THE SPANISH ORIGINS OF LIMITING ROYAL POWER IN THE MEDIEVAL WESTERN WORLD: THE *CORTES* OF LEÓN AND THEIR *DECRETA* (1188)

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ABSTRACT

The Decreta of the kingdom of León was issued by King Alfonso IX in 1188, in the setting of the Cortes of León, a medieval parliamentary body. According to UNESCO, this Cortes represents the first documented example of parliamentarism in history, since the curia regis was extended to incorporate deputies of the relevant citites, thus including representatives of the cities' political forces and merchants. The Decreta is also the first medieval charter of freedoms that has survived (in copies). An analysis of the conditions under which the Decreta was created and the content of this charter of freedom reflects local political conditions, but also universal values.

Keywords: *Kingdom of Leon, cortes, decreta, Alfonso IX, parliamentarism*

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1. THE HUNGARIAN GOLDEN BULL (1222) AND THE ENGLISH MAGNA CARTA (1215)

The year 2022 was the 800th Anniversary of the approval of the Golden Bull by Andrew II of Hungary (1222),[1] regarded as one the first European documents that notably limited royal power. The king would not have limited his power if he was not under pressure from powerful, feudal lords. According to current interpretations, however, the Golden Bull codified the policies of the king comprising concessions made to the nobility that supported him in the internal political struggles and pursuit of his reform agenda. Practically, the basis of royal powers was rearranged, which may seem paradoxical, as limiting royal power was also a way to strengthen it. The case was similar to that of the *Decreta*. The document, called "Aranybulla" in Hungarian, entailed 31 chapters. The first two chapters note the following:

> *Let no nobleman be arrested (unjustly), nor oppressed at the desire of any power* (Chapter I).
>
> *The nobles shall pay no more taxes, no denarii shall be collected from the coffers of the nobles. Neither shall their residences nor their villages be occupied, and they shall be visited only by those who have been invited. No taxes shall be collected for the Church* (Chapter III).

Some argue that, as per the text, if the Hungarian king could not maintain the guarantees contained therein, it was considered lawful to rise against the monarch. Notably, the text affected the nobility, not the freemen living in the emerging medieval cities. The Golden Bull was one of the first European documents to give evidence of the medieval tendency toward limiting royal power.

However, seven years earlier, a similar text, though longer than the Golden Bull—the so-called *Magna Carta*—was the basis of an agreement between King John I of England and a group of nobles (London, 15.VI.1215). The English text was traditionally considered the first

1 *De Bulla Aurea. Andraea II Regis Hungarie, 1222*, Verona: Edizioni Valdonega, 1999.

document limiting royal power, inducing the creation of the rule of law, which is among the main pillars of the Western legal tradition.

The Magna Carta of John I of England (known as John Lackland) is among the best-known documents of the English legal tradition. The agreement emerged from a dire royal need. Finding himself in a delicate situation (given social problems and serious foreign policy challenges), John Lackland was compelled to sign the document, which enshrined a set of legal and procedural guarantees, establishing limits to the exercise of feudal power. Thus, the text is also known as *Magna Carta libertatum* (Magna Carta of Liberties) because it makes a grant of liberties, as Chapter I highlights:

> *TO ALL FREE MEN OF OUR KINGDOM ('To all free men of our Kingdom') we have likewise granted, for Us and for our heirs in perpetual title, all the liberties hereinafter enunciated, to be had and possessed by Us and our heirs for themselves and theirs.*

Although the text is addressed to all free persons of the kingdom, the assembly was notably only attended by the aristocracy, and the 63 chapters of the document ensured the feudal rights of the aristocracy against the royal power. Beyond establishing that the monarch could not, with few exceptions, demand the scutage (tribute or payment made to the king for war expenses) or the auxiliary (monetary amount) without general consent (ch. 12), for which purpose the nobles must be summoned ("the archbishops, bishops, abbots, dukes, and principal barons," ch. 14), it was established that the city of London "shall enjoy all its ancient liberties and franchises by land as well as by sea. Likewise, we will and grant that the other cities, boroughs, towns, and ports shall enjoy all their liberties and franchises" (ch. 13).

