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THE CONSTITUTION OF 1812: AN EXERCISE IN SPANISH CONSTITUTIONAL
THOUGHT

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ABSTRACT

In March of 1812, the Spanish representative assembly known as the Cortes promulgated a decidedly liberal constitution in the midst of Napoleonic invasion. The Constitution of 1812 governed Spain for the next two years until its abrogation upon the return of Fernando VII. This momentary interval of liberalism appears as an unexpected development in the history of Spain. Undoubtedly, the Constitution's liberal, progressive, and reformist sentiments differ greatly from the conservative national culture and traditional institutions of Spain at this moment in history. This thesis addresses the causes leading Spain to adopt a constitution intent on empowering the representative Cortes, limiting the Spanish monarchy, and unifying the Spanish nation. Inherent in this project is an analysis of the distinctly Spanish brand of liberalism which attempted to combine both liberal and nationalist sentiments within the Constitution's provisions. The rhetoric of the Constitution's drafters claims to be attempting to revive an ancient Spanish constitution and system of government where strong representative institutions and a written constitution upheld the individual rights of the Spanish people. Upon assessment, this historical construction both aligns with the liberalism of contemporary Europe and ignores historical realities. Based on the evidence presented in this project, the Constitution of 1812 appears as a liberal expression brought about by a careful study of foreign principles and moderated by concessions to traditional national institutions. In this interpretation, liberal rhetoric disseminated in Spain exists as a calculating reconciliation of liberal principles with national feeling, thereby gaining popular support for an unprecedented constitution.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	iii.
Chapter 1: Introduction	1
Chapter 2: The Origins.....	9
Chapter 3: The Cortes	31
Chapter 4: The King.....	47
Chapter 5: The Nation.....	61
Chapter 6: Conclusion.....	79
Appendix A: <i>Allegory on the Adoption of the Constitution of 1812</i>	89
BIBLIOGRAPHY	90

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Chapter 1

Introduction

The Spanish Constitution of 1812, promulgated in the city of Cadiz on March 19, is a document undeniably influenced by the liberalism of the nineteenth century. Though the Constitution owes many of its provisions to liberal thought, liberalism in one sense owes something to the Constitution. Prior to the 1810's, the word liberal according to its definition in Samuel Johnson's *A Dictionary of the English Language* was a word with no political connotation, meaning merely "Not mean, not low in birth, not low in mind." The word attained its alternate definition when appropriated from the Spanish political party known as the *Liberales*, who had derived their name from the Spanish word *libre*, meaning free.¹ This political party that both lent its name to and participated in the liberal political movement was the driving force behind the Constitution of 1812.

In terms of liberal provisions, the Constitution of the *Liberal* party granted universal suffrage to all adult males of both Spain and the Spanish colonies, clearly expressing the sovereignty of the people. Individual liberty was protected under the Constitution through the empowerment of the Spanish legislative body, known as the Cortes, which was granted extensive powers at the expense of the king. For the two years following the document's proclamation in 1812, Spain existed as a nominal constitutional monarchy. Interestingly, Spain in the context of early modern history has often been characterized as a resolutely backwards nation. Thus, the

¹ J.C.D. Clark, *English Society, 1660-1832* (Cambridge: Cambridge University Press, 2000), 6-7.

Constitution's central tenets, and even its mere existence, seem to deviate from informed expectation regarding the history and culture of Spain.

Liberalism, generally speaking, is founded on ideas of liberty and equality. The doctrine's initial unfolding is placed within the conflicts between the English king and Parliament in the mid-seventeenth century, spurring English political thinkers to rhetorically support the exercise of power through representative bodies such as Parliament rather than the arbitrary authority of a king. The political arguments of these thinkers, such as John Locke, ultimately addressed and refuted with some success the divinity of monarchy, hereditary privilege, and often the power of institutionalized religion. The foundations of early modern European society were considered to be the sources of encroachment on the rights of the people at large who, according to Locke's famous assertion, deserved the right to life, liberty, and property. In Locke's opinion, elucidated in the "Two Treatises of Government", a social contract existed between the ruler and his subjects based on the consent of the governed. Subjects had, by extension, the right to rescind their consent to be governed by that which they deem tyrannical. Under the influence of these ideas, England executed King Charles I in 1649, an act of outright defiance to the idea that the king was God's chosen representative. Following a brief experiment with republicanism and the subsequent restoration of the monarchy, the English ultimately pressed parliamentary sovereignty and the English Bill of Rights on the joint monarchy of William and Mary in 1688 as a condition to recognizing their right to rule.

A demand for a change in power structure based on liberal ideals was not unique to England, although 88 years passed before liberalism's next public expression. The Declaration of Independence, produced by Great Britain's American colonies in 1776, reveals a clear understanding of the theories of authority that had become central in liberal political thought.

The Americans recognized the rights demanded by English liberal adherents and were equally determined to realize the ability to break with insufficient governance and create their own. True to form, the Declaration of Independence preceded the American Revolution which, once completed, brought about a new government under the American Constitution. Ratified in 1788, the American Constitution became the first constitution of a major state and the hallmark of constitutional government.

The written constitution as a symbol of the contract created between a government and its people was further enshrined as an emblem of popular sovereignty through the French Revolution. Prior to the revolution, the French Estates-General was comprised of three estates of the nobility, the clergy, and the rest of the population, with each estate receiving one vote. Following a rejection of this decidedly unequal and unrepresentative system, French liberals established the National Assembly. Through votes allotted equally rather than based on class, the Assembly renounced the hereditary and religious privileges that had given the aristocracy and the clergy disproportionate influence in the French constituent body. The National Assembly proceeded to promulgate the Declaration of the Rights of Man and the Citizen in 1789, capturing the rights to “liberty, property, security, and resistance to oppression” for all individuals as demanded by liberalism.² The subsequent Constitution of 1791, based in part on the American constitution, formally structured the French government under the principle of national sovereignty. Coupled with the Declaration, the Constitution of 1791 sought to retain both liberty and equality for all French citizens.

Thus, liberalism’s original growth as a response to one instance of an insistent king asserting his divine authority over an equally determined Parliament expanded to include

² “Declaration of the Rights of Man” From The Avalon Project.
<http://avalon.law.yale.edu/18th_century/rightsof.asp>.

multiple reactions to arbitrary power, whether it be that of a divinely ordained king, a dominant and exclusive nobility, or a religious institution with increasing secular influence. Though not necessarily uniformly distributed in a spatial sense, the principles of liberalism ultimately came to encompass ideas such as individual rights, political freedom, freedom of the press and of religion, equal rights under the law, protection of property, and a separation of church and state. All of these tenets stemmed from a basic belief in the value of the individual, regardless of his corporate associations. A population of such individuals was therefore entitled to input into national affairs, resulting in the national sovereignty that liberalism clearly embodies.

The idea of individuals as the foundation of a nation, and thus the repository of sovereignty, evolved with the development of a national identity and essentially the rise of nationalism. Benedict Anderson argues that print-capitalism played a significant role in the formation of national identity. The dissemination of reading materials reinforced the development of regional vernaculars, increased literacy, and, most importantly, fostered an awareness of like people outside of an individual's personal sphere. Anderson terms these conceptualizations "imagined communities" as an individual cannot personally know each his peers but knows that they are there. Furthermore, this awareness can grow to the point where a member feels affinity and loyalty, even going so far as to equate their community's status or well-being with personal identity.³ In terms of a ruler's relationship to newly imagined communities, Anderson finds that some monarchies, particularly those of multi-ethnic empires, attempted to benefit from national identification by adopting titles alluding to nationality; however, "these new identifications shored up legitimacies which, in an age of capitalism,

³ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991).

skepticism, and science, could less and less safely rest on putative sacrality and sheer antiquity.”⁴

An important implication then, according to Anderson, was that a king who had claimed the designation of the most important member of a national group thus “implicitly conceded that he was one among many of the same kind as himself, that he had a representative function, and therefore could, in principle, be a traitor.”⁵ A ruler’s accountability to the nation that he was a part of solidifies the idea of a sovereign people entitled to certain rights and a certain shared authority within a nation. Liah Greenfield, in her discussion of the bi-conditionality of liberalism and nationalism, writes that nationalism occasioned national sovereignty as it “symbolically elevated the mass of the population to the dignity of an elite” thereby invalidating inequalities in terms of civil rights and economic opportunity.⁶ Nationalism, then, essentially overturned many of the claims made by the privileged, allowing liberal theory to supersede certain bases of power with its own, more socially and economically relevant justifications.

Spain during the eighteenth century did not appear to be fertile grounds for either liberalism or nationalism. Liberalism’s clear repudiation of absolute royal power and hereditary privilege was unaligned with traditional Spanish authority, while its rejection of religion further estranged liberal ideals from the Spanish masses. In terms of royal authority, a powerful and often beloved monarchy had ruled the territory now known as Spain since the union of Isabella of Castile and Fernando of Aragon in 1469. The representative Cortes faded into quiet submission as the Spanish hereditary monarchy rapidly consolidated its power, culminating in the absolutism of the Spanish Bourbons who attained the throne in 1700 through distant dynastic relations.

⁴ Ibid., 82.

⁵ Ibid.

⁶ Liah Greenfield, “Nationalism and the Mind,” in *Nations and Nationalism* 11.3 (2005).

The idea of privilege, which granted the Spanish king his divinely gifted royal prerogative, was an important part of Spanish society throughout the early modern period and is best viewed through economic ramifications. Land-owning grandees and lesser *hidalgos* alike clung to their titles of nobility that set them above common Spanish stock and conveniently prohibited engaging in manual labor. Spain's economy was ill-served by idle, though often impoverished, nobles who refused to advance its growth. Further contributing to a faltering economic situation was the *Mesta*, a sheep owners' guild of medieval origins, which maintained the prerogative of annually herding sheep through the wide open plains of central Spain. This antiquated privilege superseded any sort of agricultural initiative in the region, rendering the land virtually worthless in terms of its potential to produce crops. In addition to the untilled land of the *Meseta*, the Catholic Church in Spain retained large tracts of land as church property which was similarly unexploited as long as it remained entailed. Finally, regionalism endured as an important player in national politics as different regions jockeyed to hold onto local privileges granting degrees of autonomy from the central authority. To economic detriment, many of these privileges concerned control of taxation within the region and trade barriers hindering interregional commerce. Regional identity in Spain, maintained through strong regional character based on linguistic differences and varying degrees of autonomy, was more important than identification with the Spanish nation through much of the early modern period. Overall, these social and economic privileges held by hereditary nobles, the Catholic Church, and the Spanish regions countered the cores of both liberalism and nationalism.

Included in liberalism and, to an extent, nationalism, is a refutation of religion's primacy as an ideological means of consolidating power. France, the United States, and, to a lesser extent, England removed religion's influence in secular affairs during their respective adoptions of

liberal principles, establishing a separation of church and state as well some level of religious freedom.

In Spain, however, liberalism's rejection of religion served only to alienate the average Spaniard from the ideology's claims. The Spanish Church, as an institution, held both political and economic stakes within Spain. In addition to church possessions in land, the Church held political influence as many bishops, men of religious training but also of a high level of education, became important advisors to the Spanish king. The Spanish Inquisition, established in 1478, further strengthened the Church, placing it in the position to control the dissemination of any written work deemed unfit for popular consumption. Buttressed by a function as the source of education for Spanish youth as well as the traditional devotion of the Spanish population, the Catholic Church was a powerful force upheld by both the privileged and the unprivileged within Spain, leaving no room for liberalism's secular appeal.

Thus Spain was an unlikely setting for a progressive, even radical, constitution. However, despite the rigid base of conservative tradition, liberal thought could not help but filter into Spain from the outside world. Once introduced, liberalism experienced a slow and halting growth that nonetheless found some level of traction with adherents who embraced and espoused its creed. Liberalism's escalation, aided by some exceptional circumstances, found outright expression in Cadiz in 1812. Underwritten by a very particular brand of Spanish liberal theory, the Constitution emerged at the confluence of the rise of both liberalism and nationalism within Spain, eventually asserting the national sovereignty used to empower the representative Cortes, limit the hereditary monarchy, and unify the Spanish nation. This thesis considers the idea that the Constitution created a moderate balance of power between the Cortes and the King, as a result both of the slow growth of liberalism within Spain and the distinctly Spanish form of

liberalism which sought also a balance between liberal principles and the particularities of the Spanish national identity.

Chapter 2

The Origins

The Constitution of Cadiz, promulgated March 19, 1812, was certainly created in the midst of extraordinary circumstances, but is not the abrupt deviation from Spanish history that it may appear to be. As thinkers in other areas of Europe developed rich Enlightenment canons, Spain seemed mired in the debt and decline of the past. Prospects for the growth of a progressive liberalism seemed scanty and improbable considering the unbroken strength of monarchy, landed aristocracy, and organized religion. Without appropriate historical context, the adoption of one of the most liberal constitutions of the era seems to be a confusing deviance from Spain's established order. A country of religious fervor and the infamous Inquisition would appear an unlikely candidate to embrace political ideals derived from the fanatically anticlerical French revolution. Similarly, a socio-economic system dominated by the First and Second Estates would be predictably unamenable to the universal enfranchisement of adult male citizens. However, even in a country of jealously guarded privileges, the progressive inclinations of the Cortes were not unprecedented. The rise of liberalism was by no means an anomaly in Spanish history; the origins of the Spanish liberal tradition were placed retrospectively in a medieval understanding of popular sovereignty. The dedication of King Charles III to enlightened reformism anchored Spanish liberalism in the eighteenth century, effectively reinforcing the nascent roots of the Enlightenment within Spain. Spurred by the support of Charles III, liberalism gained adherents who would maintain their beliefs and develop viewpoints befitting the changing domestic circumstances of the 1790's and the era of the French Revolution.

Spain's ascent to liberalism culminating in the Constitution of 1812 essentially began with the progressive reform policies of King Charles III. Heir to both the chronic problems of the Spanish state and the upward momentum initiated by the establishment of the Bourbon dynasty in 1700, Charles III ruled from 1759 to 1788 under an unerring belief in enlightened absolutism. He sought to both further the centralizing efforts of his predecessors and, at the same time, enact permanent and progressive reforms. His reforms, though rarely embraced in their entirety, were nonetheless successful to a degree in modernizing and improving the Spanish state. His efforts have earned him the distinction of "the greatest of the Spanish Bourbons"⁷ according to historian Martin Hume while Sir Charles Petrie's sympathetic account of the monarch opines that "of the benevolent despots of the eighteenth century Charles III of Spain was outstanding."⁸ The strategy for improvement under the Spanish Bourbons was one of "modifying, eroding, improving, but never breaking,"⁹ and Charles III did not split from this established tradition, however enlightened his ways of thinking may have been. The absolute power of the king, while limited by aristocratic and regional privileges, was retained under Charles' care. Similarly, the Cortes, Spain's traditional representative body, continued its diminished role of merely confirming royal decisions and prerogatives.

Charles III's reforming measures began in Madrid, a city defined by its status as the capital of one of the more powerful states in Europe but also as "one of the most filthy and backward."¹⁰ In order to modernize the city, the king sought to revitalize public works and infrastructure, widen and repair streets, and install pipes to drain excess rainfall to the effect that

⁷Martin A. S. Hume, *Modern Spain, 1788-1898* (New York: G. P. Putnam's Sons, 1900), 4.

⁸ Charles Petrie, *King Charles III of Spain: an Enlightened Despot* (New York: J. Day, 1971), xx.

⁹ Jacque Chastenet, *Godoy: Master of Spain, 1792-1808* (London: Batchworth, 1953), 30.

¹⁰ Petrie, *King Charles III of Spain*, 116.

a traveler cited by Petrie wrote in 1776 that the city had become “as clean as it was once dirty.”¹¹ Charles III’s efforts also included the construction of public buildings of culture including what is now the Museo del Prado. Although these measures were clearly successful, Charles III’s 1766 proclamation prohibiting the outdated and foreboding long cloaks and wide-brimmed hats of traditional Spanish dress at the penalty of imprisonment was rejected by the citizens of Madrid. The ensuing ‘Hat and Cloak Riots’ highlighted Charles’ own naivety in dealing with the nationalist sentiments held by the majority of native born *madrileños*. These objections to suppression of national character also included a condemnation of foreign influence within the government, namely the appointed Italian-born minister Leopoldo Gregorio, the Marquis of Esquilache, and the mercenary Walloon guard. Accepting the lesson that the reins of absolute power are not always as arbitrarily powerful as they may appear, Charles chose to capitulate to these demands, revoking the edict and removing the Italian minister from office.¹²

The Catholic Church, an important foundation of the Spanish nation and a source of profound patriotism, was the next stride in Charles III’s trajectory towards an enlightened state. While the Church itself was not the direct focus of the changes, its instruments of cultural influence, specifically the Jesuits and the omnipresent Spanish Inquisition, were restricted under Charles’ policies. The Society of Jesus, owing its origins to Spain in 1534, remained powerful into this period due to its affiliation with wealthy members of the nobility and a strict control of secular education. Jesuit support for Charles III’s brother Luis coupled with a less than covert alliance with the Inquisition against budding Enlightenment thought ultimately brought about the outright expulsion of the Jesuits in 1767. Later actions effectively constricted the extent of the Inquisition’s powers, most notably exercised through censorship. Charles III chose to institute a

¹¹ Swinburne qtd. in Petrie, *King Charles III of Spain*, 117.

¹² Petrie, *King Charles III of Spain*, 118.

more liberal review process for works in question where prohibited works became subject to the judgment of the advisory council appointed by the king and “henceforth the whole apparatus of literary control was in the hands of laymen, usually informed intellectuals, who sat on the Council of Castile.”¹³ While the Church remained an essential part of the fabric of Spain and of Charles III’s personal life, enlightened thought left no room for religious directives in nonspiritual matters. In this manner, the procedural changes regarding the capabilities of the Inquisition and the eviction of the Jesuits deprived the Church of much of its authority in the secular realm.

