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EUROPEAN IMPRESSION OF THE SPANISH CONSTITUTION OF CADIZ

Cádiz – as seen from a European point of view

The analysis of the legislation, institutions and doctrines conducted by historiography in relation to the Constitution of Cádiz has mainly focused on an internal perspective. There are many studies that examine the application of the afore-mentioned text in Spain over time, and, of course, its validity in Latin American territories colonised by the Spanish Crown. The same internal perspective has been used to debate the doctrinal sources of the Constitution, investigating whether they originated in the Hispanic world or, on the contrary, were the result of the inflow of foreign constitutional experiences, particularly from France.

There are not so many studies based on an external perspective, analysing the Constitution of Cádiz from the outside. In other words, a view that bears in mind the degree of application and influence of this fundamental law beyond Spain's borders. In this respect, only the projection of the Constitution in Latin America has been studied, while the European scope of the Constitution of 1812 has not been given the same attention. Studies have been conducted that refer to the application of the Constitution in the Italian territories¹ but they lack the overall view of its "European dimension"².

Consequently, one of the essential elements of the Constitution of Cádiz is being lost, namely: that it was the Spanish historical Constitution that had the greatest European projection. Between 1812 and 1836 the text was translated into French³, English⁴, German⁵, Italian⁶ and Portuguese⁷. The

¹ JUAN FERRANDO BADÍA, *La Constitución española de 1812 en los comienzos del "Risorgimento"* (Roma-Madrid: Consejo Superior de Investigaciones Científicas, 1959); JUAN FERRANDO BADÍA, "Vicisitudes e influencias de la Constitución de 1812", *Revista de Estudios Políticos* 126 (1962): 169-229; JUAN FERRANDO BADÍA, "Proyección exterior de la Constitución de 1812", *Ayer. Revista de Historia contemporánea* 1 (1991): 207-248. GONZALO BUTRÓN PRIDA, *Nuestra Sagrada Causa. El modelo gaditano en la revolución piamontesa de 1821* (Cádiz: Ayuntamiento de Cádiz, 2006); GONZALO BUTRÓN PRIDA, "La inspiración española de la revolución piamontesa de 1821", *Historia Constitucional* 13 (2012): 73-97.

² IRENE CASTELLS OLIVÁN, "La Constitución gaditana de 1812 y su proyección en los movimientos liberales europeos del primer tercio del siglo XIX", *Trocajero. Revista de Historia Moderna y Contemporánea* 117-132 (1989): 117-132; IGNACIO FERNÁNDEZ SARASOLA, "La Constitución española de 1812 y su proyección europea e iberoamericana", *Fundamentos: Cuadernos monográficos de Teoría del Estado, Derecho Público e Historia Constitucional* 2 (2000): 359-466; IGNACIO FERNÁNDEZ SARASOLA, *La Constitución de Cádiz. Origen, contenido y proyección internacional* (Madrid: Centro de Estudios Políticos y Constitucionales, 2011); ESTHER GONZÁLEZ HERNÁNDEZ, "Érase una vez... una Constitución universal. Especial referencia a la proyección en Europa de la Constitución de Cádiz", *Historia Constitucional* 13 (2012): 283-314.

³ *Constitution politique de la Monarchie espagnole. Publiée à Cadix le 19 mars 1912. Traduite de l'espagnol par Mr. L'abbé Vialar*, San Petesburgo, 1812; *Constitution politique de la Monarchie Espagnole, promulguée à Cadix le 19 de Mars 1812. Traité par P. De Lasteyrie*, Paris, 1812; *Constitution politique de la Monarchie espagnole promulguée à Cadix le 19 mars 1912, et acceptée par le roi le 8 mars 1820; précédée du rapport de la commission des Cortes chargée de présenter le projet de constitution*, translation by E. NUÑEZ DE TABOADA, Paris, Ladvocat, 1820; *Constitution politique de la monarchie espagnole promulguée par les Cortes Généraux et Extraordinaires en l'année 1812, jurée par S.M. le Roi d'Espagne Ferdinand VII le mars 1820*, Bourdeaux, Laguillotiére et Cercelet, 1820.

translation into the first two languages generated an extraordinary diffusion beyond Spain's borders (including countries in Northern and Eastern Europe), due to the fact that these two languages, particularly French, were the vehicular languages of the Enlightenment.

The European projection of the Constitution of Cádiz however developed at different levels of intensity. At the lowest level we can find the influence that the Constitution had in those countries in which it was simply the object of doctrinal debates which varied in intensity. Then there were the territories that already had a solid constitutional tradition, such as Great Britain and France, or those that had passed basic laws based on divergent political principles (such as in Germany, under the influence of the Monarchical principle). The Spanish Constitution of 1812 had a more intense presence in those countries in which it was used as a model for their first constitutional experiences (Norway in 1814, Portugal, in 1822, and Greece, in 1822) or, in other projects that would not become enforced (Russia). Finally, the highest level of influence of the Constitution of Cádiz was seen in the territories in which it came into force, being translated into the local language with the introduction of small amendments. This is what happened in the Italian territories, where the Spanish Constitution was highly prestigious among the Carbonari, a Masonic division originating in Salerno – a revolutionary group opposing Ferdinand I (in the Two Sicilies) and Charles Albert (in Sardinia). The Spanish text was also applied in the Papal States, Luca and the Island of Elba.

In the following pages, however, I do not seek to give an account of the influence exercised by the Constitution of Cádiz in the different European countries. On the contrary, I will attempt to address the issue from a more original point of view, analysing the opinion that different political movements existing in Europe had of the text during its lifetime. To this end, I will focus on four specific movements: Absolutism, Anglophile liberalism, Revolutionary liberalism and utilitarian liberalism.