However, the most noteworthy aspect of this text was the establishment of the legal and procedural guarantees contained in chapters 39 and 40, which enshrined the right to due process and the right to judicial protection, respectively:

> *No free man shall be arrested or imprisoned or deprived of his rights or property, nor put outlawed or banished or otherwise deprived of his rank,*

> *nor shall we use force against him or send others to do so, except by virtue of judicial sentence of his peers or by the law of the realm* (ch. 39).
>
> *We will not sell, deny or delay to anyone his right or justice* (ch. 40).

Although historiography, beginning with the English one, has mythologised this text, its content in the idea of granting liberties and establishing the aforementioned guarantees, was not novel at the beginning of the 13th century. However, it can be perceived in the more general context of political and economic transformations that occurred in Western Europe and some Central European states like Hungary. Thus, from similar processes emerged texts with similar content.

This chapter provides evidence of this historical truth. After this introduction (1.), Part II (2.) highlights the challenge of being immune to a biased observation and analysis of legal traditions when political and ideological ("national") interests are at stake and why the tendency of limiting royal power emerged and spread in medieval Europe. Part III (3.) argues for why the *Decreta* of the Cortes of León (1188) was a pioneering document, giving evidence of a tendency present in many European territories. Note the assumption that other documents, potentially older than the *Decreta* of León from different European territories, might be discovered in the future, for which a revision and recognition of which document is the first in Europe would be in order. Otherwise, the *Decreta* of the Cortes de León assumes the pioneering position.

2. HISTORICAL SCIENCE VS IDEOLOGY, SCHOLARSHIP VS POLITICS: THE MEDIEVAL ORIGINS OF LIMITING ROYAL POWER

In the Cortes of Cádiz (1812) context, Francisco Martínez Marina defended the thesis that there was a historical continuity between the 19th-century Cortes and the medieval ones, particularly those

celebrated in Castile and León.[2] Decades later, Joaquín Francisco Pacheco maintained the contrary thesis concerning the substantive criminal law contained in the Criminal Code of 1848, arguing that nothing from the past had been kept because everything was useless and unfit for modern times.[3]

These two examples show the temptation to mix scholarship with politics or legal science with ideology, which I learned from my colleague, J.M. Scholz, as I began work as a research fellow at the *Max-Planck-Institut für europäische Rechtsgeschichte* in summer 2000. He warned me of the incompatibility between doing research and political devotion.[4] Some of my research projects affirmed that Scholz was right. Controversies or rivalries between scholars from different schools of thought, nations, or traditions also affirm this truth. In the codification movement context, how "Codiphobia" poisoned the debate about the convenience to resort to the technique of codification to undertake legal reform in 19th-century England[5] or how passions overshadowed the discussion about whether to codify the private law of New York are notable.[6]

Accordingly, the title of this chapter may seem quite provocative from an ideological or nationalistic perspective. Are the origins of limiting royal power in the Middle Ages really "Spanish"[7]? Is it not possible that the emergence of the first documents and institutions limiting royal power could have arisen in other European territories

2 Martínez Marina, 1813; see Masferrer, 2018, pp. 276–292.

3 See Masferrer, 2018, pp. 193–242.

4 I remember he used the expression "*Mitmachen*", meaning to participate, contribute, play along with, or get involved in something in to transform the social reality.

5 Amos, 1856; see also Masferrer, 2019, pp. 11–22.

6 Reimann, 1989; see also Masferrer, 2008, pp. 173–256; Masferrer, 2008–2010, pp. 355–430.

7 The expression "Spanish" is only applicable from the reign of the Catholic monarchs (1479–1504), particularly, from Charles V (1516–1556), onward, a period where the political unity of the Spanish monarchy was compatible with the legal diversity. Thus, the different kingdoms and territories of the crown of Castile and Aragon had their political and legal institutions; Masferrer, 2009 (2nd ed., 2012).

rather than the Iberian Peninsula? Perhaps, it is; however, current evidence points to the *Decreta* of León of 1188 as the first document, whose content regarding limiting royal power is, as will be seen, similar to that of the famous Magna Carta (1215) of John, King of England. I am quite convinced that other European territories might have had similar texts or practices before 1188. In Spain, for example, from the Fueros of Sobrarbe that appeared in the middle of the 9th century emerged the "Antes leyes que reyes" ("First laws and only afterward kings") principle.[8]

In 13th-century Europe, places such as England, France, the Holy German Empire, Italy, Poland, Hungary, and Spain limited royal power. That century witnessed the origins of two relevant political and legal institutions: the rule of law or principle of legality (connected to the recognition of rights, though not in the modern sense, and concession of privileges), and parliamentarism (connected to the idea of an agreement or pact among those affected by decisions: "*Quod omnes tangit, ab omnibus debet approbari*").[9]

