

SECTION
II.

It had a right to be consulted on all matters of importance, especially on those of peace and war. No law was valid, no tax could be imposed, without its consent; and it carefully provided for the application of the revenue to its destined uses.⁴¹ It determined the succession to the crown; removed obnoxious ministers; reformed the household, and domestic expenditure, of the monarch; and exercised the power, in the most unreserved manner, of withholding supplies, as well as of resisting what it regarded as an encroachment on the liberties of the nation.⁴²

The excellent commentators on the constitution of Aragon have bestowed comparatively little attention on the developement of its parliamentary history; confining themselves too exclusively to mere forms of procedure. The defect has been greatly obviated by the copiousness of their general historians. But the statute-book affords the most unequivocal evidence of the fidelity with which the guardians of the realm discharged the high trust reposed in them, in the numerous enactments it exhibits, for the security both of person and property. Almost the first page which meets the eye in this venerable record contains the General Privilege,

The General
Privilege.

⁴¹ *Fueros y Observancias*, fol. 6. tit. Privileg. Gen. — *Blancas, Commentarii*, p. 371. — *Capmany, Práctica y Estilo*, p. 51. — It was anciently the practice of the legislature to grant supplies of troops, but not of money. When Peter IV. requested a pecuniary subsidy, the cortes told him, that "such thing had not been usual; that his Chris-

tian subjects were wont to serve him with their persons, and it was only for Jews and Moors to serve him with money." *Blancas, Modo de Proceder*, cap. 18.

⁴² See examples of them in *Zurita, Anales*, tom. i. fol. 51, 263; tom. ii. fol. 391, 394, 424. — *Blancas, Modo de Proceder*, fol. 98, 106.

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the Magna Charta, as it has been well denominated, of Aragon. It was granted by Peter the Great to the cortes at Saragossa, in 1283. It embraces a variety of provisions for the fair and open administration of justice; for ascertaining the legitimate powers intrusted to the cortes; for the security of property against exactions of the crown; and for the conservation of their legal immunities to the municipal corporations and the different orders of nobility. In short, the distinguishing excellence of this instrument, like that of Magna Charta, consists in the wise and equitable protection which it affords to all classes of the community.⁴³ The General Privilege, instead of being wrested, like King John's charter, from a pusillanimous prince, was conceded, reluctantly enough, it is true, in an assembly of the nation, by one of the ablest monarchs who ever sat on the throne of Aragon, at a time when his arms, crowned with repeated victory, had secured to the state the most important of her foreign acquisitions.

The Aragonese, who rightly regarded the General Privilege as the broadest basis of their liberties, repeatedly procured its confirmation by succeeding sovereigns. "By so many and such various

⁴³ "There was such a conformity of sentiment among all parties," says Zurita, "that the privileges of the nobility were no better secured than those of the commons. For the Aragonese deemed that the existence of the commonwealth depended not so much on its strength, as on its liberties." (Anales, lib. 4, cap. 38.) In the

confirmation of the privilege by James the Second, in 1325, torture, then generally recognised by the municipal law of Europe, was expressly prohibited in Aragon, "as unworthy of freemen." See Zurita, Anales, lib. 6, cap. 61, — and Fueros y Observancias, tom. i. fol. 9. Declaratio Priv. Generalis.

precautions," says Blancas, "did our ancestors establish that freedom which their posterity have enjoyed; manifesting a wise solicitude, that all orders of men, even kings themselves, confined within their own sphere, should discharge their legitimate functions without jostling or jarring with one another; for in this harmony consists the temperance of our government. Alas!" he adds, "how much of all this has fallen into desuetude from its antiquity, or been effaced by new customs."⁴⁴

The judicial functions of the cortes have not been sufficiently noticed by writers. They were extensive in their operation, and gave it the name of the General Court. They were principally directed to protect the subject from the oppressions of the crown and its officers; over all which cases it possessed original and ultimate jurisdiction. The suit was conducted before the Justice, as president of the cortes, in its judicial capacity, who delivered an opinion conformable to the will of the majority.⁴⁵

Judicial
functions
of cortes.

