

ferred them, knew well by what a precarious, illicit tenure he was to hold them.

SECTION  
I.

Constitution  
at the begin-  
ning of the  
fifteenth  
century.

From the view which has been presented of the Castilian constitution at the beginning of the fifteenth century, it is apparent, that the sovereign was possessed of less power, and the people of greater, than in other European monarchies at that period. It must be owned, however, as before intimated, that the practical operation did not always correspond with the theory of their respective functions in these rude times; and that the powers of the executive, being susceptible of greater compactness and energy in their movements, than could possibly belong to those of more complex bodies, were sufficiently strong in the hands of a resolute prince, to break down the comparatively feeble barriers of the law. Neither were the relative privileges, assigned to the different orders of the state, equitably adjusted. Those of the aristocracy were indefinite and exorbitant. The license of armed combinations too, so freely assumed both by this order and the commons, although operating as a safety-valve for the escape of the effervescing

department. I allude to the valuable works of Marina, on the early legislation, and on the cortes, of Castile, to which repeated reference has been made in this section. The latter, especially, presents us with a full exposition of the appropriate functions assigned to the several departments of government, and with the parliamentary history of Castile deduced from original, unpublished records.

It is unfortunate that his copious illustrations are arranged in so un-

skilful a manner as to give a dry and repulsive air to the whole work. The original documents, on which it is established, instead of being reserved for an appendix, and their import only conveyed in the text, stare at the reader in every page, arrayed in all the technicalities, periphrases, and repetitions incident to legal enactments. The course of the investigation is, moreover, frequently interrupted by impertinent dissertations on the constitution of 1812, in which the

Marina and  
Semper.

INTROD.

spirit of the age, was itself obviously repugnant to all principles of civil obedience, and exposed the state to evils scarcely less disastrous than those which it was intended to prevent.

It was apparent, that, notwithstanding the magnitude of the powers conceded to the nobility and the commons, there were important defects, which prevented them from resting on any sound and permanent basis. The representation of the people in cortes, instead of partially emanating, as in England, from an independent body of landed proprietors, constituting the real strength of the nation, proceeded exclusively from the cities, whose elections were much more open to popular caprice and ministerial corruption, and whose numerous local jealousies prevented them from acting in cordial coöperation. The nobles, notwithstanding their occasional coalitions, were often arrayed in feuds against each other. They relied, for the defence of their privileges, solely on their physical strength, and heartily disdained, in any emergency, to support their own cause by identifying it with that of the commons. Hence it became obvious, that the

author has fallen into abundance of crudities, which he would have escaped, had he but witnessed the practical operation of those liberal forms of government, which he so justly admires. The sanguine temper of Marina has also betrayed him into the error of putting, too uniformly, a favorable construction on the proceedings of the commons, and of frequently deriving a constitutional precedent from what can only be regarded as an acciden-

tal and transient exertion of power in a season of popular excitement.

The student of this department of Spanish history, may consult, in conjunction with Marina, Sempere's little treatise, often quoted, on the History of the Castilian Cortes. It is, indeed, too limited and desultory in its plan, to afford any thing like a complete view of the subject. But, as a sensible commentary, by one well skilled in the topics that he discusses, it is of undoubted value.

monarch, who, notwithstanding his limited prerogative, assumed the anomalous privilege of transacting public business with the advice of only one branch of the legislature, and of occasionally dispensing altogether with the attendance of the other, might, by throwing his own influence into the scale, give the preponderance to whichever party he should prefer; and, by thus dexterously availing himself of their opposite forces, erect his own authority on the ruins of the weaker. — How far and how successfully this policy was pursued by Ferdinand and Isabella, will be seen in the course of this History.

Since the political principles and bias of the author were of an opposite character to Marina's, they frequently lead him to opposite conclusions in the investigation of the same facts. Making all allowance for obvious prejudices, Semper's work, therefore, may be of much use in correcting the erroneous impressions made by the former writer, whose fabric of liberty too often rests, as exemplified more than once in the preceding pages, on an ideal basis.

