

CHAP.

VII.

1808.

July.

Junta of individual liberty, consisting of five members, was to be chosen by the Senate from its own body, and to this committee all persons arrested for offences against the state, if they were not brought to trial in the course of a month from the day of their commitment, might appeal: should the Junta be of opinion that the interests of the state did not justify a longer imprisonment, it was to call upon the minister by whom the arrest was ordered, either to set the prisoner at liberty, or deliver him over without delay to a competent tribunal. If after three such consecutive applications within the space of another month the prisoner should neither have been discharged nor remitted to the ordinary tribunals, the Junta was then to require a meeting of the Senate; and the Senate, if it saw cause, was to pass a resolution in this form: There are strong presumptions that N. is arbitrarily imprisoned. The president was to lay this resolution before the King; and the King was to refer it to a Junta, composed of the presidents of the Council of State and of five members of the Royal Council.

*Senatorial  
Junta of  
the liberty  
of the press.*

In like manner there was to be a Senatorial Junta of the liberty of the press, consisting of five senators. Authors, printers, and booksellers, who thought themselves aggrieved if they were prevented from printing or selling a work, might appeal to this Junta; and should the Junta be of opinion that the prohibition was not required by reasons of state, the minister by whom it had been imposed should be required to withdraw it. If after three consecutive applications in the course of a month the prohibition were not revoked, the Junta was then to summon the Senate, and the Senate, if it saw reason, to resolve there were strong presumptions that the liberty of the press had been violated; and this resolution was to be laid before the King, and by him, as in a matter of individual liberty, referred to a Junta whose decision was final. Periodical publications were



not entitled to the benefit of this provision. The members of these Senatorial Juntas were to be changed one every six months.

The Council of State was to consist of not fewer than thirty members, nor more than sixty, divided into the six sections or departments of justice and ecclesiastical affairs, the interior, and general police, the finances, war, the marine, and the Indies, each section consisting of a president and four members at least, and the King presiding over the council. The hereditary Prince might assist at their sittings, from the age of fifteen. The ministers and the president of the Royal Council were by their office members, and might attend their meetings when they thought it convenient, but they were not part of any section, neither were they accounted in the appointed number. The projects of all laws civil and criminal, and the general regulations of the public administration, were to be examined and determined here; and the decrees of the King upon subjects falling within the province of the Cortes were to have the force of law (having been discussed in this council) till the next Cortes should be assembled.

The Cortes or National Junta was to consist of an hundred and sixty-two members, in one chamber, divided into the three Benches of the Clergy, the Nobles, and the People; that of the clergy was to be placed on the right of the throne, that of the nobles on the left, that of the people in front. The bench of the clergy was to be composed of twenty-five Archbishops and Bishops, that of the Nobles of twenty-five peers, who should be called Grandees of the Cortes: the bench of the People of sixty-two deputies for the provinces of Spain and the Indies, thirty deputies for the principal cities of Spain and the adjacent islands, fifteen commercial members, and fifteen deputies of the universities, men of learning, or distinguished by their proficiency in the sciences or the arts. The Ecclesiastical Deputies

CHAP.  
VII.

1808.  
July.

Council of  
state.

Cortes.



CHAP.

VII.

1808.

July.

were to be appointed by letters patent, under the great seal, and they were not to be deprived of their functions unless by the sentence of a competent tribunal, legally pronounced. The Nobles were to be appointed and hold their seats in the same manner; they were required to possess an income of not less than 20,000 *pesos fuertes*, or to have performed long and important services either in the civil or military line. Members for the provinces were to be chosen in the proportion of one representative for about 300,000 inhabitants; and the provinces were to be divided into departments with reference to this purpose, each containing a population sufficient to entitle it to elect one deputy. The manner in which the Juntas of Election were to be constituted would be established by the Cortes; till that time they should be composed of the Deans of the *Regidores* in every place which contained not less than an hundred inhabitants; and if in any departments there were not twenty places containing this population, the smaller hamlets were then to be united for the purpose of furnishing an elector, in the proportion of one for an hundred inhabitants, chosen by lot from the Deans of the *Regidores*. The other electors were the Deans of the *Curas*, or parochial clergy, in the principal places of the departments; but the number of clerical electors was never to exceed one-third of the whole Junta of Election. The President was to be named by the King, and the Juntas of Election were never to meet except by letters of convocation. The Deputies for the thirty principal cities were to be chosen one for each by the *Ayuntamiento*, or corporation. A deputy for a province or city must be possessed of landed property. The fifteen commercial Deputies were to be chosen from the Juntas of Commerce, and from among the richest and most respected merchants. The Tribunals and Juntas of Commerce in every city were to form a list of fifteen persons, and from these lists the King was to appoint the mem-