⁴⁴ The patriotism of Blancas warms as he dwells on the illusory picture of ancient virtue, and contrasts it with the degeneracy of his own day. "Et vero prisca hæc tanta severitas, desertaque illa et inculta vita, quando dies noctesque nostri armati concursabant, ac in bello et Maurorum sanguine assidui versabantur; verè quidem parsimonie, fortitudinis, temperantie, cæterarumque virtutum omnium magistra fuit. In quâ maleficia ac scelera, quæ nunc in otiosâ hac nostrâ umbratili et delicatâ gignuntur, gigni non solebant; quinimmo ita tunc æqualiter omnes omni ge-

nere virtutum florere, ut egregia hæc laus videatur non hominum solum, verum illorum etiam temporum fuisse." Commentarii, p. 340.

⁴⁵ It was more frequently referred, both for the sake of expedition, and of obtaining a more full investigation, to commissioners nominated conjointly by the cortes and the party demanding redress. The nature of the *greuges*, or grievances, which might be brought before the legislature, and the mode of proceeding in relation to them, are circumstantially detailed by the parliamentary historians of Aragon. See Berart, Discurso so-

INTROD. The authority, indeed, of this magistrate in his own court was fully equal to providing adequate relief in all these cases.⁴⁶ But for several reasons this parliamentary tribunal was preferred. The process was both more expeditious and less expensive to the suitor. Indeed, "the most obscure inhabitant of the most obscure village in the kingdom, although a foreigner," might demand redress of this body; and, if he was incapable of bearing the burden himself, the state was bound to maintain his suit, and provide him with counsel at its own charge. But the most important consequence, resulting from this legislative investigation, was the remedial laws frequently attendant on it. "And our ancestors," says Blancas, "deemed it great wisdom patiently to endure contumely and oppression for a season, rather than seek redress before an inferior tribunal, since, by postponing their suit till the meeting of cortes, they would not only obtain a remedy for their own grievance, but one of a universal and permanent application."⁴⁷

Preponderance of the commons.

The Aragonese cortes maintained a steady control over the operations of government, especially after the dissolution of the Union; and the weight of the commons was more decisive in it, than in other similar assemblies of that period. Its singular distribution into four estates was favorable to

bre la Celebracion de Cortes, cap. 7. — Capmany, *Práctica y Estilo*, pp. 37-44. — Blancas, *Modo de Proceder*, cap. 14, — and Martel, *Forma de Celebrar Cortes*, cap. 54-59.

⁴⁶ Blancas, *Modo de Proceder*,

cap. 14. — Yet Peter IV., in his dispute with the justice Fernandez de Castro, denied this. Zurita, *Anales*, tom. ii. fol. 170.

⁴⁷ Blancas, *Modo de Proceder*, ubi supra.

this. The knights and *hidalgos*, an intermediate order between the great nobility and the people, when detached from the former, naturally lent additional support to the latter, with whom, indeed, they had considerable affinity. The representatives of certain cities, as well as a certain class of citizens, were entitled to a seat in this body;⁴⁸ so that it approached both in spirit and substance to something like a popular representation. Indeed, this arm of the cortes was so uniformly vigilant in resisting any encroachment on the part of the crown, that it has been said to represent, more than any other, the liberties of the nation.⁴⁹ In some other particulars the Aragonese commons possessed an advantage over those of Castile. 1. By postponing their money grants to the conclusion of the session, and regulating them in some degree by the previous dispositions of the crown, they availed themselves of an important lever relinquished by the Castilian cortes.⁵⁰ 2. The kingdom of Aragon proper was circumscribed within too narrow limits to allow of such local jealousies and estrangements, growing out of an apparent

⁴⁸ As for example the *ciudadanos honrados* of Saragossa. (Capmany, *Práctica y Estilo*, p. 14.) A *ciudadano honrado* in Catalonia, and I presume the same in Aragon, was a landholder, who lived on his rents without being engaged in commerce or trade of any kind, answering to the French *propriétaire*. See Capmany, *Mem. de Barcelona*, tom. ii. Apend. no. 30.

⁴⁹ Blancas, *Modo de Proceder*, fol. 102.

⁵⁰ Not, however, it must be allowed, without a manly struggle in its defence, and which, in the early part of Charles V.'s reign, in 1525, wrenched a promise from the crown, to answer all petitions definitively, before the rising of cortes. The law still remains on the statute-book, (*Recop. de las Leyes*, lib. 6, tit. 7, ley 8,) a sad commentary on the faith of princes.

