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SUGGESTIONS

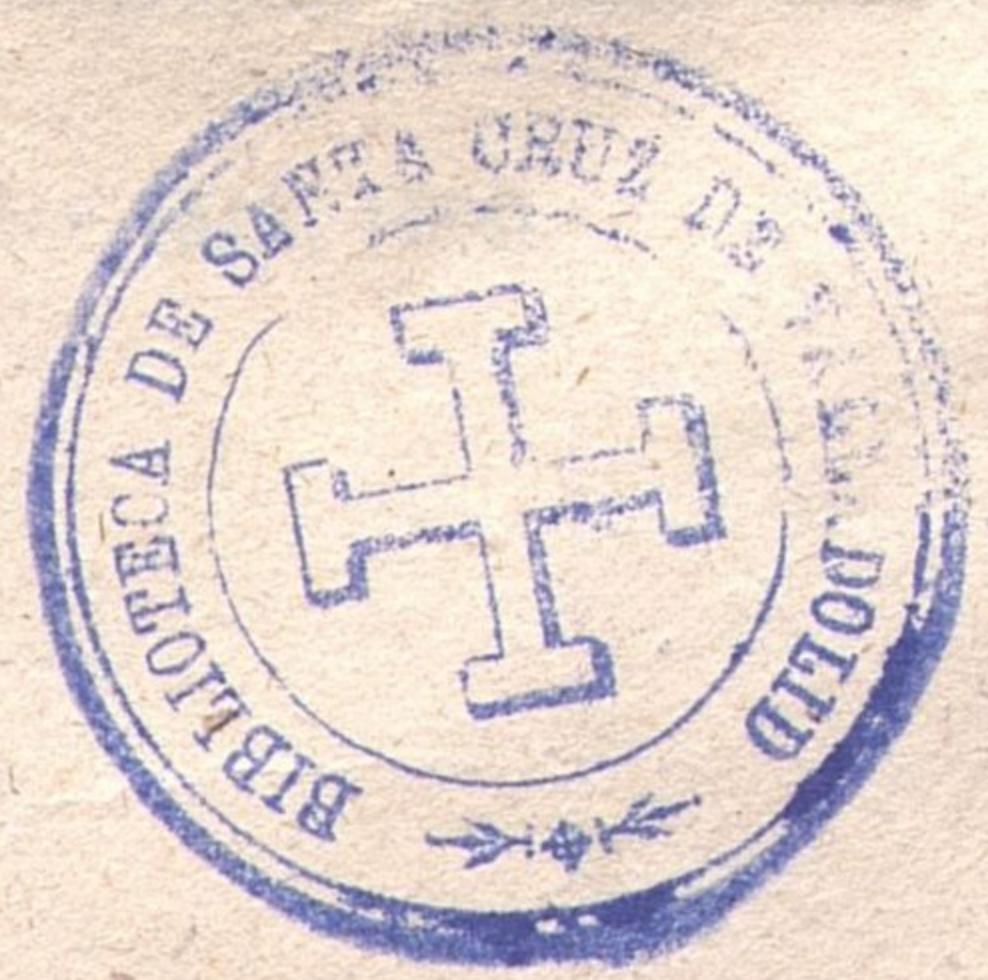
ON

The Cortes.

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SUCCESSORS

The Carter

THE following paper was drawn up some months ago, at the desire of one of the members of the Supreme Junta, soon after the promulgation of the decree of the 22d of May. It is now printed for private circulation in Spain, with the view of calling the attention of Spaniards to the important subject of which it treats, recent events having convinced the author, not that a free and popular government is necessary for Spain, in order to animate her people, and bring to a successful issue her struggle for independence, for of *that* he never entertained a doubt, but that this measure, so unhappily delayed, cannot now be deferred an instant longer, without destroying all chance of her proving victorious in the contest, or even of her maintaining for a few months longer the defence of her national honour and existence.

*London, September 15th, 1809.*

Los Subditos y vasallos sin fuero no pueden ser  
bien animados para servir á su Rey.

ZURITA. ANNAL. DE ARAGÓN, L. 4. c. 38.

SUGGESTIONS  
ON  
THE CORTES.

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SECT. I.

*On the Composition of the Cortes.*

1. THE first duty of the Cortes is to enquire into grievances, to correct abuses in the execution of the laws and administration of justice, and to bring to punishment public delinquents, that others may be deterred by the example from the commission of the like offences. All classes and descriptions of persons should feel themselves under the protection of that assembly, and look up to it with confidence and respect, as the guardian and defender of their rights. But to secure to the public the unremitting and vigilant attention of the Cortes to this branch of its duty, there should be no part of the state, no portion of the community, with which its members have not a common interest and fellow feeling. No district, however small, barren, and insignificant, should be without its deputy; no class, from the richest and most exalted, to the poorest and most

humble, should be without its organ and representative in Cortes, who will make known its grievances, and obtain for them redress and reparation. It is, therefore, necessary to make such a distribution of the national representation, that not only every district shall have its deputy in Cortes, but that the districts shall not be so extensive as to impose any inconvenient burthen on the electors, in going from their place of residence to the place of election, which might prevent them from attending to give their votes, and becoming personally acquainted with their representatives.

2. Though the good of the community be the end which legislators ought to have continually before their eyes, the zeal with which they pursue the general welfare of the commonwealth, ought not to render them indifferent or inattentive to the interests or opinions of the individuals composing it. A wise and considerate legislature will desist from measures of the most evident and acknowledged general utility, when not essential to the safety of the state, if it cannot attain them without injuring materially the interests, or wounding deeply the prejudices of its subjects. Laws are to be considered not only with respect to the general good which they are calculated to produce, but to the partial evil which they must unavoidably occasion. It is, therefore, necessary for this, as well as for the former reason, that no dis-

district should be without its representative in an assembly, occupied with the discussion and enactment of laws, which, though their object be the general good, must affect its local interests, and materially promote or injure its prosperity.

