

to the fifteenth century, this does not seem to have proceeded from any design of infringing on the liberties of the people. The nomination of these was originally vested in the householders at large, but was afterwards confined to the municipalities; a most mischievous alteration, which subjected their election eventually to the corrupt influence of the crown.²⁹ They assembled in the same chamber with the higher orders of the nobility and clergy; but, on questions of moment, retired to deliberate by themselves.³⁰ After the transaction of other business, their own petitions were presented to the sovereign, and his assent gave them the validity of laws. The Castilian commons, by neglecting to make their money grants depend on correspondent concessions from the crown, relinquished that powerful check on its operations so beneficially exerted in the British parliament, but in vain contended for even there, till a much later period than that now under consideration. Whatever may have been the right of the nobility and clergy to attend in cortes, their sanction was not deemed essential

the smaller and poorer places, which, from the charges it involved, felt it often, no doubt, less of a boon than a burden. This, we know, was the case in England.

²⁹ It was an evil of scarcely less magnitude, that contested elections were settled by the crown. (Capmany, *Práctica y Estilo*, p. 231.) The latter of these practices, and, indeed, the former to a certain extent, are to be met with in English history.

³⁰ Marina leaves this point in

some obscurity. (*Teoría*, tom. i. cap. 28.) Indeed, there seems to have been some irregularity in the parliamentary usages themselves. From minutes of a meeting of cortes at Toledo, in 1538, too soon for any material innovation on the ancient practice, we find the three estates sitting in separate chambers, from the very commencement to the close of the session. See the account drawn up by the count of Coruña, apud Capmany, *Práctica y Estilo*, pp. 240 et seq.

INTROD. to the validity of legislative acts;³¹ for their presence was not even required in many assemblies of the nation which occurred in the fourteenth and fifteenth centuries.³² The extraordinary power thus committed to the commons was, on the whole, unfavorable to their liberties. It deprived them of the sympathy and coöperation of the great orders of the state, whose authority alone could have enabled them to withstand the encroachments of arbitrary power, and who, in fact, did eventually desert them in their utmost need.³³

Its great powers.

But, notwithstanding these defects, the popular branch of the Castilian cortes, very soon after its admission into that body, assumed functions and exercised a degree of power on the whole superior to that enjoyed by it in other European legislatures. It was soon recognised as a fundamental principle of the constitution, that no tax could be imposed without its consent;³⁴ and an express en-

³¹ This, however, so contrary to the analogy of other European governments, is expressly contradicted by the declaration of the nobles, at the cortes of Toledo, in 1538. "Oida esta respuesta se dijo, que pues S. M. habia dicho que no eran Córtes ni habia Brazos, no podian tratar cosa alguna, que ellos sin procuradores, y los procuradores sin ellos, no seria válido lo que hicieren." *Relacion del Conde de Coruña, apud Capmany, Práctica y Estilo, p. 247.*

³² This omission of the privileged orders was almost uniform under Charles V. and his successors. But it would be unfair to seek for constitutional precedent in the usages of a government, whose

avowed policy was altogether subversive of the constitution.

³³ During the famous war of the *Comunidades*, under Charles V. For the preceding paragraph consult Marina, (*Teoría, part. 1, cap. 10, 20, 26, 29,*) and Capmany. (*Práctica y Estilo, pp. 220-250.*) The municipalities of Castile seem to have reposed but a very limited confidence in their delegates, whom they furnished with instructions, to which they were bound to conform themselves literally. See Marina, *Teoría, part. 1, cap. 23.*

³⁴ The term "fundamental principle" is fully authorized by the existence of repeated enactments to this effect. Sempere, who admits the "usage," objects to the

actment to this effect was suffered to remain on the statute book, after it had become a dead letter, as if to remind the nation of the liberties it had lost.³⁵ The commons showed a wise solicitude in regard to the mode of collecting the public revenue, oftentimes more onerous to the subject than the tax itself. They watched carefully over its appropriation to its destined uses. They restrained a too prodigal expenditure, and ventured more than once to regulate the economy of the royal household.³⁶ They kept a vigilant eye on the conduct of public officers, as well as on the right administration of justice, and commissions were appointed at their suggestion for inquiring into its abuses. They entered into negotiation for alliances with foreign powers, and, by determining the amount of supplies for the maintenance of troops in time of war, preserved a salutary check over military operations.³⁷

phrase, "fundamental law," on the ground that these acts were specific, not general, in their character. *Histoire des Cortès*, p. 254.