⁴ *The Political Constitution of the Spanish Monarchy, proclaimed in Cadix 19th of March 1812*, London, 1813. Translator: "Philos Hispaniae"; *The Spanish Constitution. Proclaimed at Cadix, March 19th, 1812; re-proclaimed at Cadix, March 19th, 1820; and adopted as the constitution of Naples and Sicily, July 4th*, London, 1820. The Preliminary Discours of the Constitution was also translated into English: *Preliminary discourse read in the Cortes at the presentation of the projet [sic] of the Constitution by the Commitee of the Constitution. To which is added the present Spanish Constitution. Translated exclusively for the Pamphleteer*, London, 1823.

⁵ *Die spanische Constitution der Cortes und die provisorische Constitution der Vereinigten Provin en von Südamerika; aus den Urkunden übersetzt mit historisch-statistischen Einleitungen*, traducción anónima, Leipzig, 1820. Dippel has found other translations: *Spaniens Staats-Verfassung durch die Cortes*, Berlin, 1819; *Europäische Annalen*, abril de 1819; *Die Constitutionen der europäischen Staatenseit denletzten 25 Jahren*, Leipzig, vol. III, 1820; *Die Zeiten oder Archif für die neueste Staatengeschichte und Politik*, núms. 62, 63, 66-89, 1820. *Vid.* HORST DIPPEL, "La significación de la Constitución española de 1812 para los nacientes liberalismo y constitucionalismo alemanes", in *Constitución en España: orígenes y destinos*, ed. J. M. IÑURRITEGUI and J. M. PORTILLO (Madrid: Centro de Estudios Políticos y Constitucionales, 1998): 292; Rainer Wohfeil, "España y el liberalismo alemán", *Revista de Occidente* 80 (1969): 150 y 151.

⁶ *Costituzione politica della Monarchia Spagnola, promulgata in Cadice nel marzo del 1812. Tradotta in Italiano, Collazionata e corretta sull'originale Spagnuolo*, A spese di Francesco Abbate qu. Dom., Palermo, 1820. Badía menciona otras traducciones en Milán y Roma (1814), Nápoles, Lucca y Piamonte (1820). JUAN FERRANDO BADÍA, *La Constitución española de 1812 en los comienzos del "Risorgimento"* (Roma-Madrid: Consejo Superior de Investigaciones Científicas, 1959): 9-10.

⁷ *Constituição politica da Monarquia Hespanbola promulgada em Cadix em 19 de Março de 1912 [sic]*, Translated by F. C. DA COSTA DE LACERDA., Lisboa, Offic. António Rodrigues Galhardo, 1820; *Constituição politica da Monarquia Hespanbola promulgada em Cadix em 19 de Março de 1912*, Translated by A. M. F. COIMBRA, Real Imprenta da Universidade, 1820; *Constitucion politica de la Monarquia Española promulgada em Cadix á 19 de Março de 1812*, Lisboa, Ymprenta de Antonio Rodrigues Galhardo, 1820.

The Absolutist objection to the Constitution of Cádiz

The stance adopted by the European absolutists towards the Cádiz Constitution was no different to the view held by the Spanish absolutists. A paradigmatic expression of the Absolutist rejection of the Constitution of Cádiz are the well-known writings of Vélez⁸ and Alvarado⁹, objecting to the text, or the work of the pro-French Gómez Hermosilla¹⁰ or the “Manifiesto de los Persas”¹¹ through which sixty-nine representatives of the Ordinary Courts of 1813 requested Ferdinand VII to disregard a text that violated the most sacred rights of the Crown.

Similarly, the Constitution of Cádiz was widely rejected by the European absolutists, who saw it as an imminent danger for the new order which, after the fall of Napoleon, they had sought to establish through the Congress of Vienna. In fact, Metternich scorned the Spanish text, and did not hesitate to promote its demise through the Holy Alliance. In a circular letter written in Troppau (8 December 1820) Metternich himself wrote that “the States that form part of the Alliance and have undergone a change of government due to a revolution, the results of which threaten other States, ipso facto cease to be members of the European Alliance and remain excluded from it until their situation gives guarantee for legal order and stability”. A clause designed specifically for Spain¹², as during the Liberal Triennium (1820-1823) the Constitution of Cádiz abolished in 1814 had recovered its validity, and with it a revolutionary process had ensued which was unacceptable for European absolutism. Moreover, the simple adoption of the Constitution of Cádiz by Naples gave Metternich an excuse to try to conduct an immediate intervention in the Italian territory¹³. This proposal had the support of Castlereagh¹⁴ who had not totally rejected this intervention in Spain¹⁵.

But why did the Constitution of Cádiz displease the European absolutists so much? Although there were many design elements there was one that was particularly significant: the doctrine of national sovereignty proclaimed in the third article.

⁸ RAFAEL DE VÉLEZ, *Apología del Altar y del Trono o historia de las reformas hechas en España en tiempo de las llamadas Cortes, e impugnación de algunas doctrinas publicadas en la Constitución, Diarios, y otros escritos contra la religión y el Estado* (Madrid: Imprenta de Cano, 1818).

⁹ FRANCISCO ALVARADO, *Cartas críticas que escribió el Rmo. Padre Maestro Fr. Francisco Alvarado, del orden de los predicadores, o sea el Filósofo Rancio* (Madrid: Imprenta de E. Aguado, 1825), 5 vols.

¹⁰ JOSÉ GÓMEZ HERMOSILLA, *El Jacobinismo: Obra útil en todos los tiempos y necesaria en las circunstancias presentes* (Madrid: Imprenta de D. León Amarita, 1823), 2 vols.

¹¹ *Representación y Manifiesto que algunos diputados a las Cortes ordinarias firmaron en los mayores apuros de su opresión en Madrid, para que la Majestad del Sr. D. Fernando el VII a la entrada en España de vuelta de su cautividad, se penetrase del estado de la Nación, del deseo de sus provincias y del remedio que creían oportuno (12 de abril de 1814)* (Madrid: Imprenta de Ibarra, 1820).