3. Besides general laws, there are in every government local and private statutes to be enacted, which is better done by the supreme legislature than by any inferior jurisdiction. Cases also continually occur, where grants of money, exemption from taxes, or other indulgences are necessary for relieving districts that have suffered from some heavy calamity; or for enabling them to execute some work of great, but local utility, to which their own resources are inadequate, without some favour or assistance from the state. But for this reason, as well as for the preceding ones, every district should have a deputy in Cortes, to set forth and urge its claims, and manage its interests and concerns in that assembly.

4. It is immaterial for *these* objects, whether districts are equally represented or not. It is not to the number of its deputies, but to the truth of its complaints, the justness of its fears, the reasonableness of its demands, that a district should owe the weight given to its representations in Cortes. But it is of great importance, that every district should have a representative, who owes to its choice his place, and who feels that he

must look to its favour for the continuance of his seat in that assembly.

5. But, besides procuring redress of grievances, and watching over and defending local interests and privileges, it is the business of the Cortes to vote supplies and superintend their application to the public service; and as these consist in grants of men and of money, it is reasonable that those who contribute their aid to the exigencies of the state, should possess an influence in the administration of its affairs, corresponding to the greatness of their contributions. Rich and populous districts should, therefore, have a larger share in the national representation, than districts which are poor, and but thinly peopled.

6. But as the claims of justice are stronger than the pleas of expediency, the first object in settling the distribution of deputies for the Cortes, should be the securing to every district, however small and poor, a representative, who shall feel it equally his duty and his interest to maintain its rights and defend it from injustice and oppression. The little island of Ibiza ought, on this principle, to have a vote in Cortes, though its territory is barren, and its population hardly exceeding 15,000 souls.

7. In settling, however, the distribution of deputies among the provinces, and assigning to each



its proper share in the national representation, more attention is due to wealth and population, than to mere extent of territory. It is more reasonable, that the elector of a thinly peopled region should have a few more leagues to travel, in order to give his vote, than that an uncultivated and depopulated province should have the same weight in the general deliberations of the state, as the provinces which contribute most to its power and security. Extremadura possesses an extent of surface nearly twice as great as that of Valencia, but on account of its inferiority in wealth and population it ought to have little more than half the number of representatives of that populous and highly cultivated province.

8. Such are the principles that would probably direct a legislator in the distribution of deputies among the different provinces of the same state, where no antient customs or privileges stood in his way, which gave rights to one district or to one class of the community, that were not equally shared among all the others. But where such privileges and distinctions exist, a wise legislator will not contemn them; he will rather bend, in some degree, and accommodate to them, not certainly his principles of justice, but at least his views of expediency. When they are of serious detriment to the community, by endangering the existence, or diminishing the security of the state, or where they impede the equal administration of

justice, or deprive any portion of the people of their civil rights, there can be no question but the supreme power would be lawfully entitled and morally bound, to abolish such destructive privileges, such pernicious distinctions; though even in that case it ought to make compensation to those who had inherited them without guilt, and exercised them without injustice. But, where there exists no extreme necessity nor imperious duty for the destruction of antient privileges, it is more expedient to modify and preserve than to suppress and abolish them, more especially in the infancy, or on the revival of a free government: for, in the first place, no free government can subsist without a religious veneration for established rights, a principle which could not fail to be shaken, if it were not entirely extinguished in the minds of the people by so violent a measure as that of arbitrarily depriving any part of the community, without its consent, of its antient and acknowledged privileges. Secondly, those who are deprived of any distinctions or privileges which they have been accustomed to regard as their inheritance, become naturally malcontents, and ready to embark in plots and schemes to subvert, or at least, to thwart the views of a government, which has dispossessed them of what they consider to be their rights; and this hatred and opposition to the government of their country, they naturally transmit to their posterity, and thus lay the foundation of a per-

manent faction in the state. Thirdly, the abolition of antient customs, rights, or immunities, destroys the respect and veneration for antient institutions, which at the moment of restoring a free government, fallen into disuse, it ought to be the great policy of the friends of liberty to cultivate and impress on the minds of the people.

9. For these reasons the clergy and nobility ought to retain their separate representation in the Cortes, with such alterations and modifications as the change of circumstances since their last convocation in the Cortes held at Toledo in 1539, render obviously necessary.

10. For the same reasons the cities which have votes in the present Cortes, ought each to send a deputy to the Cortes that are about to assemble, elected in nearly the same manner, and by the same persons as their present deputies.

11. For the same reasons the provinces which have separate states ought to send, besides the deputies, which would otherwise fall to their share, a representative to Cortes, chosen by their present states, for the purpose of watching over and maintaining their separate privileges and immunities.

12. The Cortes will then consist of the king, represented by the Central Junta, or any number

of its members to whom it shall delegate that office, and of the representatives of the clergy, nobles, and commons. The next question to be considered is, in what manner these representatives are to be distributed? in one chamber—in two—or in three?

13. Reason and experience declare equally against a single legislative assembly: wherever the experiment has been tried, such an assembly has been found inattentive to forms in its proceedings, and regardless of justice in its decisions, precipitate and changeable in its determinations, and governed entirely by the popular clamour, and temporary interests of the day. But, though it were less objectionable upon general grounds, a single legislative assembly would be unsuitable to the circumstances of Spain, where it must either be so numerous and unwieldy as to be unfit for business, or contain so few deputies from the commons as to be an inadequate and unsatisfactory representation of the kingdom.

14. If we should take the other extreme, and divide the Cortes into three chambers, making it necessary for all three to concur in every legislative enactment, we should fall into the opposite inconvenience of excessive delay, and protraction of public business. We should have also greater reason to apprehend the influence of faction among the nobles or the clergy, as a majority of

either would be sufficient to paralyse the government, and reduce it to terms of unconditional submission, or drive it to some act of violence subversive of the constitution. Nor should we be without the danger of some designing and ambitious prince, gaining a majority of the clergy to second his arbitrary views; and under the shelter of their negative, defeating every measure that tended to set limits to his power, or bring to punishment the favourites who abused his confidence and oppressed his people.