³⁵ "Los Reyes en nuestros Reynos progenitores establecieron por leyes, y ordenanças fechas en Cortes, que no se echassen, ni repartiessen ningunos pechos, seruiçios, pedidos, ni monedas, ni otros tributos nuevos, especial, ni generalmente en todos nuestros Reynos, sin que primeramente sean llamados à Cortes los procuradores de todas las Ciudades, y villas de nuestros Reynos, y sean otorgados por los dichos procuradores que à las Cortes vinieren." (*Recopilacion de las Leyes*, (Madrid, 1640,) tom. ii. fol. 124.) This law, passed under Alfonso XI., was confirmed by

John II., Henry III., and Charles V.

³⁶ In 1258, they presented a variety of petitions to the king, in relation to his own personal expenditure, as well as that of his courtiers; requiring him to diminish the charges of his table, attire, &c. and, bluntly, to "bring his appetite within a more reasonable compass"; to all which he readily gave his assent. (*Sempere y Guarinos, Historia del Luxo, y de las Leyes Suntuarias de España*, (Madrid, 1788,) tom. i. pp. 91, 92.) The English reader is reminded of a very different result, which attended a similar interposition of the commons in the time of Richard II., more than a century later.

³⁷ Marina claims also the right

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The nomination of regencies was subject to their approbation, and they defined the nature of the authority to be intrusted to them. Their consent was esteemed indispensable to the validity of a title to the crown, and this prerogative, or at least the image of it, has continued to survive the wreck of their ancient liberties.³⁸ Finally, they more than once set aside the testamentary provisions of the sovereigns in regard to the succession.³⁹

Its boldness.

Without going further into detail, enough has been said to show the high powers claimed by the commons, previously to the fifteenth century, which, instead of being confined to ordinary subjects of legislation, seem, in some instances, to have reached to the executive duties of the administration. It would, indeed, show but little acquaintance with the social condition of the middle ages, to suppose that the practical exercise of these powers always corresponded with their theory. We trace repeated instances, it is true, in which they were claimed and successfully exerted; while, on the other hand, the multiplicity of remedial statutes proves too

of the cortes to be consulted on questions of war and peace, of which he adduces several precedents. (Teoria, part. 2, cap. 19, 20.) Their interference in what is so generally held the peculiar province of the executive, was perhaps encouraged by the sovereign, with the politic design of relieving himself of the responsibility of measures, whose success must depend eventually on their support. Hallam notices a similar policy of the crown, under Edward III., in his view of the English constitu-

tion during the middle ages. View of the State of Europe during the Middle Ages, (London, 1819,) vol. iii. chap. 8.

³⁸ The recognition of the title of the heir apparent, by a cortes convoked for that purpose, has continued to be observed in Castile down to the present time. Práctica y Estilo, p. 229.

³⁹ For the preceding notice of the cortes, see Marina, Teoria, part. 2, cap. 13, 19, 20, 21, 31, 35, 37, 38.

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plainly how often the rights of the people were invaded by the violence of the privileged orders, or the more artful and systematic usurpations of the crown. But, far from being intimidated by such acts, the representatives in cortes were ever ready to stand forward as the intrepid advocates of constitutional freedom; and the unqualified boldness of their language on such occasions, and the consequent concessions of the sovereign, are satisfactory evidence of the real extent of their power, and show how cordially they must have been supported by public opinion.

It would be improper to pass by without notice an anomalous institution peculiar to Castile, which sought to secure the public tranquillity by means scarcely compatible themselves with civil subordination. I refer to the celebrated *Hermandad*, or Holy Brotherhood, as the association was, sometimes called, a name familiar to most readers in the lively fictions of Le Sage, though conveying there no very adequate idea of the extraordinary functions which it assumed at the period under review. Instead of a regularly organized police, it then consisted of a confederation of the principal cities bound together by solemn league and covenant, for the defence of their liberties in seasons of civil anarchy. Its affairs were conducted by deputies, who assembled at stated intervals for this purpose, transacting their business under a common seal, enacting laws which they were careful to transmit to the nobles and even the sovereign himself, and enforcing their measures by an armed force. This

Herman-
dades of
Castile.

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wild kind of justice, so characteristic of an unsettled state of society, repeatedly received the legislative sanction; and, however formidable such a popular engine may have appeared to the eye of the monarch, he was often led to countenance it by a sense of his own impotence, as well as of the overweening power of the nobles, against whom it was principally directed. Hence these associations, although the epithet may seem somewhat overstrained, have received the appellation of "cortes extraordinary."⁴⁰

Wealth of
the cities.