¹² F. R. BRIDGE and ROGER BULLEN, *The Great Powers and the European States System. 1814-1914* (Harlow: Pearson Education Limited, 2005 (2^a ed.)): 47.

¹³ F. R. BRIDGE and ROGER BULLEN, *The Great Powers and the European States System. 1814-1914* (Harlow: Pearson Education Limited, 2005 (2^a ed.)): 129; WALTER ALISON PHILLIPS, *The Confederation of Europe. A Study of the European Alliance, 1813-1823 as an Experiment in the International Organization of Peace* (New Jersey: The Lawbook Exchange, 2005 (2^a ed.)): 197.

¹⁴ WILLIAM W. KAUFMANN, *British Policy and the Independence of Latin America, 1804-1828* (New Haven: Yale University Press, 1951): 99.

¹⁵ JOHN BEW, *Castlereagh. A Life* (Oxford: Oxford University Press, 2012): 478.

The leader of the French ultra-royalists, Chateaubriand, pointed out that the Constitution of Cádiz – a text which he described as “deplorable” – relied on the stigma of proclaiming the “false principle” of popular sovereignty¹⁶. In reality, the Constitution proclaimed national not popular sovereignty, but in Chateaubriand’s view there was no substantial difference. In both cases the result was the same: the denial of the authentic ownership of sovereignty, which resided exclusively in the King, by divine right. In these theories we can observe not only the presence of French post-revolutionary thought of the likes of Joseph de Maistre and Louis Gabriel Ambroise de Bonald, but also the previous theories of Jacques-Bénigne Bossuet. 9

The denial of royal sovereignty by divine right ultimately meant that the Spanish Constitution was a product that went against the very principle of confessionalism that was proclaimed in its twelfth article¹⁷, according to another reputed absolutist: Kart Ludwing von Haller, a law professor at Berne and the author of one of the best-known refutations of the Constitution of Cádiz. 10

If the national sovereignty was the main defect of the Spanish Constitution, it is logical that the absolutists were opposed to two of the precepts deriving from that principle; namely, the idea of constituent power, and the superiority of the Courts in the State’s political organisational structure. 11

In fact, being a sovereign nation, it was responsible for exclusively designing its own basic laws, as expressly stipulated in the third article of the Constitution. Even though the argumentative historicism used in the Courts of Cádiz sought to give the impression that the text was simply an amendment of the old Basic Laws that contained the essence of the so-called “Gothic Constitution”, the truth is that the liberals based their idea of constituent power on the teachings of Sieyès. 12

Haller however, understood that as the Monarchy was the sole and legitimate sovereign, the idea of the constituent power of the Nation was a fallacy. Only the King – by virtue of the “Monarchical principle” which was applied in Germany, was capacitated to govern the State through a “charter octroyée”¹⁸, such as the one which had been approved in France in 1814 and which had been imitated by the German territories. 13

The other premise derived from national sovereignty – the superiority of the Parliament over the other state bodies – was also considered as an inadmissible element of the Constitution of Cádiz by the absolutists. The idea of a rigid separation of powers did not foster a functional comparison of the state branches. On the contrary, the Courts carried out the most relevant public tasks as representatives of the Nation. So, the principal of national sovereignty counteracted the division of power, generating a hierarchical arrangement of the state branches. Precisely for this reason, Haller claimed that the Constitution of Cádiz was unequivocally a work that was openly “Jacobin”, 14

¹⁶ FRANÇOIS RENÉ DE CHATEAUBRIAND, "Discours sur la loi relative à l'emprunt de cent millions prononcé à la chambre des pairs le 15 mars 1823", in *Oeuvres complètes de Chateaubriand*, ed. F. R. D. CHATEAUBRIAND (Paris: Acamédia, 1997), vol. VIII.

¹⁷ KARL LUDWING VON HALLER, *Análisis de la Constitución española. Obra escrita en alemán por Mr. De Haller, autor de la restauración de las ciencias políticas, traducida al francés por él mismo, y a la lengua castellana por un amante de su Rey (1814)* (Madrid: Imprenta de D. José del Collado, 1823): 9.

¹⁸ K.L.V. HALLER, *Karl Ludwing von Haller, Análisis de la Constitución española. Obra escrita en alemán por Mr. De Haller, autor de la restauración de las ciencias políticas, traducida al francés por él mismo, y a la lengua castellana por un amante de su Rey (1814)* (Madrid: Imprenta de D. José del Collado, 1823) : 2, 18.

more radical than the French Constitutions of 1791 and 1793¹⁹. This is somewhat exaggerated and highlights the rejection of the Spanish document among some of his peers. René de Chateaubriand viewed the Constitution as a badly disguised hypocrisy. The Spanish text proclaimed the inviolability of the King but, Chateaubriand wondered whether it could be any other way when he had been stripped of all his powers. With the Monarch reduced to a mere automaton applying the law, acknowledging his inviolable nature was, in reality, a tautology²⁰.

Anglophile liberalism and the criticism of the absence of constitutional balance

The anglophile liberalism movement did not regard the Constitution of 1812 in a positive light either. It is worth remembering that Anglophilia had already started spreading its roots throughout Europe from the mid eighteenth century, when the British system of government was considered as a universally valid model. The goodness of the so-called “Constitution of England” which was described not only by British commentators (Blackstone, Hume, Bolingbroke...) but also French speakers (Voltaire, Montesquieu or De Lolme) was widely disseminated. After the fall of Napoleon, Anglophilia experienced a revival in a Europe which, at least partly, wished to leave the French revolutionary experiences behind. In France itself, the feeling of admiration for the British government soon took hold, not only among the intellectuals, from Constant to doctrinaire liberalism, but also on the regulatory level, when Louis XVIII granted the Charte of 1814, modelled on the English example²¹. The subsequent French Constitution of 1830 and the Belgian Constitution of 1831 also followed the British example. Moreover, even before these dates, in December 1812, Sicily had approved a constitutional text that sought to go even further, embodying British common law. This Sicilian Constitution represented an attempt by the aristocracy to slow down the rise of the Constitution of Cádiz in this territory²².