But, with every deduction, Marina's publications must be considered an important contribution to political science. They exhibit an able analysis of a constitution, which becomes singularly interesting, from its having furnished, together with that of the sister kingdom of Aragon, the earliest example of representative government, as well as from the liberal principles, on which that government was long administered.

## SECTION II.

### REVIEW OF THE CONSTITUTION OF ARAGON, TO THE MIDDLE OF THE FIFTEENTH CENTURY.

Rise of Aragon. — Ricos Hombres. — Their Immunities. — Their Turbulence. — Privileges of Union. — The Legislature. — Its Forms. — Its Powers. — General Privilege. — Judicial Functions of Cortes. — The Justice. — His great Authority. — Rise and Opulence of Barcelona. — Her free Institutions. — Intellectual Culture.

INTROD.

Rise of Aragon.

THE political institutions of Aragon, although bearing a general resemblance to those of Castile, were sufficiently dissimilar to stamp a peculiar physiognomy on the character of the nation, which still continued after it had been incorporated with the great mass of the Spanish monarchy. — It was not until the expiration of nearly five centuries after the Saracen invasion, that the little district of Aragon, growing up under the shelter of the Pyrenees, was expanded into the dimensions of the province which now bears that name. During this period, it was painfully struggling into being, like the other states of the Peninsula, by dint of fierce, unintermitted warfare with the infidel.

Even after this period, it would probably have filled but an insignificant space in the map of history, and, instead of assuming an independent station, have been compelled, like Navarre, to accommodate itself to the politics of the potent

monarchies by which it was surrounded, had it not extended its empire by a fortunate union with Catalonia in the twelfth, and the conquest of Valencia in the thirteenth century.<sup>1</sup> These new territories were not only far more productive than its own, but, by their long line of coast and commodious ports, enabled the Aragonese, hitherto pent up within their barren mountains, to open a communication with distant regions.

The ancient county of Barcelona had reached a higher degree of civilization than Aragon, and was distinguished by institutions quite as liberal. The sea-board would seem to be the natural seat of liberty. There is something in the very presence, in the atmosphere of the ocean, which invigorates not only the physical, but the moral energies of man. The adventurous life of the mariner familiarizes him with dangers, and early accustoms him to independence. Intercourse with various climes opens new and more copious sources of knowledge; and increased wealth brings with it an augmentation of power and consequence. It was in the maritime cities scattered along the Mediterranean, that the seeds of liberty both in ancient and modern times, were implanted and brought to maturity. During the Middle Ages, when the people of Europe generally maintained a toilsome and infrequent intercourse with each other, those situated on the margin of this inland ocean found an easy

<sup>1</sup> Catalonia was united with Aragon by the marriage of queen Petronilla with Raymond Berengere, count of Barcelona, in 1150. Valencia was conquered from the Moors by James I., in 1238.

INTROD.

mode of communication across the high road of its waters. They mingled in war too as in peace, and this long period is filled with their international contests, while the other free cities of Christendom were wasting themselves in civil feuds and degrading domestic broils. In this wide and various collision their moral powers were quickened by constant activity; and more enlarged views were formed, with a deeper consciousness of their own strength, than could be obtained by those inhabitants of the interior, who were conversant only with a limited range of objects, and subjected to the influence of the same dull, monotonous circumstances.

Among these maritime republics, those of Catalonia were eminently conspicuous. By the incorporation of this country with the kingdom of Aragon, therefore, the strength of the latter was greatly augmented. The Aragonese princes, well aware of this, liberally fostered institutions to which the country owed its prosperity, and skilfully availed themselves of its resources for the aggrandizement of their own dominions. They paid particular attention to the navy, for the more perfect discipline of which a body of laws was prepared by Peter the Fourth, in 1354, that was designed to render it invincible. No allusion whatever is made in this stern code to the mode of surrendering to, or retreating from the enemy. The commander, who declined attacking any force not exceeding his own by more than one vessel, was punished with death.<sup>2</sup>

<sup>2</sup> Capmany, Mem. de Barcelona, tom. iii. pp. 45-47. — The Catalans were much celebrated during the Middle Ages for their skill with

