, it was only one of many of their territories. For most purpose, Carlos I should be thought of as the leading Hapsburg of his era, rather than as the king of Spain. Carlos I was not simply a "Spanish" king and, indeed, did not initially speak Spanish. He moved from his native Belgium (then a Hapsburg-Burgund territory) to Spain as a very young man in 1517.

Carlos I and his son Phillip II invested much of their time, attention, and money in other parts of Europe, including opposing French efforts to annex territories in Italy, countering Ottoman efforts in Eastern Europe, resisting Dutch efforts at succession, and suppressing the Protestant Reformation in their German territories. Gold from the new Spanish South American colonies helped finance these European military and political efforts. It did so in a manner that did not require consulting dozens of regional parliaments throughout Europe to raise new taxes. The Hapsburg properties were split after Charles' retirement in 1555; the central European properties went to his younger brother (Ferdinand) and his Spanish and Burgundy properties went to his son Phillip II. This reduced "Spanish" influence in Europe, but did not end it.

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<sup>3</sup> The position of emperor of the Holy Roman Empire was formally an elective office determined by nine electors, but the electors routinely selected Hapsburgs for the office and normally the next male child in line for the office.

<sup>4</sup> Charles had one name, but many titles, and his name has many translations. The number associated with his name varies with the title and territory. He was Carlos I (Charles I) in Spain, Charles II in the Netherlands, and Charles V (or Karl V) in the Holy Roman Empire. "Carlos I" is used in this paper, since it is about Spain. I have used "II" and "V" elsewhere as appropriate for other papers and book chapters.

Hapsburgs ruled Spain for about a century, but the line died out with the absence of a clear Spanish successor in 1700. The last Spanish Hapsburg left his title to a member of the Bourbon family, which had long ruled France. This produced a geopolitical crisis in Europe, because the Austrian Hapsburgs and the English were concerned that the French and Spanish crowns would sit on the same head and produce an extremely powerful state. After a bit of negotiation, warfare, and more negotiation, a compromise was found: the Bourbon, Phillip (the Duke of Anjou) obtained the Spanish crown, but renounced all claims to the French crown and ceded some territories in Italy to the Austrian Hapsburgs.

### **III. Spanish Governance and Liberalism in the Eighteenth Century**

At the beginning of the eighteenth century, Hapsburg governance was somewhat more centralization in Spain than elsewhere, because of revenues from the American colonies; however, a good deal of political authority in Spain remained vested in the historic kingdoms of Spain, which continued to have their own parliaments (cortes), laws, and special privileges. Spanish parliaments (cortes or corts) included ones in Aragon, Castile, Catalonia, Valencia, Navarre, and the Basque country. To the extent there was a Spanish government in 1700, it had emerged as a consequence of the practical requirements that a single sovereign faced when dealing with many regional and local parliaments.

National policymaking, especially foreign policy, had gradually become centered in Castile, but the regions had their own laws, court systems, and privileges.

#### **A. Bourbon Spain and Centralization**

Phillip's (Felipe V's) claim to the throne was ultimately settled through international warfare and treaties in 1714, rather than the usual Spanish legal practices (acceptance by the various royal cortes and the church). As a consequence, the custom of bargaining with parliaments was weakened and the importance of the Spanish army increased, which tended to increase royal authority.

Felipe V, unlike the Hapsburgs, was not used to dealing with a variety of parliaments and territories, each with their own laws and privileges. After his claim to the throne was



buttressed by international treaties, Felipe V attempted to create a more unified government in Spain. For example, he took revenge on the regions that had supported the Hapsburg (Austrian) claims to the throne during the war over the Bourbon (French) ones. In 1707 the *Nueva Planta Decrees* eliminated most of the privileges and independence of Aragon (Aragon, Catalonia, and Valencia), which had sided with the Hapsburgs. The territories of Aragon would henceforth be subject to the laws of Castile. Castilian Spanish also became the official language of legal proceedings in Spain at that time.<sup>5</sup>

Local government autonomy was also greatly reduced, because noble privileges were somewhat diminished and pivotal seats in local governments would be appointed by the central government. In practice this made the Castilian bureaucracy, councils, and Cortes the central government of Spain, although regional interests could not be entirely ignored.