In terms of broad national reforms, Charles III sought to construct a modern and efficient polity. These reforms included the introduction of a census to replace the vague approximations formerly used to determine effects such as projected revenue. A new education system employing secular priests was also implemented to supplant the Jesuit-controlled system. To stabilize Spain’s historically unbalanced financial situation and revitalize Spanish industry, protective tariffs were levied against highly competitive foreign imports and state funding was used to patronize immigration of skilled craftsmen and merchants from other parts of Europe. Spain’s economic situation was further improved by a graduated taxation system and an overall reduction in taxes introduced to supersede the excessive duties that had stifled domestic industry in the past. National improvements also included construction projects to benefit the public welfare such as hospitals, schools, and asylums.¹⁴

Regarding domestic affairs, Charles III’s reforms were not limited to the contiguous provinces of the Iberian Peninsula but stretched to the concerns of Spain’s vast holdings in Spanish America. The removal of trade barriers and tariffs improved internal revenues that

¹³ Ibid., 154.

¹⁴ Ibid., 228.

buttressed Spanish finances and, of equal importance, a series of reforms revised the bureaucracy governing colonial holdings. The previously hierarchical structure of the colonial government was streamlined, thus reducing the patronage and corruption that had characterized its existence and passively condoned oppression of the natives.¹⁵ Overall, Charles III's policies supported the creation of a more efficient and improved state encompassing the entirety of the Spanish Empire as well the entirety of its citizens.

However encouraged by enlightened thought, Charles III's restructuring of the established order cannot be judged as overwhelmingly popular. Regarding the opinion of Spain's upper estates, Petrie writes that "far too many vested interests [were] adversely affected, not least in aristocratic and ecclesiastical quarters."¹⁶ Taxation of social elites and the trimming of the Church's avenues of influence clearly account for a degree of unpopularity, but what is most notable is the lack of support from the lower levels of Spanish society who stood to gain the most from these types of reforms. Charles, as far-sighted and progressive as he may have been in introducing such changes, appears to have been somewhat of a doctrinaire, frequently overlooking the practical considerations of making his plans reality and occasionally alienating the population at large. In Petrie's understanding, Charles III "tried to force upon Spain reforms which, however excellent in themselves, were alien to the national genius, and so took no root," making Charles perhaps "the prototype of innumerable Spanish liberals" who were unable to reconcile national feeling with rational reforms born of enlightened thought.¹⁷

In line with the principles of enlightened despotism, Charles III's policies, though undeniably visionary for Spain, increased the power of the monarchy but at the expense of

¹⁵ Ibid., 145.

¹⁶ Ibid., 229.

¹⁷ Ibid., 2.

weakening its strongest grounds for legitimacy. Reforms “placed the monarch in a position of dangerous, if splendid, isolation”, where the Cortes, the Inquisition, and the foundations of the Church were diluted to the point where the monarchy no longer had the traditional structures of legitimacy to rely upon.¹⁸ Though such results were insignificant in Charles III’s time, Spain would suffer these consequences under the rule of his son.

At the time of Charles III’s death and Charles IV’s ascension at the end of 1788, Spain had made inroads into resolving its chronic inefficiencies but a variety of challenges continued to exist. Privileges dating back to feudal concessions continued to benefit the Spanish military and both the nobility and the Church retained extensive rights. The institution of the Church still held roughly fifteen percent of the land in Spain proper that had yet to be successfully disamortized. The centralization of power under the Spanish government was further challenged by the near autonomy of Navarre and the Basque provinces whose feudal privileges allowed them to dictate their own taxation and uphold a customs barrier between themselves and the rest of the country.¹⁹ As far as acquainting the ordinary Spaniard with the enlightened thought essential to Charles III’s interpretation of enlightened despotism, the external origin of liberal analyses continued to be an obstacle to the Enlightenment’s diffusion into Spain.

Despite the promising strides made by Charles III towards a tradition of enlightened absolutism, Charles IV proved to be somewhat less competent in directing the course of the Spanish monarchy and empire. Though well-intentioned, he was “a monarch without vigor or intelligence,”²⁰ characteristically weak-willed and passive. In historian Jacque Chastenet’s

¹⁸ Ibid., 135.

¹⁹ Chastenet, *Godoy: Master of Spain*, 31.

²⁰ Robert W. Kern, “Carlos IV, King of Spain” in *Historical Dictionary of Modern Spain, 1700-1988* (Westport: Greenwood, 1990), 118.

portrayal, “anyone dispensing him from the need to take a decision himself was his friend,”²¹ resulting in the control exercised by Charles III’s former ministers the Condes de Aranda and Floridablanca during the beginning of Charles IV’s reign. Later, the appointment of the young upstart Manuel Godoy would in effect fill the role of royal leadership.

Manuel Godoy, who became an object of widespread ire among both Spanish nobles and the general populace, was “not a politician or administrator of great education or mental power”²² and owed his rise less to any degree of aptitude and more to his somewhat dubious connections to the royal family. Beginning his career as a virtual nobody, the ambitious Godoy served in the royal bodyguard and caught the eye of the queen. The subsequent relationship between the queen and the young guard became a point of scandal and controversy.

Either due to complete ignorance or passive acceptance, Charles IV chose not to remove Godoy from court but rather to elevate him to various positions within the government. In Hume’s opinion, Godoy’s rise was the direct result of a defined strategy of creating an utterly dependent advisor whom the king could unequivocally trust, while other interpretations point to Charles IV’s complete inability to make a definitive decision. Regardless, Godoy had gained the affection of both the king and the queen and was ultimately appointed to the office of prime minister, the position of power from which he essentially ruled Spain between 1792 and 1808. Godoy’s appointment, due either to a need for a strong decision-maker or a loyal advisor, appeared to all of Spain as a revival of the unpopular system of *validos*, or ‘favorites’, that had been used in the past. His promotion and resulting power were due to obvious favoritism and a continuing relationship with the Queen rather than any degree of merit, including that of noble

²¹ Chastenet, *Godoy: Master of Spain*, 19.

²² Stanley G. Payne, *A History of Spain and Portugal* Vol. 2 (Madison: University of Wisconsin Press, 1973), np.

lineage.²³ The circumstances of his ascent, hardly overlooked by Spanish public opinion, thus from the outset resulted in a sharp decline in public respect for their weak king in a situation reminiscent of the popular contempt held for King Louis XVI prior to the French revolution. The institution of the Spanish monarchy, previously revered, thus suffered a loss in prestige in the minds of its subjects.

Charles III's absolutism, and enlightened despotism in general, had entailed a level of respect and deferral to the monarchy that strengthened prerogative and legitimated unilateral actions. Though Charles IV had renounced much of this basis, Godoy chose to follow the path forged by enlightened despotism. Disregarding his palpable unpopularity, Godoy believed himself to be a "continuer of the policies of Charles III" and sought reform through such undertakings as patronization of natural sciences, restrictions of the ancient agricultural privileges held by the *Mesta*, and support of public welfare.²⁴ While these changes provoked irritation among the more conservative and reactionary elements of Spanish society, Godoy was nonetheless criticized by the political left for being too authoritarian and underhanded in actually executing these measures.²⁵

As far as the ordinary Spaniard's acceptance of the enlightened thought underpinning these types of reform measures, the fact that enlightened publications were foreign in origin caused many Spaniards to balk. This rejection resulted from what Chastenet characterizes as a "narrow and intransigent Spanish nationalism" where 'Spanish-ness' was vaunted however

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

superficial and vaguely hypocritical it may have been: “The Bourbon King was revered but, except in quite restricted circles, on condition that he forgot Versailles.”²⁶

Though perhaps impeding enlightened reform, the type of nationalism gripping the Spanish masses would prove itself partially favorable to the Spanish crown, specifically concerning the French revolution and its centrifugal forces. The storming of the Bastille that occurred within six months of the jubilant celebrations of Charles IV’s crowning would forebode difficulties for the French monarchy, but the event and its escalating ramifications did not have similar effects across the Pyrenees border. Spain was, on the whole, “too religious, too attached to its own traditions and, if you like, too ignorant to be seduced by new ideas”; however, a minority of Spaniards would be affected by these types of ideas at this time.²⁷

During the 1780’s, Spain had seen an increase in intellectual societies and periodicals expounding on the less polarizing ideals of the Enlightenment including new theories of the natural sciences, education, and improvements in agriculture. These publications were digested by Spaniards living in large, urban centers, while the rural population remained unexposed to these developments. In 1791, the Spanish government deemed French radicalism to be a threat to internal order and closed the Franco-Spanish border to all publications originating in revolutionary France. The same edict forced all foreign-born people living in Spain to pledge allegiance to the Spanish king and the Catholic faith. In this conservative reaction to the French revolution, historian Stanley Payne finds that “the progress of the Spanish enlightenment was brought to a near halt.”²⁸

²⁶ Chastenet, *Godoy: Master of Spain*, 32-33.

²⁷ *Ibid.*, 51.

²⁸ Payne, *A History of Spain and Portugal*, np.

In 1793, Spain as a nation was financially sound. The national fiscal position, stronger even than that of Prussia, allowed Godoy the leeway to institute reforms, the most important of which being a more egalitarian system of taxation that removed aristocratic privilege and brought the high nobility and *grandees* under direct taxation for the first time in recent history. This important reform corresponded with an increase in taxes on clergy and salaried officials and the removal of the ancient *servicio* tax on the peasant class. None of these changes, however, were accepted without opposition from both the political right and left.²⁹

Although the early years of the decade showed promise for Spain, the Treaty of San Ildefonso negotiated with the French in 1796 proved to be a diplomatic misstep for Godoy, effectively tying the fate of Spain to the whims of France. Godoy had interpreted the treaty, which promised the aid of one country in the armed conflicts of the other, as essentially a Franco-Spanish non-aggression pact and apparently failed to consider the ramifications of this alliance. Under the treaty's provisions, Spain became entangled in the French conflict with Great Britain later in 1796 which led to severe economic consequences attributed to the British blockade of Spanish America. This blockade was eventually lifted and Spain was able to recover somewhat, though French aggression would continue to cause problems for Spain.

The censorship that had been instated at the first stirrings of French republicanism was relaxed as the revolution appeared to wane. Though the spread of liberalism in Spain was not particularly viral, certain groups of people remained interested in the ideas percolating out of France. The spread of progressivism at this time was plainly catalyzed by French influences so that, "while only a few small revolutionary cliques were formed in Spain, the scope of critical

²⁹ Ibid.

opinion among the upper and middle classes increased considerably.”³⁰ In the final years of the century, there was a noticeable increase in the circulation and pervasiveness of liberal ideals to the point where censorship was reinstated in 1798.

Godoy had clearly been diplomatically outplayed; the renewal of the treaty with France meant that Spain’s resources began feeding the numerous campaigns of Napoleon. Drawn into renewed hostilities with Britain in 1805, the totality of the Spanish fleet was destroyed in the Battle of Trafalgar and the Atlantic blockade was reinstated. The blockade, coupled with the introduction of the Napoleonic Continental system, wreaked havoc on the Spanish economy in the following years and resulted in an economic crisis that, as Payne relates, “completed the discrediting of the government, and the unpopularity of Godoy increased year by year until he became the target of almost universal execration.”³¹

At this point, Godoy’s ineptitude that had long ago become attributed to the reign of Charles IV led to various intrigues seeking to place Charles’ son Fernando on the throne. The conservative *fernandistas* drew support from all classes and wholeheartedly believed that Fernando could restore pre-Godoy Spain. Fernando, however, proved himself unworthy of this loyalty, seeking out the aid of Napoleon and offering to marry a woman of the emperor’s choosing in order to cement an alliance.

In October 1807, prior to the rise of the *fernandista* opposition, Godoy had tied Spain even more tightly to France with the Treaty of Fontainebleau, allying the two countries with the goal of occupying Portugal and partitioning it between themselves. A caveat of the agreement was that Godoy himself was to be given an independent principality to rule as his own. Under the treaty, nearly seventy thousand French troops were given entry into Spain under the pretense of

³⁰ Ibid.

³¹ Ibid.

this invasion. However, French troops remained on Spanish soil after the subjugation of Portugal had been completed and were reinforced to about one hundred thousand in total by March 1808.

As France's ploy became increasingly clear, both Godoy and Fernando believed that Napoleon was on his respective side in helping to depose the other. This utter naivety regarding Napoleon's intentions is plain in Charles IV's message issued to the Spanish people on March 16, 1808 where he writes, "the army of my dear ally, the Emperor of the French, is passing through my country solely with ideas of peace and amity: its object being to reach points threatened by the common enemy."³²

By March 19th, a popular uprising speaking to the extent to which the general population and the military supported Fernando had forced the abdication of Charles IV. Charles, however, later renounced this act under the claim that he had abdicated under duress. This somewhat confusing turn of events led ultimately to a meeting between the three parties in the French city of Bayonne where the king and his son both pleadingly appealed for the emperor's support in unseating the other. This disunity that Payne characterizes as a "suicidal feud within the royal family"³³ led to the forced abdication of Fernando VII to his father and the subsequent abdication of Charles IV to Napoleon. Napoleon, already backed by the French troops occupying Spain, was then legitimately free to intervene, instituting the Bayonne Statute that placed Spain under many of the measures of the Napoleonic Code and assigning the Spanish throne to Joseph I.

Despite many informed expectations, French occupation was not as readily accepted by the Spanish masses as had been previously anticipated. Residents of Madrid, regardless of socio-economic class, participated in a popular revolt on May 2nd, known as the Dos de Mayo uprising that occurred simultaneously with Napoleon's machinations in Bayonne. Resisting efforts by the

³² Charles IV qtd. in Hume, *Modern Spain*, 97.

³³ Payne, *A History of Spain and Portugal*, np.

nearly twenty five thousand French troops to quell the furor, Spanish citizens struggled against the invading forces and were punished harshly by the French command. The opposition and subsequent martyrdom of the citizens of Madrid inspired resistance in the other provinces and fueled the overall resistance of Patriot Spain against French intrusion on national independence and the national religion.

A traditional war effort against the French was undertaken by the Junta Central, a body that had superseded the Regency Council left in charge when Charles IV and Fernando VII had departed the country. This national Junta had been elected in September 1808 by local and regional juntas organized and guided by aristocratic and upper middle class elites in order to avoid complete anarchy. Continuing in its refusal to acknowledge the abdication of its sovereigns, the Junta Central tried to maintain order at the national level and hold a degree of executive authority. Under the circumstances of its formation, the national Junta represented the interests of upper class citizens, the clear minority of Spaniards. A reactionary body unable to adequately exercise its power, the Junta Central dissolved itself in January 1810 and returned executive power to the Regency Council.³⁴ Though resisting and postponing the meeting of a representative body demanded by the local juntas, the Council ultimately summoned the Cortes seemingly to appropriate funds for the war effort.

During these political maneuverings of the Spanish opposition government, the French army under the personal supervision of Napoleon had made headway into conquering the entirety of the Iberian Peninsula. Before disbanding itself, the Junta Central had fled from Madrid to Seville due to a French resurgence that reoccupied Madrid and much of central Spain. Spanish forces dwindled to approximately one hundred thousand troops in comparison to the

³⁴ Hume, *Modern Spain*, 164.

three hundred thousand commanded by Napoleon. The diminished Spanish army had little hope of reinforcements due to a lack of internal funding, but was sustained by a new alliance with Great Britain whose main contributions were economic relief and the very cautious military stratagems of British General Arthur Wellesley. Much of the success in Spanish resistance to French occupation came in the form of persistent guerilla warfare centered in the north of Spain. In what Payne calls “the first great people’s war of modern history,” mere citizens hampered French efforts at outright occupation and slowed their advancement down the peninsula.³⁵

Ordinary Spaniards participating in these guerilla activities claimed to act in the name of Fernando *el deseado* (the Desired), clearly retaining their love and loyalty for their former king who remained in captivity in France. These guerilla tactics, however, were only effective in obstructing occupation and could not completely retake and protect territory already lost to the French. Thus, the Cortes called by the Regency Council met in September 1810 at Patriot Spain’s last stronghold: the city of Cadiz, a port to the Atlantic on the southern coast of Spain. Besieged and blockaded by French troops but protected by the combined efforts of the Spanish and British navies, the Cortes spent the next year and a half deliberating and crafting a revolutionary constitution.

Although the presumed function of the Cortes in this instance was not sweeping change, the conditions stipulated by the Regency Council enfranchised all adult males living in Spain to elect the Cortes. One representative was chosen for every 50,000 persons, resulting in a total of 308 elected delegates. Areas occupied by France and colonial holdings unable to send representatives were assigned delegates who, while native to those areas, were currently residing in Cadiz.

³⁵ Payne, *A History of Spain and Portugal*, np.

Chosen by exceptional wartime conditions to be the site of an historic meeting of the Spanish representative body, the city of Cadiz was an ideal situation for nurturing growing strains of Spanish liberalism. Living in a city with port access to Spanish America and the rest of Europe, the citizens of Cadiz were by and large members of the mercantile class and consistently exposed to foreign influences. The forty seven deputies assigned rather than elected to represent occupied and colonial territory probably did not share the primarily conservative outlook of the northern Spanish provinces or the views held by the Americans regarding a need for further colonial reform. For the most part, the remaining 261 representatives were democratically elected by a country spurred to patriotism by the intrusive Peninsular War. At this type of juncture, the conservative views of the old order seemed to be less important than the Spanish resistance movement, and a number of educated and enlightened men found themselves elected to the Cortes.³⁶ Merely 14 landed aristocrats attained spots on the Cortes' roll, while, comparatively, 56 lawyers and 90 clergy were elected. With only eight merchants, there was clearly an underrepresentation of purely economic interests.³⁷

Regarding the ideological spectrum, a narrow focus on occupation fails to account for the actual views of the roughly 300 representatives. Conservative or liberal inclinations may have instead been prompted by an educated background. In this vein, some members of the aristocracy and the clergy heartily promoted liberal ideals while others were staunch defenders of Spain's traditional institutions. Additionally, the 49 career bureaucrats who had loyally served the old regime did not necessarily seek to preserve it, as some decided that they stood to gain personally from the creation of new form of government. Similarly, the 30 men who defined their profession as members of the military may also have seen the same potential in aiding a new

³⁶ Hume, *Modern Spain*, 167.