If, on the other hand, we take the concurrence of two out of three chambers, as the voice of the Cortes, the whole power of that assembly will be virtually lodged in two of the chambers, and the third excluded from all weight or influence in the commonwealth. This is actually the case in Sicily, where such is the constitution of the legislature. The clergy and the nobles have transferred the whole power of the parliament (such as it is) to themselves, and reduced the Commons to utter insignificance.

If, to avoid these evils, we should permit the king, as formerly in Castille, to convoke only one of the chambers, in order to obtain its approbation and support of his government, we should open a door to division and intrigue, which would soon prove fatal to public freedom.

15. Two chambers afford a better security than one, for the deliberate discussion of public business, and give time for reflection, and opportunity for consulting the voice of the country, before the measures submitted to the legislature are passed into laws. Two houses are also mutual checks on each other's conduct, and as they are in some degree rival candidates for public opinion, they are each of them more observant of forms and more attentive to justice than if they had no competitor for public approbation.

16. But, if the scheme of two chambers should be adopted, there are many obvious reasons for placing the clergy and nobility in the same house. Both have privileges and immunities, and both are likely to be somewhat influenced by a corporation spirit, or regard to the exclusive privileges of their order. But, as their interests and prejudices are different, where this spirit might be hurtful, it will be checked and counteracted by the opposite views and interests of their coadjutors in the same assembly. The pride of the nobles will find its antidote in the lowliness of the clergy, while the zeal of the latter will be moderated and repressed by the coolness and experience of men of the world. If to these are added a select number of lawyers from the supreme tribunals of the kingdom, an assembly will be formed, of weight, character, gravity, and experience,

which will oppose a barrier equally strong against popular violence and ministerial artifice, and give stability and ensure duration to the liberties of their country.

17. The representatives of the clergy may consist of the archbishops, the bishops of Leon and Oviedo, who enjoy archiepiscopal authority in their respective dioceses, and twelve of the oldest bishops; to which might perhaps be added the generals of some of the monastic orders, and a few of the principal mitred abbots. This representation will secure the privileges and immunities of the church from encroachment, and serve as a counterpoise to the power of the nobles. A greater number of deputies would only serve to distract so many more of the dignified clergy from the sacred and more important duties of their order.

18. The nobles who used to be summoned to the antient Cortes were the *Ricos Omes*, the *Infanzones*, the masters and knights of the military orders, and other descriptions of inferior nobility. If the *Grandeas* are considered the only legitimate representatives of these ancient nobles, none of the present nobility but the *Grandeas* will have seats in the upper house; but, if it is thought right or expedient to admit the *Titulos* of Castille to a participation of the same privileges, as they are too numerous to have seats individually in that assembly, it will be necessary for them to elect a certain number of

delegates as their representatives; and to secure the independence of these delegates, it will be proper to elect them for life. As to the other persons of noble birth, including the sons and brothers of *Grandees*, however distinguished in rank from the *Estado Llano*, they ought to possess no rights with respect to the Cortes different from those of other members of the state; but, on the contrary, should place their highest ambition in being elected representatives of the Commons. And though a separate representation should be given to the *Titulos*, yet, if any of their number preferred being a deputy of the Commons, he ought to be eligible to that situation, without forfeiting his rank, or any of the privileges attached to it, except that of voting in the election of delegates of his own body, or of being chosen one of its representatives, while he continued in the chamber of the Commons.

19. By the antient constitution of the Cortes, the Counsellors of Castille had no right to vote in these assemblies; but the president of the council and a certain number of counsellors used to be present, and assist at their deliberations, besides claiming and exercising the important right which they still retain, of examining the returns of the *procuradores*, and of pronouncing on their validity. A privilege so liable as this to abuse, and so dangerous to the independence of the Cortes, cannot be suffered longer to continue. But, as a



compensation for being deprived of it, and as a useful addition to the upper house, it might be proper to give a seat in that assembly to the members of the *Camara*. It would, in that case, however, become necessary to declare that the members of the *Camara* should not be removable from office, without an address from the Cortes to the Crown, petitioning for their removal.

20. All the *Infantes* of Spain should be members of the upper house by right of their birth, on attaining the age of 21 years complete, which might, in general, be fixed upon as the age when those who had seats in the Legislature should be entitled to sit and vote in it.

21. The representation of the Commons should not be confined to the *Estado Llano*, but rendered accessible, as in the antient Cortes of Castille, to persons of noble birth; and none, perhaps, need be disqualified by law, from the high and honourable situation of a representative of the Commons, except foreigners by birth; persons consecrated to the sacred ministry of the altar; members of the upper house, and, if the *Titulos* have representatives, those who have voted in that election; Counsellors of Castille and Judges. To form a perfect and complete representation of the Commons, their deputies should be chosen from among the younger brothers and sons of the members of the upper house; the landed proprie-

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tors, whether of noble birth or of the *Estado Llano*; the merchants and manufacturers; the lawyers and men of letters; the officers of the army and of the navy. None should be excluded from the representation by positive law, except the classes and descriptions of persons already mentioned; and no qualification should be required of its members, except that of being a natural born subject of the King of Spain, having attained a certain age, and being of a sound and entire mind. If no salaries are assigned to the deputies, it will be unnecessary to exact from them any qualification in point of fortune.—Needy adventurers will hardly aspire to a distinction unproductive of profit, but attended with certain and inevitable expence. And, surely, it will not be thought necessary to give salaries to the deputies, while there are persons to undertake, without salaries, so high and honourable a trust.

22. The two most important points to be attended to in the composition of the lower house are its numbers, and the mode of its election.

23. A numerous assembly, having a certain dependance on the people, comprehending a fair proportion of the property and talents of the state, and possessing the freedom of speech, and the right of inquiring into and correcting the abuses of government, affords the best security which human wisdom has been able to devise

against the excesses of power, the corruptions of justice, or the mal-administration of public affairs. A large assembly, however chosen or constituted, is necessarily popular in its feelings and opinions, while its numbers render it difficult for any prince or minister to manage it by intrigue or govern it by fear. A small number of persons may be gained over or intimidated; but in a large assembly, there will always be some members whom it will be impossible to reduce to silence; and though the efforts of these patriots should be unable to obtain the punishment of the malversations which they expose, the detection alone will be often sufficient to prevent other men from being guilty of the like. For, there are many who will shrink from the public exposure of an act which, if it could be buried in silence, they would have no scruple to commit. In judging of the effects of a popular assembly, it is a common, though a very gross error, to attend solely to what it *does*, and to overlook entirely what it *prevents*. A job, a fraud, a blunder, brought to light and exposed to disgrace, deters those who have more shame than virtue, from doing that which may subject them to the like humiliation.