Royal authority had become more independent of the parliament(s), because of tax and military reforms adopted early in Felipe V's long rule. As a consequence, even the Castilian councils and cortes were less often called and consulted by the Bourbon rulers than by the Hapsburgs (Livermore 1958: Ch. 10, Payne 1973: Ch. 16).

## **B. Eighteenth-Century Economic Liberalism in Spain**

Europe was connected by networks of trade, travel, and religion. These international connections brought books to the hands and ideas to the minds of educated men and women throughout Europe. In the eighteenth century, this common knowledge base

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<sup>5</sup> Centralization was partly a matter of convenience and partly to punish those in Aragon who had resisted Phillip V's accession to the throne. "Considering that the kingdoms of Aragon and Valencia and all their inhabitants have through their rebellion completely broken the oath of fidelity they swore to me and lost all the fueros, privileges, exemptions, and liberties that they enjoyed and that they had been so liberally granted to them..." Cowans (2003: 203). The Nararre and Basque territories remained separate, at this point. Excerpts in Spanish from the *Decretos de Nueva Planta* are available at [http://es.wikisource.org/wiki/Decretos\\_de\\_Nueva\\_Planta](http://es.wikisource.org/wiki/Decretos_de_Nueva_Planta).

included an increasing number of secular works. For example, Spinoza, Bacon, Hobbes, Locke, and Montesquieu were well known and fairly widely read, although several of their books were banned by the Catholic Church. Much of the literature of the Enlightenment was originally published in or translated into Latin, which made it readily accessible to literate Spaniards. The use of French at the Bourbon court also made contemporary French contributions to philosophy, economics, and politics more accessible, because persons seeking favor at the Bourbon court benefited from knowing French customs, language, and literature.

Together, expanded trade, early industrialization, government finance, and the ideas of scholars caused economic theory to become more sophisticated in Spain and elsewhere. New theories of taxation, finance, and economic development attracted broad attention, because of policies that could increase economic growth and/or raise additional government revenues were of interest inside and outside of government. Early liberal ideas about property, commerce, and free trade were also somewhat more evident in Spain than political liberalism, because economic ideas were less subject to censorship.

In the second half of the eighteenth century, a number of economic clubs were established in Spain, and many of these evidently lobbied for economic reforms at both the local national levels of government. The fiscal system was also analyzed, for example, by Leon de Arroyal, who proposed an idea that anticipated Lindahl's notion of an ideal tax system in the 1770s: the ideal state was one in which "each partner contributes to the common expenses in proportion to the benefits from the common fund" (Stein and Stein, 2003: 346). Spanish economists such as Campomanes and Jovellanos argued that modernizing property law (e.g., creating freer markets in land) was the key to revitalizing Spanish agriculture (Ringrose 1998: 169–170).

Partly as a consequence of such arguments, there was a substantial shift of ownership from medieval forms to "freehold" ownership, under which property could be more freely bought and sold. These liberal land reforms were reinforced by pragmatic interests in additional government revenues. Fiscal pressures and constitutional constraints induced the

king to sell royal properties and former Jesuit holdings that became available after the Jesuits were expelled from Spain in 1767 (Ringrose 1998: 384).

Similarly, free trade arguments began to be heard in Spain. For example, several years before Adam Smith completed his most famous book, Pablo de Olivide, the superintendant of Seville, wrote in 1765 that

“The [wheat] supply of Madrid would be assured, since the bakers cannot run short of grain as long as any is available in Spain. It might be expensive, but this would attract more to market, and thus its very expensiveness, attracting competition will produce cheapness.” Quoted in Ringrose (1998: 171).

Supply would follow demand, without the need for government rationing. With such ideas in mind, the internal grain market was liberalized the same year (Payne ch. 16).