³⁷ Payne, *A History of Spain and Portugal*, np.

form of government as restoring the old.³⁸ Composed of many men who, despite occupation or status, were educated in the enlightened ideas of the day, the Cortes of Cadiz, meeting for the first time on September 24th, 1810, thus lent itself to liberal, even revolutionary, inclinations.

Prior to convening, the Cortes prescribed by the Regency was modified at the urgings of council advisor Agustin Argüelles y Álvarez. Instead of a traditional assembly of three estates, the Cortes met as a unicameral legislature. This change was the first liberal victory, the second being the fact that the majority of deputies were expecting deliberations concerning war appropriations and not sophisticated political debates. Argüelles, an esteemed lawyer of very liberal sentiments, in effect led the coalition of liberals during the Cortes' proceedings. Other names of significance were José María Queipo de Llano, who held the title Conde de Toreno and advocated for a liberal economic policies, and Diego Muñoz Torrero, an educated clergyman who served as the body's president. Those representing more conservative views were often called the *apostólicos*, but were also referred to as *serviles*, a derogatory term implying fawning submissiveness to the King, the Church, and the aristocracy. Though not entirely prepared to address the liberal arguments, conservatives relied on the articulations of absolutist clergymen such as Pedro Inguanzo de Rivera, Jaime Creus Martín, and Ramón Lázaro de Dou y de Bassols, but also by the lawyer Francisco Gutierrez de la Huerta who mainly skewed conservative in his views but voted for the freedom of the press.³⁹

The legitimacy to govern claimed by the Cortes was simultaneously claimed by Joseph I who continued to reside in Madrid. Despite the considerable popular fury expressed in the Dos de Mayo riots, Napoleon had still proceeded in officially crowning Joseph on July 25, 1808. In

³⁸ "Gráfica 1", *Hispanidad Futura*, <<http://www.hispanidad.info/1g.htm>>.

³⁹ Alexandria Wilhelmsen, "Cortes of Cadiz" in *Historical Dictionary of Modern Spain, 1700-1988* (Westport: Greenwood, 1990), 164.

his brief time as king, Joseph I was technically the climax of enlightened despotism within Spain; however, Joseph's policies and the Napoleonic Code were not actually implemented outside of Madrid due to the continuing resistance of guerilla fighters and ordinary Spaniards against French domination. Though Joseph did not radically diverge from the enlightened reforms of the previous Spanish kings, the widespread loathing inspired by all things French meant that Joseph's sources of support were the French military who preserved his rule by force of arms, along with a very small group of liberal intellectuals who supported the reformist spirit of Napoleon that his brother was attempting to execute. Payne estimates that liberals in support of Joseph's regime numbered approximately twelve thousand persons out of a population of ten million residing in Spain.⁴⁰ Again, the people who had the most to gain from progressive reforms were uninterested in supporting them.

Joseph I's lack of authority and the continued exile of Charles IV and Fernando VII created a political vacuum that the Cortes intended to step into. However, considering the military position of Patriot Spain, the Cortes was drawing up plans for a government that, but for a drastic change in momentum, could claim sovereignty over minimal population and territory while the abdication of the Spanish Bourbons had technically legitimized Napoleonic occupation. The Cortes, also claiming the legal right to rule Spain, was thus obliged to defend its existence through the doctrine of popular sovereignty; the people, not the king, had the final say in who would rule them.

As the democratically elected representatives of the people, the Cortes could justifiably say that their authority was reasonable and solid. This ideology was not merely a response to the demands of the situation. In what historian Richard Herr terms "the Spanish liberal tradition,"

⁴⁰ Payne, *A History of Spain and Portugal*, np.

liberal thinkers partaking in or acknowledging the egocentric brand of Spanish nationalism routinely looked back to the more significant role of the Cortes in the past, determining that Spain had historically been a nation of representative and sovereign institutions.⁴¹ In addition to the traditions of the past, the argument for popular sovereignty was further reinforced by contemporary circumstances. The Spanish people, betrayed by their sovereigns, though mostly unaware of the extent of this betrayal, and personally fighting for their country's independence, seemed to deserve a degree of representation in the Spanish government as consolation for their collective sacrifices.

Multiple historians have sought to address the issue of how and why a preponderantly liberal Cortes was able to create such a progressive constitution in a nation that was somewhat ambivalent about the liberal spirit. According to Herr, the rise of Spanish liberalism was a product of the French revolution.⁴² Prior to Charles IV's reign, the enlightened despotism of the Spanish Bourbons coupled with a steadfast faith in the Catholic religion established protections against internal divisions that had historically threatened Spanish unity.⁴³ As the liberal ideas of the French revolution began to enter Spanish society, these protections extended to bridging an ideological divide between conservatives and the growing class of liberal intellectuals. Without discontent, French radicalism could not gain any degree of mass appeal. According to Herr, "for the great majority of the Spanish people the French ideals remained incomprehensible and undesirable. To them "liberty" meant "license" and the Republic was an outrage to religion and royalty."⁴⁴ Charles III's traditional popularity combined with a successful reform program

⁴¹ Richard Herr, "The Constitution of 1812 and the Spanish Road to Parliamentary Monarchy" in *Revolution and the Meanings of Freedom in the Nineteenth Century*, ed. Isser Woloch (Stanford: Stanford University Press, 1996), 79.

⁴² Richard Herr, *The Eighteenth Century Revolution in Spain* (Princeton: Princeton University Press, 1958), 444.

⁴³ *Ibid.*, 436.

⁴⁴ *Ibid.*, 315.

inspired loyalty, staved off discontent, and fostered unity within Spain. During the prosperity of his reign, ideological or regional “tensions could not match the cohesive forces of traditional royal prestige and religious faith and long maturing patriotism.”⁴⁵ As Spain transitioned from the successful enlightened despotism of Charles III to the failures of his successor, the influential ideas of French revolutionary thought began to find an outlet, leading certain groups to reject the feasibility of enlightened despotism and embrace radical change as the best alternative. Charles IV’s decisions in effect negated the protections granted by royal deference and led to disunity and discord. Herr notes that, despite the shortcomings of Charles IV and Godoy, Spanish citizens did not reject national patriotism. French dominion did not appeal to the Spanish masses as Spain had finally found tangible national unity after hundreds of years of a merely nominal sort of nationhood. The integrity of the nation was therefore preserved along with the national myths that underwrote both liberal and conservative ideology.⁴⁶

The Constitution of Cadiz was thus a patriotic effort wrought by liberals seeking to unite the traditional national ideas of Spanish history with contemporary enlightenment thought. The ideas represented at the Cortes and embodied in the Constitution were the results of a “loss of faith in enlightened despotism.”⁴⁷ Without Charles IV’s ineptitude, the radical ideals of the French revolution may not have taken root in Spain; however, the persona of the king along with his foreign and domestic policy failures led to “the destruction of the state of mind necessary for the continuation of the old order.”⁴⁸ Under the guidance of the empowered liberals of the Cortes of 1812, a new order was formed to replace the old.

⁴⁵ Ibid., 444.

⁴⁶ Ibid., 347.

⁴⁷ Ibid., 444.

⁴⁸ Ibid.

Historian Stanley Payne agrees that Spanish liberal ideology was a combination of traditional and contemporary thought, observing that progressives used both French and English sources but “tried to form a uniquely Spanish synthesis.”⁴⁹ Payne’s analysis does not, however, view the French revolution as the catalyst determining the course of liberalism in Spain. Instead, Payne emphasizes the development and growth of liberalism dating back to the end of intellectual suppression fulfilled by Charles III. Payne writes that the Constitution of 1812 was a result of previous preparation and development rather than an attempt to fill the political void. Liberals were able to seize the opportunity presented in 1810 because of the slow burgeoning of liberal thought. Though this interpretation seems to imply that liberals could have seized a different opportunity in the future, Payne acknowledges the exceptional circumstances surrounding the Cortes convening in 1810, conceding that events “could probably have taken the shape they did only at Cadiz.”⁵⁰ Payne determines that “the Cadiz environment gave a decisive thrust to constitutional reformism” and was thus seemingly the right place at the right time.⁵¹

Meanwhile, historian Charles Esdaile finds the argument regarding the exceptional circumstances of Cadiz to be too simplistic when assessing how liberals were able to gain an upper hand in the representative assembly. He notes the patriotism and the mindset of reform attributed to the situation of Patriot Spain that may have accounted for the election of reform-minded deputies. Distinguishing liberals from traditionalist candidates became difficult as both factions used patriotic rhetoric to make their points. Furthermore, many of the liberals were educated and eloquent speakers, able to capture audiences of potential voters who may not have

⁴⁹ Payne, *A History of Spain and Portugal*, np.

⁵⁰ Ibid.

⁵¹ Payne, *A History of Spain and Portugal*, np.

supported their elected representatives' liberal intentions. The realities of this situation explain a base of support that was far less stable than it may have appeared at the time.⁵²

In all, these perspectives point to the outside forces, inside forces, and the impact of individuals in shaping the Cortes at Cadiz. The French Revolution was clearly a factor, both causing Spaniards to embrace and turn their collective backs on liberal ideals. That Spanish liberals turned to the French system as a response to the collapse of their own system seems, however, to be a somewhat of an oversimplification. Even if the French Revolution had created liberty, equality, and fraternity for its citizens, educated Spaniards were likely well aware of the situation it had ultimately spawned. Even uneducated Spaniards, in the midst of a French invasion, were aware of the eventual ramifications produced by a radical overthrow of the government.

In addition to the liberal ideals it had proclaimed, the French Revolution did set an evident precedent for a creating a new system that may have inspired the new system sought by Cadiz liberals. Based on the constitutional structure these men created, perhaps Payne's argument for the slow, measured growth of reformism under the hand of Charles III becomes more compelling. Esdaile's comments regarding the patriotism and reform mindset of the Peninsular War also become relevant in terms of the final outcome of the Spanish constitutional experiment.

This thesis argues that the rise of the pervasiveness of liberal thought in Spain, begun under the enlightened despotism of Charles III, had finally found expression in the Cortes at Cadiz. The policies and reforms of Charles III had been successful in modernizing the nation and making liberal thought more accessible but had often been hindered by arbitrary enforcement

⁵² Charles J. Esdaile, *Spain in the Liberal Age: From Constitution to Civil War, 1808-1939* (Oxford: Blackwell, 2000), 31.

and their foreign inspiration's offense to nationalist feeling. Charles IV, under the influence of Godoy, proceeded with some liberal reforms but undercut popular support for the monarchy and upset the delicate balance created by Charles III where respect for the king allowed him to weaken traditional strongholds of power such as the Catholic, aristocratic, and regional privileges but still retain the power of the crown. Missteps on the part of Charles IV and his favored minister inspired popular support for the *fernandista* opposition and ultimately the king's abdication, an event coinciding with the Napoleonic invasion. The onset of the Peninsular War effectually overturned the government and created a politically viable opportunity for liberalism to assert its voice. The representative Cortes that was subsequently called was doubtlessly intended to deal with the war effort but instead established itself as the voice of the Spanish people and sought to resolve Spain's internal crisis through a new form of government as stipulated by a new constitution. Presented on March 19, 1812, the Constitution of Cadiz was the result of a slow growth of liberalism in Spain and the extraordinary circumstances that gave an advantage to the liberals against a more conservative, even absolutist, opposition. Liberals determined that the Cortes had been granted its legitimate authority through popular sovereignty and was thus bound to creating a new government that would continue to protect the peoples' right to shape their government and its policies.

Chapter 3

The Cortes

As monarchy had consolidated power in Spain, the Cortes had inevitably lost its influence as an avenue of popular input into national policy. The assembly had become, as Herr writes, “a living, if docile, institution.”⁵³ The third section of the Constitution of 1812 is concerned with the reviving the institution of the Cortes and enumerates the representative body’s extended powers and procedures. Under the Constitution, the representatives of the Cortes would be elected by universal male suffrage with one deputy for every seventy thousand persons.⁵⁴ Once elected, these deputies would be entrusted with deliberating on and passing laws and treaties, as well as managing the national budget.⁵⁵ All of these duties had, in recent history, been conducted by the reigning monarch. In a clear deviation from modern Spanish tradition, the Cortes at Cadiz clearly endeavored to establish the independence of the national Cortes from the maneuverings of the King. This ascendancy of legislative authority in Spain mirrors the liberal trend observable in France and the United States. However, according to Spanish liberals, the power of the Spanish Cortes would not be merely established by a constitution, but reinstated to a previous position of eminence. The power and independence of the Cortes was thus a freedom justified by the proclaimed national sovereignty and the ancient workings of the Spanish government as imagined by Spanish liberals.

⁵³ Herr, “The Constitution of 1812 and the Spanish Road to Parliamentary Monarchy” in *Revolution and the Meanings of Freedom in the Nineteenth Century*, 69.

⁵⁴ *The Political Constitution of the Spanish Monarchy: Promulgated in Cádiz, the nineteenth day of March*. From Biblioteca Virtual de Miguel Cervantes. Articles 29, 31.

⁵⁵ *Ibid.*, Articles 131:7, 15, 137:12-18.

The Cortes of Cadiz and the authority it claimed could not exist without a proclamation of national sovereignty. As the King had legally renounced all rights of the Spanish nation to Napoleon, the true government of Spain technically resided in Madrid under Joseph I's administration. However, the Spanish masses had demonstrated through general uprisings and the onset of guerilla warfare a clear rejection of the authority of a French puppet government. The election of the Cortes, though not a military action, was an act of defiance against France and a confirmation that Spaniards were determined to choose their own leaders when deprived of their beloved king. Though likely elected in order to organize and maintain a national war effort against Napoleon's armies, the Spanish Cortes, released from the shackles of monarchy, had the unique opportunity to step beyond a pattern of symbolically pledging the nation's allegiance to a new king and confirming subsequent monarchical initiatives. Following the path implied by the nation's revolutionary elections, the Cortes seized far more control over Spain's future government than its arrival had suggested. The situation of the nation, combined with the liberal influence and inclinations of the time period, led the Cortes at Cadiz to rewrite the Spanish government under the assumption that it, as the representative body of the Spanish people, had the unique ability to create a fair, natural, and lasting form of government to the benefit of its constituents.

The Constitution of 1812 does not waste time in officially proclaiming the sovereignty of the nation, stating in Article 3 that "Sovereignty belongs to the nation, consequently it exclusively possesses the right of establishing its fundamental laws".⁵⁶ Under the basis of that argument, the Cortes is given the right to create the laws governing the nation. Although the official wording of the provision granting the Cortes this power is "The power of making laws is

⁵⁶ Ibid., Article 3.

in the Cortes, with the King”, the Cortes is given authority beyond mere collaboration with royal prerogative in later articles of the Constitution.⁵⁷ Under the law making process described in the Constitution, the King’s contribution to shaping national law is restricted to accepting or rejecting bills passed by the Cortes along with suggesting potential laws for the Cortes’ consideration. While the King has the ability to veto prospective legislation before being bound to execute its provisions, the Cortes is granted the ability to override rejections of bills that the people, and by extension the Cortes, deem utterly necessary to the well-being of the nation. According to Articles 147 through 149, an executive veto entails that the legislation in question be silenced during the session in which it was introduced, but may be raised again in the next session.⁵⁸ If the bill is again brought before the King and rejected, it may be again raised in the following session at which point, should it be passed by a majority, the bill will automatically become law with or without the King’s endorsement.⁵⁹

Through this power, the Cortes is no longer relegated to a subordinate role in the Spanish government and a degree of checks and balances is introduced. However, in creating a process spanning at least three years, the Constitution necessitates moderation and precludes sweeping change without the consent of the monarchy. As deputies are elected for terms of two years, a rejection of a royal veto by the Cortes also requires that deputies supporting that legislation be elected to a subsequent session, ensuring popular support for the legislation in the case that monarchical interests are not aligned with popular will.

In a conscientious effort to separate the Cortes from the royal domination of the past hundreds of years, the Constitution lays out provisions to preserve the independence that the

⁵⁷ Ibid., Article 15.

⁵⁸ Ibid., Article 147.

⁵⁹ Ibid., Articles 148-149.

Cortes had declared for itself under the doctrine of national sovereignty. In order to avoid the reemergence of the auxiliary function it had occupied during the ages of powerful monarchy, the Cortes at Cadiz regularized the elections and meetings of the national Cortes. Instead of convening solely when called by the King, the Cortes under the Constitution of 1812 would meet annually regardless of royal sanction as dictated by Article 121: “The King shall assist at the opening of the Cortes; and, should any impediment occur, the president shall open it himself, on the day appointed, without any circumstance whatever being allowed to defer it to another period.”⁶⁰ Furthermore, the Constitution attempts to preemptively prohibit the King from inserting his influence into the Cortes’ consideration of legislation. Agents of the King are barred from election as deputies and the King cannot attend the Cortes’ debates.⁶¹

In a provision plainly meant to protect representatives from retribution, Article 128 holds that “The deputies shall be inviolable for their opinions”, thus allowing the Cortes to facilitate thorough and natural debates in accordance with a level of freedom of speech.⁶² A suspicion of the monarchy’s intentions, suggested by the Cortes’ ability to override an executive veto, is further evidenced by Articles 157 through 160 which establish a body of deputies that “shall sit from the dissolution of one Cortes until the meeting of the other.”⁶³ As explicitly stated in Article 160-1, the primary intent of this body is to monitor whether or not the legislation passed by the Cortes is acceptably executed by the King and his ministers: “The duties of the permanent deputation are: To observe whether the Constitution and laws are duly acted upon and obeyed”.⁶⁴ Although the Cortes at Cadiz seemed assured that their claims of national sovereignty would

⁶⁰ Ibid., Article 121.

⁶¹ Ibid., Articles 95, 124.

⁶² Ibid., Article 128.

⁶³ Ibid., Article 159.

⁶⁴ Ibid., Article 160-1.

ensure respect for the newfound powers of the legislature, provisions constraining the involvement of the monarchy in producing legislation reveal perhaps a level of uncertainty regarding how the new abilities would be brought into accordance with the traditional power of the King.