Unsurprisingly, the 13th century witnessed the emergence of royal power and the approval of charters and legal institutions to limit such power, which explains why most medieval institutions were particularly studied, praised, and idealised in 16th-century Europe. In England, particularly in the 17th century, royal absolutism threatened the *status quo* of social states, especially the nobility privileges and the natural rights of freemen. As kings did not enjoy much political power in many European territories in the 11th and 12th centuries, there was no reason to limit royal power. However, the emergence of royal power in the 13th century, given various historical factors (e.g., social, economic, military, cultural, political, and legal), furnished the need for limiting royal power. Similarly, the emergence of royal absolutism in the 16th and 17th centuries, also given various factors, induced some lawyers to focus on medieval institutions that had emerged precisely to limit royal power. Examples include the interest of Aragón's lawyers in the *Fuero*

8 See fn n. 11.

9 Condorelli, 2013, pp. 101-127; see also Arecco, 2005, pp. 163–175 .

of Sobrarbe in the 16th century or that of English lawyers in the *Magna Carta* in the 17th century.

Spain in the 13th century comprised various autonomous kingdoms or territories: Castile, León, Aragón, Catalonia, Navarre, Basque provinces (Álava, Guipúzcoa y Vizcaya), Valencia, and Majorca (the Catalan territory was called *Principatus* or Principality).[10] Except for the Balearic islands and Basque provinces, all Spanish territories had their parliaments (or *Cortes*, as they were called in the sources), attended by the three social states: the ecclesiastical nobility, secular nobility, and common people or representatives of the cities. Evidence suggests that the attendance of common people started in Castile and Aragón-Catalonia in 1214 and León in 1188.

Parliaments did not emerge from the royal awareness of the benefits of limiting royal power but from a royal dire need for various reasons (personal or familiar, political, economic, or military). In Spain, kings began to resort to assemblies in the Early Middle Ages when their power did not guarantee peace and security. Accordingly, particularly relevant were, for example, the assemblies of peace and truce of God.[11] Other institutions of assemblies somehow revealed the weakness of royal power: *curia regis* and councils (where kings were supported by secular and ecclesiastic nobility) and charters of the population (where nobility and freemen supported military undertakings by occupying new territories reconquered from Muslims). Such assemblies did not appear to limit royal power, given that, at that time, the king, was a *primum inter pares* or looked for support to remedy his weakness.

10 While Castile and León were definitely united by Ferdinand III in 1230, Aragon and Catalonia were also united in 1137 from the marriage of Ramon Berenguer and Petronila of Aragón; later, the kingdom of Aragón comprised united Valencia, Majorca, Menorca, and the Italian territories of Sicily, Corsica, Sardinia, and Naples. Hence, most territories of the Basque provinces were united to Castile at the beginning of the 13th century. The marriage of Ferdinand of Aragon and Isabelle of Castile politically united both kingdoms, from which the Spanish monarchy under the Catholic kings emerged (1469). In 1512, Navarre was incorporated to Castile.

11 Hoffmann, 1964.; Head and Landes, 1992; Kosto, 2003, pp. 133–149; Masferrer, 2014, pp. 28–48, particularly pp. 31–39.

3. THE *DECRETA* OF THE CORTES OF LEÓN (1188) AS THE FIRST DOCUMENT LIMITING ROYAL POWER: THE LEONESE ORIGINS OF WESTERN PARLIAMENTARISM AND THE RULE OF LAW

The Arabic invasion of the Iberian Peninsula created a peculiar situation that encouraged or "forced" the common people to sometimes defend themselves, even in regions without any political or royal initiative or support. It induced the emergence of a popular legal culture characterised by the existence of laws without a king, giving rise to the well-known saying in Aragón and Navarre, "*Antes leyes que reyes*" ("Laws first and kings afterward"), as it would be presented in the early modern age.[12] This principle might have appeared in the *Fueros de Sobrarbe*, a charter allegedly enacted in the Pyrenean valley of Sobrarbe in the middle of the 9th century, according to a falsified version of the *Fuero de Tudela* (postdated to 1117). As per legend, the *Fuero de Sobrarbe* contained some liberties, including the following: laws may not be impaired, a mediator judge shall watch, and it shall be lawful to appeal to the king should anyone be injured.