A few years later, Carlos III formed a relatively liberal cabinet headed by José Moñino (the Count of Foridablanco).<sup>6</sup> That cabinet adopted a number of economic reforms, including the free trade law of 1778, which substantially reduced barriers to trade within the Spanish empire and induced a rapid expansion of trade in the next decades. In Fisher’s (1985) words:

“Free trade promoted a massive expansion in the value of exports from Spain to America. The rise was uneven, but in the period 1782–96 as a whole their average annual value was 400% higher than in the base year of 1778... The share of Spanish products in total exports from Spain to America rose from 38% in 1778 to an average of 52% in 1782–96.”

All this is not to suggest that Spain was filled with liberal reformers, even in the economic sphere, but simply to indicate that early forms of economic liberalism had relatively broad and active support in Spain’s government and literate society—before the American and French Revolutions took place and before Adam Smith’s influential book on

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<sup>6</sup> The word “relatively” is important here, as Carlos III was certainly not a liberal himself. Moreover, liberals, then as now often disagreed about the nature of “ideal” reforms, although they often agreed about the proper direction for reform. Compromises and bargains were always necessary. So, along with some important reductions in monopoly privileges and education reform came stronger dress codes and some rent control (Payne 1973: Ch. 16).

economics was published. Liberal economic reforms were often in the interest of otherwise conservative governments.

### **C. Political Liberalism in Eighteenth Century Spain**

Political liberalism was less evident during the eighteenth century than economic liberalism was, because suggestions for major political reforms were often subject to censorship and treason laws, and subjected to tough penalties. In the seventeenth and eighteenth centuries, a good deal of European political theory was published anonymously or at Dutch presses where censorship was far less stringent and threatening than elsewhere in Europe. Spain's censorship was somewhat broader and more threatening than most: the Inquisition was still a possibility until it was formally abolished in 1834, and the Bourbon's had long attempted to suppress political dissent in France.

As a consequence, Spain's political liberals published little during the late Hapsburg and Bourbon periods. Indeed, the *Encyclopedia of Philosophy* (1972, Vol. 7: 514) includes no entries for Spanish philosophy between Francisco Suarez (1548-1617) and Jaime Balmes (1810-1848), who is credited with attempting to reintroduce philosophical discussion in Spain. It bears noting that Spanish scholars had written about political constraints before the arrival of the Hapsburg and Bourbon dynasties. For example, Mariana had explored issues concerning the scope of legitimate authority in his *De Rege Et Regis Institutione* (1599)—perhaps influenced by the Dutch experience in the late sixteenth century (Braun 2007).

Censorship is rarely complete, however, and private discussions can take place and smuggled books read, even when censorship is rigorous. Eighteenth-century philosophical work by Spanish and neighboring Portuguese scholars also had a significant impact in Spain, for example, the work of Benito Jeronimo Feijoo and Luis Antonio Verney, who were both influential among Spanish intellectuals. Although the latter were not explicitly political, they raised questions about the appropriate methodology for understanding the world, which indirectly directed attention to the constitutional experiments taking place elsewhere in the world, as in the North American colonies, the Netherlands, and England (Israel 2002: 534).

It may also be presumed that Spanish political reform was discussed at the various economic clubs established throughout Spain during the second half of the eighteenth century.

Economic reforms could often be accomplished indirectly by first adopting political reforms, although this did not occur in Spain.

The political ideas of Spanish liberals became apparent during and after the French Revolution. During the French Revolution, moderate Spanish liberals, as elsewhere, were shocked by the excesses of the Committee of Public Safety and the use of the guillotine. Others who were more sympathetic to the idea of revolutionary reform and confident that Spain could avoid French excesses called for a new constitutional convention:

Spaniards: The time has come to offer the truth to all peoples; tyranny tries in vain to smother their cries. The country of liberty [France], where the people are king, offers asylum to philosophers and the defenders of humanity, who are safe from any worry in the heart of France ... This sublime revolution, which has solemnly toppled superstition and tyranny from their golden throne in order to place equality and reason on it... You have but one means remaining, Spaniards, of destroying religious despotism and that is to convoke a meeting of your Cortes ... Your Cortes are well known [for their rules and rigid limits]. France needed a revolution; Spain needs only rejuvenation.”