24. A large assembly, which has a great deal of business to transact, must necessarily be observant of forms, and strictly attentive to precedents. But this respect for form and precedent is the disposition most important to cultivate in a free

government. A reverence for antient forms is, in such governments, at once the best check on the rashness of innovation, and the surest protection against the illegal interference of authority, under the plausible and never failing pretext of the public good. In England, the House of Commons, which is a more numerous body than the House of Lords, has been always distinguished by its greater attention to forms and stricter observance of precedents ; and many are of opinion, that the most faultless part of the English constitution is to be found in the forms, or, as they are called, the *standing orders* of that assembly. In the Spanish Cortes, on the contrary, if we are to judge from the circumstantial account left us by the Conde de Coruna, of the last convocation of the military branch in 1539, there was a lamentable want of method and ignorance of forms, in the mode of debating questions, and bringing them to a decision, defects which, had these assemblies been more numerously attended, they must of necessity have corrected. A large assembly is on this account more easily kept in order, and is better fitted for the dispatch of business, than a smaller body, which is apt to fancy, that the smallness of its numbers dispenses it from a strict attention to forms in its deliberations. In large assemblies, where necessity has introduced forms and taught respect for them, time is not consumed in the discussion of irrelevant and useless matter, that leads to no immediate question ;

a motion is put, seconded, argued according to the forms of the House, and decided by a vote before any other subject can be introduced, without the consent of the majority expressed by a vote. Due warning must be given of every question to be submitted to the house, that it may not be taken by surprise, and hurried into resolutions, of which it sees next moment the inconvenience, though it may want the courage or the power to rescind them. But to enlarge upon and illustrate the importance of forms would be endless: with them a house of 500 country gentlemen is better able to conduct business, than without them an assembly of 100 clerks of office, or veterans of diplomacy.

25. A large representation of the Commons is necessary to give their due weight in the legislature to the more rich and populous provinces, without depriving the others of representatives, to look after their local interests and defend them from encroachment. A large representation admits into the legislature a greater variety of individuals, who represent the opinions and interests, not only of their immediate constituents, but of the classes of society to which they belong. It admits also military and naval officers to be chosen into the legislature, whose constant attendance at its deliberations is not to be expected, but whose occasional presence may be useful, and whom, at all events, it is of importance to attach to the civil

constitution of their country, by admitting them to a participation of its honours. Above all, a numerous assembly of representatives admits into the legislature a large, inactive, indolent, but not useless mass of deputies, who seldom attend in their places, and still seldomer vote, especially when debates are long or tedious, but who are nevertheless of use, by checking and restraining the over-restlessness and inordinate activity of the more eloquent, more distinguished, and more vivacious members of the assembly. Upon extraordinary emergencies, when parties run high in the legislature, these usually inert legislators are to be seen quitting their country seats and provincial towns, and repairing in crowds to the capital, to decide, by the weight of their numbers, questions that had divided the wisdom of their colleagues, and but for their intervention might have led to interminable dissensions and civil wars.

26. In laying down rules for the elections of the lower house, systematic uniformity should be avoided; and, paradoxical as it may appear, a preference should be given to variety and inequality of representation, whenever a reason can be found for introducing them. In a uniform system of representation, where population, for example, is taken as the basis, the right of voting is either annexed to a high pecuniary qualification, in which case the lower orders are without interest in the legislature or consideration in the state,

or no pecuniary qualification is required of the electors, which gives an undue and dangerous preponderance to the poor over the rich, and to the population of the towns over that of the country. The representation of the Commons in England might be improved; but its inequality, which is one of the most plausible objections to it, is in fact one of its merits.

27. Keeping this principle in view, and adhering to the maxim of interfering as little as possible with existing rights, the cities which have votes in the Cortes should be allowed to retain them, and exercise them through the same channels as formerly, with this difference only, that whereas these cities, though they have each but one vote in Cortes, are accustomed at present to send two or more deputies to that assembly, elected or taken by lot from their *Regidores*, or, according to the practice of many cities, one taken by lot from the *Regidores* and the other from the *Jurados*, or in some cases from particular families which have that privilege; they should, in future, exercise their vote through one representative only, elected in each city according to the mode at present in use, that is, taken by choice or lot from the *Regidores*, or from the *Regidores* and *Jurados* or privileged families conjointly. This representation, however, derived from antiquity, and maintained out of respect to antient rights, ought not to prevent the same cities from having

another representative, chosen, as in other parts of the kingdom, by the body of the people. The votes of the cities in Cortes are at present thirty-seven; but as there are seven cities in Galicia having only one among them, and two cities in Estremadura having but one vote between them, the whole number of cities which have interests to preserve in the Cortes amount to forty-four, and the whole number of their representatives will be eighty-eight; that is, forty-four chosen by the *Regidores*, *Jurados*, and privileged families, and forty-four chosen by the people. It will be a subject of future consideration for the Cortes when they meet, whether the present municipal constitution of the cities that have votes in Cortes, is not an infringement of the antient rights and charters of these cities, and whether it would not be proper for that and other reasons to reform these corporations and bring them back to their ancient constitution, making compensation to those who possess in them, by right of purchase, or inheritance derived from purchase, the offices of hereditary *Regidor* or *Veintequatro*.

28. The provinces, which have separate states, ought each to have one deputy at least in Cortes to represent their states, elected of course by the members of the states, which should continue to meet as usual for the interior administration of the province, subject to the laws and orders of



the general Cortes. The provinces having separate states are five.