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diversity of interests, as existed in the neighbouring monarchy. Their representatives, therefore, were enabled to move with a more hearty concert, and on a more consistent line of policy. 3. Lastly, the acknowledged right to a seat in cortes, possessed by every city, which had once been represented there, and this equally whether summoned or not, if we may credit Capmany,⁵¹ must have gone far to preserve the popular branch from the melancholy state of dilapidation, to which it was reduced in Castile by the arts of despotic princes. Indeed, the kings of Aragon, notwithstanding occasional excesses, seem never to have attempted any systematic invasion of the constitutional rights of their subjects. They well knew, that the spirit of liberty was too high among them to endure it. When the queen of Alfonso the Fourth urged her husband, by quoting the example of her brother the king of Castile, to punish certain refractory citizens of Valencia, he prudently replied, "My people are free, and not so submissive as the Castilians. They respect me as their prince, and I hold them for good vassals and comrades."⁵²

The Justice
of Aragon.

No part of the constitution of Aragon has excited more interest, or more deservedly, than the office of the *Justicia*, or Justice;⁵³ whose extraordinary functions were far from being limited to judicial matters, although in these his authority was su-

⁵¹ *Práctica y Estilo*, p. 14.

⁵² "Y nos tenemos á ellos como buenos vassallos y compañeros."
—Zurita, *Anales*, lib. 7, cap. 17.

⁵³ The noun "justicia" was

made masculine for the accommodation of this magistrate, who was styled "*el justicia*." Antonio Perez, *Relaciones*, fol. 91.

preme. The origin of this institution is affirmed to have been coeval with that of the constitution or frame of government itself.⁵⁴ If it were so, his authority may be said, in the language of Blancas, "to have slept in the scabbard" until the dissolution of the Union; when the control of a tumultuous aristocracy was exchanged for the mild and uniform operation of the law, administered by this, its supreme interpreter.

His most important duties may be briefly enumerated. He was authorized to pronounce on the validity of all royal letters and ordinances. He possessed, as has been said, concurrent jurisdiction with the cortes over all suits against the crown and its officers. Inferior judges were bound to consult him in all doubtful cases, and to abide by his opinion, as of "equal authority," in the words of an ancient jurist, "with the law itself."⁵⁵ An appeal lay to his tribunal from those of the territorial and royal judges.⁵⁶ He could even evoke a cause, while pending before them, into his own court, and secure the defendant from molestation on his giving surety for his appearance. By another process, he might remove a person under arrest from the place in which he had been confined by order of an inferior court, to the public prison appropriated to this purpose, there to abide his own examination of the legality of his detention. These

His great authority.

⁵⁴ Blancas, Commentarii, p. 26.
— Zurita, Anales, tom. i. fol. 9.

⁵⁵ Molinus, apud Blancas, Commentarii, pp. 343, 344. — Fueros y Observancias, tom. i. fol. 21, 25.

⁵⁶ Blancas, Commentarii, p. 536.
— The principal of these jurisdictions was the royal audience in which the king himself presided in person. Ibid., p. 355.

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two provisions, by which the precipitate and perhaps intemperate proceedings of subordinate judicatures were subjected to the revision of a dignified and dispassionate tribunal, might seem to afford sufficient security for personal liberty and property.⁵⁷

In addition to these official functions, the Justice of Aragon was constituted a permanent counsellor of the sovereign, and, as such, was required to accompany him wherever he might reside. He was to advise the king on all constitutional questions of a doubtful complexion; and finally, on a new accession to the throne, it was his province to administer the coronation oath; this he performed with his head covered, and sitting, while the monarch, kneeling before him bare-headed, solemnly promised to maintain the liberties of the kingdom. A ceremony eminently symbolical of that superiority of law over prerogative, which was so constantly asserted in Aragon.⁵⁸

⁵⁷ Fueros y Observancias, tom. i. fol. 23, 60 et seq., 155, lib. 3, tit. De Manifestationibus Personarum. — Also fol. 137 et seq., tit. 7, De Firmis Juris. — Blancas, Commentarii, pp. 350, 351. — Zurita, Anales, lib. 10, cap. 37. — The first of these processes was styled *firma de derecho*, the last, *manifestacion*. The Spanish writers are warm in their encomiums of these two provisions. "Quibus duobus præsidiiis," says Blancas, "ita nostræ reipublicæ status continetur, ut nulla pars communium fortunarum tutelâ vacua relinquatur." Both this author and Zurita have amplified the details respecting them, which the reader may find extracted, and in part translated by Mr.

Hallam, Middle Ages, vol. ii. pp. 75-77, notes.