Excerpt from Jose Marchena's *To the Spanish Nation* (1792), translation from Cowan (2003: 261–63).

Marchena's thoughts were a minority opinion even among Spain's liberals, and Spain, perhaps naturally with its Bourbon rulers, joined the alliance against the French Republic. This, nonetheless, accelerated land reforms, as the monarchy sold its land and church land to help finance the war effort. (Evidently, freehold claims could be sold at higher prices than more encumbered claims.) Napoleon's armies proved too effective for Spanish forces, just as they were for most other armies in Europe.

Spain's king, Carlos IV and his son Ferdinand VII were “persuaded” to abdicate in June of 1808. He and his son Ferdinand were taken to France where they were held in isolation, and rule of the kingdom of Spain was turned over to Napoleon's brother Joseph. However, Joseph did not have an easy time governing Spain, because of Spanish resistance (supported by British troops) throughout most of Spain.

That those resisting French rule were mainstream opponents of Napoleonic rule, rather than revolutionaries, is indicated by the steps that they took. In the absence of the proper king, a national parliament (central junta) was organized, which asked the elderly José Moñino, the former prime minister for Carlos III three decades earlier, to head the government in exile in 1808. He accepted, although the rigors of travel at his age led to his demise.

#### **IV. The Cádiz Cortes and the Constitution of 1812 as a Window into Spanish Political Liberalism**

Although not all opponents of Napoleon and his brother were liberals, the constitutional efforts undertaken suggest that Spanish liberals, rather than conservatives (traditionalists), played major roles. This became clear when the resistance formed a central administration in the absence of the king. The various regional groups organized a national umbrella organization, the Supreme Central and Governmental Council (Junta) of Spain. It met in Aranjuez in September 1808 with José Moñino as president.<sup>7</sup> It called for a Cortes of the Spanish Nation that would write a new constitution for the nation as a whole.

The members of the Constitutional Cortes were to be elected representatives from both Spain proper and Spanish territories in the New World, rather than Spanish nobles or members of the clergy. One representative for every 50,000 freemen were to be (indirectly) elected from Spain and one from every 100,000 freemen from Spanish territories in the New World.

As the provisional government retreated before French forces, the resistance found itself meeting in Cádiz, an important, easily defended, port city with a major Spanish naval base, about as far away from France as it is possible to get without leaving Spain.<sup>8</sup> The Constitutional Cortes assembled there in 1810 and included representatives from both new and old Spain. Not all communities could send representatives, because of the French

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<sup>7</sup> José Moñino was by that time 80 years old in and poor health. He died in November 1808.

<sup>8</sup> The constitutional negotiations within the Cortes took place while Cádiz was under siege by the French army. The siege was finally lifted in 1812 after the Spanish victory at the battle of Salamonca.

occupation. Replacements were appointed by the conference organizers, who were somewhat more liberal than the typical Spaniard (or local representative) would be; indeed they could be considered radical liberals by the standards of 1800.

The result of two years of deliberations was a document that was the most liberal of its kind in Europe. The constitution was grounded on popular sovereignty and it characterized a government with a dominant, unicameral, parliament to be elected by very broad suffrage. Its provisions substantially increased civic equality by reducing aristocratic and monopoly privileges. It was briefly implemented in 1812–14, which made it an actual constitutional document, rather than an entirely theoretical exercise, as might be said of Germany's Frankfurt constitution of 1848.

In many respects, the document of 1812 was similar to that of the Frankfurt convention thirty six years later. It characterized a constitutional monarchy, rather than a republic. It called for a parliament elected on the basis of essentially universal male suffrage. It was also a product of negotiations among liberals, rather than the result of constitutional bargaining among persons in government with the authority to adopt constitutional reforms.