The supporters of the British system substantially admired its government due to two connected elements: the existence of a constitutional balance between the political branches (executive and legislative) and the presence of an Upper House which acted as a counterweight between the two. Both of these elements were missing from the Constitution of Cádiz so it is not surprising that it did not satisfy their interests.

The Quarterly Review, the British journal that supported the Tory point of view, indicated that the constitutional balance was missing from the Constitution of Cádiz. In particular, it criticised

¹⁹ K.L.V. HALLER, KARL LUDWING VON HALLER, *Análisis de la Constitución española. Obra escrita en alemán por Mr. De Haller, autor de la restauración de las ciencias políticas, traducida al francés por él mismo, y a la lengua castellana por un amante de su Rey (1814)* (Madrid: Imprenta de D. José del Collado, 1823): VI, VII, 1, 4, 11, 17.

²⁰ FRANÇOIS RENÉ DE CHATEAUBRIAND, "Congrès de Vérone; Guerre d'Espagne de 1823; Colonies espagnoles", in *Oeuvres complètes de Chateaubriand*, ed. F. R. D. CHATEAUBRIAND (Paris: Acamédia, 1997), vol. XII.

²¹ JOAQUÍN VARELA SUANZES-CARPEGNA, "El liberalismo francés después de Napoleón (de la anglofobia a la anglofilia)", *Revista de Estudios Políticos* 76 (1992): 29-43.

²² CONCETTA SPOTO, "Le «fonti» ideologiche della costituzione siciliana del 1812", in *Assemblee di stati e istituzioni rappresentative nella storia del pensiero giuridico moderno (secoli XV-XX)*, ed. V.V.A.A. (Rimini: Maggioli, 1983): 461.

the fact that the authors of the constitution had granted the Monarch a suspensive veto instead of an absolute veto with which a greater balance of power could have been achieved²³. Jean Denis Lanjuinais added another element that should have been incorporated into the Constitution of Cádiz: the royal power of dissolving the Courts early in order to undertake the tasks of an Assembly²⁴.

According to the Anglophilia movement, the absence of a second Chamber – an aspect closely linked to constitutional balance – was the worst failing of the Constitution of Cádiz. Although it is true that during the Liberal Triennium, the Spanish moderate liberals used argumentative manoeuvring in order to try to demonstrate that, to a certain point, the role of a Senate fulfilled that of the State Council recognised in the Spanish text. Initially, this could seem surprising, but it should not be if we take into account the organic characteristics of that institution: on the one hand it was partially formed by the privileged classes (church representatives and Grandees of Spain) which enabled it to be incorporated into an aristocratic chamber; on the other hand its members were proposed by the Courts and chosen by the King, so it could be understood that they held a position between the two powers²⁵.

However, this forced interpretation of the Constitution of Cádiz did not convince the Anglophile liberalist movement which desired a true co-legislative Upper House²⁶. On the whole, they would have preferred it to be formed by the aristocracy, as Madame de Staël made the liberal Spaniard Antonio Alcalá Galiano see when he met her in Paris. The daughter of Jacques Necquer and the creator of the Coppet Circle, she said to Alcalá Galiano: “Did you know, sir, that your Constitution is very bad? (...) Yes, you need an aristocracy”²⁷. Other Anglophiles however, believed that it was important for Spain to adopt a bicameral system even though the Senate was not aristocratic. Lanjuinais proposed that Spain incorporate a second chamber similar to the Council of Elders of the French Directory (of which he had been a member), to be made up of leading figures of the Spanish State and people who had provided special services to the State, with lifelong membership²⁸.

The absence of constitutional balance and bicameralism in the Constitution of Cádiz was, according to the Tories in the Quarterly Review, the result of the Spanish liberals’ love of French revolutionary thought²⁹. The authors of the constitution had made a clear choice, relegating the British model in favour of Jacobin ideas. In this regard, the Quarterly Review even referred to a

²³ *Quarterly Review*, vol. XXVIII, October-January 1822-1823: 548.

²⁴ JEAN DENIS LANJUINAIS, "Vues politiques sur les changemens a faire a la Constitution d'Espagne afin de la consolider, spécialement dans le Royaume des Deux-Sicilies (1821)", in *Lanjuinais. Ses oeuvres: avec une notice biographique*, ed. D. LANJUINAIS (Paris: Dondey-Dupré, 1832) : 541, 543, 562 y 564.

²⁵ IGNACIO FERNÁNDEZ SARASOLA, "Las primeras teorías sobre el Senado en España", *Teoría y Realidad Constitucional* 17 (2006): 169-194.

²⁶ J.D. LANJUINAIS, *op. cit.*, págs. 539-540 ; *Edinburgh Review*, vol. XXIII, núm. 46, september 1814: 362.

²⁷ ANTONIO ALCALÁ GALIANO, "Memorias", in *Obras escogidas de D. Antonio Alcalá Galiano*, ed. J. CAMPOS (Madrid: Biblioteca de Autores Españoles, vol. LXXXIII (I), Atlas, 1955): 429.

²⁸ J.D. LANJUINAIS, *op. cit.* : 538, 539, 549, 550.

²⁹ *Quarterly Review*, vol. XXVIII, October-January 1822-1823: 547-548, 551.

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specific representative: Agustín Argüelles, the most respected liberal representative in the Courts of Cádiz who had approved the Constitution of 1812. In spite of being considered an honourable man, the British journal reproached him for not having correctly understood the British model (despite having known it at first hand), and opting to defend the antagonistic French revolutionary system³⁰.