bers. He was in like manner to appoint the remaining fifteen from a list to that amount presented by the Royal Council, and from seven candidates presented by each of the universities.

CHAP.  
VII.

1808.

*July.*

Members of the Bench of the People might be re-elected to a second Cortes, but not to a third, till an interval of three years should have elapsed. The Cortes should assemble once in three years at least; it was to be convoked by the King, and neither deferred, prorogued, nor dissolved, but by his order. The President should be appointed by the King from three candidates whom the Cortes was to choose. At the opening of every session the Cortes was to choose these three candidates, two vice-presidents, and two secretaries, and four committees, . . . of justice, of the interior, of finance, and of the Indies, consisting of five members each. The sittings of the Cortes were not to be public; votes were to be taken vocally or by secret ballot; and for every resolution a majority of the whole body was necessary. The opinions and votes were neither to be printed nor divulged; such publication, whether by means of the press, or of written papers, if made by the Cortes, or any of its members, was to be considered as an act of rebellion. Every three years the amount of the annual receipts and expenditure was to be fixed by law; which law was to be presented by orators of the Council of State for the deliberation and approbation of the Cortes. In like manner all alterations in the civil and penal codes, in the system of imposts, or of currency, were to be propounded; and projects of laws were to be proposed by the sections of the Council of State to the respective committees of the Cortes. Accounts were to be presented annually to the Cortes by the Minister of Finance, and to be printed; and the Cortes might make such representations as they deemed convenient upon any abuses in the administration. If they had any grave charges to prefer against a minister, the accusation and the proofs were to



CHAP. VII. be laid before the throne by a deputation; and the King was to refer it to a commission composed of six counsellors of state and six members of the Royal Council.

1808.

July.

The colonies.

The Spanish kingdoms and provinces in America and Asia were to enjoy the same rights as the mother country, and to trade freely with her; every kind of cultivation and industry was to be free there, and no monopoly of export or importation to be granted. Every kingdom and province should always have deputies at the seat of government, to promote their interests and to be their representatives in the Cortes. Two deputies each were to be sent by New Spain, Peru, the Nuevo Reyno de Granada, Buenos Ayres, and the Philippines; one each by the islands of Cuba and Puerto Rico, by Venezuela, Charcas, Quito, Chile, Cuzco, Guatemala, Yucatan, Guadalupe, the western internal provinces of New Spain and the eastern. These deputies were to be chosen by the *Ayuntamientos* of such places as the Viceroy or Captains-general should appoint in their respective territories; they must be natives of the respective provinces, and proprietors of land: they were to hold their places for a term of eight years, and after the expiration of that term, till their successors should arrive. Six of these deputies, chosen by the King, should be added to the Council of State and section of the Indies, to have a consultive voice in all matters relating to the colonies.

Judicature.