When complex litigation became more frequent, the Justice was allowed one, afterwards two, and at a still later period, in 1528, five lieutenants, as they were called, who aided him in the discharge of his onerous duties. Martel, Forma de Celebrar Cortes, Notas de Uztarroz, pp. 92-96. — Blancas, Commentarii, pp. 361-366.

⁵⁸ Ibid., pp. 343, 346, 347. — Idem, Coronaciones, pp. 200, 202. — Antonio Perez, Relaciones, fol. 92.

Sempere cites the opinion of an ancient canonist, Canellas, bishop of Huesca, as conclusive against the existence of the vast powers im-

It was the avowed purpose of the institution of the Justicia to interpose such an authority between the crown and the people, as might suffice for the entire protection of the latter. This is the express import of one of the laws of Soprarbe, which, whatever be thought of their authenticity, are undeniably of very high antiquity.⁵⁹ This part of his duties is particularly insisted on by the most eminent juridical writers of the nation. Whatever estimate, therefore, may be formed of the real extent of his powers, as compared with those of similar functionaries in other states of Europe, there can be no doubt that this ostensible object of their creation, thus openly asserted, must have had a great tendency to enforce their practical operation. Accordingly we find repeated examples, in the history of Aragon, of successful interposition on the part of the Justice for the protection of individuals persecuted by the crown, and in defiance of every attempt at intimidation.⁶⁰ The kings of Aragon,

puted by later commentators to the Justicia. (*Histoire des Cortès*, chap. 19.) The vague, rhapsodical tone of the extract shows it to be altogether undeserving of the emphasis laid on it; not to add, that it was written more than a century before the period, when the Justicia possessed the influence or the legal authority claimed for him by Aragonese writers, — by Blancas, in particular, from whom Sempere borrowed the passage at second hand.

⁵⁹ The law alluded to runs thus, "Ne quid autem damni detrimen-
tive leges aut libertates nostræ pa-
tiantur, judex quidam medius ades-
to, ad quem a Rege provocare, si
aliquem læserit, injuriasque arcere

si quas forsā Reipub. intulerit, jus
fasque esto." Blancas, *Commen-
tarii*, p. 26.

⁶⁰ Such instances may be found
in Zurita, *Anales*, tom. ii. fol. 385,
414. — Blancas, *Commentarii*, pp.
199, 202–206, 214, 225. — When
Ximenes Cerdan, the independent
Justice of John I., removed certain
citizens from the prison, in which
they had been unlawfully confined
by the king, in defiance equally of
that officer's importunities and men-
aces, the inhabitants of Saragossa,
says Abarca, came out in a body to
receive him on his return to the
city, and greeted him as the defen-
der of their ancient and natural lib-
erties. (*Reyes de Aragon*, tom. i.
fol. 155.) So openly did the Ar-

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chafed by this opposition, procured the resignation or deposition, on more than one occasion of the obnoxious magistrate.⁶¹ But, as such an exercise of prerogative must have been altogether subversive of an independent discharge of the duties of this office, it was provided by a statute of Alfonso the Fifth, in 1442, that the Justice should continue in office during life, removable only, on sufficient cause, by the king and the cortes united.⁶²

Security
against its
abuse.

Several provisions were enacted, in order to secure the nation more effectually against the abuse of the high trust reposed in this officer. He was to be taken from the equestrian order, which, as intermediate between the high nobility and the people, was less likely to be influenced by undue partiality to either. He could not be selected from the ricos hombres, since this class was exempted from corporal punishment, while the Justice was made responsible to the cortes for the faithful discharge of his duties, under penalty of death.⁶³ As this supervision of the whole legislature was found unwieldy in practice, it was superseded, after various modifications by a commission of members elected from each one of the four estates, empowered to sit every year in Saragossa, with authority to investigate the charges preferred against the Justice, and to pronounce sentence upon him.⁶⁴

agonese support their magistrate in the boldest exercise of his authority.

⁶¹ This occurred once under Peter III., and twice under Alfonso V. (Zurita, *Anales*, tom. iii. fol. 255. — Blancas, *Commentarii*, pp. 174,

489, 499.) The Justice was appointed by the king.

⁶² *Fueros y Observancias*, tom. i. fol. 22.

⁶³ *Ibid.*, tom. i. fol. 25.

⁶⁴ *Ibid.*, tom. i. lib. 3, tit. *Forum Inquisitionis Officii Just. Arag.*