That neither the king nor conservative officeholders participated in the negotiations allowed the document to take a very liberal form. Because it represented the consensus in Spanish liberalism at that time, it became an important symbol for liberal reformers throughout the Spanish world for many decades.<sup>9</sup> However, the absence of constitutional bargaining with conservatives and the king, also made it likely that the document would have a short life as a true constitution after the war with Napoleon and his brother was won.

The specifics of the negotiation process are neglected here in order to focus on the results. The 1812 constitution is of interest, both as a clear window into Spanish political liberalism of the time and as a response to the constitutional experiences of America and France in the late seventeenth century. It should be kept in mind that eighteenth-century liberals generally agreed about the proper direction for reform, rather than the specifics of

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<sup>9</sup> The Frankfurt constitution was intended to become a constitution for Germany, rather than a symbolic document. The crown created by that constitution was offered to the King of Prussia, who rejected it, as Ferdinand VII would later reject the Cádiz Constitution.

reform or a particular vision of the “good society.” Both areas of consensus and disagreement among liberals are evident in the document that emerged from the Cortes at Cádiz.

Eighteenth-century liberals generally agreed that constitutions should be written, rather than unwritten, and that parliaments should be more broadly elected than they were at that time. They also believed that royal authority should be subject to the rule of law and that parliamentary authority be increased. Most believed that legitimate governments were grounded on popular sovereignty and had a duty to advance the interests of all members of their polities, rather than just the interests of the well born. These areas of agreement are all advanced by the constitution of 1812.

Some moderate liberals, following Montesquieu and Burke, favored royal systems with bicameral parliaments, as in England. They believed that such systems balanced competing interests fairly well and had proven to be fairly stable. Republics were evidently less so, given the experience of France in the 1790s. Other more radical liberals favored republican systems, both because they opposed familial privileges and because they thought that it was essentially impossible for parliaments to constrain a king. Most believed that cabinets should be appointed by, or at least responsible to, the parliament.

The Cádiz Constitution was clearly a product of negotiation and compromise. In areas where liberals agreed on principles, they were able to find words acceptable to a majority of liberals. Chapter I states that “sovereignty belongs to the nation” and that “the nation is obliged, by wise and just laws, to protect the liberty, property, and all other legitimate rights, of every individual which composes it.” The document describes rights to education in chapter IX (which tends to equalize opportunity) and rights to due process before the law in courts staffed by judges that serve for life (unless they violate the law) in chapter V.

Fiscal matters were to be decided by the parliament (cortes) and “every Spaniard, without exception, is obliged to contribute, in proportion to his means, to the finances of the State.”

The government was to have a king, but a weak king, relative to other European kings of the time. The constitutional language is clear and detailed on royal powers; it includes



enumerated powers, prohibitions, and titles. Article 14 states that “the Government of the Spanish nation is a moderate, hereditary monarchy” and “the King shall be styled, his Catholic Majesty.” Chapter IV describes the extent and limits of royal authority. Article 170 states that “the exclusive power of enforcing and rendering the laws effective resides in the King, whose authority extends to whatever may be conducive to the interior regulation, and exterior security and defense of the State, consistently with the laws and the Constitution.”

Article 171 lists royal authorities, including the following:

- “(3) To declare war and make and ratify peace; laying, afterwards, authentic documents of the same before the Cortes;
- (4) To nominate, by and with the assistance of the council of State, all civil and criminal magistrates;
- (5) To appoint all civil and military officers;
- (6) To present, by and with the advice of the council of State, to all bishoprics, ecclesiastical benefices and dignities...
- (8) To command the navy and army, and appoint the generals...
- (11) To regulate the coinage of money, on which shall be impressed his image and name.”

These were normal authorities of European kings at the time. However, the document places many restrictions on the king’s authority, some of which were new for Europe and most of which had been absent from Spain for many decades, indeed centuries.