In the late Middle Ages, even though royal power was strengthened for various reasons (e.g., the emergence of cities and merchants and their incorporation in parliaments, the creation of universities, and the prestige of Roman law that supported kings as main legislators), kings were not adequately strong to address political turmoil without being compelled to make concessions. Thus, the *Privilegio de la Unión* granted to Aragón in 1287 was quite similar to the English *Magna Carta*, as the nobility took advantage of the challenging situation of Alphons III of Aragón to obtain prerogatives that were confirmed in the Cortes of Zaragoza (1347) but derogated a year later by Pedro IV because of the Battle of Épila. Like the *Magna Carta*, the *Privilegio de la Unión* affected the nobility, not the freemen. The *Privilegio General* granted in 1283 by Pedro III in the context of the military intervention in Sicily and its

12 García Pérez, 2008.

consequences (economic, political, religious, and social) affected the cities of Aragón.[13]

Notably, both Privileges of Aragón—*Privilegio General* (1283) and *Privilegio de la Unión* (1287–1348)—were linked to 9th-century *Fuero de Sobrarbe*. Moreover, the Fuero de Sobrarbe was somehow present in the cities of Aragón (through the *Fueros of Aragón*, 1283) and Navarre (through the *Fueros de Navarra*, 1238).

In Catalonia, another political turmoil led Jaume I to summon the representatives of the cities in the Cortes of Lleida in 1214. For some historians, the first Cortes of Castile were also celebrated in 1214.[14] There is no doubt that the first Cortes of León, convoked and presided over by Alphons IX, occurred in 1188, followed by the Cortes of 1202 and 1208.[15] Irrespective of whether these meetings of León should be called "Cortes" or *Curia extraordinaria*[16] or whether Cortes *stricto sensu* started in the 13th century,[17] it seems clear that they were attended by citizens.[18] Thus, they might be regarded as "Cortes."[19]

The document that justifies the title of this chapter is the first Cortes of León, particularly their *Decreta*. Unlike the *Fueros de Sobrarbe*, which belong to the 9th century but whose historical basis is not entirely certain or consistent, there is evidence that i) these Cortes were celebrated in 1188, ii) Alphons IX invited citizens from different cities to attend and participate (as he would do it again in 1202 and 1208), and iii) two bodies of laws were enacted (some constitutions against violence and thieves

13 Danvila y Collado, 1881; González Antón, 1975; Lalinde Abadía, 1980, pp. 55–68; Sarasa Sánchez, 1979; Sarasa Sánchez, 1984.

14 See Procter, 1980; O'Callaghan, 1989.

15 Colmeiro, 1861, chapter IX; Cavero Domínguez, 2009; some historians discussed whether the first Cortes of Castile and León were celebrated in Burgos (1187), in San Esteban de Gormaz (1187), or in León (1188); or whether the first Cortes of the Iberian Peninsula occurred in Portugal in 1143; see Martín Rodríguez, 2003, pp. 29–64; See also the works by Arvizu Galagarra, 1988, pp. 13–141; Arvizu Galagarra, 1994, pp. 1193–1238; Arvizu Galagarra, 2002, pp. 37–46.

16 See, for example, Estepa Diez, 2002, pp. 181–190, pp. 183–184; De Ayala Martínez, 1996, pp. 193–216; Mitre Fernández, 1989, pp. 415–426; Procter, pp. 67 ss.

17 Nieto Soria, 2011, pp. 197–241.

18 Fernández Catón, 1988.

19 For this view, see González Díez and González Hernández, 2018.

and the *Decreta*, the original of which has not been found, though there are many original and cartulary copies). The text of the *Decreta*, originally drafted and approved in Latin[20], has since been translated into Spanish[21] and English[22] and, recently, Hungarian,[23] comprises seventeen chapters.

These *Decreta* are relevant from a historical perspective because i) they reflect a strategy to strengthen royal power by obtaining institutional support rather than weakening the monarch's power, and ii) they show how adopting a wider representative assembly or a parliamentary system strengthened royal power. That is, the outcome of the Cortes of León of 1188 was two-fold: a) maintaining justice and ensuring peace in the kingdom by resorting to the rule of law or legality principle, and b) enhancing the joint participation of common people in discussing matters that affected them. What happened in León in 1188 would spread and become common in other European jurisdictions some years later: German Diet (1232), English parliament (1265), and French General States (1302).