29. With respect to the remaining deputies, if four representatives are given to Madrid as the capital of the kingdom, one being chosen by the *Regidores* on account of its vote in Cortes, a second may be elected by the *Gremios Mayores*, and the remaining two by the people. A similar arrangement may be adopted with respect Saragossa and Seville, if to each of these cities, as the capitals of Aragon and Andalucia, the same number of deputies is given. If Barcelona and Valencia have each three deputies, one being chosen by the *Regidores* on account of the vote of these cities in Cortes, a second may be chosen by the *Consulado* and the *Gremios*, and a third by the people. And, in like manner, if two representatives are given to Cadiz, Malaga, Carthagene and Ferrol, cities which have not votes in Cortes, one may be chosen by the people, and the other by the *Ayuntamiento* and *Consulado* conjointly.

30. Where there is only one deputy to be chosen, or where there is more than one, in the election of the deputies chosen by the people, the *vecinos*, or those entitled to vote, ought to give their votes directly, without the interposition of any electoral body, which would only prove a scene of cabal and intrigue; and, as the experi-

ence of France contrasted with that of England demonstrates, would prevent the people from taking an interest in the character or conduct of their representatives.

31. The following mode of conducting the elections is recommended by its simplicity, and might be adopted till experience shall suggest other and better regulations.

A writ, or *carta convocatoria*, in the name of the king, should be addressed to Corregidor, Alcalde Mayor, or chief magistrate of the town where the election is to be held, ordering him, on a certain day and in the manner prescribed by the writ, to notify in every parish of the district which is to return the deputy, that on such a day at such an hour, and in such a place, the election of its representative to Cortes will be made; and that unless more than one candidate be then proposed, the election will be concluded; but, that if more than one candidate is proposed, a register will be opened for taking votes, and kept open for so many days, persons attending every day, from such to such hours, to receive and enter the votes tendered by *vecinos*, or householders of the district who present themselves for that purpose. This notification having been made in terms of the writ, the magistrate to whom that instrument has been addressed, will attend

at the place appointed on the day of election as the returning officer, accompanied by the *Ayuntamiento* of the town, and such members of other *Ayuntamientos* of the district as chose to be present, and there, at the hour prescribed in the writ, he will read to the people assembled in front of the town house the *carta convocatoria*; after which the election will begin by some one elector present proposing a candidate. If no other candidate is proposed within the time fixed by the writ, the one first named will of course be declared duly elected; but if more than one be proposed, a register will be immediately opened, and the votes of the electors received and entered in it by proper officers, in the presence and under the inspection of the friends of the candidates. At the conclusion of the period appointed by the writ for receiving votes, the numbers will be cast up in the presence of the returning officer, and that candidate declared duly elected who has the greatest number of votes in his favour. If any of the disappointed candidates is of opinion that the return is unfair, or that the election has been unfairly conducted, he should be entitled within a certain time to petition the lower house to take the merits of the election into consideration, and pronounce on the validity of the return. But from the judgment of the house there ought to be no appeal. No tribunal but the house itself, or a committee appointed by it, ought to have any cognizance of the returns of its members. To

prevent vexatious contests, it might be proper to make the candidate defray all reasonable expences of the election. Not only the candidates but the voters should have the right to petition against the fairness of returns. The expence attending such petitions would prevent them from being made on frivolous or vexatious grounds.

## SECT. II.

ON THE CONSTITUTIONAL RIGHT OF THE SUPREME JUNTA TO CONVOKE THE CORTES, AND REGULATE THE NUMBER AND DISTRIBUTION OF THAT ASSEMBLY.

1. THE Supreme Junta, as the representative of His Catholick Majesty King Ferdinand VII. is invested with all his lawful prerogatives, and is bound to exercise them in the manner most conducive to his interest and to the benefit of his people.

2. One of the prerogatives of the kings of Spain is to convoke the Cortes, and, according to their discretion, they may either summon General Cortes, consisting of the three estates or *brazos* of the clergy, nobles, and commons, or assemble any two of the *brazos*, or any one of them singly. The antient history of Castille is full of examples of the exercise of this discretionary power, and no other proof is required of its existence than the fact, that since 1539, though the *procuradores* of the Commons have frequently met in Cortes, neither the clergy nor the nobles have ever been summoned to these assemblies.

3. It was antiently the prerogative of the kings of Castille to issue writs of summons to Cortes to cities which did not usually appoint deputies to that assembly. In Spain, as in other countries of Europe, the original selection of cities which sent deputies to Cortes must have been made by the crown: and though, from the tenor of the writs of summons, or *cartas convocatorias*, it appears that certain cities of Castille acquired a right to be summoned to Cortes whenever the *brazo de las ciudades y villas* was convoked; it is equally certain that other cities used to be summoned to these assemblies, which had not acquired that right; and in some Cortes, the cities which had no right from custom to send deputies to the assembly, were in greater number than the cities which had that right. This seems to have been the case in the famous Cortes held at Alcala de Henares in 1349, by Alonzo XI.; and it was certainly so in the Cortes held at Madrid in 1390, during the minority of Henry III. And though frequent attempts were made in Cortes to limit this branch of the royal prerogative\*, no actual limitation was ever imposed on it till the grant of the *Millones* to Philip IV. in 1649.

4. By *acuerdo* of the 3d of August in 1649, the kingdom assembled in Cortes, for reasons

\* Particularly in the Cortes held at Valladolid in 1506, and in the Cortes held at Burgos in 1512.

therein expressed, “acordó servir à S. M. con-  
 “veinte y quatro millones, pagados en seis años,  
 —, baxo las condiciones siguientes.”—Of these  
 conditions there are two relating to our present  
 subject, included in the “Quinto genero de las  
 “condiciones generales para el alivio de estos  
 “reynos,” and to the following effect:

S. 78. “Que no se acrecentase el numero de  
 “las ciudades, villas y lugares, que tuviesen  
 “voto en Cortes.”

S. 87. “Que el reyno junto en Cortes, y no  
 “otra persona alguna, pudiese dispensar las con-  
 “diciones de este servicio.”