Article 172 lists policy areas in which kings could not act without the consent of the Cortes. Many of these were policy areas affecting property rights and civil liberties:

- “(5) The king cannot make any offensive or defensive alliance, or special treaty of alliance or commerce, with any foreign power, without the consent of the Cortes...
- (7) He cannot cede or make over the national property without consent of the Cortes;
- (8) He cannot, without a previous decree of the Cortes, directly or indirectly, impose contributions, or make loans, under any name or for any object whatsoever;
- (9) Neither can he grant any exclusive privilege to any person or corporation;
- (10) He cannot dispossess any corporation or individual of their property; neither can he disturb them in the enjoyment or direction and profit of it; and if, in case of necessity, for the general advantage of the public good, it should be required to convert that of an individual for a particular object, it cannot be done without a full indemnification, by just valuation of respectable persons;

- (11) The King cannot punish, in any manner whatsoever, or deprive any individual of his liberty, under any pretense; the secretary of State who signs and the judge who executes the order shall be responsible to the nation; and, in such case, punished as criminals against civil liberty.”

Chapter III describes the authority and composition of the reformed and strengthened parliament. As developed above, Spain had long had parliaments at the regional level and had a national parliament for much of the eighteenth century. However, the authority of these parliaments was quite limited: they were not self calling; all of their proposed laws were subject to a royal veto; and in the eighteenth century their veto power over new taxes was narrowly interpreted. The cortes had largely been ignored during the Bourbon period. In contrast, the reformed parliament would have power to adopt and repeal laws, and broader authority over revenues, succession, and military deployments.

The authorities of parliament listed in article 131 include the following:

- “(1) To propose and decree the laws and interpret and repeal them, when it shall be necessary;
- (2) To administer the oath to the King, and Prince of Asturias and to the Regency, according to the forms directed in their proper places...
- (7) To approve, *before their ratification* [author’s emphasis], the treaties of offense, alliance, subsidy, and particularly those of commerce...
- (8) To grant or deny the admission of foreign troops into the kingdom...
- (10) To fix, by proposals from the King, the proportion of sea and land forces for the year; determining the standing force in time of peace and augmentation in war;
- (11) To issue codes of established instructions to the army, navy, and national militia, for their direction, under all circumstances;
- (12) To fix the expenses of the public service;
- (13) To establish the annual contributions and imposts;
- (14) To borrow money, in cases of emergency, on the credit of the nation;
- (15) To approve the division of the proportion of contributions to be levied on each province...
- (17) To establish customhouses and the rates of duties;
- (18) To make the necessary dispositions for the administration, preservation and expenditure of the public funds;
- (19) To determine the value, weight, standard, impression and denomination of the circulating medium;
- (20) To adopt the system of weights and measures, which may appear to them most just and convenient;

- (21) To promote and encourage all descriptions of industry and remove the obstacles which may check them;
- (22) To establish a general plan of public education throughout the whole monarchy and approve that which is pursued for the instruction of the Prince of Asturias;
- (23) To approve the regulations for the general health and police of the kingdom;
- (24) To protect the political liberty of the press;
- (25) To make the responsibility of the secretary of State and other public officers, effective;
- (26) Lastly, it belongs to the Cortes to give or refuse its consent to all those acts and circumstances, in which, according to the Constitution, it may be necessary.”

The list includes many authorities that no other European parliaments possessed in 1812, although most were held by the U. S. Congress and (implicitly) by the British parliament. Authorities 12–18 provide the cortes with a stronger power of the purse than the British parliament formally had at this time. Authority 21 encouraged the Cortes to remove internal and external barriers to trade.

The cortes also oversaw the activities of the secretary of state (prime minister) to assure that he, rather than the king, is responsible for his actions (e.g., that they are lawful) and determines the limits of censorship. It also had obligations to oversee education reform and public health in the kingdom, both of which were policy concerns of liberals of the day. (Contemporaries who claim to be “classical liberals” often forget that such policy concerns were part of the classic liberal reform agenda, although it bears noting that the early proposals were very modest ones by the standards of a twenty-first century welfare state.)