The Spains and the Indies were to be governed by one code of laws civil and criminal. The judicial order was to be independent, justice administered in the King's name by the courts and tribunals which he should appoint, and all corporate or private jurisdictions, such as the *Justicias de abadengo, ordenes y señorio*, were abolished. The King was to appoint all the judges, and no one could be removed from his office, unless in consequence of charges against him made by the president or



*Procurador General* of the Royal Council, at the Council's instance, and with the King's approbation. There were to be Conciliatory Judges forming a Tribunal of Pacification, Courts of the first instance, Audiencias or Tribunals of Appeal, a Tribunal of Reposition or Cassation for the whole kingdom, and a High Court Royal. The courts of first instance were to be as many as the country required; the tribunals of appeal for Spain and the adjacent islands, not fewer than nine nor more than fifteen. The Royal Council was to be the Tribunal of Reposition, and should also take cognizance of appeals in ecclesiastical cases. Criminal processes were to be public, and it was to be discussed in the first Cortes whether or not trial by jury should be established. Appeal might be made to the Tribunal of Reposition against a criminal sentence. The High Court Royal was to take cognizance of personal offences committed by individuals of the Royal Family, ministers, senators, and counsellors of state; there might be no appeal against its sentences, but they were not to be executed till the King should have signed them. It was to consist of the eight senior senators, the six presidents of the sections of the Council of State, the president and two vice-presidents of the Royal Council. The right of pardoning should belong to the King alone. There should be one commercial code for Spain and the Indies; and in every great commercial town a Tribunal and a Junta of commerce.

The *Vales Reales*, *Juros*, and whatever loans the government had contracted, were acknowledged as the national debt. Custom-houses between different jurisdictions and provinces were abolished both in Spain and the Indies, and were only to exist upon the frontiers. Taxes were to be equalized throughout the kingdom, and all privileges, whether granted to corporations or individuals, were suppressed; but for those which had been purchased, an indemnification should be awarded. The public

CHAP.  
VII.  
1808.  
July.

Finance.



CHAP.  
VII.

1808.

July.

*Alliance  
with  
France.**Security of  
persons.**Limitation  
of entails.*

treasure was to be distinct from that of the crown, and under a director general appointed by the King; the accounts were to be rendered yearly, and examined and closed by a tribunal of general accounts, composed of persons whom the King should nominate. All nominations for all employments belonged to the King, or to the authorities to whom the laws confided them.

A perpetual alliance, offensive and defensive, by land and by sea, between France and Spain, was declared by this constitution; the contingent which each power was to furnish being to be determined by a particular treaty. Foreigners who had rendered important service to the state; or who might be useful to it by their talents, their invention, or their industry; and those who formed large establishments, or acquired lands for which they paid yearly taxes to the amount of fifty *pesos fuertes*, might be admitted to the rights of naturalization. Every man's house was an asylum, not to be entered except by day, and for a specific object, determined by the law, or by an order proceeding from the public authority. No person residing in the Spanish dominions should be arrested, except in *flagrante delictu*, without a legal and written order, issued by a competent authority, notified to the party, and explaining the grounds of the arrest, and the law in virtue of which it was granted. No Alcayde or jailer should receive or detain a prisoner, till he had entered in his register the warrant of committal: nor might the relations and friends of a prisoner be prevented from seeing him, if they came with an order from the magistrate, unless the judge should have given directions that the prisoner should have no communication with any person. The use of the torture was abolished, and any rigour beyond what the law enjoined was pronounced a crime.

All existing feoffments, entails, and substitutions, if the property did not amount by itself, or with other possessions held by the same owner, to the annual rent of 5000 *pesos fuertes*, were



abolished, and the owners were to hold it as free property. If it exceeded that value, the owner, at his choice, might ask the King's permission to make it free. If it exceeded the yearly value of 20,000 *pesos fuertes*, all above that sum should be free. In the course of one year the King would establish regulations upon this subject; and for the future no property might thus be tied up, except by virtue of the King's permission, granted in consideration of services rendered to the state, and for the purpose of perpetuating in their rank the families who should thus have deserved; but the property thus to be bound should in no case exceed the annual value of 20,000 *pesos fuertes*, nor fall short of 5000. The different degrees and classes of nobility were to be preserved with their respective distinctions; but all exemptions hitherto attached to it, from public burthens and duties, were abolished, and nobility was not to be required as a qualification for civil or ecclesiastical employment, nor for military rank either by sea or land. Services and talents were to be the only means of promotion. But no person might obtain public employment in the state or church, unless he had been born in Spain, or naturalized there. The endowments belonging to the different orders of knighthood were only to be bestowed according to their original destination, in recompense of public services; and no individual should hold more than one commandery.