By *cedula* of the 18th of July 1650, the king  
 accepted of this grant on the terms proposed to  
 him, and when it had expired and was offered  
 him a second time for the same number of years,  
 and upon the same conditions, he was again gra-  
 ciously pleased to accept of it by his royal *cedula*  
 of the 14th of February 1659, “aprobando,  
 “como apruebo, las condiciones que en los  
 “dichos acuerdos y escrituras se declaran,—sin  
 “exceptuar ni reservar cosa alguna de lo en ella  
 “contenido, ni de sus condiciones y declara-  
 “ciones; y en su conformidad—mando à todos  
 “—que proveen y den orden *etc.* —; porque  
 “mi intencion y determinada voluntad es,  
 “que los dichos, acuerdos y escritura que en su

“ virtud se otorgó, y sus condiciones con que  
 “ está acordada por el reyno, y por mí estan  
 “ concedidas, se guarden y executen, como en  
 “ ellas se contiene, y como concedida à mi pedi-  
 “ mento y en mi servicio: *lo qual quiero que*  
 “ *tenga fuerza de contrato mutuo, reciproco y*  
 “ *obligatorio, hecho y otorgado entre partes,*  
 “ *interviniendo para ello el servicio que el reyno*  
 “ *me ha hecho ;*—

This grant, with the conditions annexed to it, has been continued ever since, having been always renewed by the Cortes, or *diputados del reyno*, before the period of its expiration, that is, every six years ; and it forms at present that part of the *Rentas provinciales* called the *Millones*.

5. It is quite clear from this statement, that the King of Spain is not possessed at present of a constitutional right of adding to the cities that have votes in Cortes, without obtaining the consent of the present Cortes ; and, consequently, the Junta, which is no more than the depositary of the royal prerogative, has no such right, and cannot assume it, without overstepping the bounds of its legitimate authority, and violating the respect due to existing laws.

6. But, it is equally clear from the whole tenor of this transaction, and particularly from the terms in which the royal assent is given to the



propositions of the Cortes in the passages already quoted, that this limitation of the prerogative was not considered by either of the parties as a perpetual and fundamental law of the kingdom, but as a temporary obligation, resulting from a mutual contract, the effect of which was to limit the king in the exercise of this part of his prerogative, while he continued to receive the grant for which he consented to such limitation; and, therefore, nothing more is wanting to establish the crown in its antient prerogative, but the abrogation of the *Millomes*, either by the Cortes refusing to prolong the grant when it expires, or by the king refusing to receive it any longer upon the same conditions.

7. If this view of the subject be a sound one, it is necessary before the Supreme Junta can assemble Cortes suited to the present circumstances and emergencies of the country. or make even the smallest alteration in the composition of that assembly, that it should either act in defiance of the existing laws and constitution of the kingdom; a course of proceeding which no friend to the liberties of his country would recommend; or assemble the *procuradores* of the present Cortes, and obtain from them a repeal of the 78th article of the "quinto genero de condiciones" contained in the *acuerdo* of the 3d of August 1649; a measure which might be attended with much inconvenience and many difficulties, and which at any rate could

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not be carried into effect till the French were expelled from the provinces of Castille and Aragon : or formally abolish the tax called *millones*, which would be a great relief and present satisfaction as well as permanent benefit to the people, and thereby establish the crown in its ancient right of summoning to Cortes as many cities as it judges necessary to consult with for the redress of grievances and better government and security of the kingdom.

8. But, whatever be the plan adopted for emancipating the crown from this restriction, whether the 78th condition be formally repealed by a vote of the Cortes, or indirectly set aside by an act of the crown, provided only it is legally and constitutionally done away, there will be no necessity of consulting the Cortes about the number or distribution of the cities, which are hereafter to be called to that assembly ; for, the regulation and settlement of that matter will then belong, by the law of Spain, to the crown : and, if unnecessary to consult the Cortes upon this point, surely it would be unwise and inexpedient to occupy a popular assembly, at the commencement of its political career, while unacquainted with forms, unaccustomed to business, and composed of members ignorant of each others opinions and characters, and even strangers to each others faces, fresh from their respective provinces, and full of the local prejudices and attachments which they have there

imbibed, with the discussion and adjustment of plans of representation, in which the claims and interests of their several towns, districts, and provinces, must necessarily be brought into competition; and where, after giving full weight and effect to every principle that can direct the judgment, much must be settled by arbitrary discretion and mutual compromise. In a subject so calculated to awaken jealousy and excite division, the best result that could be hoped for would be the adoption of a plan of representation, founded solely and strictly on population, and such, in all probability, will be the system established in Spain, if the Supreme Junta shrinks from its duty, and transfers to the Cortes the settlement of this most important question.

9. It is far from being essential to a free government, that it should have been formally constituted by the people, or by delegates of the people expressly chosen for the purpose. Government, it is true, is not only *for* the people, but *from* the people. No government can be free in which the people have not weight. No people are secure from oppression, except through the influence which they possess over their government. But, though there resides inalienably in the people, a right to change their government, and adapt it to their wants and necessities, and even to their wishes and caprices; there is no subject of which they are so little qualified to form a just opinion

as of the form of government best calculated to ensure their happiness and preserve their liberties ; and nothing is so likely to endanger both, as to call upon them unnecessarily to decide by their votes a question so essential to their welfare, but so far removed from their usual habits of contemplation. Wise nations have been content with the enjoyment of freedom, without nice inquiries into its origin and genealogy. *Limpieza de Sangre*,\* which the friends of liberty are apt with reason to think an absurd test of merit in real personages, is not the less ridiculous when applied to metaphysical existences. The Romans submitted to to be free for 500 years, under a constitution given to them by Servius Tullius ; and the English have not yet expunged Magna Charta from their statute book, though it exists there in the form of a concession from their ancient kings. The French, on the contrary, whom nothing would serve but a spick and span new constitution of their own making, after changing the fashion of it five times in little more than twice the number of years, have relapsed into a despotism more severe than the one from which they had tried to emerge. It is proper that federal states should settle the terms of their confederation by meetings of delegates from the different states ; but in no great country, one and indivisible, except in France, has it ever been thought necessary to found the lega-

\* *i. e.* Purity of descent.

lity of its government upon this basis; and in France, besides the other melancholy consequences of the experiment, we have seen the indifference with which the people have voted for constitutions, in the equal readiness with which they declared for democracy, republicanism, or despotism, as these forms of government were successively presented to them for their approbation.