While the *Privilegio General* (1283) and *Privilegio de la Unión* (1287) are relevant texts in introducing the principle of the rule of law and some judicial guarantees, the *Decreta* of León (1188) were approved almost a century earlier. Though Aragón's *Fuero de Sobrarbe* is much older than the *Decreta*, no documentary evidence dispels the tradition surrounding this legal source. Hence, the *Decreta* of León in the Iberian Peninsula are the earliest document comparable to the *Magna Carta*, where the king committed himself before the social estates, including the citizens, to respect the law and guarantee a set of procedural rules (which is today called the "right to due process").

What were the circumstances surrounding these Cortes of León, considered to be the first in the history of Western European parliamentarism? The economic needs of Alfonso IX of León from the rising prices after a tax increase to cope with the break of the reconquest and

20 González, 1944, doc. 11, pp. 23–26.

21 Fernández Catón, 1993, pp. 93–117.

22 Seijas Villadangos, 2016, p. 23; see this version – with some minor corrections – in the Appendix of this chapter.

23 Mezey, 2022.

the need for income to cope with the war with Portugal and Castile led the monarch to convene an extraordinary *curia regia*, where, for the first time in Europe, discounting the Icelandic case (with its legislative assembly, the "Althing"), the representatives of the city (with voice and vote) were invited. The king, realising the need for strengthening his social and political legitimacy, made the wise decision to submit a set of decrees for approval. Such *Decreta* included the recognition of a set of rights and liberties, such as the inviolability of home and mail, the obligation of the monarch to convoke Cortes and make war or declare peace, and the guarantee of various individual and collective rights.

Leaving aside the importance of the Cortes of León from a parliamentary perspective, their *Decreta* are perfectly comparable to the English Magna Carta in defending some principles connected to the rule of law and judicial guarantees. Below are brief references to some chapters containing these principles.[24]

Chapter I contains a royal commitment to observe and contribute to compliance with the customs established by Alphons IX's antecessors, establishing and confirming under oath that he would "respect the good customs (...) established by my predecessors" (Ch. I).[25]

Chapters II and III contain a royal commitment that only accurate, well-founded evidence would amount to an accusation, where the royal curia acts as the highest court of appeal. In Chapter II, Alfonso IX promised not to deny justice to anyone "if anyone should make or present a denunciation of anyone to me," threatening the informer who could not prove his accusation with "the punishment that the accused would have suffered if the accusation had been proven" (Ch. II). Moreover, given the denunciation, the king promised to treat the denounced person following the law, since "I will never cause him harm or damage to his person or properties until he is subpoenaed in writing to respond to justice in my curia in the manner that my curia determined" (Ch. III). The content

24 See the English version of the *Decreta* of León 1188 in the Appendix, reproducing the translation by Seijas Villadangos, 2016, pp. 2–25. (the English version appears in pp. 22–25), from the Spanish version of Fernández Catón, 1993, pp. 93–117.

25 Such customs included the *Fuero de León* approved in 1017; see *Fueros locales del Reino de León (910–1230). Antología*, Madrid: Boletín Oficial del Estado, 2018 (available at https://www.boe.es/biblioteca_juridica/publicacion.php?id=PUB-LH-2018-61).

of both chapters (II and III) was indeed quite similar to what would later be drafted in Chapter 39 of the *Magna Carta*.[26] Moreover, as will be seen, Chapter IX punished those *justicias* [judges] who do not administer justice according to the prescribed legal procedure.

In Chapter IV, the king promised that he would make neither peace nor war, nor would he make agreements without the advice of bishops, nobles, and good men. He pledges neither to "wage war nor make peace or make any agreement without the counsel of the bishops, nobles, and good men, by whose advice I must abide" (Ch. IV).

Chapters V and VII sought the protection of property (houses, lands, and trees). It goes beyond private vengeance by committing to protect property, as long as the offended party "presents the complaint to me or to the lord of the land or to the justices appointed by me or by the bishop or by the lord of the land," while also protecting the alleged offender (or accused) "so he will not suffer any harm," and who is allowed to "present a guarantor or give a guarantee according to the ancient law [*fuero*]" (Ch. V).

Beyond prohibiting riots (tumult disturbing the public peace) (Ch. VI), it prohibits the theft of things (movable or immovable) that are in the possession of others, whether done with (Ch. VII) or without (Ch. VIII) violence. Chapter VIII discouraged and punished private revenge, calling offices to enforce the laws of towns and villages. It also provides that no one may be seized by another person "but through the justices or mayors designated by me; and they and the landlords do faithfully enforce the law in the cities and in the boroughs [*alfores*] for those who seek it" (Ch. VIII).