The Catalan navy successfully disputed the empire of the Mediterranean with the fleets of Pisa, and still more of Genoa. With its aid, the Aragonese monarchs achieved the conquest successively of Sicily, Sardinia, and the Balearic Isles, and annexed them to the empire.<sup>3</sup> It penetrated into the farthest regions of the Levant; and the expedition of the Catalans into Asia, which terminated with the more splendid than useful acquisition of Athens, forms one of the most romantic passages in this stirring and adventurous era.<sup>4</sup>

But, while the princes of Aragon were thus enlarging the bounds of their dominion abroad, there was probably not a sovereign in Europe possessed of such limited authority at home. The three great states with their dependencies, which constituted the Aragonese monarchy, had been declared by a statute of James the Second, in 1319, inalienable and indivisible.<sup>5</sup> Each of them, however, maintained a separate constitution of government, and was administered by distinct laws. As it would be fruitless to investigate the peculiarities of their respective institutions, which bear a very

the crossbow; for a more perfect instruction in which, the municipality of Barcelona established games and gymnasiums. *Ibid.*, tom. i. p. 113.

<sup>3</sup> Sicily revolted to Peter III., in 1282. — Sardinia was conquered by James II., in 1324, and the Balearic Isles by Peter IV., in 1343-4. Zurita, *Anales*, tom. i. fol. 247; tom. ii. fol. 60. — Hermylly, *Histoire du Royaume de Majorque*, (Maestricht, 1777,) pp. 227-268.

<sup>4</sup> Hence the title of duke of Athens, assumed by the Spanish sovereigns. The brilliant fortunes of Roger de Flor are related by count Moncada, (*Expedicion de los Catalanes y Aragoneses contra Turcos y Griegos*, Madrid, 1805,) in a style much commended by Spanish critics for its elegance. See Mondejar, *Advertencias*, p. 114.

<sup>5</sup> It was confirmed by Alfonso III., in 1328. Zurita, *Anales*, tom. ii. fol. 90.

INTROD.

close affinity to one another, we may confine ourselves to those of Aragon, which exhibit a more perfect model than those either of Catalonia or Valencia, and have been far more copiously illustrated by her writers.

Code of  
Soprarbe.

The national historians refer the origin of their government to a written constitution of about the middle of the ninth century, fragments of which are still preserved in certain ancient documents and chronicles. On occurrence of a vacancy in the throne, at this epoch, a monarch was elected by the twelve principal nobles, who prescribed a code of laws, to the observance of which he was obliged to swear before assuming the sceptre. The import of these laws was to circumscribe within very narrow limits the authority of the sovereign, distributing the principal functions to a *Justicia*, or Justice, and these same peers, who, in case of a violation of the compact by the monarch, were authorized to withdraw their allegiance, and, in the bold language of the ordinance, "to substitute any other ruler in his stead, even a pagan, if they listed."<sup>6</sup> The whole of this wears much of a fabulous aspect, and may remind the reader of the government which Ulysses met with in Phæacia; where King Alcinous

<sup>6</sup> See the fragments of the *Fuero de Soprarbe*, cited by Blancas, *Aragonensium Rerum Commentarii*, (Cæsarangustæ, 1588.) pp. 25 - 29. — The well-known oath of the Aragonese to their sovereign on his accession, "Nos que valemus tanto como vos," &c. frequently quoted by historians, rests on the authority of Antonio Perez, the unfortunate minister of

Philip II., who, however good a voucher for the usages of his own time, has made a blunder in the very sentence preceding this, by confounding the Privilege of Union with one of the Laws of Soprarbe, which shows him to be insufficient, especially as he is the only authority for this ancient ceremony. See Antonio Perez, *Relaciones*, (Paris, 1598,) fol. 92.