10. It is far from being intended by these remarks, to insinuate that the representatives of the people are not qualified to judge, or entitled to vote, in points connected with the basis or foundations of the government. On the contrary, there is no part of a constitution or form of government so sacred and inviolable, that the ordinary legislature should not possess a right of examining and amending it, and, if necessary, of altering or abolishing it entirely; and in a well constituted government there ought to be no necessity of employing any power but the ordinary legislature to effectuate these changes, whenever they are wanted. But, it is contended, that a government is not unlawful and despotical, because the people were not consulted in its formation; and that it is no proof of its being free and well adapted to secure their happiness, that when submitted to them in the form of a written or printed constitution, they voted for it unani- mously. It is also contended, that it is unwise and inexpedient to refer, without necessity, to a

numerous assembly, unpractised in affairs, the settlement of a business, at once so full of difficult and complicated details, and so likely to excite the passions of interest and rivalry among its members, as the distribution of the representation of the Commons.

11. Is it apprehended, that if the Junta make great innovations in the existing representation of the Commons, the legality of its proceedings will be questioned and denied? But who will question them? Will the districts, to which *cartas convocatorias* are addressed, refuse to elect deputies? Will the deputies, when assembled, impugn the authority by which they are convoked, and to which alone they owe their legal existence? It is not impossible, that it should appear to the Cortes, when met, that so large a discretionary power of summoning to these assemblies, as was vested in the crown by the antient constitution of Castille, is dangerous to public freedom; and that some law will be passed to limit or abrogate so exorbitant a prerogative. But such a law can have no retrospective operation, nor invalidate acts anterior to its existence.

12. In short, while the 78th condition of the *millones* is in force, the Junta cannot add to the number of cities that have votes in Cortes; but when that condition is done away, it will have a right of calling any number of cities to that as-

sembly ; and this right, which would convert the Cortes into a mere instrument of the crown, were it suffered to continue after that assembly has been constituted on a proper basis, is better lodged at present with the Crown than with the Cortes, where it would prove an apple of discord fatal in more ways than one to the country.

13. Is it apprehended, that as the clergy and nobles had each a separate chamber in the antient Cortes, they will object to being confounded together in the same assembly, and reduced to form but one house between them? But on what ground could they advance or maintain such an objection. So far from having a right to form each a separate chamber, they have no right to be convoked at all to Cortes, except the summons, which they receive from the crown, and which may be issued or withheld at pleasure. For, such was the rude and imperfect constitution of Castille in former times, that laws could be passed and taxes imposed in Cortes, by the *procuradores* of the cities alone, without the intervention of either the nobility or the clergy. But if the ecclesiastical and military branches of the Cortes have no right to be summoned to these assemblies, but what they derive from the pleasure of the Crown, they can have no right to complain, that, when convoked, they are made to sit in the same chamber and vote in the same house. And if a

law, most essential to public freedom, were enacted, declaring that in future the crown should on no pretence summon the commons to Cortes without the nobility and clergy, or the nobility and clergy without the commons, it would give an accession of weight and importance to the two former classes that would more than counterbalance any imaginary degradation from their being made to sit and vote together in the same assembly.



## SECT. III.

## SKETCH OF A PLAN FOR THE CORTES.

The Cortes to consist of the king, and of two houses.

I. The king to be represented by the members of the Supreme Junta, or by a council of regency, if they appoint one.

II. The upper house representing the nobles and clergy, to consist of the following members:—

The archbishops	-	-	-	8
The bishops of Leon and Oviedo	-	-	-	2
The twelve oldest bishops	-	-	-	12
Eight of the mitred abbots and generals of the monastic orders	-	-	-	8
All the grandees, supposed to be about	-	-	-	70
Thirty deputies elected for life by the <i>Titulos</i> of Castille	-	-	-	30
The counsellors of Castille, who belong to the <i>Camara</i>	-	-	-	14

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about 144

III. The lower house, representing the commons, to consist of 300 deputies for Spain, and the Spanish Islands of the Mediterranean, without including the deputies from Spanish America, or from the Philippine and Canary Islands. This representation to be distributed among the

provinces, according to the following principles:—

1. Each province to have a number of deputies, corresponding to the number of votes which it has at present in Cortes - 37
2. Asturias, Navarre, and the three provinces of Biscay, which have separate states but no votes in the present Cortes, to have each a deputy elected by their states - 5
3. Each province to have, besides, a number of deputies, corresponding to its population, one deputy being allowed for every 40,000 souls, according to the Census of 1797 - - - - - 252
4. As six deputies will still be wanting to complete the number of 300, they may be distributed among the following provinces:
 

To New Castille, on account of its capital	- 1
To Aragon, for the same reason	- 1
To Andalucia, one on account of its capital, and one on account of its commercial wealth	- 2
To Estremadura, on account of its extent	- 1
To Valencia, on account of territorial wealth	- 1
	300

The Distribution of Members among the Provinces, according to these Principles, will be as follows :

	On account of its votes in Cortes or its separate State.	On account of its Population.	On account of its Capital, Wealth, or extent of Territory.	Total.
	<i>Deputies</i>	<i>Do.</i>	<i>Do.</i>	<i>Do.</i>
New Castille will have . . . . .	4	30	1	35
Old Castille . . . . .	4	23	—	27
Leon . . . . .	6	23	—	29
Asturias . . . . .	1	9	—	10
Galicia . . . . .	1	28	—	29
Extremadura . . . . .	1	10	1	12
The four kingdoms of Andalusia . . . . .	4	47	2	53
Murcia . . . . .	1	9	—	10
The three provinces of Biscay . . . . .	3	7	—	10
Aragon . . . . .	7	16	1	24
Catalonia . . . . .	6	21	—	27
Valencia . . . . .	2	20	1	23
The Balearic isles and Ibiza . . . . .	1	4	—	5
Navarre . . . . .	1	5	—	6
	42	252	6	300