Debates regarding a new constitution for the Spanish nation did not begin immediately in 1810 when the Cortes of Cadiz first met. Prior to the beginning of the immense constitutional project, an appointed commission drafted an essay known as the *Discurso preliminar*. The *Discurso*, essentially a lengthy argument for the adoption of a new constitution, was read aloud to the Cortes on August 18, 1811 by Agustín Argüelles y Álvarez, an esteemed lawyer and the primary drafter of the document. Positively received by both the liberal coalition of deputies and an audience of Cadiz citizens, the *Discurso* initiated the constitutional debates that officially began on August 25.

Many of the essay's arguments lay the groundwork for the structure and scope of the Constitution. Highly influenced by liberal ideals and crafted by one of liberalism's strongest supporters, the *Discurso* and its aims were for the most part fulfilled by the Constitution, further indicating the strength of the liberal coalition over the Cortes' more conservative elements. That is to say, the ideas of the basic foundations of a liberal constitution were fully laid before the Cortes prior to the four months of debates preceding the Constitution of 1812's final promulgation.

Perhaps this liberal achievement was due in part to Agustín Argüelles y Álvarez, the creator of the *Discurso preliminar* who would continue to play an important role throughout the constitutional debates. A deputy from the province of Asturias in northwestern Spain, Argüelles was born in 1776 to a family that was respected if not economically powerful. Though lacking

the resources of other wealthy aristocratic families, the young man was provided with an expansive education including studies in the humanities, philosophy, Latin, Greek, English, French, and Italian. At the completion of his schooling, Argüelles received his accreditation as a lawyer from the University of Oveido.

Either due to excellent training as a lawyer or an exceptional natural gift, Argüelles was granted the moniker “el Divino” after his eloquent performances during the length of the Cortes’ sitting. In addition to his unmatched and universally recognized oratorical skill, Argüelles was uniquely suited to arguing the mechanics of representative government. While working in Madrid in 1805, he was awarded the assignment of assisting with negotiations of an alliance with Britain due to his fluency in English. Argüelles had the opportunity during his three years in London to study the English Parliamentary system and attend daily sessions. This experience undoubtedly shaped Argüelles’ thoughts regarding the way Spain should be governed and may have helped to develop the points he passionately defended during the constitutional debates, especially the protection of individual rights.⁶⁵

In arguing the need for a written constitution, Argüelles’ *Discurso* expounds on the national sovereignty of Spain as well as the Cortes’ justifications for convening and setting the course of a new form of government. The essay states that Spain as a nation “has seen itself obligated to rise up in order to oppose the most unprecedented aggression that the ancient and modern centuries have seen.”⁶⁶ The Spanish government, which had failed to repel the French invasion, was no longer functioning, thus forcing the Spanish people to defend the nation

⁶⁵ Trinidad Ortúzar Castañer, “Agustín José Argüelles Álvarez” in *Diccionario Biográfico Español* Vol. 5., 225-227.

⁶⁶ Agustín de Argüelles, *Discurso Preliminar a la Constitución de 1812* From Centro de Estudios Políticos y Constitucionales, 78. “La nación [...] se ha visto obligada a levantarse toda ella para oponerse a la más inaudita agresión que han visto los siglos antiguos y modernos.” This and all future translations similarly noted are the author’s own.

themselves. In these circumstances, Argüelles argues that the people of Spain are deserving of a government that protects both the integrity and the liberty of the nation; however, the creation of a reputable government cannot entail a return to the pre-Peninsular War system. Argüelles characterizes Spain as “victim of an oversight so terrible, and no less wretched for having been stripped by the ministers and favorites of the kings of all the laws and institutions that assured the liberty of its individuals.”⁶⁷ In implicating the King’s advisors and unmerited favorites such as Manuel Godoy in stifling the liberty of Spaniards and failing to protect the nation, Argüelles implies that the form of government that had allowed these abuses is unamenable to the national spirit.

Continuing its argument for popular input in government, the *Discurso* goes on to refute the idea that Napoleon rightfully controls Spain, stating, “Napoleon, in order to usurp the throne of Spain, tried to establish as unyielding principle that the nation was a property of the royal family, and under such absurd supposition extracted in Bayonne the cessions of the kings, father and son”.⁶⁸ In the *Discurso*’s view, Napoleon’s presumption that hereditary rulers ultimately control the destiny of a nation is outdated and mistaken. Joseph I’s power thus rests on an unsatisfactory premise and cannot be upheld. Furthermore, the Spanish people’s continuing resistance is compelling evidence for Spain’s assumption of national sovereignty. The peoples’ refusal to accept French rule therefore gave the Cortes no choice but “to proclaim solemnly in its

⁶⁷ Ibid., “La nación, Señor, víctima de un olvido tan funesto, y no menos desgraciada por haberse dejado despojar por los ministros y favoritos de los reyes de todos los derechos e instituciones que aseguraban la libertad de sus individuos”

⁶⁸ Ibid., “Napoleón, para usurpar el trono de España, intentó establecer, como principio incontrastable, que la nación era una propiedad de la familia real, y bajo tan absurda suposición arrancó en Bayona las cesiones de los reyes padre e hijo.”

august decree of September 24 the national sovereignty and declare null the renunciations made in that city of the crown of Spain by lack of free and natural consent of the nation”.⁶⁹

Having established the nation’s ability to create its own form of government, the *Discurso* notes the need for a separation of powers within government, especially between the legislative and executive functions. This principle was later instituted within the Constitution of 1812, which clearly established the independence of the Cortes from the monarchy. In the words of Argüelles, “The experience of all the centuries has demonstrated through evidence that there cannot be liberty or security, and by the same justice or prosperity, in a State where the exercise of all authority is united in only one hand. Its separation is essential.”⁷⁰

Drawing on one of contemporary Europe’s most important political theories, the *Discurso* emphasizes the importance of a system where one entity creates the laws of the nation while another is charged with their execution. Argüelles clearly believes that Spain’s previous system of all-powerful monarchy lacked protections against abuses, specifically taking issue with the fact that a King can arbitrarily administer laws if he is both their creator and enforcer. Due to this potential for injustice against the liberties of the people, a written constitution is absolutely necessary for Spain as laws need to be established and well known in order to reliably check abuse. According to the *Discurso*, a constitution will allow the Spanish nation, architects of their own institutions through a representative Cortes, to “constantly have in view the august testimony of their grandeur and dignity, in that power to read at the same time the solemn

⁶⁹ Ibid., 78-79. “V.M. no tuvo otra razón para proclamar solemnemente en su agosto decreto de 24 de septiembre la soberanía nacional y declarar nulas las renunciaciones hechas en aquella ciudad de la corona de España por falta del consentimiento libre y espontáneo de la nación.”

⁷⁰ Ibid., 78. “La experiencia de todos los siglos ha demostrado hasta la evidencia que no puede haber libertad ni seguridad, y por lo mismo justicia ni prosperidad, en un Estado en donde el ejercicio de toda la autoridad esté reunido en una sola mano. Su separación es indispensable.”

catalogue of their privileges and obligations without the necessity of exhibitors or interpreters.”⁷¹

By creating a document that can be popularly read and understood, Argüelles emphasizes the importance that ordinary citizens comprehend the laws to preempt the usurpation of authority or willful flouting of established laws by figures in power. Through a separation of powers enshrined in a written constitution, the *Discurso* trusts that the right of the people to protected liberties can be established and maintained.

As both the Constitution and the *Discurso preliminar* emphasize the Cortes’ intention of creating a powerful national Cortes, few restrictions exist regarding the power of the representative body. With the possible exception of the cumbersome process of overriding the executive veto, the primary restriction of the power of the Cortes is found explicitly in Article 108 which establishes that “An entire new deputation shall be chosen every two years.”⁷² This provision is undoubtedly meant to prevent political entrenchment and perhaps discourage the influence of powerful, tenured deputies within the Cortes.

The lack of restrictions on the national legislature places the Spanish Constitution in line with the French constitutions and separates it from the constitution adopted by the United States. Fareed Zakaria, in his article “Illiberal Democracy”, notes that the American constitution is fundamentally concerned with limiting the power of all branches of government due to “an avowedly pessimistic conception of human nature, assuming that people cannot be trusted with power. “If men were angels,” Madison famously wrote, ‘no government would be necessary.’”⁷³ Both the French and Spanish constitutions, however, grant popularly elected legislatures

⁷¹ Ibid., “[...] para que los españoles tengan constantemente a la vista el testimonio augusto de su grandeza y dignidad, en que poder leer a un mismo tiempo el solemne catálogo de sus fueros y de sus obligaciones sin necesidad de expositores ni interpretes”

⁷² *The Political Constitution of the Spanish Monarchy*, Article 108.

⁷³ Fareed Zakaria, “Illiberal Democracy” in *Foreign Affairs* 76.6 (1997), 49.

extensive powers under the argument that the people desire to protect their own liberties: “The French model places its faith in the goodness of human beings. Once the people are the source of power, it should be unlimited so that they can create a just society.”⁷⁴ Spanish liberals, due to their belief that a powerful Cortes had ensured liberty in the past, thus created a national Cortes whose sole limit regards the term constraints placed on its members.

Primary to Spanish liberalism and its insistence on a fundamentally progressive constitution was the belief that an ideal form of government had existed in Spain in the past. This system of government, as construed by Spanish liberals, included a written constitution and a powerful, representative Cortes that had effectively checked the power of the hereditary monarchy. The idea that a constitutional monarchy had existed previously in Spanish history served as the basis for a resurgence of representative government within Spain. The aim of the *Discurso preliminar* was thus to inform those “unversed in the ancient history and legislation of Spain” who claim that Spain’s natural form of government is an absolute monarchy lacking the protections of a written constitution.⁷⁵ This ignorance is not necessarily the fault of the monarchists; the *Discurso* regretfully observes “the veil” that has obscured national memory of the Cortes’ past contributions as the perpetuation of the knowledge of its former role was not in the monarchy’s best interest.⁷⁶ In its discussion of the separation of powers, the *Discurso* states that its authors, in order to propose the balance between legislative and executive authority, “have consulted in this part the spirit of the ancient constitution of Spain.”⁷⁷

⁷⁴ Ibid.

⁷⁵ de Argüelles, *Discurso Preliminar a la Constitución de 1812*, 68. “poco versados en la historia y legislación antigua de España.”

⁷⁶ Ibid. “La Comisión recuerda con dolor el velo que ha cubierto en los últimos reinados la importante historia de nuestras Cortes”

⁷⁷ Ibid., 78. “La Comisión [...] ha consultado en esta parte la índole de la Constitución antigua de España.”

In addition to justifying the resurrection of a constitution, the reference to the “Constitución antigua” serves to defend the principles of the liberal Cortes. The *Discurso preliminar* identifies the risk that the project’s detractors may believe that the essence of the new constitution has been “taken from foreign nations”, presumably referring to France.⁷⁸ Through its discussions of Spain’s past government, the *Discurso* attempts to refute any suggestions that the constitutional theory behind the Constitution of 1812 was perhaps derived from French influence. Argüelles and the rest of the commission were clearly sensitive to the fact that Enlightenment ideas were often rejected based on their French origin. Furthermore, the ideals of the Constitution could also appear as mimicking the radical French constitutions of the French Revolution which were viewed in the popular Spanish mindset as agents of anti-clericalism, anti-monarchism, and general anarchy.

The *Discurso* also condemns the idea that the constitution was “introduced by the itch for reform,” refuting the implication that the changes to be represented by a constitution are neither necessary nor worthwhile.⁷⁹ On the contrary, the *Discurso* hopes that a progressive constitution marking the restoration of the historical power of the Cortes will return Spain to its idyllic and most natural state where the individual liberties of the masses were most effectively protected. Overall, the *Discurso preliminar* presents the period of absolute monarchy, rather than the introduction of a liberal constitution, as the aberration in Spanish history.

The Spanish Cortes at its most influential was not a nationally representative body; rather, each of the regional kingdoms had their own representative traditions. These regional differences are essential to consider when determining the actual role of the Cortes in the time period venerated by Spanish liberals. These assemblies were generally divided into estates

⁷⁸ Ibid., 68. “creerán tal vez tomado de naciones extrañas.”

⁷⁹ Ibid. “introducido por el purito de la reforma.”

representing the nobility, the clergy, and the general population. During this period, the king sought to court the support of the lower estate in order to neutralize a powerful nobility. Yet this need for popular support apparently did not preclude royal attempts at guiding or controlling the popularly elected representatives in the king's interest.

In Alice Holden's analysis, the minor role of feudalism within Spanish society, in comparison with other European countries, allowed for more physical mobility within the population, thus encouraging the rise of powerful and essentially autonomous cities.⁸⁰ As a means of supporting the monarchy against the nobility, the kings of the period granted privileges to these cities, one of which was representation within the government. However, as the right of the cities became an increasingly powerful force in the shaping of national affairs, "the king did not scruple to exert his wiles to gain control over it by meddling in the internal affairs of the cities themselves."⁸¹ Holden denotes the decline in the power of the Cortes as occurring during the course of the fifteenth century when the king became more and more involved in the elective process for representatives, eventually progressing to naming the representatives himself.⁸² As royal involvement increased, the power of the Cortes decreased proportionally until the institution itself was relegated to a inconsequential role in the Spanish government.

While Holden's theory merely encompasses general trends of the regional Cortes, historian Roger Merriman instead considers the powers of the Cortes in each of the Spanish kingdoms. Merriman, like Holden, writes that the peak of the Cortes' power was roughly between 1200 and 1500, but the extent of these powers varied by region. Castile and Aragon, the largest of the kingdoms prior to their unification in 1474, display different levels of development

⁸⁰ Alice M. Holden, "The Imperative Mandate in the Spanish Cortes of the Middle Ages" in *The American Political Science Review* 14.4 (1930), 890.

⁸¹ *Ibid.*, 892.

⁸² *Ibid.*, 895.

in regards to their representative traditions. The Cortes devised in central Castile was assumed to be of assistance to the king; thus, the functions and procedures of the body were aligned with this general understanding. Regarding the Castilian Cortes, Merriman observes that “no one had a right to sit or be represented there. The assembly being in theory at least a council of the king, summoned to aid him, was composed as the king desired, and varied from session to session accordingly.”⁸³

Despite this defined role, Merriman notes that if the king wanted extra money or an unusual service, he traditionally would seek the endorsement of the representative assembly. This custom became written law in 1307 and was adhered to multiple times in the following century. The peak of the Cortes’ power was at the turn of the fourteenth century, evidenced by successful demands for internal audits and reductions in amounts desired by the king. Although these capabilities imply that Castile’s assembly had a strong position in determining the finances of the kingdom, this position was undercut by the fact that the Third Estate, the only estate required to pay taxes during the era, was alone in its struggle to reduce royal appropriations. Furthermore, royal prerogative continued to hold the right to levy certain taxes without the consent of the assembly, allowing the monarchy to circumvent opposition in the Cortes.⁸⁴

Though the Castilian monarchy continued to dictate the finances of the kingdom, the Cortes did have the ability to petition the crown regarding legislation, an action it evidently undertook quite frequently. However, Merriman acknowledges that the Cortes had no real ability to ensure these petitions were acted upon and was unable to consolidate and extend its influence within the kingdom: “That the Castilian assembly was unable to turn this right of petition into a

⁸³ Merriman, Roger B, “The Cortes of the Spanish Kingdoms in the Later Middle Ages” in *The American Historical Review* 16.3 (1911), 479.

⁸⁴ *Ibid.*, 484.

right of legislation (like the English Parliament at this period), was due to its ineffective procedure, its failure to make redress precede supply, and to the general lack of co-operation and of political opportunism which characterized its members.”⁸⁵ Unlike Holden, who points to royal intervention, Merriman faults the structure and processes, as well as the representatives, for not extending the Cortes’ role in Castile beyond a limited ability to influence the affairs of the kingdom.

Unlike Castile, the kingdom of Aragon in eastern Spain contained a representative Cortes that, in practice, realized far more of the powers theoretically granted to the representative assembly. Whereas the structure of Castile allowed the monarchy to skirt the demands of the Cortes, Merriman writes that in Aragon, “a patriotic aristocracy and third estate prevented healthy centralization from degenerating into harmful despotism.”⁸⁶ Likewise, the actual composition of representatives was less dictated by Aragon’s monarchy. In terms of powers, the Cortes had the authority to accept and reject laws which were then carried out by the king in accordance with the agreement of the Cortes to recognize his leadership.⁸⁷ As a measure of authority over the executive powers of the monarchy, a group of representatives were designated as the *Diputacion del Reyno* (Deputation of the Kingdom) to ensure observance of laws when the Cortes was in recess.⁸⁸ Merriman writes that the powers of the Cortes in Aragon were mirrored in the smaller kingdoms of Catalonia and Valencia. In an overall comparison of the Spanish Cortes and English parliaments during the period, Merriman concludes that, “speaking broadly,

⁸⁵ Ibid., 485.

⁸⁶ Ibid., 487.

⁸⁷ Ibid., 489.

⁸⁸ Ibid.

the claim of the people to a share in government was considerably more fully recognized, theoretically at least, in Spain than in England, at that stage of their development.”⁸⁹

In explaining the form of government to be shaped by the Cortes at Cadiz, the *Discurso preliminar* recognizes the discrepancy between the rights of the Castilian and Aragonese assemblies. Though stating outright that “Aragon was in all its institutions more free than Castile,” the *Discurso* fails to mention that a strong representative tradition was not native to all of Spain.⁹⁰ Similarly, the ancient constitution that liberals hoped to recreate is named the constitution of all of Spain when in fact under half the territory of contemporary Spain would have been subject to such a constitution in that era. Instead of reviving the ancient constitution of the nation, the Cortes at Cadiz was seeking to reinvent a form of government that had predominated solely in Aragon and to some extent in Catalonia and Valencia.

Interestingly, provisions such as a commission to oversee the executive when the legislature is not in session do seem to be lifted straight from the Aragonese provisions cited by Merriman. Though ignoring an essential reality of the situation, the Cortes at Cadiz appears to have been aware of the powers exercised in medieval Spain, allowing Argüelles to refute the idea that a powerful representative assembly was born solely of French influence.