Chapter IX addresses those in charge of adjudicating and enforcing the law, establishing punishments for judges who do not enforce the law, ignore the plaintiff, or administer justice when damages or offenses have been caused or committed. It lays down the obligation to do justice following a legal procedure, with a three-day term for the *justicias* to

26 *Magna Carta*, ch. 39: "No free man shall be arrested or imprisoned or deprived of his rights or property, nor put outlawed or banished or otherwise deprived of his rank, nor shall we use force against him or send others to do so, except by virtue of judicial sentence of his peers or by law of the realm."

admit the demand, foreseeing the consequences of a supposed refusal on their part:

> *I also decreed that if one of the justices denied justice to the plaintiff or delayed it maliciously or did not recognise his right by the third day, he should present witnesses before one of the aforementioned 'justicias' by whose testimony stating the truth of the matter and compel the justice to pay the plaintiff twice as much of his demand and the costs. And if all the justices of that land deny justice to the plaintiff, he should take witnesses from good men by whom it is proven and give pledge without responsibility instead of the justices and mayors, as much for the demand as for the costs, so that the justices would satisfy twice and also concerning the damage, that would ensure whom guarantees, the justices would pay double* (Ch. IX).

Chapter X prescribes that judicial decisions and judges must be followed and respected.

Chapter XIII punishes, in general terms, the offended party who, rejecting the legally established procedures to do justice and compensate for the offense, chooses to take justice into his own hands by causing some damage to the offender, in which case "he should pay double, and if also he should kill him, he should be declared a treacherous" (Ch. XIII).

The justices were sanctioned if they refused to do justice or did not arrest "immediately and without delay" anyone who "wander[ed] by chance from one city to another (...) and someone with seal should come from justices to the justices (...) they should not hesitate in detaining him and doing justice" (Ch. XIV).

Beyond the obligations and duties required of the justices, the monarch also came to their defense, stating "that no one should appeal the justices nor grab the pledges when he did not want to comply with the justice; and if he should do this, he should repay twice the damage, the demand, and the costs and also pay the justices 60 *sueldos* [wages]" (Ch. X). The end of that same chapter contains the following general clause of protection for the *justicias* in charge of administering justice:

> *And if any of the justices suffered any harm in carrying out the justice, all the men of that land will reimburse him for all the damage, in case he who did him harm should not have means to pay him; and if it happens, that one in addition may kill him, he would be taken as a traitor and a treacherous* (Ch. X).

Sanctions were also provided for those who did not appear before the justices when summoned by them in accordance with the law (Ch. XI).

Another decree established the inviolability of the home, imposing heavy financial penalties and exonerating the homeowners of a possible homicide committed in self-defense (Ch. XII).

Chapter XVI addresses the rule of law. It prescribes that nobody shall be accused or tried by either royal or city court unless established by law. Prescribing that no one should go to trial before the royal curia or the court of León "unless for those causes for which he should go according to their own ancient laws [*fueros*]" (Ch. XVI) was the logical consequence of the royal commitment to respect "the good customs" established by his predecessors (Ch. I) to proceed "according to the ancient law [fuero]" (Ch. V) and act in conformity with the privilege and ancient customs of his land (Ch. VIII). Indeed, such commitment to the rule of law was quite similar to what would later be drafted in chapters 39 and 40 of the *Magna Carta*.[27]

Further, to this royal recognition of rights and liberties, those attending the Cortes of 1188 (bishops, knights, and citizens) responded by committing themselves to be faithful to the king in his counsel "to maintain justice and keep the peace in my kingdom" (ch. XVII). Hence, Chapter XVII establishes that all participants of the Cortes shall swear faithfulness to the king to keep justice and peace and ensure public order throughout the kingdom.