Three cities, viz. Madrid, Saragossa and Seville, to have each four deputies in Cortes—one elected as their present members of Cortes—one elected by the *Gremios*—and two by the *Vecinos* of the

city, and district attached to it by the <i>carta convocatoria</i>	12
Two cities, viz. Barcelona and Valencia, to have each three deputies in Cortes—one elected as their present members of Cortes —one by the <i>Gremios</i> and <i>Consulado</i> conjointly, and one by the <i>Vecinos</i> of the city and district	6
Thirty-nine cities and towns, viz. Toledo, Burgos, Leon, Granada, Mallorca, Cor- duba, Murcia, Jaen, Avila, Zamora, Toro, Guadalaxara, Fraga, Calatayud, Cervera, Segovia, Alcantara, Plasencia, Soria, Tor- tosa, Peniscola, Tarazona, Palencia, Sa- lamanca, Lerida, Valladolid, Gerona, Jaca, Teruel, Tarragona, Borja, Cuen- ca, Coruna, Santiago, Betanzos, Lugo, Mondonedo, Orense, and Tuy, to have each two deputies in Cortes—one elected as their present members of Cortes, and one elected by the <i>Vecinos</i> of the city and district	78
Four cities, viz. Cadiz, Malaga, Cartha- gene, and Ferrol, to have each two de- puties in Cortes—one elected by the <i>Ayuntamiento</i> and <i>Consulado</i> —and one by the <i>Vecinos</i> of the city and district	8
One hundred and ninety-six cities and towns to have each one deputy in Cortes, elected by the <i>Vecinos</i> of the city and district	196
	<hr/> 300

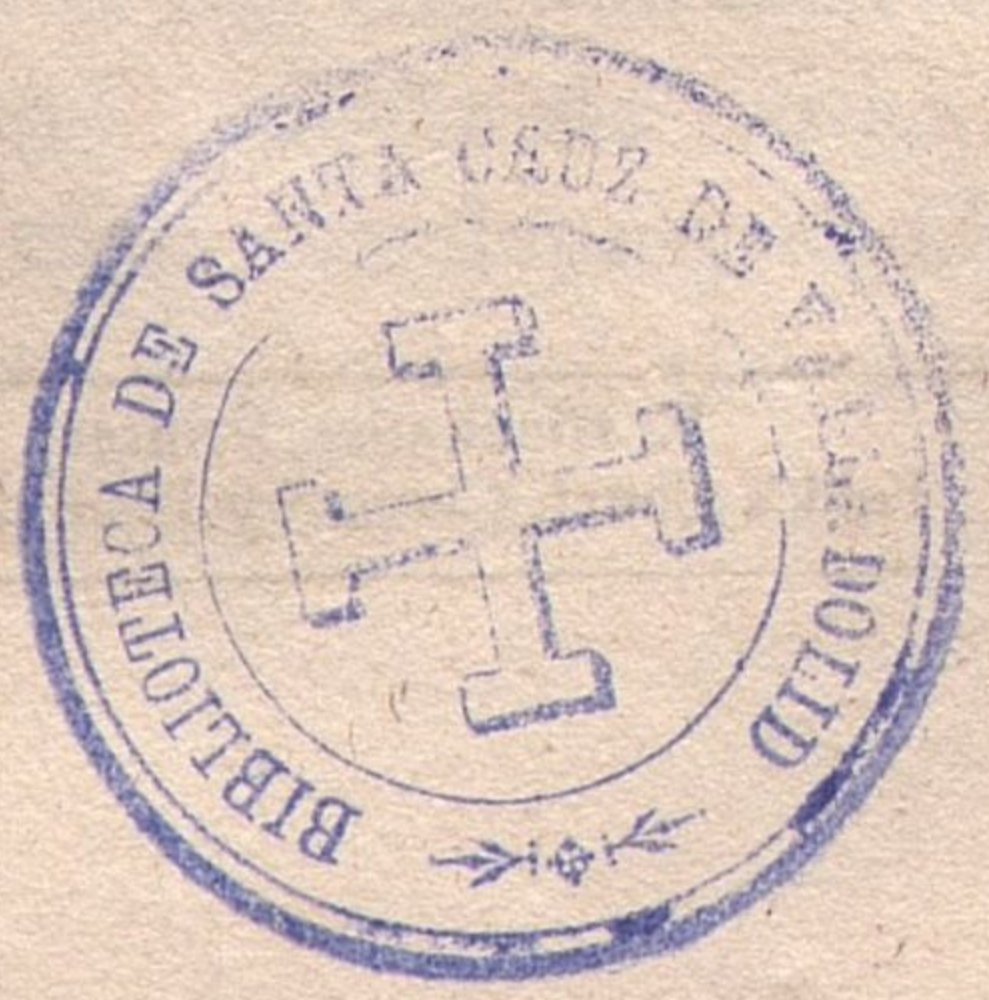
In the selection of these last cities and towns, and, in general, in the demarcation of the districts attached to the towns where the elections are conducted, more regard ought to be had to existing political divisions, to natural divisions of territory, and to diversities of interest, arising from differences of local situation, territorial produce, or occupations of the inhabitants, than to mere population. For, it cannot be too often repeated, that though in a free country there ought to be no fraction of the territory, no portion of the people, without an interest in the legislature, nothing is more fatal to the stability of government, and consequently to the preservation of liberty, than a representation founded entirely on population, and strictly regulated and distributed by the rules of arithmetic, from the returns of the census.

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In the selection of these last titles and towns and  
in general, in the designation of the libraries  
related to the topic, where the circumstances con-  
duced, more regard ought to be had to retaining  
political doctrine in relation to the objects of contact,  
rather than to the objects of contact, in order to  
of local attention, to the objects of contact, or in the  
towns of the inhabitants, then to give particular  
for it cannot be too often repeated, that though  
in a free country there ought to be no interference  
of the authorities in the selection of the books, without an  
interest in the legal force, nothing is more fatal to  
the stability of government, and necessary to  
the preservation of liberty, than a representation  
fringed either on population, and strictly con-  
fined and distributed by the laws of the country  
from the interests of the country.



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