Less convincing, however, is the idea that an ancient Spanish constitution separated the powers of the king and the Cortes. Even in Aragon, legislating appears as a collaborative effort, with the Cortes taking the role of either sanctioning or rejecting laws introduced by the king. In the principles realized by the Constitution of 1812, power is more effectively separated between the king and the Cortes while also extending the representative body’s powers. In determining

⁸⁹ Ibid., 495.

⁹⁰ de Argüelles, *Discurso Preliminar a la Constitución de 1812*, 71. “Aragón fue en todas sus instituciones más libre que Castilla.”

the precision and merit of the Cortes' justifications for creating a written constitution and a powerful Cortes, perhaps the most difficult element to prove is the *Discurso*'s claim that the powerful Cortes of Aragon, Catalonia, and Valencia actually protected the interests and liberties of their citizens.

In conclusion, the Cortes at Cadiz created a powerful national legislature derived from national sovereignty and a liberal conceptualization of Spain's former system of government. Through the provisions of the Constitution of 1812, the Cortes was established as an independent institution with the ability to create laws and equitably represent the will of the people apart from the influence of the unelected king. Seeking to downplay the effects of foreign influence, the *Discurso preliminar* stubbornly claims that this form of national sovereignty and representative legislative assembly are significant, and indigenous, pieces of Spanish history. Considering the actual role of the Cortes during the period it was most powerful, the powers granted by the Constitution of 1812 appear to combine liberal principles with authentic parts of regional systems of the period. Although the claims that the revived Cortes is merely an imitation of a former system cannot be upheld, the fact that a reasonably influential assembly existed to an extent in Spain's past does refute the suggestion that Spanish liberals formed the Constitution of 1812 solely from contemporary foreign ideals.

Chapter 4

The King

The role of the King of Spain is defined in the fourth section of the Constitution of 1812. Under the provisions of the newly promulgated constitution, the government of Spain is established as a “moderate, hereditary monarchy” where the traditional figure of the King is preserved.⁹¹ This hereditary monarchy as freshly construed by the Cortes at Cadiz is moderate in that the power of the King is prescribed and limited by a recognized constitution. Recent Spanish history had shown what a monarch could accomplish using the full scope of his powers. Charles III’s enlightened despotism had introduced reforms, but had also set a precedent for an unpopular king and his less popular prime minister to access the same amount of power.

As insufficient, yet excessively powerful, monarchy had brought Spain to invasion and internal disarray, the Cortes thus had an interest in creating a new standard of monarchy where the situation of all of Spain was less subject to individual royal impulses. As the *Discurso preliminar* states, “the immense power that has been appropriated to the royal authority needs of a brake that constantly contains it within its limits” to an end that will maintain national sovereignty and thus the liberties of the people.⁹² The *Discurso* again references Spain’s history as a justification for the Constitution’s provisions although many of its principles align with those of contemporary Europe’s constitutional governments with regards to the power of a king. Overall, in creating a constitutional monarchy, the Constitution of Cadiz balances the power of the King with that of the Cortes, effectually enforcing national sovereignty and holding the King accountable to the will of the people.

⁹¹ *The Political Constitution of the Spanish Monarchy*, Article 14.

⁹² de Argüelles. *Discurso Preliminar a la Constitución de 1812*, 87. “el inmenso poder que se ha adjudicado a la autoridad real necesita de un freno que constantemente le contenga dentro de sus límites”

The King under the Constitution is vested with executive power of the Spanish government.⁹³ His primary duty is to execute the laws of the kingdom and he retains command of the armed forces, including the right to declare war and negotiate peace.⁹⁴ He is also charged with conducting the nation's foreign relations.⁹⁵ As the executive, the King is given the responsibility of overseeing the central administration. He has the ability to appoint military and civil functionaries, as well as to ensure justice is rendered by the courts.⁹⁶ Royal authority also extends to legislative functions of the state where the King is granted the opportunity to petition the Cortes for potential laws or reforms.⁹⁷ Before being obligated to distribute and execute laws, the King is given the power to either accept or reject legislation passed by the Cortes.

In accepting the powers granted by the Constitution, the King is likewise bound to acknowledging the limitations placed on his power. Although the traditional authority of the Spanish king had formerly been restricted only at his own discretion, the Constitution of 1812 instead places strict boundaries on the King's rights, especially in relation to the power of the representative Cortes. Article 172 outlines the various limitations on the King's autonomy, prohibiting him from acting unilaterally in some cases without the consent of the Cortes and dispossessing or imprisoning citizens extra-judicially.⁹⁸

In light of recent history, some of these provisions and restrictions were fitting and sensible reminders of what the Cortes at Cadiz was attempting to accomplish. The sovereignty of the nation, rather than the King, is repeatedly stressed. In Article 2, the Constitution proclaims that "The Spanish nation is free and independent, and neither is nor can be the property of any

⁹³ *The Political Constitution of the Spanish Monarchy*, Articles 16, 170.

⁹⁴ *Ibid.*, Articles 171:8-9, 171:3.

⁹⁵ *Ibid.*, Article 171:10.

⁹⁶ *Ibid.*, Articles 171:4-5, 171:2.

⁹⁷ *Ibid.*, Article 171:14.

⁹⁸ *Ibid.*, Article 172:11.

family or person”.⁹⁹ This claim to a form of national sovereignty entails a repositioning of the monarchy within Spain’s political arrangement, forcing the King to take the popular will into account when making decisions. The Constitution further reinforces this principle by explicitly stating that “The King cannot renounce, yield, deliver up, or make over, to any other person, the royal authority, or any of its prerogatives.”¹⁰⁰ The King furthermore is unable to make alliances and treaties or renounce any Spanish territory during the course of negotiation without the consent of the Cortes.¹⁰¹

In these provisions, the nation and its citizens are not one man’s property, as tangibly demonstrated by Spain’s revolt against the Napoleonic rule derived from Charles IV and Fernando VII’s abdications. In attempting to ensure that Spain’s current state of affairs does not occur again in the future, the Constitution asserts that a royal abdication and a suitable heir must be first approved by the national Cortes before any authority can be exercised.¹⁰² Overall, the provisions of the Constitution of 1812 create a new structure of government where the King, no longer sovereign in his own right, must respect the will of the people as represented by the Cortes.

The Cortes, the expression of national sovereignty, is thus given a number of means of constitutionally asserting its authority over the King. At the ascension of a new monarch, the Cortes administers the oath to the newly crowned King, as provided in Article 173 of the Constitution:

On the King's accession to the throne, or, if he should be under age, when his Government begins, he shall make oath before the Cortes according to the following

⁹⁹ Ibid., Article 2.

¹⁰⁰ Ibid., Article 172:3.

¹⁰¹ Ibid., Articles 172:4-6.

¹⁰² Ibid., Article 172:4.

form: I, N., by the grace of God and the Constitution of the Spanish Monarchy, King of all Spain, do swear before God [...] that I will observe, and cause to be observed, the laws and political constitution of the Spanish monarchy, doing and acting, in all things, only for their good and benefit; that I will not make over, yield or dismember any part of the kingdom; that I will never exact contributions, money or any other thing, without it shall have been decreed by the Cortes; that I will respect private property and, above all, the civil liberty of the nation and rights of every individual; and if, to what I have now sworn, or any part of it, I should be found to act contrary, such act shall be null, void and not be obeyed. If thus I do, may God reward and protect me, if not, may it be at my own peril.¹⁰³

The inaugural oath, with its somewhat ominous conclusion, effectively binds the King to recognizing the Constitution. In receiving the oath, the King is firmly placed within his constitutional role while the Cortes, in administering the contract, symbolically indicates the nation's formal recognition of a new executive and ceremoniously grants him the authority to reign.¹⁰⁴

The underlying assumption in this arrangement is that the Cortes, as the representative body of the nation, is the guarantor of the King's authority. In terms of the aforementioned provision stating that the King cannot grant his royal authority to another without the Cortes' ascent, royal power is thus held through an exclusive contract between the reigning monarch and the Cortes. As the conferrer of power, the Cortes is charged with resolving any conflict regarding the order of succession and is similarly given the power to appoint the Regent or the tutor for a

¹⁰³ Ibid., Article 173.

¹⁰⁴ Ibid., Article 131:2.

minor heir should the natural candidate be unclear.¹⁰⁵ To ensure a balance and deter possibilities of undue influence, the *Discurso preliminar* states, “The authority exercised by the Regency named by the Cortes will be equal to that of the King, to not create opportunity to limit it.”¹⁰⁶ Although these provisions are likely placed for efficiency, the ability to select an heir, Regent, or tutor potentially gives the Cortes a significant amount of power over the future of the executive body of the government should it be seeking to exert such an influence.

In order to maintain a balance between the King and Cortes, the Constitution contains a number of articles ensuring the King’s recognition of the national assembly’s independence. In Article 122, the King is prohibited from entering the Cortes with a guard, while Articles 129 and 130 respectively stipulate that deputies can accept neither “lucrative employ or place from the King” nor “any pension, honour, place or order, which is the gift of the King” during their term of service.¹⁰⁷ Although Article 121 gives the president of the Cortes the authority to convoke the assembly if the King chooses not to do so, Article 172-1 explicitly forbids the King from obstructing the meeting of the Cortes or dissolving it mid-session.¹⁰⁸

These provisions suggest that the Cortes at Cadiz was anticipating royal attempts to exert undue influence in legislative procedures through either military force or bribery. In expressly preventing these occurrences, the maneuverings of the Cortes reveal a level of unease regarding the King’s future conduct within such a comparatively limited role. These preemptive provisions serve as a reminder that the Cortes of Cadiz was not in a bargaining position such as that of the English barons at the signing of the Magna Carta or even the National Assembly on the eve of

¹⁰⁵ Ibid., Article 131:3-6, 198.

¹⁰⁶ de Argüelles, *Discurso Preliminar a la Constitución de 1812*, 92. “La autoridad que ejerza la Regencia nombrada por las Cortes será igual a la del Rey, a no ser que crean oportuno limitarla”

¹⁰⁷ *The Political Constitution of the Spanish Monarchy*, Articles 122, 129-130.

¹⁰⁸ Ibid., Article 172:1.

the French Revolution. Although the Constitution was written in the name of Fernando VII, the probability of the future king's acceptance of a constitutional monarchy would remain uncertain until his return and would likely hinge on the Spanish population's support for either King or Constitution. Essentially, a written document founded on a claim of patronization by the Spanish masses was the sole means of pressing a constitutional structure on the King.

The *Discurso preliminar* discusses the role of the King much in the same way that it speaks of the Cortes. The new role of the King, constrained in a constitutional monarchy, is justified through an account of the King's role under the ancient constitution of Spain. According to Argüelles in the *Discurso*, Aragon and Castile had both been elective monarchies at some point in their histories. The *Discurso preliminar* claims that in these regions' respective constitutions, "it is mandated that the crown is elective; that no one can aspire to the reign without being chosen."¹⁰⁹ In the *Discurso*'s reconstruction of history, Castile lacked the fixed laws to ensure that the elective process continued. The elective monarchy thus became a hereditary monarchy in the twelfth century as to better maintain order and contain the political chaos that ensued while elections were being held. The *Discurso* appears to recognize this flaw of an elective monarchy; if a monarch is elected for life, there is no heir destined to rule immediately after his death. In Argüelles' view, this reasonable shift to a hereditary arrangement does not diminish or cover up the fact that Spain had once elected its executive. That is to say Spaniards, or at least powerful Spaniards, had once held a measure of control over who ruled them.

Although the Castilian King dominated his domains, the representative assembly of Aragon retained more power in relation to their monarch. The Cortes of Aragon was able to

¹⁰⁹ de Argüelles, *Discurso Preliminar a la Constitución de 1812*, 70. "En ellas se dispone que la corona es electivo; que nadie puede aspirar al reino sin ser elegido."

assert its authority over the King according to the *Discurso preliminar* which states with admiration, “The formula that they used through their publication is remarkable, and removes all doubt for the clarity and precision of the words in that they were conceived. It said like this: “The King, by the will of the Cortes, rules.”¹¹⁰ In this view, the ancient Cortes of Aragon had legitimate controls limiting the power of the king to encroach on privileges and liberties, as well as hindering the dangerous ambitions of the king or his ministers.

Argüelles further expounds on the reasons the Spanish Cortes should be powerful in relation to the King based on Spanish history. To justify this belief in a powerful assembly, the *Discurso* presents the fact that the Spanish kings habitually attempted to defer the meetings of the national congress as evidence of the royal understanding of “the frequent reunion of the Cortes as a true obstacle to the arbitrary nature of their government and the intended usurpation of the liberties.”¹¹¹ Argüelles goes on to say that these changes toward a more authoritative executive “began ordinarily by small omissions in the observance of the laws that accumulated imperceptibly to come to introduce custom”, allowing the King to take control, historically, to the detriment of the Cortes, and thus the people.¹¹² In addition to its basis in national sovereignty, the *Discurso*’s argument also rests on an understanding of the Cortes as the bulwark against the worst of the Spanish Kings, embodied in a man constantly scheming to amass more power and impose his will and interests. Ultimately, the arguments upheld in the *Discurso preliminar* sustain a confidence that fixed laws of a constitution will discourage this tendency toward a powerful executive and thus the encroachment of the liberties of the Spanish people.

¹¹⁰ Ibid., 72. “La fórmula de que usaba para su publicación es bien notable, y quita toda duda por la claridad y precisión de las palabras en que estaba concebida. Decía así: El Rey, de voluntad de las Cortes, estuesce y ordena.”

¹¹¹ Ibid., 86. “la frecuente reunión de Cortes como un verdadero obstáculo a la arbitrariedad de su gobierno y a la usurpación que se intenta hacer de las libertades”

¹¹² Ibid., “comienzan de ordinario por pequeñas omisiones en la observancia de las leyes, que acumulándose insensiblemente llegan a introducir costumbre”

Though the dominating faction of the Cortes at Cadiz clearly believed that the King's power should be restricted, the *Discurso* denies the idea that the Constitution is meant to completely subjugate royal authority. The *Discurso preliminar* states that the most ideal forms of government are achieved through a separation of powers; however, it admits that there is no clear consensus among political theorists as to the best way to appropriate power among the branches. In creating a constitution, the *Discurso* suggests seeking the answer in the ancient constitution of Spain where "it is seen that the King participated in some mode of the legislative authority."¹¹³ The *Discurso* thus explains the power granted to the King to veto laws passed by the Cortes, when perhaps the opposite was true during the period of the alleged "Constitución antigua." In allowing the King this input into creating laws, the *Discurso* presents a more optimistic view of the King's contribution to legislative procedure. According to Argüelles, the purpose of the executive veto is "to revise and refine whenever possible the impetuous character that necessarily dominates in the numerous body."¹¹⁴

The *Discurso* further clarifies this power by stating that the Constitution establishes "that the power of making laws belongs essentially to the Cortes, and that the act of sanction should be considered only as a corrective that demands the particular usefulness of accidental circumstances."¹¹⁵ Interestingly, the *Discurso preliminar* concedes that the royal sanction is a means of containing the representative Cortes, which has the potential to act rashly in spite of its dedication to acting on behalf of the people. However, the *Discurso* finds this to be an occurrence both unlikely and easily corrected by the insight of the King.

¹¹³ Ibid., 78. "es visto que el Rey participaba en algún modo de la autoridad legislativa"

¹¹⁴ Ibid., 88. "La parte que se ha dado al Rey en la autoridad legislativa, concediéndole la sanción, tiene por objeto corregir y depurar cuanto sea posible el carácter impetuoso que necesariamente domina en un cuerpo numeroso"

¹¹⁵ Ibid., 89. "La fórmula con que se han de publicar las leyes a nombre del Rey está concebida en los términos más claros y precisos: por ellos de demuestra que la potestad de hacer leyes corresponde esencialmente a las Cortes, y que el acto de la sanción debe considerarse sólo como un correctivo que exige la utilidad particular de circunstancias accidentales"

Entrusting this power in the body of the King does not particularly align with the cynical conviction expressed in the Constitution and the *Discurso preliminar* of the King's inclination toward encroachment on the rights of the venerated Cortes. In allowing the King to veto legislation, neither the *Discurso* nor the Constitution addresses the possibility of royal obstinacy hindering effective functional government. While the Cortes has, in theory, the ability to supersede the veto, actually voiding the King's rejection is a cumbersome and drawn out process. Due to this conversion of opinion, the executive veto could be construed as a concession to the King, allowing him part of his traditional privilege in the hope that he will accept limits if he is able to retain some degree of his power. This discrepancy could also suggest that this appropriation of power to the King was genuinely conceived as a check on the power of the Cortes. The idea of the Cortes as an imperfect body in need of a counterweight is an idea that the *Discurso* chooses not to thoroughly explore except when introducing the idea of the executive veto.

The *Discurso*'s mission to persuade its audience that national sovereignty and a powerful Cortes are important trappings of excellent government does not preclude its drafters' understanding of other constitutional systems such as that of Great Britain and the United States. In this light, the extensive preemptions restricting the King's infringement on the Cortes' authority can be seen as a means of curbing the conspiracies of the worst of the Spanish kings as the merit of the royal line is left partially to chance.

In addition to the royal veto, the Constitution of 1812 grants the King power in the realm of foreign affairs. While many of his actions are limited by the need for the Cortes' assent, the King ultimately continues to occupy his role as the figurehead of the Spanish government. The *Discurso* states that the Constitution has been carefully crafted with respect to the King's power

“so that it he may exercise it with the dignity, grandeur, and ease that belongs to the monarch of the enlightened Spanish nation.”¹¹⁶ In his rightful place, the King “needs to be cloaked in a truly powerful authority in order that, in addition to being loved and venerated within his kingdom, he is respected and feared outside of it by nations, friends and enemies.”¹¹⁷ In this way, the *Discurso preliminar* recognizes that completely devaluating the person of the King would be equally detrimental as an all-powerful executive. A dignified, worthy King commands the respect of domestic and foreign elements, preserving order in a way that an unreasonably subdued monarch could not. In granting the King some measure of royal prerogative, the Cortes at Cadiz sought to construct a level of balance between the legislative and executive authorities.