The agreement of the *Decreta* in the Cortes of 1188 notably contributed to legitimising the social and political power of Alphons IX. Moreover,

27 *Magna Carta*, ch. 39: "No free man shall be arrested or imprisoned or deprived of his rights or property, nor put outlawed or banished or otherwise deprived of his rank, nor shall we use force against him or send others to do so, except by virtue of judicial sentence of his peers or by law of the realm"; ch. 40: "We will not sell, deny or delay to anyone his right or justice."

considering the content of its provisions, it is more than reasonable that such decrees have been called the "*Magna Carta Leonesa*." However, it would be a mistake, to think all the precepts were new. Some had already been enacted. Accordingly, Alfonso IX confirmed the Fueros de León (1017, by Alphons V). Provisions such as those prohibiting attacks on the property of others, ordering the resolution of disputes before the courts, or preventing the King from entering into war without general consent were well known during the reign of Alfonso VII of León (1135). New decrees were added to these precepts in 1188 concerning, for example, cases of violence on (movable and immovable) things, recourse to justice in such cases, and other guarantees of a procedural nature. A few years later, in Galicia, "constitutions" (1194) would develop some of these precepts of 1188.

The *Decreta* insists on the idea that offenses or damages must be repaired or remedied through the enforcement of the law (mainly, the Fuero of León, 1017) and in court (rather than resorting to private revenge), calling for the respect of the judicial procedure and right conduct of judicial proceedings.

Thus, the Cortes of León and their *Decreta* are considered the oldest preserved written records of the parliamentary tradition in the Western world and, by extension, of modern parliamentary democracy. Unlike the *Magna Carta*, these *Decreta* were never abolished up until the 19th century when modern codes replaced older laws approved by Alphons the Wise (the *Fuero Juzgo*—containing the *Decreta*—the *Fuero Real*, the *Siete Partidas*, and the *Espéculo*).

On the 19th of June 2013, the UNESCO recognised the Cortes of León as the "Cradle of parliamentarism," and the *Decreta* was declared "Memory of the World" for being "the oldest written document of the parliamentary system in Europe."[28] Perhaps, more importantly, the Cortes of León and their *Decreta* reflect how a king, for the first time, "put the power of law above his own power, and not vice versa."[29]

28 International Memory of the World Register. The *Decreta* of León of 1188. The oldest documentary manifestation of the European Parliamentary System. p. 1. The proposal was submitted in 2012 and registered in 2013 (available at https://en.unesco.org/memoryoftheworld/registry/251).

29 Suárez Fernández, 1976, p. 8.

Hence, for now, the first documented precedent of the rule of law and representative democracy in the Western world can be found in 1188 in León, a city that had enacted its law (Fuero de León) in a council presided by Alphons V in 1017. Thus, the people of León already appreciated what the law was about.

We cannot exclude the possibility of Spanish influences regarding the Hungarian Golden Bull because there are certain ties between the Kingdoms of Aragón and Hungary in the analysed period. The brother of King Andrew II of Hungary, King Emeric (who reigned between the 1196–1204 period) married, perhaps in 1196, Constance, the daughter of King Alfonso II of Aragón (Constance, after the death of her husband, became the wife of Frederick II, Holy Roman Emperor). The queen was accompanied to her new home by a court and clerical entourage: the latter may have been a bearer of political ideas. Iberian influences are certainly documented, for example, in the heraldic motifs. After Emeric's death (1204), Constance and their child, the child King Ladislaus III, fled to Vienna, but there, Ladislaus died at the age of approximately 5, and Andrew, later the signatory of the Hungarian Golden Bull, was crowned king. The dynastical relations between the Árpád dynasty of Hungary and the Kingdom of Aragón continued: the daughter of Andrew II of Hungary, Violant of Hungary, was the wife of King James I of Aragón (the Conqueror). Their marriage occurred in 1235, more than a decade later than the issuance of the Hungarian Golden Bull, and some years before King James I of Aragón liberated Valencia (1238). After this battle, King James I rewarded several Hungarian knights who took part in the fighting and arrived on the Iberian Peninsula alongside queen Violant.

4. CONCLUDING CONSIDERATIONS

Affirming that the *Decreta* of León (1188) constitutes a relevant historical precedent of the rule of law and representative democracy in the Western world neither means ignoring the radical differences between two social, cultural, political, and legal contexts (the 12th-century medieval and the 19th-century liberal and constitutional-legal orders) nor

denying the mythological character of some historical texts, such as the *Fueros de Sobrarbe*, *Cortes de León*, and *Carta Magna*.[30] It does rather mean that such documents show how medieval Europe started to be aware of the convenience of limiting political power through law, using the law as a safeguard against the abusive and arbitrary exercise of political power.[31]

Many notions, categories, and principles radically changed throughout time but do not preclude the possibility to reconstruct their historical development. Sovereignty, notably, changed in the Middle Ages, then in the early modern age (with the rise of royal absolutism), and, eventually, in the late modern age (with the emergence of liberal and constitutional systems after the French and American revolutions). However, such changes should not prevent legal historians from trying to describe and analyse such development.