All seats in the cortes were to be elected, although elections to the parliament were to be indirect. Representation was to be uniform with a representative (deputy) for each 70,000 citizens in the worldwide Spanish nation-state. (The colonies were to elect their own representatives [deputies] to the parliament.) Elections were to be held every two years (Article 108). The electorate was to comprise the entire citizenry. Citizens, described in chapter I, were to be free-born men (of Spanish parents or born within Spanish territory), immigrants who have lived in a particular village for 10 years, freed slaves, and others naturalized by law. (Only citizens were eligible to hold government jobs.)

The elections for seats in the cortes took place in three stages. First, the citizenry was divided into groups of 200, each of which elected a representative. Those representatives gathered in the major towns of their respective regions and elected an “elector” who then met in their regions’ major cities to elect their deputies (representatives) to the cortes. Such three-part elections would tend to generate moderate, relatively well-qualified members of the cortes.

The Cádiz Constitution also included innovative procedures for the adoption and repeal of legislation. The king could delay, but could not permanently block legislation adopted by the cortes. If parliament passed a law once each year for three years, it became law. If, however, it was passed once or twice, but vetoed by the king on those occasions, it would not.

Although a relatively complete constitution, some issues evidently could not be resolved by compromises among the participants. For example, article 91 states that: “to be a member of the Cortes, it is also necessary to possess a sufficient real and personal property,” but makes no effort to describe how much property would be necessary. In many constitutional compromises reached in other countries later in the century, relatively high wealth requirements were often adopted to obtain noble support for other liberal constitutional reforms.

More important, as a constitutional matter, the document repeatedly mentions the council of state (cabinet) and its members (secretaries of state), but characterizes neither its duties nor its membership. In the mid-to-late nineteenth century, control over such councils of state (cabinets) was a significant area of constitutional negotiation. In other European countries at the time (toward the end of the Napoleonic period), the king appointed cabinets, which served at his pleasure; they, like the king, were above the law. In the Cádiz Constitution, cabinet members were clearly to be “responsible” (Article 130, part 25) and the king was to coordinate his policies with or through them. However, the king was not responsible in this sense. Article 168 states that “neither is he [the king] responsible for any thing.”

These clauses implicitly suggest that the king would appoint the cabinet, which would serve as the main channel of executive authority. Cabinet ministers (secretaries of state) would be responsible for violating the laws adopted by parliament, rather than the king. However, the constitution does not state this explicitly, which contrasts with the broad range of other procedural issues and authorities that are clearly stated. This ambiguity suggests that moderate and radical liberals could not reach agreement on this important constitutional point, possibly because they hoped that the king would accept the new constitution and believed that the power to appoint the cabinet was necessary to obtain his support.

Other issues were also left unresolved. For example, the constitution mentions slavery, but does not explicitly support, criticize, or eliminate it. Nonetheless, with its very broad electorate, expanded parliamentary authority, and provisions for the protection of property and due process, the Cádiz Constitution would have been the most liberal constitution in Europe in 1812.

## **V. Conclusions and Postscript**

Ferdinand VII was “restored” in March 1814 following the defeat of Napoleon (by the alliance of Russia, England, Prussia and Austria). He initially accepted the Cádiz constitution, but after the voices of conservative defenders of the long-standing medieval system of government were heard, which included both nobles and rural farmers, he revoked the constitution and ruled under the pre-Napoleonic Bourbon constitution (which was largely unwritten).

The 1812 constitution, nevertheless continued to influence politics in Spain and in the New World. It was a rallying point for constitutional liberals, who managed to reinstate the constitution twice in the next two decades. It also served as a model and inspiration for reformers in the New World, many of whom had participated in the constitutional deliberations in Cádiz. Among these were Miguel Ramos Arizpe of Mexico, Joaquín Fernández de Leiva of Chile, Vicente Morales Duárez of Peru, and José Mejía Lequerica of Ecuador, who subsequently played significant roles in politics in the New World, many of which seceded from Spain in the decades that followed. The elections undertaken in 1813

under the 1812 constitution were the first national elections in Spain or Spanish America (Rodríguez 1998).