Considering that the constitutional monarchy created by the Constitution of 1812 cannot strictly be a reflection of an ancient Spanish constitution, its creators indisputably looked to foreign systems for inspiration. The British system, one that Argüelles was coincidentally well-acquainted with, was also arrayed in an arrangement similar to that which the Constitution of 1812 hoped to create. Under the organization of Great Britain, a powerful legislature effectively exerted powerful authority in tandem with a hereditary monarchy. Although Great Britain admittedly did not have one single constitutional document, a constitutional system was consistently upheld in its recent history. During the eighteenth century, the British king, as the executive, held the right to convoke and dissolve Parliament, with the caveat that Parliament must assemble at least once in three years’ time. He also gave his royal assent to all bills passed in Parliament in order to create laws. As the figurehead of the British government, the King

¹¹⁶ Ibid., 80. “así para que pueda ejercerla con la dignidad, grandeza y desembarazo que corresponde al monarca de la esclarecida nación española”

¹¹⁷ Ibid., 89. “necesita estar revestido de una autoridad verdaderamente poderosa para que, al paso que sea querido y venerado dentro de su reino, sea respetado y temido fuera de él de las naciones amigas y enemigas”

headed both the Anglican Church and the armed forces, in addition to conducting foreign affairs and creating peers.

Although the British monarch appeared to have extensive powers over his government, he was effectually limited by Parliament's undeniable control of the budget. J. L. de Lolme, writing an admiring account of the English government in 1771, points to this restriction as a cardinal reason why the British system was able to best preserve the liberties of its citizens. Referring to money, de Lolme writes, "it may be safely affirmed, that he who depends on the will of others, with regard to so important an article, is, whatever his power may be in other respects, in a state of real dependence."¹¹⁸ As the King had few avenues of circumventing this situation, he truly relied on Parliament for appropriations. De Lolme points to the example that the King can technically declare war but is unable to maintain it without financial support and concludes, "the Royal prerogative, destitute, as it is, of the power of imposing taxes, is like a vast body which cannot of itself accomplish its motions."¹¹⁹ De Lolme also addresses the issue of balance within the British government and finds that offensive subversion of royal authority is averted by a subsidy granted to the King in order "to support the dignity of the Crown."¹²⁰

In R. R. Palmer's analysis, de Lolme's work is placed within a broader argument regarding the growing power of the aristocracy in the period leading up to the revolutionary convulsions of the late eighteenth century. Palmer finds that a belief inherent in de Lolme's writings is "an intense dislike of government by oligarchy, coterie, or self-perpetuating

¹¹⁸ Jean Louis de Lolme, *The Constitution of England, or, An Account of the English Government; in which it is Compared with the Republican Form of Government, and Occasionally with the other Monarchies of Europe* (London: Spilsbury, 1775), 85.

¹¹⁹ *Ibid.*, 86.

¹²⁰ *Ibid.*, 90.

aristocracy.”¹²¹ Therefore, the reason de Lolme found the English system so compelling was that a strong king was able to eclipse the collective force of a powerful nobility, in contrast with France’s tradition of regional loyalties and *parlements*. De Lolme ultimately determined that representative assemblies, though well-intentioned, inevitably came to be dominated by a few powerful men asserting their narrow interests and ambitions. A powerful executive, endowed with the voluntary consent and deference of the people, was a positive force that “served as a barrier against ambitions.”¹²²

Although de Lolme emphasizes the essential restriction on the King’s authority, he finds that the King’s ability to grant influence to members of Parliament through elevation to the peerage among other honors and promotions gave him significant leverage in guiding Parliament’s affairs, thus allowing the government to function as one cooperating administration.¹²³ In this sense, determined opposition against the King’s endeavors was not rewarded, allowing a functioning balance between Parliament and King. Through a strong, benevolent executive counteracting the personal interests of a representative assembly, the English government, according to de Lolme, was an ideal means of preserving the liberty and well-being of its citizens.

The Spanish system gives comparable powers to the monarch and similarly limits his undertakings by granting control of expenditures to the representative body. Both kings are also able to command the respect of their constituents and of foreign nations through their roles as distinguished checks on the national assemblies’ rule. However, the Cortes at Cadiz, by Articles

¹²¹ R.R. Palmer, *The Age of Democratic Revolution: A Political History of Europe and America, 1760-1800* (Princeton: Princeton University Press, 1959), 146.

¹²² *Ibid.*, 147.

¹²³ *Ibid.*, 150.

129 and 130, arguably prevents the Spanish king from exercising the authority of the British monarch.¹²⁴

While these provisions are clearly intended to prohibit royal usurpation by all forms of bribery, they also prevent the King from granting the type of influence that de Lolme finds essential for collaboration between the legislative and executive branches. These bans on granting forms of influence are similarly found in the French Constitution of 1791 which, while short-lived, comprised of a monarchy limited by a number of provisions before being dispensed in favor of a republic in 1792.¹²⁵ Likewise, the Spanish king, along with the French king, finds his authority limited in that the constitution regularizes the Cortes' meetings which can be convoked with or without his involvement.¹²⁶

Although the *Discurso preliminar* recognizes that a representative body could have the potential to act unwisely, the national Cortes of the Constitution of 1812 is not divided into separate chambers. This component of the British and American models, justified respectively by traditional privileges and the need to diffuse congressional authority, is rejected in the Spanish system.¹²⁷ In this case, the Spanish Cortes is more similar to the French National Assembly which sought to avoid segregation into the estates that had been traditional in the past.

In essence, the Cortes of Cadiz sought to create a system where the King was bound by constitutional laws but had a degree of input into the legislative process, thus acting as a check on the representative Cortes. In attempting to suitably preserve the liberty of the people and national sovereignty, the Cortes at Cadiz seems to determine that, while it is theoretically better

¹²⁴ *The Political Constitution of the Spanish Monarchy*, Article 129-130.

¹²⁵ *French Constitution of 1791*. From Duke University. Chap.2, §4, cl.2.

¹²⁶ *Ibid.*, Chap.1, cl.4.

¹²⁷ James Madison, "The Federalist #51" From Our Documents: 100 Milestone Documents from the National Archives.

to completely subordinate the King to the will of the people, a practical and more reasonable course of action mandates a balance where both need the other's assent to fulfill ideally mutual objectives. Essentially, all of the aforementioned constitutional systems were wrought in attempts to achieve the overarching goal of avoiding consolidation of considerable power in one person. De Lolme, in agreement, writes regarding the executive of a just government, "the laws, whether those that existed before him, or those to which, by his assent, he has given being, must direct his conduct, and bind him equally with his subjects."¹²⁸

Across the Atlantic Ocean, an American writing under the pseudonym Brutus felt inclined to contribute to the popular debates surrounding the adoption of the United States' constitution. In warning of the potential problems of conferring excessive power on the executive office, he argues, "Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority."¹²⁹ Although the Cortes at Cadiz was creating a constitutional system under the assumption that Fernando VII would willingly curtail his traditional power, the *Discurso preliminar* consistently argues that the Constitution of 1812 is intended to discourage the accumulation of power in the hands of one single arbitrary ruler while also recognizing his traditional prerogative. In this way, the Constitution of 1812 hopes to strike a delicate balance between the traditional authority of the British monarchy who may convoke and exert influence in Parliament and the French Constitution of 1791 which ultimately devolved into a radical form of republicanism.

¹²⁸ de Lolme, *The Constitution of England*. 80.

¹²⁹ "The Essays of Brutus" (1787), reprinted in Hollinger and Capper, eds. *The American Intellectual Tradition, Volume I, 1630-1865* (New York: Oxford University Press, 2006), 144.

Chapter 5

The Nation

The Constitution's provisions regarding the powers of the Cortes and the King were justified through broad liberal claims that an ancient constitution had at one point restricted the Spanish king from amassing enough power to infringe on individual liberty. As noted previously, the conceptualization of ancient Spain as a constitutional monarchy is likely a largely fictive construction. However, in justifying the empowerment of a representative assembly and limits on the executive in terms of national sentiment, the drafters of the Constitution of 1812 expose an awareness to the thrust of the era, namely the rise of the significance of national identity. The use of an ancient constitution governing a singular Spanish nation as a central validation implies that Spaniards believed themselves to be part of nation and thus invested in its history. While much of the Constitution of 1812 contains provisions defining the national character of Spain, equally important are the Constitution's implications for expressing and solidifying the idea of the Spanish nation.

The idea of a Spanish national sentiment stands in contrast to the regional particularism preeminent in Spanish history. The conceptualization of Spain as a nation was a recent development, explained by Herr as “the achievement of the Bourbon rulers and the religious faith of the Spaniards.”¹³⁰ Tactics of a strong monarchy, culminating in the enlightened despotism of Charles III, had ruled Spain as one nation, suppressing regional appeals and interests to the benefit of the nation as a whole. Bourbon reforms were broader than the

¹³⁰ Herr, *The Eighteenth Century Revolution in Spain*, 436.

Habsburg focus on Castile and attempted to evenly distribute, in a geographic sense, both the benefits and burdens of the nation, as necessitated by the international trend toward political centralization and the formation of the early modern state. The Spanish national character taking shape at this time was a stubborn and insular variety that recognized the dismal position of Spain in relation to the rest of Europe while at the same time rejecting any foreign means of improving it. Thus, the Bourbons resorted to introducing careful and judicious reforms, with the rare exceptions of Charles III's conflicts with the Spanish masses. Although Charles III's moderate reformism had included the expulsion of the Jesuits and decline in the Inquisition's authority, the king otherwise retained Catholic traditions and his personal piousness endeared him the Spanish people. Herr writes that "the identification of Catholicism with Spanishness penetrated all layers of society," creating a unifying feature of Spanish culture that effectively transcended differences based on region or class.¹³¹ Through Bourbon centralization efforts and the cultural constant of Catholicism, Spain took shape as a cohesive and functional state.

If Spain had reached a level of national unity, this accord was put to the test under the leadership of Charles IV and Godoy. Undercut by the monarchy's loss of prestige, the enlightened despotism that had placed the country under progressive reforms began to wane, theoretically opening up opportunities for national discord. Payne writes that the events of the 1790's "had completely broken the unity of the Spanish polity" while Hume describes the convulsions of the monarchy in 1808 as effecting "a perfect cataclysm of change" for national institutions.¹³²

In light of this situation, Napoleon's assumption that a divided Spain would easily fall to his supremacy seems very reasonable. Had his invasion coincided with stalwart regionalism,

¹³¹ Ibid., *An Historical Essay on Modern Spain*, (Berkeley: University of California Press, 1971), np.

¹³² Payne, *A History of Spain and Portugal*, np.; Hume, *Modern Spain*, 154.

perhaps different elements could have been played off each other through promises of privilege or autonomy in the new regime. However, the Spanish nation did not capitulate to Napoleon. According to the *Diario de Palma*, the daily newspaper of the city of Palma de Mallorca, in March of 1812, “The French have ignited a patriotic fire, whose sacred call will never be extinguished.”¹³³ This patriotism thus spurred Spaniards of all regions to rise up and assert their independence and united nationhood.

Spanish liberalism clearly incorporated Spain’s evolving national identity. Broadly speaking, Spanish liberalism asserted that the end to a tradition of national sovereignty, evidenced by the dissolution of the Cortes’ power and the ancient constitution, “brought the ruin of Spain.”¹³⁴ The rise of the arbitrary power of the monarchy curtailed Spain’s liberty and prosperity, seen in the decline of its empire, the economic hardships brought about by the Habsburg wars, and the establishment of the Inquisition. Despite the *Discurso preliminar*’s claim that “When the Commission says that in this Project there is nothing new, it says an unshakeable truth, because truly, in substance, it is not”, suggestions of the impact of nineteenth century liberalism are evident.¹³⁵ The influence of particularly contemporary thought is manifest in the liberals’ emphasis on national sovereignty, individual rights, and written constitutions entailing separated powers with both constitutionally protected rights and constitutional limitations. The use of Spanish national sentiment to justify the injection of liberal principles appears as a product of Spanish national pride, but also as a means of capitalizing on the importance of national identity in order to make foreign elements relevant and palatable as they had not been previously.

¹³³ “Conclúyense los debates del parlamento,” *Diario de Palma*, March 18, 1812, 1. “Los franceses han encendido un fuego patriótico, cuya sagrada llama no se apagará jamas [sic].”

¹³⁴ Herr, *The Eighteenth Century Revolution in Spain*, 347.

¹³⁵ Agustín de Argüelles, *Discurso Preliminar a la Constitución de 1812*, 76. “Cuando la Comisión dice que en su proyecto no hay nada nuevo, dice una verdad incontrastable, porque realmente no lo hay en la sustancia.”

The first chapter of the Constitution concerns the definition of the Spanish nation as well as what it means to be a citizen. The first four articles generally spell out the broad goals of the document, indicating a series of principles that govern the remainder of the Constitution. The first article establishes that Spain, and thus the jurisdiction of the Constitution, is “the re-union of all the Spaniards of both hemispheres.” This encompassing nation is, by the second article, “free and independent, and neither is nor can be the property of any family or person.” This independence is reinforced by the third article that explicitly states “Sovereignty belongs to the nation, consequently it exclusively possesses the right of establishing its fundamental laws.” Finally, article four assures 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.”¹³⁶ Thus, through its opening articles, the Constitution of 1812 clearly enumerates its governing principles as they relate to national sovereignty and the rights of the individual.

The nation, as interpreted by the Constitution, encompasses people, rather than territory, and includes the residents of the Spanish colonies. Citizenship, and therefore the right to vote, is granted to all men born in “Spanish dominions”, as well as to the sons of the native-born. A man may also be considered a citizen by attaining a letter of naturalization from the Cortes or living solely in Spain for a minimum of ten years after surrendering citizenship rights in another nation. Finally, the Constitution allows rights of citizenship to slaves freed within the Constitution’s jurisdiction.¹³⁷ A Spanish citizen can likewise voluntarily or involuntarily renounce his citizenship status by either becoming a citizen or working for the government of another country. Similarly, a Spaniard who lives abroad for longer than five years without leave from the Spanish

¹³⁶ *The Political Constitution of the Spanish Monarchy: Promulgated in Cádiz, the nineteenth day of March.* Articles 1, 2, 3, 4.

¹³⁷ *Ibid.*, Article 5.

government automatically voids his citizen rights.¹³⁸ Citizenship is also forfeited by committing a criminal offence or through economic irresponsibility such as bankruptcy. Domestic servants are deprived of citizenship rights as are persons “holding no office or having no employ, nor known means of living.”¹³⁹ Finally, Article 25-6 stipulates that “From the year 1830, those who enter on the exercise of the rights of citizenship must have learned to read and write.”¹⁴⁰

Once defined, citizens are prescribed certain duties per Articles 6 through 9 of the Constitution. These duties mainly consist of ensuring civic order as “Every Spaniard is obliged to be faithful to the Constitution, to obey the laws and to respect the established authorities” in addition to the idealistic duty “to be just and honest.”¹⁴¹ Furthermore, Spanish citizens are obligated “without exception, to bear arms in defence [sic] of the country, when called on by the laws,” presumably meaning required service in the military in the case of a draft.¹⁴² As citizens, Spaniards also must pay taxes under the provision stating that a citizen is “obliged to contribute, in proportion to his means, to the finances of the State.”¹⁴³

In defining citizenship and what it means to be a citizen, the Constitution provides one of the defining characteristics of nationalism, namely the idea of belonging to one nation at the exclusion of all others. To be a citizen of Spain was to have an identity within the nation and thus to be uniquely entitled to rights granted by the Spanish Constitution.

Based on the qualifications placed by the Cortes at Cadiz, rights of citizenship in Spain were more comprehensive than many of the era, but were not universal in practice. Disregarding usual exclusions, such as that of women, the Constitution of 1812 bars criminals, the bankrupt,

¹³⁸ Ibid., Article 24.

¹³⁹ Ibid., Articles 24, 25.

¹⁴⁰ Ibid., Article 25-6.

¹⁴¹ Ibid., Articles 6, 7.

¹⁴² Ibid., Article 8.

¹⁴³ Ibid., Article 9.

and the unemployed, implying that the rights of citizenship are privileges to be bestowed on the worthy and the virtuous. Interestingly, the Constitution explicitly revokes the rights of the idle members of society and effectually departs from the historical Spanish tradition of rejecting commercial involvement as a debasing activity. A progressive attitude toward capitalism, though by no means ubiquitous, had been growing as part of the economic reforms of enlightened despotism which had clearly realized the need for healthy economic growth in a powerful modern nation. The Constitution further supports the construction of an efficient polity through the duties placed on its citizens. Citizenship entails adherence to the nation's laws, military service, and payment of taxes in return for the rights protected by the Spanish constitutional government.

The Constitution endeavors to ensure Spanish citizens' right to justice through provisions governing the judicial process. Article 257 states specifically that "No Spaniard can, either in civil or criminal causes, be tried by any commission, or any other than the competent tribunal established by an anterior law."¹⁴⁴ The Constitution also prohibits imprisonment without knowledge of the offence committed and stipulates that criminals are, in most cases, allowed to post bail for release.¹⁴⁵ Furthermore, Article 297 entails that prisons are legally "constructed so as to secure, but not to distress the prisoners [... and] never in subterraneous or unwholesome dungeons."¹⁴⁶ Through these provisions, the Constitution clearly seeks to end the arbitrary imprisonment often alluded to in the *Discurso*'s claims that written law will secure individual liberty, literally speaking in this case.

¹⁴⁴ Ibid., Article 257.

¹⁴⁵ Ibid., Article 287, 295.

¹⁴⁶ Ibid., Article 297.

These provisions also appear to be in response to a more tangible element in Spanish history, specifically the authority of the Spanish Inquisition which was infamous for its unjust and occasionally inhumane tactics regarding the imprisonment of suspected subversives. This aim is clearly evidenced by Article 303 which states that “Neither the rack, nor any violence, shall be used to extort confession,” unambiguously mentioning the symbol of the Inquisition’s participation in torture.¹⁴⁷ Through such provisions regarding the treatment of suspected criminals, the Constitution attempts to preempt a return to arbitrary rule of the government while simultaneously preventing a tribunal body from exercising the type of inquisitional justice formerly applied in Spanish history. These assurances of individual rights are part of an effort to methodically safeguard against encroachments by government bodies, such as the King or the judicial system, counter to the positions specifically denoted in the Constitution.