With these immunities, the cities of Castile attained a degree of opulence and splendor unrivalled, unless in Italy, during the middle ages. At a very early period, indeed, their contact with the Arabs had familiarized them with a better system of agriculture, and a dexterity in the mechanic arts unknown in other parts of Christendom.⁴¹ On the

⁴⁰ So at least they are styled by Marina. See his account of these institutions; (Teoria, part. 2, cap. 39;) also Salazar de Mendoza, (Monarquía, lib. 3, cap. 15, 16,) and Sempere, (Histoire des Cortès, chap. 12, 13.) One hundred cities associated in the Hermandad of 1315. In that of 1295, were thirty-four. The knights and inferior nobility frequently made part of the association. The articles of confederation are given by Risco, in his continuation of Florez. (España Sagrada, (Madrid, 1775-1826,) tom. xxxvi. p. 162.) In one of these articles it is declared, that, if any noble shall deprive a member of the association of his property, and refuse restitution, his house shall be razed to the ground. (Art. 4.) In another, that if any one, by

command of the king, shall attempt to collect an unlawful tax, he shall be put to death on the spot. Art. 9.

⁴¹ See Sempere, Historia del Luxo, tom. i. p. 97. — Masdeu, Hist. Crítica, tom. xiii. nos. 90, 91. — Gold and silver, curiously wrought into plate, were exported in considerable quantities from Spain, in the tenth and eleventh centuries. They were much used in the churches. The tiara of the pope was so richly incrustated with the precious metals, says Masdeu, as to receive the name of *Spanoclista*. The familiar use of these metals as ornaments of dress is attested by the ancient poem of the "Cid." See, in particular, the costume of the Campeador; vv. 3099 et seq.

occupation of a conquered town, we find it distributed into quarters or districts, appropriated to the several crafts, whose members were incorporated into guilds, under the regulation of magistrates and by-laws of their own appointment. Instead of the unworthy disrepute, into which the more humble occupations have since fallen in Spain, they were fostered by a liberal patronage, and their professors in some instances elevated to the rank of knighthood.⁴² The excellent breed of sheep, which early became the subject of legislative solicitude, furnished them with an important staple, which, together with the simpler manufactures, and the various products of a prolific soil, formed the materials of a profitable commerce.⁴³ Augmentation of

⁴² Zuñiga, *Annales Eclesiásticos y Seculares de Sevilla*, (Madrid, 1677,) pp. 74, 75.—Sempere, *Historia del Luxo*, tom. i. p. 80.

⁴³ The historian of Seville describes that city, about the middle of the fifteenth century, as possessing a flourishing commerce, and a degree of opulence unexampled since the conquest. It was filled with an active population, employed in the various mechanic arts. Its domestic fabrics, as well as natural products, of oil, wine, wool, &c., supplied a trade with France, Flanders, Italy, and England. (Zuñiga, *Annales de Sevilla*, p. 341.—See also Sempere, *Historia del Luxo*, p. 81, nota 2.) The ports of Biscay, which belonged to the Castilian crown, were the marts of an extensive trade with the north, during the thirteenth and fourteenth centuries. This province entered into repeated treaties of commerce with France and England; and her factories were established at Bruges, the great em-

porium of commercial intercourse during this period between the north and south, before those of any other people in Europe, except the Germans. (*Diccionario Geográfico-Histórico de España*, por la Real Academia de la Historia, (Madrid, 1802,) tom. i. p. 333.)

The institution of the *mesta* is referred, says Laborde, (*Itinéraire Descriptif de l'Espagne*, (Paris, 1827—1830,) tom. iv. p. 47,) to the middle of the fourteenth century, when the great plague, which devastated the country so sorely, left large depopulated tracts open to pasturage. This popular opinion is erroneous, since it engaged the attention of government, and became the subject of legislation as anciently as 1273, under Alfonso the Wise. (See Asso y Manuel, *Instituciones*, Introd. p. 56.) Capmany, however, dates the great improvement in the breed of Spanish sheep from the year 1394, when Catharine of Lancaster brought with her, as a part of her dowry

INTROD. wealth brought with it the usual appetite for expensive pleasures; and the popular diffusion of luxury in the fourteenth and fifteenth centuries is attested by the fashionable invective of the satirist, and by the impotence of repeated sumptuary enactments.⁴⁴ Much of this superfluous wealth, however, was expended on the construction of useful public works. Cities, from which the nobles had once been so jealously excluded, came now to be their favorite residence.⁴⁵ But, while their sumptuous edifices and splendid retinues dazzled the eyes of the peaceful burghers, their turbulent spirit was preparing the way for those dismal scenes of faction, which convulsed the little commonwealths to their centre during the latter half of the fifteenth century.

The flourishing condition of the communities

to the heir apparent of Castile, a flock of English merinos, distinguished, at that time, above those of every other country, for the beauty and delicacy of their fleece. (*Memorias Históricas sobre la Marina, Comercio, y Artes de Barcelona*, (Madrid, 1779-1792,) tom. iii. pp. 336, 337.) This acute writer, after a very careful examination of the subject, differing from those already quoted, considers the raw material for manufacture, and the natural productions of the soil, to have constituted almost the only articles of export from Spain, until after the fifteenth century. (*Ibid.*, p. 338.) We will remark, in conclusion of this desultory note, that the term *merinos* is derived, by Conde, from *moedinas*, signifying "wandering"; the name of an Arabian tribe, who shifted their place of residence with the season.