That other well-organized groups, such as the clergy and the nobility, did not accept the new document is not surprising. Relatively few persons from these groups participated in the constitutional deliberations, their interests were not represented, and no constitutional bargains between liberals and conservatives were consummated. For the purposes of this paper, however, the imbalanced representation of Cádiz has clear practical advantages. The document, as a product of negotiations among liberals, provides an especially a clear window into Spanish political liberalism in the early nineteenth century. The 1812 constitution demonstrates that, although Spanish scholars produced relatively little written liberal political theory, Spanish political liberals and theories did exist, were well organized, and influential.

After the war with France was over, the old regime was restored and constitutional bargaining begun again. The subsequent process of constitutional negotiation and exchange, however, did not fully deliver on its potential in nineteenth-century Spain, as it did elsewhere in Europe (Congleton 2011), although some progress was made. The bargaining failure in Spain may have been a consequence of circumstances in Spain, where political liberals may have been more doctrinaire and less willing to compromise than elsewhere—in part, because they already had a specific constitutional design in mind. It may also have been partly a consequence of the constitution of 1812 itself, which provided a natural “all or nothing” offer for liberal proponents. In other places, liberals lacked a clear vision of what they wanted to achieve, which made bargaining incremental and also made such bargains easier for liberals and conservatives to accept. It also reflected the break down in traditional quasi-constitutional governance during the Napoleonic period, which increased the size and political importance of the Spanish army in a manner that made negotiations and compromise by conservatives more difficult.

What is important for the present analysis is not the failure of the 1812 constitution to become the law of the land, but that it represented a sophisticated synthesis of liberal thought about constitutional design. There was a long history of constitutional experiments in Spain, and many lessons from that history were obvious to Spain’s political reformers.

They could recall, for example, the value that the cortes had added in pre-Bourbon Spain. They could also observe the effects of liberal political and economic reforms in the United States, England, France, and the Netherlands.

Their efforts to design a liberal constitutional monarchy produced a very plausible result, one that was in many ways similar to those that would emerge in the late nineteenth and early twentieth centuries in Belgium, Denmark, the Netherlands, Norway, and Sweden. The Cádiz Constitution was not a document written by radical revolutionaries who explicitly aimed to end the monarchy, Catholic Church, and nobility; these were all preserved. It contained no grand statement of the rights of man. It was a compromise worked out by serious men, who deliberated in the midst of a war of resistance, while the site of their negotiations was under siege by the enemy.

The result makes it clear that the constitutional political economy and political liberalism were well advanced in Spain at the beginning of the nineteenth century. Had the king accepted his greatly reduced authority under the Cádiz Constitution and foreign powers not intervened as they had in France, Spanish history for the next two centuries might have been very different.

It is beyond the scope of the present analysis to explore those possibilities in any detail, but it seems clear that the 1812 constitution might have produced stable governance, not only for Spain, but for Spanish America as well. After a few decades, the constitutions' liberal political and economic provisions would have become the norm and been taken for granted in Spanish politics. With civil and economic liberties guaranteed and broad representation, there would have been less reason for the various Spanish territories to secede.

It is also likely that the Cádiz Constitution would have been gradually revised through the nineteenth century. Given its early start, it also seems likely that the reforms would have been at the forefront of other constitutional liberalizations in Europe. Women would presumably have been made eligible for suffrage and slavery eliminated.

In the long run, it seems likely that that result would have been better for Spain, for South America, and for the king and nobility than the turbulent constitutional and political

history that actually followed. This too suggests that constitutional political economy was well advanced in Spain in 1812. Indeed, it may have been more so at that time than at any other point, until relatively late in the twentieth century.

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