In addition to guaranteeing the right to justice, the Constitution states that “The object of Governments is the welfare of nations; as is the happiness of the individuals who compose them, that of all political societies.”¹⁴⁸ Without listing exactly what rights every citizen is entitled to in the manner of the American Bill of Rights or of the French Declaration of the Rights of Man and of the Citizen, the Constitution of 1812 broadly and liberally recognizes the importance of the individual citizen, rather than people as members of classes or groups, within a nation. Article 371 essentially protects freedom of the press, granting to each citizen the “liberty to write, print and publish, his political ideas, without any previous licence [sic], permission or revision, under the restrictions and responsibility established by law.”¹⁴⁹ However, the final clause of this article

¹⁴⁷ Ibid., Article 303.

¹⁴⁸ Ibid., Article 13

¹⁴⁹ Ibid., Article 371.

permits the Cortes, technically the representatives of the people, to limit this freedom at its secular discretion, rather than condoning the religious censorship present in Spanish history.

Finally, the Constitution recognizes a right to education, stating that “Introductory schools shall be established in every town throughout the kingdom.”¹⁵⁰ This education initiative is clearly of importance to the Cortes at Cadiz which also inserts literacy as a requisite for citizenship, to become effective in 1830. The goal of these schools, to teach basic reading and writing as well as “the catechism of the Roman Catholic Religion, and a brief exposition of natural and civil duties and obligations” reflects a liberal emphasis on the importance of education.¹⁵¹ Furthermore, both literacy and knowledge of civil responsibilities can be interpreted as rational means of building a properly effective state with economic potential. Developing literacy was particularly important for Spain’s transition into a modern state, especially considering that early nineteenth century Spanish literacy rates hovered around ten percent.¹⁵²

The idea of imparting civil duties is also evidence of the value of national sentiment in that the Cortes believed these lessons were important to transmit to future generations. The *Discurso* relates the important “objective of forming true Spaniards” while also inducing unity within the nation as it highlights the importance that “the direction of public education not remain entrusted to mercenary hands, to limited genius imbued with false ideas or mistaken principles, that could set up a terrible struggle of opinions and doctrines.”¹⁵³ By avoiding such a struggle, the Spanish nation would ideally remain united in a common purpose. The reference to

¹⁵⁰ Ibid., Article 366.

¹⁵¹ Ibid.

¹⁵² Payne, *A History of Spain and Portugal*, np.

¹⁵³ Argüelles, *Discurso Preliminar a la Constitución de 1812*, 125. “objeto de formar verdaderos españoles”; “confiada la dirección de la enseñanza pública a manos mercenarias, a genios limitados imbuidos de ideas falsas o principios equivocados, que tal vez establecerían una funesta lucha de opiniones y doctrinas”

“mercenary hands” that would prompt such disunity presumably refers to foreign influence but can perhaps be considered a veiled reference to the Church’s control of education. Although the Constitution mentions the necessity of teaching the catechism, the establishment of schools mandated by the state practically speaking introduces secular schooling that would likely replace church-run education that had dominated in Spain.

One right that a Spanish citizen does not have, however, is freedom of religion. The importance of religion is established in the Constitution’s opening lines which determine that the document is written “In the name of All-Powerful God, Father, Son and Holy Spirit, author and supreme legislator of society.”¹⁵⁴ This emphasis on religion is clarified by Article 12, which states “The religion of the Spanish nation is, and ever shall be, the Catholic Apostolic Roman and only true faith,” thus revealing that the God of the Constitution is purely the conceptualization of God adhered to by the Catholic Church.¹⁵⁵ While other nations uphold a state-sponsored religion or grant privileges to members of a specific faith, the Article 12 goes on to hold that “the State shall, by wise and just laws, protect it [the Roman Catholic religion] and prevent the exercise of any other.”¹⁵⁶

As this stipulation clearly inhibits the liberty that both the Constitution and the *Discurso preliminar* pledge to protect, an explicit declaration of support for the Roman Catholic tradition appears to contradict the purpose of Spanish liberals in shaping the Constitution of 1812. Likewise, the authority of the Inquisition is curtailed yet not completely abolished by the

¹⁵⁴ “Constitución Política de la Monarquía Española: Promulgada en Cadiz a 19 de Marzo de 1812,” in *Escritores Políticos Españoles: 1789-1854*, ed. Albert Derozier (Madrid: Ediciones Turner, 1975), 178. “En el nombre de Dios Todopoderoso, Padre, Hijo y Espíritu Santo, autor y supremo legislador de la sociedad”.

¹⁵⁵ *The Political Constitution of the Spanish Monarchy: Promulgated in Cádiz, the nineteenth day of March*, Article 12.

¹⁵⁶ *Ibid.*

Constitution despite the termination under Napoleon's Bayonne constitution and the Inquisition's ironic public condemnation of noncompliance with French rule.

Catholicism, an institution held dear to national feeling, seems to have been a part of Spanish culture and tradition that liberals were unwilling to excise. Unlike some conspicuous divergences from Spanish custom, the maintenance of Catholicism as the national religion of Spain, to the exclusion of all others, appears seemingly as a means of unifying the nation under an essential part of the national identity.

Spain's devotion in its religion is evident in a number of places. In the binding document drafted to negotiate the terms of Charles IV's resignation to Napoleon, the second article stipulates that "The catholic, apostolic, and Roman religion shall be the only one in Spain; no reformed religion shall be tolerated there, and still less infidelity, according to the usage now established."¹⁵⁷ Furthermore, Napoleon's Bayonne constitution was for the most part in line with the Napoleonic Code with the exception of a provision prohibiting religious beliefs other than Catholicism. This restriction on the usual freedom of religion is attributed to the influence of a few powerful Spaniards given input into the statute and as well as a concession to the national character of Spain.

Despite these assurances that Catholicism would continue as the predominant religion, its need for protection became a rallying cry for Spaniards against the French. The National Junta, proclaiming an official declaration of war against the French in June of 1808, announces that Napoleon "has, in fine, declared, that he will trample down our monarchy, our fundamental laws,

¹⁵⁷ "No. 21. – Resignation of the Crown of Spain by King Charles IV. and the Prince of Asturias," in *The Edinburgh Annual Register for 1808*, Vol. 1, Part 1, ed. Walter Scott (Edinburgh: Balantyne and Co., 1810) Google Books, liv.

and bring about the ruin of our holy catholic religion. The only remedy, therefore, for such grievous ills, [...] is in war, which we declare against him.”¹⁵⁸

In a separate document, the Junta expresses a similar sentiment in inspiring loyalty to the cause, warning that “if they rule over us all is lost, kings, monarchy, prosperity, liberty, independence, and religion; and that therefore it is necessary to sacrifice our lives and property in defence [sic] of the king, and of the country.”¹⁵⁹ Continuing the theme, the Central Junta proclaims, “the vile French [...], under the mask of friendship, and wishes for our happiness, should contrive, for this alone they are contriving, to plunder us, to violate our women, to assassinate us, to deprive us of our liberty, our laws, and our king, to scoff at and destroy our holy religion, as they have hitherto done, and will always continue to do.”¹⁶⁰ By using the preservation of Catholicism as a justification for war, the Junta reveals a confidence that the present threat to the cherished national faith will spur Spaniards to defiant action against notoriously anticlerical France.

The debates of the Cortes also reflect a clear preoccupation of some factions with preserving the importance of Catholicism in Spain. From the onset, these men expressed their sincere belief that the Catholic faith should have a more central place within the Constitution in addition to its opening lines and Article 12. Francisco Maria Riesco, a clergy member and former official of the Inquisition, states in response to the Constitution’s first sentence that “It has filled me with satisfaction to see that the men of the commission, religion being the most solid foundation of the Spanish nation, have begun the constitution invoking the sacred name of the

¹⁵⁸ “No. 26. – Declaration of War against the Emperor of France, Napoleon the First” in *The Edinburgh Annual Register for 1808*, Vol. 1, Part 1, ed. Walter Scott, lxi.

¹⁵⁹ “No. 27. – Precautions which will be proper to observe throughout the different provinces of Spain, in the necessity to which they have been driven by the French, of resisting the unjust and violent possession which their armies are endeavoring to take of the kingdom” in *The Edinburgh Annual Register for 1808*, Vol. 1, Part 1, ed. Walter Scott, lxiv.

¹⁶⁰ *Ibid.*, lxv.

most holy Trinity” but ultimately determines the constitution “could better indicate the religion that the nation professes.”¹⁶¹ His statement was followed by a response made by Simon López Or, also a clergyman, who takes issue with the fact that “it does not make mention of Jesus Christ, as redeemer and founder of the Catholic, Apostolic, and Roman religion, and as such it should make mention of him and the most pure Virgin Mary.”¹⁶² These criticisms, among others, regarding the very nature of an ordinarily secular document demonstrate the importance of Catholicism to the Spanish nation.

Regarding Article 12, the original provision from the first draft of the Constitution stated “The Spanish nation professes the one true Catholic, Apostolic, Roman religion, at the exclusion of any other.”¹⁶³ This article was amended without lengthy discussion as it became clear that some deputies hoped to give the provision more force. Pedro Inguanzo y Rivera, a clergy member with absolutist views, contributes his view that “To say that the Spanish nation professes the Catholic religion is to say a pure fact. A fact is not a law, it does not induce obligation. [...] Religion should enter the constitution as a law that obligates all Spaniards to profess it.”¹⁶⁴ His justification for compelling people to follow religion is that “religion is the first of all the fundamental laws, because all others rest upon it [...] and] without the mandates that its [religion’s] divine author communicates through religion, human laws do not have force

¹⁶¹ *Constitución en Cortes: El debate constituyente 1811-1812*, ed. Fernando Martínez Pérez (Madrid: Ediciones UAM, 2011), 24. “me ha llenado de satisfaccion ver que los senores de la comission, siendo la religion el fundamento mas solido de la nacion espanola, hayan dado principio a la constitucion invocando el sagrado nombre de la santisima Trinidad”; “no obstante, aun puede indicarse mas la religion que profesa la nacion”.

¹⁶² *Ibid.*, 25. “no se hace mencionan de Jesucristo, como redentor y establecedor de la religion católica, apostólica, romana, y como tal se debía hacer mención de él y la purísima virgen María”.

¹⁶³ *Ibid.*, 103, “La nación española profesa la religión católica, apostólica, romana, única verdadera, con exclusión de cualquiera otra”

¹⁶⁴ *Ibid.*, 107, “Decir que la nacion española profesa la religión católica, es decir un puro hecho. Un hecho no es una ley, no induce obligación. [...] La religion debe entrar en la constitución como un ley que obligue a todos los españoles a profesarla”.

or obedience, and the entire construction of society will collapse.”¹⁶⁵ In addition to his preoccupation with maintaining an orderly society, Iguanzo contends that religion is also important “because the nation will be as such a nation being monarchical as democratic, or any other government.”¹⁶⁶ Iguanzo thus reinforces the idea of Catholicism as inextricable from Spain’s identity, as he believes that the protection of Catholicism will conserve the character and order of the Spanish nation regardless of the type of government that rules it. Through this argument, Iguanzo expresses the opinion that religion is a more central aspect of Spain than means by which it is governed.

In excluding all other religions in the Constitution’s original form, its drafters, mainly liberals, seem to ostensibly condone the rigid beliefs of clergymen such as Riesco, Lopez, and Iguanzo. To deny religious toleration would be to ignore an important part of liberty, though liberals of all credos have conveniently disregarded certain elements of full liberty as their personal interests have occasioned. The Spanish liberals had consistently pledged to reinstate the ancient constitution of Spain which, based on its implied placement somewhere in the early medieval period, would have grudgingly allowed Spaniards to observe other religions as this period falls before the more intense efforts of the Reconquista. Spanish Jews and Muslims of the era were certainly social outcasts, but the full force of the government was not unleashed to monitor their personal convictions until the mass expulsions under the Catholic Monarchs Ferdinand and Isabella after 1480. Admittedly, Spanish liberals may not have included this historical fact in their retrospective reconstruction of Spanish constitutional history. The

¹⁶⁵ Ibid. “La religion es la primera de todas las leyes fundamentales, porque todas las demás estriban en ella [... y] sin los preceptos que por ella comunica su divino autor, no tienen fuerza ni obediencia las leyes humanas, y todo el edificio de sociedad viene por tierra”

¹⁶⁶ Ibid. “Es también la mas esencial, porque la nacion será tan nacion siendo monarquia como democrática, u otro qualquier gobierno”.

Discurso preliminar makes rare mention of religion, typically referring to it as an institution in Spain without much explanation. When expounding on the proposed article making Catholicism the sole religion in Spain, the *Discurso* reasons that this provision is included merely because of religion's "preeminent part in the fundamental law of the state that corresponds to the grandeur and sublimity of the objective."¹⁶⁷

Perhaps this brief explanation is due to a general understanding of Catholicism's standing; thus, religion does not occasion the extensive arguments of newly introduced ideas such as national sovereignty. However, the high regard for Spanish Catholicism that may explain the inclusion of Article 12 and its lack of justification conflicts with the fact that the word religion is used a meager six times in the lengthy *Discurso* and the name God only once. The *Discurso*, tightlipped on the subject, could also suggest religion's relative personal insignificance to Argüelles and the commission who do not feel the need to preface their statements with references to higher powers or divinely justify their principles.

Article 12 might then be considered a compromise to the powerful institution of the Church in the same spirit that allowed the King of Spain veto power over the Cortes. Similarly, considering the religious climate of Spain, anything less than a whole-hearted backing of the national religion could potentially estrange religiously oriented subjects. Alienating their citizens, by way of undermining an important national institution, was the opposite of the Cortes' goal of permanently uniting the Spanish nation under one Constitution.

Historian Albert Derozier, in his scrutiny of the liberals' decision to support Catholicism, considers religion to be a point of contention that the liberals were willing to compromise on. He finds that Spanish liberals were not necessarily in favor of denying religious tolerance but chose

¹⁶⁷ Argüelles, *Discurso Preliminar a la Constitución de 1812*, 80. "ha debido ocupar en la ley fundamental del Estado un lugar preeminente, qual corresponde a la grandeza y sublimidad del objeto".

to capitulate, stating, “The liberals, for their part, committed, in spirit of conciliation, the worst error that they could commit.”¹⁶⁸ Article 12 was thus a miscalculated political move “which would cause it [the Constitution] to lose its innovative aspect and leave an entire historical crisis unresolved.”¹⁶⁹ Essentially, Derozier determines that, through Article 12, the liberals allowed avenues for the continuance of the repression that the entire project of the Constitution of 1812 was concerned with mitigating.¹⁷⁰ To Derozier, this compromise was not a worthwhile exchange for the promise of national unity. Ultimately, the liberal faction in Cadiz appears resigned to the fact that amending, even drastically, the government of Spain would be a far more realistic task compared to interfering with the institution of the Catholic Church.

The structure of the Cortes is another issue explained by the *Discurso preliminar* in terms of national unity. The Constitution mandates that future Cortes, like the Cortes at Cadiz, would meet as a single body representing the nation. After discounting the system of meeting in estates, the *Discurso* explains why the Cortes would continue to be a unicameral body in the spirit of the French National Assembly rather than a bicameral legislature with an upper and lower house. Argüelles predictably does not mention the example of the ill-fated National Assembly but does point to the House of Lords and the House of Commons in England to fully develop the argument. Although England clearly has a functioning bicameral legislature based theoretically on class, the *Discurso* states that this custom “is founded over that base from the origin of the Monarchy by firm and known laws for many centuries” and thus, as a long standing tradition, “the experience has been useful and even venerable.”¹⁷¹ As Spain does not have the privilege of

¹⁶⁸ Albert Derozier, *Escritores Politicos Españoles: 1789-1854*, 45. “Los liberales, por su parte, cometieron, por espíritu de conciliación, el peor error que podían cometer”.

¹⁶⁹ Ibid., “el cual la hacía perder su aspecto innovador y dejaba sin resolver toda la crisis histórica”.

¹⁷⁰ Ibid., 46.

¹⁷¹ Argüelles, *Discurso Preliminar a la Constitución de 1812*, 84. “está fundada sobre esa base desde el origen de la Monarquía por reglas fijas and conocidas para muchas siglas”; “la experiencia ha hecho útil y aun venerable”

centuries of powerful legislature, the nation “would have to fight against all the inconveniences of a true novelty.”¹⁷² Lacking the tradition of an effective bicameral legislature, Spain would thus be better served by a single representative body which would not have to overcome the inevitable lack of cohesion between two houses that England had taken centuries to supersede. Regarding these potential problems, the *Discurso* warns that “the chambers, or any other separation of the deputies in estates, would provoke the most awful disunion, encourage the interests of the bodies, [and] excite jealousy and rivalry.”¹⁷³ Therefore, by meeting as one body, the structure of the Cortes would suppress the interests of social class while the Cortes itself would be better able to express the will of the nation.

Of course, the *Discurso preliminar* does not fail to mention the ancient Spanish constitution in its discussion of the Cortes’ structure. As previously noted, the single body of the Cortes at Cadiz was the result of a last minute change to typical proceedings where the Cortes would meet in estates. This structure based on class had been customary throughout the Middle Ages in the most representative of the Spanish representative bodies, with each estate receiving one vote on important issues. By petitioning to meet as a united body, liberals would be better situated to set reforms in motion as factions of conservative nobility or clergy would lose their decisive veto.

To refute the idea that the Cortes should return to a structure divided into estates, the *Discurso* writes that the natural state of the Cortes under the ancient Spanish constitution is a unicameral legislature and characterizes a Spanish Cortes divided into estates as “purely a

¹⁷² Ibid. “tendría que luchar contra todos los inconvenientes de una verdadera novedad”

¹⁷³ Ibid. “las cámaras o cualquiera otra separación de los diputados provocaría la más espantosa desunión, fumentaria los intereses de los cuerpos, [y] excitaría celos y rivalidades”

tradition of untrue origin that was not subject to any firm or known law.”¹⁷⁴ Organizing the Cortes in estates, as had been done realistically speaking throughout the body’s history, would allow the nobility and clergy to further their interests, while also disrupting the equality among citizens established by the Constitution. A unicameral Cortes would be unfettered by the inequality preserved in estates and thus able pursue the interests of the nation.