The Quarterly Review's criticism of Argüelles was true, although unfair. There is no doubt that the Spanish representative had, in fact, directly experienced the British system as he had lived in London between 1806 and 1808, when he was commissioned by Godoy to monitor British movements in Spanish overseas interests. Despite having had the opportunity to see how the English political system worked, it is also true that Argüelles had not fully understood it and that he declared himself to be a supporter of French revolutionary thought³¹. However, the injustice of the criticism of the Quarterly Review resides in the fact that the Tories did not understand how the British government worked either; which is a lot more serious.

The Quarterly Review continued to describe the "Constitution of England" as a system of checks and balances as had William Blackstone at the end of the eighteenth century. However, since the beginning of the reign of the Hannover dynasty, England had shifted towards a parliamentary system of government by way of a series of constitutional conventions which altered the content of the statute law. The balance between the King and the Parliament had been displaced by a cabinet system, in which the political leadership of the State corresponded to a Cabinet that was politically responsible to Parliament³². Until the Reform Act of 1832, the Tories were reluctant to accept the reality of this change in the British system and were blind to it just as Argüelles was.

The Whigs, on the other hand, had seen this change and their criticism of the Constitution of Cádiz was not so much because it lacked constitutional balance (which did not exist in England either) but because it did not contemplate elements relating to the true functioning of the British political system, in other words, the parliamentary system.

So, the leading Whig journal, the Edinburgh Review, criticised that the Constitution of Cádiz placed the legislative and executive elements of government in permanent opposition. This journal believed that these two bodies should be in permanent harmony and contact, for which it proposed, for example, that the positions of minister and representative were compatible³³. In reality, the incompatibility of the positions included in the Constitution of Cádiz – already proposed by the Spanish representative Capmany before the Constitution was created³⁴ – could also be found in the English statute law, in particular in the Act of Settlement of 1701. However, it is true that the constitutional conventions had changed this aspect, so that in Great Britain it was unquestionable

³⁰ *Quarterly Review*, vol. XXVIII, October-January 1822-1823: 548.

³¹ *Carta de Agustín Argüelles a Lord Holland* (Madrid, 8 de febrero de 1823). En: Manuel Moreno Alonso, "Confesiones políticas de don Agustín de Argüelles", *Revista de Estudios Políticos* 54 (1986): 250.

³² M. J. C. VILE, *Constitutionalism and the Separation of Powers* (Indianapolis: Liberty Fund, 1998 (2ª ed.)): 107-130, 233-162. JOAQUÍN VARELA SUANZES-CARPEGNA, *Sistema de gobierno y partidos políticos: de Locke a Park* (Madrid: Centro de Estudios Políticos y Constitucionales, 2002).

³³ *Edinburgh Review*, vol. XXIII, 46, September 1814: 362-363.

³⁴ *Diario de Sesiones de las Cortes de Cádiz*, 6 (29 de septiembre de 1810): 15.

that the ministers could also be members of parliament. In short, the Edinburgh Review was criticising the Constitution of Cádiz not because it was moving away from British statute law but from the constitutional conventions.

One of the most reputable Whig leaders shared this opinion, namely Lord Holland, the nephew of Charles James Fox, whose career is well known. Always mindful of the Spanish situation, Holland was a personal friend of the Spanish erudite Gaspar Melchor de Jovellanos (they met when Holland was barely eighteen years old) and of some of the leading Spanish liberals such as Blanco White, Manuel José Quintana and Agustín Argüelles (who would become his librarian). Lord Holland pointed out to Blanco White that the Courts of Cádiz had been mistaken in not allowing Ministers to also be members of parliament. His explanations were so convincing that Blanco White decided to publish them in the journal El Español³⁵.

In any event, however discontent the Anglophile liberals were about the Constitution of Cádiz, unlike the absolutists, they were not in favour of military intervention in Spain or in other territories where the Constitution of 1812 applied. In a European congress, Canning refused to sanction the armed intervention in sovereign states³⁶, and in particular he rejected the proposal of the Holy Alliance to intervene in Spain. Lord Holland, meanwhile, expressed his complete rejection for Great Britain to use force to prevent the Spanish Constitution from being implemented in Naples³⁷. The British could express their disagreement but could never forcefully impose a decision that depended solely on the will of the Nation

The acceptance of the Constitution of Cádiz by European revolutionary liberalism

Rejected by absolutists and anglophiles (although with different levels of hostility, as we have seen), the Constitution of Cádiz did not satisfy the more revolutionary sections of European liberalism, in many cases which had inherited the principles of the French Revolution. Therefore, it is not surprising that Cádiz found a response, for example in the Italian territories, where the French Constitutions of 1793 and 1795 had prevailed (in the so-called “Revolutionary Triennium”, between 1796 and 1799). However, why not choose to continue imitating the French Constitutions instead of implementing the Cádiz model which was, to a certain degree, very similar to them?

There are several aspects that can explain this preference. First, we should not rule out a simply chronological reason: in 1812 and 1820 – the years when the Cádiz text was most widely disseminated – the Spanish Constitution was in force, whereas the French documents had been

³⁵ *Carta de Lord Holland a Ángel de la Vega* (12 de octubre de 1812), in José María Blanco White, *Epistolario y documentos (reunidos por André Pons)* (Oviedo: Instituto Feijoo de Estudios del Siglo XVIII, 2010): 366-367; *Carta de Lord Holland a Blanco White* (9 de abril de 1813), in ibidem.: 153-154.

³⁶ H. W. V. TEMPERLEY and C. K. WEBSTER, "The Congress of Vienna, 1814-1815, and the Conference of Paris, 1919", in *From Metternich to Hitler. Aspects of British and Foreign History, 1814-1939*, ed. W. N. MEDLICOTT (London: Routledge, 1963): 20; HAROLD WILLIAM VAZEILLE TEMPERLEY, *Life of Canning* (London: Finch, 1905): 275.

