

The Principle of National Sovereignty in the Early Spanish Constitutionalism: The Constitution of Cádiz (1812)

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Abstract

From a strictly juridical – constitutional perspective it is quite clear that national sovereignty, the separation of powers and the guarantee of fundamental rights constitute the requisites *sine qua non* for authentic constitutionalism. Both national sovereignty and the separation of powers had as a common objective the creation and guarantee of this personal space in which the citizen was free from State intrusion. In fact, it was precisely in order to protect the fundamental rights of the individual that the State had been restructured into three distinct powers (the legislature, the executive and the judiciary), and subjected to the rule of law in Anglo-Saxon jurisdictions and the principle of legislative supremacy on the Continent.

In Spain, as a result of the invasion (Independence War, 1808-1814), a phenomenon of popular reaction was produced, which is reflected at the beginning of the creation of a series of 'Juntas Provinciales' that arose spontaneously, without a relationship between them initially and without the thus generated recognized a higher political or military authority. Will they, consequently, be the ones who are responsible of the revolutionary process that begins in 1808 and will lead first to the creation in Aranjuez on the 25th of September of a Central Board to assume political authority and, finally, after severe military defeats will begin in Ocaña (1809), in the creation of a Regency Council which on the 30th of January, 1810 returned to the traditional law.

In view of the bankruptcy that the institutions of the *Ancien Régime* had suffered, two conflicting options will be offered which will be represented, one by Joseph I and the Constitution of Bayonne on one side, and another, led by the Council of Regency, unifying absolutists and liberals, will end up crystallizing in the liberal breach that were the *Cortes* of Cádiz and the Constitution of 1812.

One of the main objectives of the Cádiz Parliament meeting in September 1810 was to offer a reformist alternative to give an adequate response to the proposals made by King Joseph in his Constitution. And it was necessary to assume some of the revolutionary principles of 1789, recoating them, if necessary, of old clothing. Thus, together with the need to recognize certain individual rights (property, freedom of the press, etc...), it must be stated from the first moments the radical principles as **national sovereignty** and the division of powers, which were undoubtedly the main limits against the absolute monarchy (as reflected in the Decree of September 24th, 1810).

In addition to the national sovereignty and the separation of powers, it established the principles of universal male suffrage, constitutional monarchy, freedom of press, and supported land reform and free enterprise.

The Constitution of Cádiz has been regarded as the founding document of liberalism in Spain, as well as one of the first examples of classical liberalism worldwide, coming to be called the 'sacred code' of the branch of liberalism that rejected the French Revolution. Moreover, during the early nineteenth century it served as a model for liberal constitutions of several Mediterranean and Latin American nations, as well as for the Norwegian Constitution of 1814, the Portuguese Constitution of 1822 and the Mexican one of 1824.

The lecture will focus on the notion of the principle of national sovereignty, analyzing the discussions of the deputies of the *Cortes* (or parliament) of Cádiz. In doing so, the French influence will be explored. Besides, the impact of this principle on the constitutionalism of Spain and beyond will be also described.

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