(*Hist. de los Arabes en España*, tom. i. p. 488, nota.) The derivation might startle any but a professed etymologist.

⁴⁴ See the original acts, cited by Sempere. (*Historia del Luxo*, passim.) The archpriest of Hita indulges his vein freely against the luxury, cupidity, and other fashionable sins of his age. (See Sanchez, *Poesias Castellanas*, tom. iv.) — The influence of Mammon appears to have been as supreme in the fourteenth century as at any later period.

"Sea un ome nascido, et rudo labrador,
Los dineros lo fassen fidalgo e sabidor,
Quanto mas algo tiene, tanto es mas de
valor,
El que no ha dineros, non es de si señor."
Vv. 465 et seq.

⁴⁵ Marina, *Ensayo*, nos. 199, 297. — Zuñiga, *Annales de Sevilla*, p. 341.

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 Period of
the highest
power of
the com-
mons.

gave their representatives a proportional increase of importance in the national assembly. The liberties of the people seemed to take deeper root in the midst of those political convulsions, so frequent in Castile, which unsettled the ancient prerogatives of the crown. Every new revolution was followed by new concessions on the part of the sovereign, and the popular authority continued to advance with a steady progress until the accession of Henry the Third, of Trastamara, in 1393, when it may be said to have reached its zenith. A disputed title and a disastrous war compelled the father of this prince, John the First, to treat the commons with a deference unknown to his predecessors. We find four of their number admitted into his privy council, and six associated in the regency, to which he confided the government of the kingdom during his son's minority.⁴⁶ A remarkable fact, which occurred in this reign, showing the important advances made by the commons in political estimation, was the substitution of the sons of burgesses for an equal number of those of the nobility, who were stipulated to be delivered as hostages for the fulfilment of a treaty with Portugal, in 1393.⁴⁷ There will be occasion to notice, in the first chapter of this History, some of the circumstances, which, contributing to undermine the power of the commons, prepared the way for the eventual subversion of the constitution.

⁴⁶ Marina, Teoría, part. 2, cap. 28. — Mariana, Hist. de España, lib. 18, cap. 15. — The admission of citizens into the king's council, would have formed a most important epoch for the commons, had

they not soon been replaced by juriconsults, whose studies and sentiments inclined them less to the popular side than to that of prerogative.

⁴⁷ Ibid., lib. 18, cap. 17.

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The nobility.

The peculiar situation of Castile, which had been so favorable to popular rights, was eminently so to those of the aristocracy. The nobles, embarked with their sovereign in the same common enterprise of rescuing their ancient patrimony from its invaders, felt entitled to divide with him the spoils of victory. Issuing forth, at the head of their own retainers, from their strong-holds or castles, (the great number of which was originally implied in the name of the country,) ⁴⁸ they were continually enlarging the circuit of their territories, with no other assistance than that of their own good swords. ⁴⁹ This independent mode of effecting their conquests would appear unfavorable to the introduction of the feudal system, which, although its existence in Castile is clearly ascertained, by positive law, as well as usage, never prevailed to any thing like the same extent as it did in the sister kingdom of Aragon, and other parts of Europe. ⁵⁰

⁴⁸ *Castilla*. See Salazar de Mendoza, *Monarquía*, tom. i. p. 108. — Livy mentions the great number of these towers in Spain in his day. "Multas et locis altis positas turres Hispania habet." (Lib. 22, cap. 19.) — A castle was emblazoned on the escutcheon of Castile, as far back as the reign of Urraca, in the beginning of the twelfth century, according to Salazar de Mendoza, (*Monarquía*, tom. i. p. 142,) although Garibay discerns no vestige of these arms on any instrument of a much older date than the beginning of the thirteenth century. *Compendio*, lib. 12, cap. 32.

⁴⁹ "Hizo guerra a los Moros,
Ganando sus fortalezas
Y sus villas.
Y en las lides que venció
Caballeros y caballos

Se perdieron,
Y en este oficio ganó
Las rentas y los vasallos
Que le diéron."

Coplas de Manrique, cople 31.

⁵⁰ Asso and Manuel derive the introduction of fiefs into Castile, from Catalonia. (*Instituciones*, p. 96.) The twenty-sixth title, part. 4, of Alfonso X.'s code, (*Siete Partidas*), treats exclusively of them. (*De los Feudos*.) The laws 2, 4, 5, are expressly devoted to a brief exposition of the nature of a fief, the ceremonies of investiture, and the reciprocal obligations of lord and vassal. Those of the latter consisted in keeping his lord's counsel, maintaining his interest, and aiding him in war. With all this, there are anomalies in this code, and still more in the usages