³⁷ IGNACIO FERNÁNDEZ SARASOLA, "La Constitución de Cádiz en Inglaterra", *Historia Constitucional* 13 (2012): 21.

long buried. Neither can we disregard the extraordinary value that the Constitution of Cádiz had in terms of its mythical image: the text had emerged amidst the roar of the French cannons during the war of national liberation against the most powerful army of Europe. This context would confer a huge symbolism that would benefit the Constitution of 1812 particularly during the boom of romanticism³⁸. Moreover, contrary to the French Constitutions, the Spanish constitution did not have the stigma of having triggered a regime of terror. The French Constitution of 1791 had been tarnished with the execution of Louis XVI and the subsequent text of 1793 had led to the persecution by the Committee of Public Safety. The Spanish text, however, had instigated a non-violent revolutionary process. Hence, in the 1820 edition of the German encyclopedia Brockhaus, the Constitution of Cádiz was described as the freest in Europe, written without any blood being spilt³⁹.

In some cases, the identical intellectual education of foreign constitutional authors in relation to the Cádiz intellectuals could have been significant. This was the case of the Portuguese liberal representatives who created the Portuguese Constitution in 1822. Like the Spanish liberal representatives, they had not only known about the French experiences, but were also permeable to historicism and neo-Scholastic thought⁴⁰. The representative Soares Franco pointed out that “Spain has just set an example for Europe (...). From here on it will be our natural ally; inhabitants of the same peninsula, penetrated by the same principles”⁴¹.

Finally, there is one last detail that could explain the predicament of the Cádiz text: the existence within it of certain elements related to the Old Order. Although the assessment of these elements, which I will examine later, was not the same for all European revolutionary liberals, it is true that they could have been useful for a political movement which had evolved and had done away with some of the Jacobin baggage from years gone by. If European revolutionary liberalism was accused of radicalism this could be refuted by indicating that ascribing to a Constitution like the Cádiz text, unlike the French Constitutions, did not generate anticlericalism or iusrationalism. The first full translation into German in 1819, edited by Friedrich von Grunental and Kart Gustav Dengel, described the text as a “prudent political work of art of pure morality”⁴².

The European revolutionary liberalists liked many aspects of the Constitution of 1812. Starting with those that had antagonised the absolutists and Anglophiles, namely: national sovereignty, the predominance of Parliament and unicameralism. Even the Edinburgh Review had to acknowledge

³⁸ FRANCISCO SÁNCHEZ-BLANCO PARODY, "La «Revolución española» y el liberalismo alemán del siglo XIX: Hermann Baumgarten y la historia de España", *Revista de Estudios Políticos* 58 (1987): 267-280.

³⁹ R. RAINER WOHPFEIL, "España y el liberalismo alemán", *Revista de Occidente* 80 (1969):*op. cit.*: 150.

⁴⁰ PAULO FERREIRA DA CUNHA, *Para uma História Constitucional do Direito Português* (Coimbra: Livraria Almedina, 1995): 273-277.

⁴¹ “Memoria e Projecto de Decreto presentado por Soares Franco”, Sesión núm. 2 (27 de enero de 1821), in *Diario das Cortes Geraes e Extraordinarias da Nação Potugueza*, Lisboa, Na Impressão Nacional, 1821-1822: 5-6. Other representative, Margiochi, said that the Spanish Constitution would be the model for the Portuguese Constitutional project. Sesión de 13 de febrero de 1821 (Diario núm. 14, de 14 de febrero de 1821): 84.

⁴² R. RAINER WOHPFEIL, "España y el liberalismo alemán", *Revista de Occidente* 80 (1969):*op. cit.*: 150-154.

that these principles were ideal for revolutionary processes⁴³, gaining the support of the most progressive liberalists.

The identifying elements in the Constitution of Cádiz were highly prestigious, such as the definition of the Nation (as free and independent) and its citizens. These aspects were useful for the national independence processes and the revolutionary movements and were imitated throughout Europe: from the North to the East and to the Mediterranean area. **32**

Here are a few examples. After the Peace of Kiel (14 January 1814), which marked the end of the war between Denmark, (allied with Napoleon), and Sweden, the former handed over the Norwegian territory to the latter. This act, conducted by Frederick VI was considered illegal by the Norwegians who refused to accept the unilateral handover. As a result, Viceroy Christian Frederick decided to hold an assembly in Eidsvold, formed by one hundred and twelve representatives, which drew up the Norwegian Constitution in 17 May 1814. It was a Constitution that focused on establishing the country's independence process. The text contains some elements copied from the Constitution of Cádiz, such as the definition of Norway as free and independent, taken from the second article of the Constitution of Cádiz⁴⁴. **33**

Something similar happened with Russia. After Tsar Alexander I formed an alliance with Meternich, the Russian liberals' desire for greater freedom was thwarted and they decided to seek alternative and revolutionary solutions through the Decembrist movement. Many Decembrists were military officers and had seen the western constitutional experiences in their campaigns against Napoleon. Now they were trying to import them into their own country. On 9 February 1816, to this end, a secret society was formed called the Union of Salvation or the Society of the True and Loyal Sons of the Fatherland in Saint Petersburg, and was subsequently divided into the Northern Society (led by Nikita Muraviev) and the Southern Society (led by Pavel Pestel). They each designed their own constitutional project which they sought to impose on the Tsar, even by force if necessary⁴⁵. Muraviev's project was clearly inspired by the Constitution of Cádiz. One of the elements where this is most visible is in the definition of the Russian nation and the Russian citizens, which is practically an identical copy of the Spanish text⁴⁶. **34**

Other aspects of the Constitution of 1812 also had repercussions outside of Spain. The Portuguese constitutional assembly closely followed the organs of the Spanish Constitution, such as the Council of Regency, the State Council or the Permanent Deputation⁴⁷. With respect to rights and liberties, it is worth highlighting that authors such as the Frenchman Dominique Duford Pradt admired the system of rights in the Constitution of Cádiz, particularly the section referring to **35**

⁴³ *Edinburgh Review*, vol. XXXVII, 75, February 1823: 242.