The constitution was successively and gradually to be brought into use by decrees or edicts of the King, so that the whole should be in execution before the first of January, 1813. The particular charters of the provinces of Navarre, Biscay, Guipuzcoa and Alava, were to be examined in the first Cortes, that what should be deemed most convenient to the interest of those provinces and of the nation might be determined upon. Two years after the constitution should have been entirely car-

CHAP.  
VII.  
1808.  
July.

*Abolition of  
privileges.*

*Time for  
introducing  
the consti-  
tution, and  
for amend-  
ing it.*



CHAP.  
VII.

1808.

July.

ried into effect, the liberty of the press was to be established, and organized by a law made in the Cortes. All additions, modifications, and improvements, which it might be deemed expedient to make in this constitution, were to be presented by order of the King, for examination and discussion, to the first Cortes which should be held after the year 1820. And a copy of the constitution, signed by the Secretary of State, was forthwith to be communicated to the Royal Council and to the other councils and tribunals, in order that it might be published and circulated according to accustomed form.

*The Nobles and Regulars contend for their respective orders.*

*De Pradt, p. 152.*

*Nellerto, i. 103.*

The Notables were not allowed much time for deliberating upon the various provisions of this constitution, which they had been convoked to sanction and not to form. The only two points which called forth any discussion were the limitation of entails, and the declaration of intolerance: the nobles who, by a wise reform of government, when their injurious privileges were taken away, would have recovered their just and legitimate influence in the state, contended in vain against the first, which was designed to cut the root of their strength; the latter was unwillingly conceded to the inveterate prejudices of the nation by men whom the enormous falsehoods, the preposterous usages, and the execrable cruelty of their own church had driven into a state of unbelief, less impious than such a superstition. The Vicar-general of the Franciscans presented a memorial signed by the Prelates of the Religious Orders in behalf of those institutions, to show that it was not expedient to abolish them, but that some suppressions, and a limitation of their numbers, would produce all the good that was desired. A memoir was also presented in behalf of the Inquisition, by one of its officers, and signed by the Council of Castille, arguing against an apprehended intention of abolishing that tribunal, and advising that it should be enjoined to follow in its pro-



ceedings the forms of the episcopal ecclesiastical courts. Both memorials were referred to the legislature, as not being within the scope of the constitution.

The members of the Junta, ninety-one in number, subscribed this constitution, and bound themselves to observe it, and as far as in them lay to provide for its observation, believing, they said, that under a government thus defined, and so just a Prince as the one who for their good fortune had fallen to their lot, Spain would be as happy as they desired. The ministry was now completed: Urquijo was appointed Secretary of State, Cevallos Minister for Foreign Affairs, Azanza for the Indies, Mazarredo for the Marine, O'Farril for the War Department; Jovellanos for the Interior, in his absence and against his consent, repeatedly and firmly refused. The Conde de Cabarrus was appointed Minister of Finance; the news reached him at Burgos, where he was in the midst of the French armies: Cabarrus acted always from impulse rather than principle, and fear and ambition operating upon a vain, rash, unstable temper, he yielded in an unhappy hour, and, contrary to his better mind, accepted the appointment. Pinuela was made Minister of Justice; the Duque del Parque Captain of the Body Guard, the Duque del Infantado Colonel of the Spanish, and the Prince de Castelfranco of the Walloon Guards; the Marquis of Ariza Grand Chamberlain, the Duque de Hajar Grand Master of the Ceremonies, the Conde de Fernan Nuñez Grand Huntsman, the Conde de Santa Colonna Chamberlain.

Some of these persons signed the constitution, and accepted office because they were in a state of duress; some because they were regardless of every thing except their own interest, and cared not whom they served so they might serve themselves; others attached themselves faithfully to the intrusive King, because they miscalculated the resistance which could be opposed,

CHAP.  
VII.

1808.

July.

*Joseph appoints his ministers.*