Instead of addressing these liberal and rational arguments for a unicameral assembly, the *Discurso preliminar* couches the decision to maintain a unicameral Cortes in terms of reviving a significant historical institution. This institution would, as in the ancient days, work in the people’s interests which Spanish liberalism assumes to be in accord based on a shared Spanish nationality. This idealistic and naïve assumption disregards the regional politics that had fought for privileges and autonomy throughout Spain’s history. Instead, Spanish liberalism, through rhetoric such as the *Discurso preliminar*, homogenizes the nation and unifies its people within a shared past. The use of a reconstruction of Spanish history to justify a liberal present suggests that perhaps Spanish history was to an extent manipulated by Spanish liberals in order to appeal to the public. While Spain’s traditional institutions are maintained, the Constitution reimagines their roles in essential ways. Claiming that these changes hearkened back to an earlier time would likely convince the Spanish public to support these alterations, circumventing the opposition that mired some of Charles III’s foreign-inspired reforms.

As political scientist Benedict Anderson writes regarding nation-states, “the nations to which they give expression always loom out of an immemorial past.”¹⁷⁵ If Spanish liberalism was actually derived from a faultless past, its ideas aligned remarkably with the liberalism

¹⁷⁴ Ibid., 83. “era puramente un costumbre de incierto origen, que no estaba un sujeto a regla alguna fija o conocida”

¹⁷⁵ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991), 11.

percolating through Europe and manifesting itself in the French constitutions. Dubious claims are evident throughout the *Discurso preliminar*'s confident construction of Spanish history, a construction conveniently irrefutable due to a lack of circulated evidence. The ancient constitution, powerful Cortes, elective monarchy, and idea of a historic Spanish nation are all examples that the *Discurso*'s drafters, regardless of any degree of historical ignorance, seem have stretched the truth in some respects. These fabrications opportunely support their agenda and mesh with the Spanish masses' refusal to accept the effects of foreign influence.

In conclusion, Spanish liberals in need of both political and popular support willingly conceded certain aspects of liberalism due to national circumstances while continuing to unify the nation under a conception of a shared past. National sovereignty without a nation cannot exist. Constitutional provisions both affirming and modifying certain aspects of Spanish national character preserve cultural constants and express a common national history and shared national experience. Instead of doggedly pressing a liberal agenda, representatives to the Cortes at Cadiz chose to create a Constitution that would preserve these constants but introduce liberal changes that bring Spain into alignment with the progressive and liberal reforms gradually being adopted throughout Europe. In the interest of suppressing dissent and disunity, the Constitution attempts to unite Spain under one law and one religion with the understanding that only united Spaniards operating as one nation could hope to keep Spain's traditionally powerful institutions in a role subservient to the people's will.

Chapter 6

Conclusion

In conclusion, the liberals of the Cortes at Cadiz effected sweeping change on the traditional structure of Spanish government through prerogatives granted to the Cortes, limitations on the absolute power of the King, and sovereignty re-appropriated to the Spanish nation. Though established on contemporary liberal ideals, the Constitution of 1812 was restrained and moderated by Spanish traditions and institutions that remained fundamentally conservative. Justifications for this project, most notably expressed in the *Discurso preliminar*, provide insight into the ways in which liberalism was adopted and adapted to the unique needs and outlooks of the Spanish people.

The Constitution of 1812 vested the Spanish people with citizenship rights including enfranchisement to elect representatives. These representatives constituted the empowered Cortes whose redefined role and exclusive power over the legislative process acted as a counterweight to the power of the King. The Constitution defines the Spanish government as a moderate, hereditary monarchy; thus, the idea of its moderation turns around the role of the King within politics.

In the manner of archetypical constitutional monarchies, the Constitution creates fixed laws that arbitrary royal power cannot violate. The Cortes admittedly held oversight over royal autonomy per its granted powers. In the role imagined by the Constitution, the Cortes would confer power to the King by administering the royal oath, symbolically bestowing on the King his authority by popular consent. Although this ceremony and the Cortes' checks on the King's

prerogative position the legislature over the monarchy, the Cortes' role as the people's representatives places not the assembly but the people above royal sovereignty, in line with the social contract theories of liberalism.

In its most extreme forms seen in other countries of Europe, liberal government did away entirely with hereditary, dynastical rights to rule; however, Constitution's drafters chose to preserve the dignity of the monarchy's position, retaining the King's status as the national figurehead with domestic executive powers and control of foreign affairs. The King is also granted veto powers over legislative initiatives giving him a semblance of control over the laws he is bound to enforce. This veto, working as a check on the Cortes' power, effectively balances the executive and legislative branches and prevents unilateral action on the part of either body. Although the activities and intrigues of Charles IV's court had both dissatisfied the Spanish people and ultimately led to the Napoleonic occupation, the institution of monarchy remained an important part of Spanish society, culture, and identity. The Constitution thereby respects this symbolic significance while cautiously restraining the monarchy from asserting or consolidating power counter to its prescribed constitutional role.

Liberal ideals that shaped the Constitution at Cadiz did not spontaneously arise in Spain at this juncture. Rather, progressive reformism undertaken by Charles III encouraged the slow growth of liberal thought as external and internal censorship were reduced, allowing a less restricted circulation of ideas. Bourbon reforms, accelerated under Charles III, set precedent for changes to traditional structures in Spain. The sudden expression of liberalism in Cadiz of 1812 can be viewed then as a result of a growth in liberalism catalyzed by extraordinary circumstances. Liberals clearly made the most of the situation of war and political vacuum that arose in 1808. The national sovereignty claimed by these representatives aligns with the popular

outrage to French occupation where Spaniards chose to take matters into their own hands. In this manner, the Spanish people resisted an authority that, by the terms of pure royal sovereignty, had a legitimate claim to the Spanish throne. The masses, uneducated in the popular sovereignty proposed by liberals, were reacting to an infringement on nationalism, more specifically the dominion over clearly Spanish territory and Spanish people by an outside force. Spanish national sentiment and liberalism in this situation thus had equivalent goals of creating a united and independent Spain.

Due to the nature of Spanish culture, Spanish identity of the period and liberalism did not coexist in seamless harmony due mainly to the influence of and deference to traditional institutions firmly rooted in Spanish society. Attempting to reconcile these differences was the Spanish interpretation of liberalism which tied liberal reforms inextricably to historical justifications based on the Spanish past. In this way, Spanish liberalism appeared as both a liberal and conservative movement. Thus, the national sovereignty evident in the Constitution was justified not only by a liberal value judgement of the worth of popular will, but also by the argument that the Cortes had historically held a far more defined role in Spanish government.

The idea of the former power and glory of the Cortes was an essential part of Spanish liberalism which persistently claimed that Spain had once experienced a period of liberty and prosperity brought about by strong representative institutions and a limited monarchy. In assessing the extent that these claims were founded in reality, the arguments of the *Discurso preliminar*, echoed in the provisions of the Constitution, provide the liberals' ostensible justifications, while modern historiography allows a degree of comparison.

In terms of the Cortes, the Spanish national assembly circa the 1300's could claim more influence than the submissive institution that it would become. While the powers exercised by

the Cortes were not uniform across the various Spanish regions, none of these representative institutions held authority quite to the extent granted by the Constitution. In all of these instances, the King appears to have had the ability to influence or interfere with the legislative process while the regional Cortes held few means of protecting their privileges. Though the *Discurso preliminar* recognizes the need for constitutional protections in terms of limiting the King and strengthening the Cortes, its accompanying claim that these rights and protections had existed in medieval Spain are not historically accurate. Furthermore, the Constitution includes a provision for a “permanent deputation” of the Cortes to continue to sit while the entire body of the Cortes is not in session in order to ensure royal compliance to the Constitution and the law. This idea, remarkably similar to the Deputation of the Kingdom that had existed historically in Aragon, demonstrates that Spanish liberals had an awareness of the realities in Spanish history.

This awareness is also seen in the *Discurso preliminar*'s persistent warnings that a limited monarchy is impossible without a strong Cortes and a written constitution. This idea appears to be a rational one, grounded in fact. However, in the context of a goal to resurrect the perfect Spain of the past, Spanish liberals essentially ignore the legislative function and influence that the King held in reality, even at the time of the Cortes' highest degree of power. The restricted monarchy of the Constitution then seems to be a result of a careful study of the constitutional systems of contemporary Europe, a fact that liberals would likely be loath to admit. Thus, both the redefined roles of the Cortes and the King set by the Constitution appear as sound ideas couched in a nationalist sentiment that consistently rejected foreign input on principle.

The Constitution's final goal of unifying the nation under its auspices is accomplished in a variety of ways, not all of which are addressed in the *Discurso preliminar*. The idea of national

sovereignty is repeatedly emphasized, as the enfranchisement guaranteed by the Constitution will effectually give expression to a collective national will. Although Spain of the nineteenth century may have conveyed a sort of national identity and culture, the Spanish liberal idea that an ancient constitution had governed Spain and protected Spaniards can be considered merely a retroactive placement. In addition to the fact that no such constitution has ever been found, the concept of an overarching national structure superseding the various regional kingdoms likewise did not exist during the period. The idea then that the Constitution of 1812 was the ultimate expression of a uniquely Spanish character, enduring and timeless, seems to be a modern construction in line with an aim of unifying the nation.

In terms of expressing national sentiment, the Cortes at Cadiz maintains many traditional Spanish institutions despite inconsistencies with contemporary liberalism. The continued preeminence of the Catholic Church in the Constitution and the Constitution's failure to end the Inquisition run counter to the religious tolerance and freedom of religion that contemporary liberalism professed. To the majority of Spaniards, religion was an important part of their personal lives as well as a link with other Spaniards, creating a profound relationship between Catholicism and Spanish national identity. This type of religious belief was not in all cases amenable to the development of more progressive schools of thought as expressed in the constitutional debates by clergyman Simon López Or who was of the opinion that "we are in a time in which reigns the heresy of philosophy, so contrary to this religion."¹⁷⁶ The maintenance of the power of the Church, as well as the retention of much of the monarchy's traditional authority, imply that the Constitution's drafters had undertaken the challenge of reconciling the often contradictory themes of liberalism and Spanish national identity.

¹⁷⁶ *Constitución en Cortes*, ed. Martínez Pérez, 107. "estamos en un tiempo en que reyna mucho la heregia de la filosofia, tan contraria a esta religión que tanto nos honra".

The idea of a Spanish liberalism, distinct from foreign ideologies through its insistence on the historical foundations of liberal principles within Spain as well as protection of traditional Spanish institutions, could have theoretically arisen as a result of national pride. However, the multiple historical discrepancies that happen to correlate with contemporary liberal principles regarding written constitutions, representative assemblies, and limited monarchy seem to suggest that Spanish proponents of liberalism were pressing an agenda. Furthermore, the collective ignorance by some of the most educated men in Spain to facts such as the monarchy's input into legislative processes in early modern Spain, coinciding with knowledge of functions such as the Deputation of the Kingdom, makes an argument for sincere rhetoric far less compelling. Instead, the need for popular support, coupled with the goal of unifying the nation, suggests that the type of liberalism disseminated in Spain was less a product of strong national sentiment and more of an attempt to make liberal ideals more digestible for the conservative, uneducated Spanish public.

Despite the best efforts of the Spanish liberals at creating a viable and lasting constitution, the saga of the Constitution of 1812 ultimately ended in defeat. Facing certain defeat himself, Napoleon offered a preliminary peace treaty to Spain in 1813. Officially signed on December 11, the Treaty of Valençay restored Fernando VII to the Spanish throne. In March 1814, the Peninsular War officially ended with Napoleon's overthrow by the allied powers of the Sixth Coalition that included Spain, Great Britain, Portugal, Prussia, Austria, Russia, and Sweden. Napoleon's downfall meant the release of Fernando VII who returned to Spanish soil amidst grand fanfare on March 24.

The Cortes at Cadiz after the Constitution of 1812 had continued in its mission to bring reform to Spain. The Inquisition was formally terminated in 1813 and other progressive

measures were instituted. Despite the merit of these reforms, Hume writes that the Cortes' "legislation was sentimental and doctrinaire, and for the most part it found neither sympathy nor comprehension amongst the mass of their countrymen," distancing rather than uniting the Cortes' deputies and their constituents.¹⁷⁷

At the beginning of 1814, a new Cortes was convoked per the directives of the Constitution. The retreat of the French army allowed this session to assemble in Madrid and included the direct representatives of the northern and central regions. The elections held in these provinces greatly advantaged the conservative faction of the Cortes. Still, despite the changing character of the Cortes, the terms of Fernando's reentrance into Spain were dictated by the Cortes's non-negotiable terms: Fernando's assumption of royal authority hinged on an explicit acceptance of the Constitution of 1812. The Cortes was furthermore intent on preventing any means of asserting power by the king. To ensure Fernando's consideration of the agreement decisively placed before him, the Cortes prohibited his entrance into Spain with any sort of armed force and set a defined route for his journey to Madrid.

Although appearing to promise that he would eventually give his ascent to the Cortes' offer, Spain's returned king, Fernando *el Deseado*, ultimately had no intention of accepting his altered position within a constitutional monarchy. Hume relates the euphoric crowds gathered to welcome their king home and the encouragement of his advisors and thus, "Fortified by these elements of reaction grouped around him, Fernando began to show his teeth."¹⁷⁸

On May 4, Fernando officially voided the Constitution by a decree which became public on May 14, 1814. The public revocation of the Constitution corresponded with the imprisonment of some of liberalism's strongest proponents. In officially reclaiming his absolute power,

¹⁷⁷ Hume, *Modern Spain*, 187.

¹⁷⁸ *Ibid.*, 191.

Fernando declared all acts of the Cortes at Cadiz null and void. The Inquisition was reinstated as were the clergy's powers and Church land that liberal initiatives had curtailed and disentailed, respectively. Finally, Fernando promised to call a Cortes in the traditional sense at some point in the future.

This return to absolutism was accepted by the Spanish people with varying degrees of either elation or passive disappointment. No reaction in defense of the Constitution was immediately elicited, despite its drafters' best efforts at appealing to the national sentiment held by the population. In this, the Constitution was ultimately unable to capture the hearts and minds of the Spanish people who had risen in reaction to a threat to their nation's independence but could not be roused to protect their constitutional rights. The manner in which the Cortes promulgated the Constitution, which clearly exposed its interpretation of national sovereignty, also may have been a cause of this inaction. As Herr relates, the Cortes at Cadiz "felt no need to submit the document to popular ratification. In this, as in all their measures, they were acting as absolute as had the king, whose authority they claimed to have in his absence."¹⁷⁹ Sovereignty may have theoretically belonged to the nation, but in this moment it belonged to the peoples' representatives who ultimately neglected to engage with popular input. Without direct participation, the Spanish people lacked the type of emotional investment that may have led to an alternative outcome.

Although the Constitution of 1812 was revoked, in effect returning Spain to an absolute monarchy, the vision conveyed by the liberals in Cadiz somehow held on to some life. The memory of the progressivism and enlightenment inherent in the Constitution is enshrined in the

¹⁷⁹ Herr, "The Constitution of 1812 and the Spanish Road to Parliamentary Monarchy," 86.

famed Spanish painter Francisco Goya's *Allegory on the Adoption of the Constitution of 1812*.¹⁸⁰

This painting contains three figures, popularly interpreted as Old Man Time, a young woman representing liberty or Spain itself, and another woman signifying History. The figure of liberty or the Spanish nation is, according to art historian Robert Hughes, "radiant from the light that streams from the upper left corner" while holding a book entitled the 1812 Constitution and a scepter "emblematic of noncoercive power". Time stands "enveloping her in a blaze of protective radiance and drawing her gently away from the darkness" while he himself holds an hourglass that has recently been overturned, signaling that "a new era of possibility is beginning". Finally, History sits partially nude, as "plain, unveiled Truth is the business of History", carefully documenting the events occurring.¹⁸¹ The way in which the events of 1812 captured Goya's imagination is clear through this painting, especially his evident opinion regarding the historical gravity of the Cortes and the Constitution.

The almost mythic reputation of the Constitution was revived six years after its abrogation under Fernando VII. Seeking to take advantage of popular dissatisfaction with Fernando's royal actions, and inaction in the case of his promise to call a Cortes, a military general named Rafael de Riego marched on Madrid in 1820. General Riego completed a coup d'état and proclaimed the Constitution of Cadiz, forcing Fernando to pledge his unequivocal allegiance to the document he had once scorned. The Constitution of 1812 remained in effect for the next three years until another assertion of absolute monarchy again nullified its authority. Though the Constitution of 1812 may not have found any permanent impact in Spain, the constitutions for the newly independent countries of Spanish America as well as post-Napoleonic

¹⁸⁰ See Appendix A.

¹⁸¹ Robert Hughes. *Goya* (New York: Knopf, 2003), np.

Portugal were modelled on its principles. While the drafters in Cadiz were ultimately unsuccessful in changing the Spanish structure of government permanently, the Constitution they created undoubtedly inspired a tradition of liberal thought with a distinctively Spanish outlook. Whatever the criticisms, as contemporary William Walton writes in 1816 regarding the Constitution of 1812, “Wisdom does not dwell among ruins and tempests; and the transition from despotism to liberty is never the season for absolute perfection.”¹⁸²

¹⁸² William Walton, “Translator’s Preliminary Remarks” in *The Inquisition Unmasked: Being an Historical and Philosophical Account of that Tremendous Tribunal Founded on Authentic Documents; and Exhibiting the Necessity of its Suppression as a Means of Reform and Regeneration* Vol. I by D. Antonio Puigblanch (London: Baldwin, 1816), xv.

Appendix A

Allegory on the Adoption of the Constitution of 1812



Francisco Goya, *Allegory on the Adoption of the Constitution of 1812*, 1812-14. Oil, 294cm x 244cm.

Swedish National Museum.

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