⁴⁴ DITLEV TAMM, "Cádiz 1812 y Eidsvoll 1814", *Historia Constitucional* 7 (2006): 313-320.

⁴⁵ PAVEL IANOVICH PESTEL, "Russian Law", in *A Documentary History of Russian Thought. From the Enlightenment to Marxism*, ed. W. J. LEATHERBARROW and D. OFFORD (Ana Point: Ardis, 1987): 51-90.

⁴⁶ DEREK OFFORD, "The response of the Russian Decembrists to Spanish politics in the age of Ferdinand VII", *Historia Constitucional* 13 (2012): 163-191; SUSANNA RABOW-EDLING, "The Decembrist Movement and the Spanish Constitution of 1812", *ibid. Historia Constitucional* 13 (2012): 143-161.

⁴⁷ JOAQUÍN VARELA SUANZES-CARPEGNA, "El primer constitucionalismo español y portugués (Un estudio comparado)", *ibid., Historia Constitucional* 13 (2012): 99-117.

the freedom of press which, in his opinion, had never been better defined⁴⁸. The final principle of Article 4 which obliged the Nation to protect rights through wise and fair laws (which, as we shall see, was to the liking of Bentham) was also welcomed by the Greek constitutional assembly, influencing Greece's first two constitutions (Article 7 of the Constitution of 1822 and Article 12 of the Constitution of 1827).

All of these more radical aspects of the Constitution of Cádiz were well received by the European revolutionary liberals, but they had criteria that were somewhat different with respect to those articles of the Spanish text that contained elements that were more closely connected to the Old Order. The assessment made of these elements was highly unequal. In this respect we can refer to two aspects: historicism and confessionism. 36

Historicism was a highly characteristic argumentative instrument of the Constitution of Cádiz and particularly of its preliminary statement. Through it, the liberals sought to justify their actions, claiming that it represented the rescue of a forgotten national past and not the establishment of new institutions. The clear objective was to escape from iusrationism, which evoked French revolutionary thought and therefore the nation against which Spain had fought between 1808 and 1814. However, for some European revolutionary liberals, such as the representatives of the Portuguese constitutional assembly, historicism was a factor that contributed to the success of and admiration for the Constitution of Cádiz. As it has been already mentioned, the Portuguese liberals shared this historicist vocation with the Spanish liberals, which suited them. However, French authors, such as Pradt⁴⁹ and Duvergier de Hauranne⁵⁰, considered that historicism was an anachronistic element in the Spanish Constitution. This appraisal which was mistaken as the historicism of Cádiz had a clearly revolutionary component in that it sought to recover a mythologised "Gothic Constitution" which, in fact, was simply a reflection of its own revolutionary ideas. 37

The other aspect that aroused mixed reactions was the famous twelfth article which on the one hand declared the catholic, apostolic and Roman condition of the Spanish nation (descriptive part) and on the other, proclaimed religious intolerance (prescriptive part)⁵¹. Many of the European revolutionary liberals rejected this article which they deemed inadmissible. Rotteck, who had described the Constitution of Cádiz as a "bastion of freedom" did not understand how such a liberal text could contain an article of this nature. Portugal held an intermediate stance⁵². Its Constitution of 1822 adopted the descriptive part of Article 12 (the declaration of confessionism) but not the prescriptive part (religious intolerance), assuming a position very similar to that maintained by 38

⁴⁸ DOMINIQUE DUFOUR PRADT, *De la révolution actuelle de l'Espagne, et de ses suites* (Paris: Chez Béchét Ainé, 1820): 180-184.

⁴⁹ D.D. PRADT, DOMINIQUE DUFOUR PRADT, *De la révolution actuelle de l'Espagne, et de ses suites* (Paris: Chez Béchét Ainé, 1820): 177.

⁵⁰ JEAN-MARIE DUVERGIER DE HAURANNE, *Coup-d'œil sur l'Espagne* (Paris: Baudouin Frères, 1824): 7.

⁵¹ EMILIO LA PARRA LÓPEZ, *El primer liberalismo y la Iglesia* (Alicante: Instituto de Estudios Juan Gil-Albert, 1985).

⁵² HORST DIPPEL, "Das Dilemma des deutschen Frühliberalismus. Karl von Rotteck und die Verfassung von Cadiz", *Historia Constitucional* 13 (2012): 119-142.

Flórez Estrada in Spain to the Greek Constitution of 1822. A third sector accepted Article 12 of the Constitution without demur. This was the case of the Italian territories which on the whole preferred to maintain the wording of this article. A similar view was held by the British Edward Blaquier, an author who was particularly interested in the revolutionary processes of the Mediterranean. Although Blaquier did not agree with the declaration of religious intolerance of the Constitution of Cádiz, at least he said that he understood that such an article should form part of the Holy Code: it constituted a concession of the liberals towards the more conservative sectors of the populations which it considered necessary so that the text did not encounter ever higher rates of unpopularity⁵³.

The Constitution of Cádiz – caught between two fronts: review and admiration among the utilitarian liberalists

Utilitarian liberalism occupied a special position between the previously-mentioned movements as it maintained a certain degree of neutrality in its evaluation of the Constitution of Cádiz. This stance was represented mainly by its founder, the English philosopher Jeremy Bentham, but also by the journal that he founded, the Westminster Review, which published authors such as James Mill and his son John Stuart Mill. 39

For utilitarian liberalism, the Constitution of Cádiz contained both positive elements and those deserving reproach. Hence Bentham's comment that the Spanish Constitution was a mixture of arsenic and sugar⁵⁴. This movement did not find a problem with it being adopted in other territories (as expressed by Bentham in the case of Portugal and Naples) but always when certain points considered as inappropriate were amended⁵⁵. 40

Some of the more highly esteemed elements of the Constitution of Cádiz were precisely those which the absolutists and Anglophiles had criticised: the declaration of national sovereignty and unicameralism⁵⁶. With respect to this latter point, it is worth remembering that Bentham had openly opposed his master, William Blackstone, whose model of constitutional balance he had considered to be wrong. Bentham also liked the fact that in basic Spanish law, all of the authorities, without exception, were accountable, including the King and could be removed from their positions⁵⁷. 41

With respect to rights and freedoms, Bentham had a weakness for Article 4⁵⁸ which proclaimed that "The Nation is obliged to preserve and protect by wise and just laws, the civil liberty and the property besides all other legitimate rights of all the individuals belonging to it". Why did he find 42

⁵³ EDWARD BLAQUIERE, *An Historical Review of the Spanish Revolution including some account of Religion, Manners* (London: G. and W. B. Whittaker, 1822): 549.