SECTION  
II.

is surrounded by his "twelve illustrious peers or archons," subordinate to himself, "who," says he, "rule over the people, I myself being the thirteenth."<sup>7</sup> But, whether true or not, this venerable tradition must be admitted to have been well calculated to repress the arrogance of the Aragonese monarchs, and to exalt the minds of their subjects by the image of ancient liberty which it presented.<sup>8</sup>

The great barons of Aragon were few in number. They affected to derive their descent from the twelve peers above mentioned, and were styled *ricos hombres de natura*, implying by this epithet, that they were not indebted for their creation to the will of the sovereign. No estate could be legally conferred by the crown, as an *honor* (the denomination of fiefs in Aragon), on any but one of these high nobles. This, however, was in time evaded by the monarchs, who advanced certain of their own retainers to a level with the ancient peers of the land; a measure which proved a fruitful

The ricos  
hombres.

<sup>7</sup> Δώδεκα γὰρ κατὰ δῆμον ἀριστεροὶς βασιλῆος ἄρχοι κραινοῦσι, τρισκαίδεκατος δ' ἰγὰ αὐτός.  
Odys. ©. 390.

In like manner Alfonso III. alludes to "the ancient times in Aragon, when there were as many kings as ricos hombres." See Zurita, Anales, tom. i. fol. 316.

<sup>8</sup> The authenticity of the "Fuero de Soprarbe" has been keenly debated by the Aragonese and Navarrese writers. Moret, in refutation of Blancas, who espouses it, (See Commentarii, p. 289,) states, that, after a diligent investigation of the archives of that region, he finds no mention of the laws, nor

even of the *name*, of Soprarbe, until the eleventh century; a startling circumstance for the antiquary. (Investigaciones Históricas de las Antigüedades del Reyno de Navarra, (Pamplona, 1766,) tom. vi. lib. 2, cap. 11.) Indeed, the historians of Aragon admit, that the public documents previous to the fourteenth century suffered so much from various causes as to leave comparatively few materials for authentic narrative. (Blancas, Commentarii, Pref. — Risco, España Sagrada, tom. xxx. Prólogo.) Blancas transcribed his extract of the laws of Soprarbe principally from Prince Charles of Viana's History, written in the fifteenth century. See Commentarii, p. 25.

## INTROD.

source of disquietude.<sup>9</sup> No baron could be divested of his fief, unless by public sentence of the Justice and the cortes. The proprietor, however, was required, as usual, to attend the king in council, and to perform military service, when summoned, during two months in the year, at his own charge,<sup>10</sup>

Their immunities.

The privileges, both honorary and substantial, enjoyed by the *ricos hombres*, were very considerable. They filled the highest posts in the state. They originally appointed judges in their domains for the cognizance of certain civil causes, and over a class of their vassals exercised an unlimited criminal jurisdiction. They were excused from taxation except in specified cases; were exempted from all corporal and capital punishment; nor could they be imprisoned, although their estates might be sequestered, for debt. A lower class of nobility styled *infanzones*, equivalent to the Castilian *hidalgos*, together with the *caballeros*, or knights, were also possessed of important though inferior immunities.<sup>11</sup>

The king distributed among the great barons the territory reconquered from the Moors, in proportions

<sup>9</sup> Asso y Manuel, *Instituciones*, pp. 39, 40. — Blancas, *Commentarii*, pp. 333, 334, 340. — *Fueros y Observancias del Reyno de Aragon*, (Zaragoza, 1667,) tom. i. fol. 130. — The *ricos hombres*, thus created by the monarch, were styled *de mesnada*, signifying "of the household." It was lawful for a *rico hombre* to bequeath his honors to whichever of his legitimate children he might prefer, and, in default of issue, to his nearest of kin. He was bound to distribute the bulk of his estates in fiefs

among his knights, so that a complete system of sub-infeudation was established. The knights, on restoring their fiefs, might change their suzerains at pleasure.

<sup>10</sup> Asso y Manuel, *Instituciones*, p. 41. — Blancas, *Commentarii*, pp. 307, 322, 331.

<sup>11</sup> *Fueros y Observancias*, tom. i. fol. 130. — Martel, *Forma de Celebrar Cortes en Aragon*, (Zaragoza, 1641,) p. 98. — Blancas, *Commentarii*, pp. 306, 312-317, 323, 360. — Asso y Manuel, *Instituciones*, pp. 40-43.