⁵⁴ JEREMY BENTHAM, "Rid yourselves of Ultramarina (1820)", in *The Collected Works of Jeremy Bentham: Colonies, commerce and Constitutional Law. Rid yourselves of Ultramarina and other writings on Spain and Spanish America*, ed. P. SCHOFIELD (Oxford: Clarendon Press, 1995): 92.

⁵⁵ J. BENTHAM, *op. cit.*: "Rid yourselves of Ultramarina": 29.

⁵⁶ JEREMY BENTHAM, "Emancipation Spanish (1820)", in *The Collected Works of Jeremy Bentham: Colonies, commerce and Constitutional Law. Rid yourselves of Ultramarina and other writings on Spain and Spanish America*, ed. P. SCHOFIELD (Oxford: Clarendon Press, 1995): 261.

⁵⁷ J. BENTHAM, *op. cit.*: "Emancipation Spanish": 251.

⁵⁸ J. BENTHAM, *op. cit.*, "Emancipation Spanish": 185 y 192.

this article, and in general the Cádiz design of rights and freedoms so pleasing? Possibly because they were not so different to his own convictions in relation to this aspect. We should remember that Bentham had criticised the metaphysical French Declarations of Rights and in the Constitution of Cádiz there was very little that resembled them: the rights were not grouped into a specific section but spread throughout the text, therefore the iusrationalist rationale of the French codes could not be explicitly found in the Constitution of Cádiz. On the other hand, we should note that for Bentham, the rights were, above all, securities and this is what is expressed in the Constitution of Cádiz, in which freedoms had regulatory guarantees (legal reserve, which is what was specified in the above-mentioned Article 4), jurisdictional guarantees (protection through judicial procedures) and organic guarantees (judges and courts responsible for safeguarding the Constitution).

These constitute the “sugar” contained in the Constitution of Cádiz. But, alongside this, Bentham and the utilitarians detected a high dose of toxic arsenic. They criticised certain aspects which they believed weakened the Courts with respect to the Executive body. Exactly the opposite of what the absolutists and Anglophiles claimed! For the utilitarians, it was unacceptable that the Courts only met three times a year, because the nation was left like an orphan for the other nine months, during which the Executive had a free reign⁵⁹. And the Permanent Deputation, created for the recesses of the Courts, had insufficient power to oversee the King and his executive agents. Bentham believed that these figures formed a dangerous “septum virato”⁶⁰ and, in addition, they benefitted from the fact that the representatives were not eligible for re-election. What had been conceived as a sign of detachment was, according to Bentham, a serious mistake, as it would oblige the Courts to be composed of neophytes, hindering its efforts.

Even more critical, was the liberal utilitarians’ objection to religious intolerance⁶¹, although Bentham made special reference to the inadmissible distinction that the Constitution of Cádiz made between “Spaniards” (holders of civil rights) and “citizens” (holders also of political rights). The distinction sought to exclude mixed raced sections of the population from the second category. This denied them the right to vote and also excluded them from the population base which determined the number of representatives which corresponded to the provinces to which they belonged. In this way, the criollos had no say in the Courts where the overseas territories were (for the same reason) underrepresented. Appalled by such an injustice, Bentham appealed to the mother country to give up its colonies and let the territories on the other side of the Atlantic follow their own course.

But the aspect that displeased Bentham most about the Constitution was one that affected all of its components. I am referring to the impossibility of reforming the Constitution until at least eight years after it had entered into force. This clause meant that the improvements that the Constitution urgently required could not be implemented for a long period of time⁶².

⁵⁹ JEREMY BENTHAM, "Trois essais sur la politique de l'Espagne (1820): Premier Essai: Lettre à la Nation Espagnole sur la Proposition d'établir une Chambre Haute", in *Jeremy Bentham. Oeuvres*, ed. E. DUMONT (Aalen: Scientia Verlag, 1969), vol. III: 204.

⁶⁰ J. BENTHAM, *op. cit.*, Letter I, par.41; J. BENTHAM, *op. cit.*: 50.

⁶¹ *The Westminster Review*, April 1824: 290.

⁶² J. BENTHAM, *op. cit.*, págs. 74 y 183; J. BENTHAM, *op. cit.*: 203.

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In conclusion: the voice of Cádiz in Europe

In light of what we have seen, we could say that the Constitution of Cádiz was highly influential in Europe. In the rest of the continent, Spain's pioneering constitution was the reflection of a Spanish political class that was aware of the constitutional developments in the West and sought to apply them to the national context, uniting them with elements related to its own idiosyncrasies. 46

For two decades, the Constitution of 1812 became, therefore, a regulatory benchmark for Europe; a beacon watched by both its critics and those that saw the last reflections of the inspiring principles of the French Revolution in it. But the influence of the Constitution of Cádiz was closely related to its own survival; hence the debate surrounding it - and the effective influence on the constitutions of other territories – was most intense during the moments when it was in force (1812-1814 and 1820-1823) after which it gradually faded. 47

In any event, it is worth remembering the extraordinary influence that the Constitution of Cádiz had beyond Spain's borders during this time period. Admired by many, vilified by others, the truth is that Spain's most unique historical constitutional text left no-one indifferent in Europe. 48