Nobody will deny that the Second World War context from which the legal notion of "human rights" emerged was radically different from that of the rise of "fundamental rights" in the 18th and 19th centuries) and "natural rights" in the 16th century. However, it should not preclude the possibility of connecting such notions that are indeed connected.[32]

Can the expressions "rights" and "liberties" be used in the medieval context, as some scholars use them?[33] Arguably, yes; however, clarification is needed: though such expressions might appear in the sources, their meaning and scope might not extend to expectations of contemporary reading. However, it seems less appropriate to use the expressions "individual freedoms"[34] or "fundamental rights"[35] in the medieval context.

30 Lorente Sariñena, 2016.

31 Masferrer and Obarrio, 2012, pp. 15–51.

32 Masferrer, 2022; (see also the English version entitled *The Making of Dignity and Human Rights in the Western Tradition: A Retrospective Analysis*, Dordrecht-Heidelberg-London-New York: Springer, forthcoming, 2023).

33 See fn n. 12.

34 Cited in the fn n. 12.

35 Dávila Campusano, 2017, pp. 203–211.

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APPENDIX
DECRETA OF CORTES OF LEÓN (1188)

Decrees that Don Alfonso, King of León and Galicia, established in the Curia of León with the Archbishop of Compostela and all the bishops and magnates and also with the elected citizens of his kingdom.

[I]

In the name of God. I *Don Alfonso*, King of León and Galicia, having held curia in León, with the archbishop and bishops and magnates of my kingdom and elected citizens from each one of the cities, established and confirmed under oath that to all those of my kingdom, both clergy and laity, I would respect them the good customs that have been established by my predecessors.

[II]

Ditto. I decreed and swore that if someone had come to me with an accusation against another, without delay I will inform the accused of the accuser; and if he is unable to prove the accusation that he made in my curia, he will suffer the punishment that the accused would have suffered if the accusation had been proven.

[III]

Ditto. I also swore that, for the accusation that would be made about someone or for slander of him, I will never cause him harm or damage to his person or properties, until he is subpoenaed in writing to respond to justice in my curia in the manner that my curia determined; and if it is not proven, he who made the accusation will suffer the aforementioned

punishment and will also pay the expenses incurred by the accused in coming and going.

[IV]

Ditto. I also promised that I will not wage war nor make peace or make any agreement without the counsel of bishops, nobles and good men, by whose advice I must abide.

[V]

Ditto. I also established that neither myself nor anyone else other of my kingdom would destroy the house or invade or cut down the vineyards and trees of another, moreover he who has a grievance against someone should present the complaint to me or to the lord of the land or the justices appointed by me or through the bishop or the lord of the land; and if whoever is the object of the complaint wants to present a guarantor or give a guarantee according to the ancient law (*fuero*) he will not suffer any harm; and if he does not want to do that, the lord of the land and the justices would force him, as it is just; and if the lord of the land or the justices would not to do that, present me the complaint with the testimony of the bishop and of good men, and I will see justice done.

[VI]

Ditto. I also firmly forbid that anyone engages in any riots in my kingdom, instead of justice before me, as stated above. And if someone did cause such disturbance he would pay twice the damage done to me; and he would lose my favor, benefit and any land of mine if he possessed.

[VII]

Ditto. I also established that none dares to violently take either anything personal property or real property that would be in possession of another. And if this would be done, it is to be restored twice to whoever suffered the violence.

[VIII]

Ditto. I also established that none should pledge but through the justices and mayors designated by me; and they and the landlords do faithfully enforce the law in the cities and boroughs for those who seek it. And if someone else pledges in any other way, he would be punished as a violent invader. Similarly [is punishable] whoever pledges oxen or cows for ploughing, or whatever the villager had on him in the field, or the villager himself. And if someone pledges or seizes things, as stated above, he should be punished and also excommunicated. And whoever denies having acted violently to avoid such penalty, should present a guarantor according to the old law (*fuero*) and the ancient customs of the land, and immediately should be investigated if he committed violence or not, and according to the results of the investigation should be obliged to provide the given bail. The enquirers, however, be they by consent of the accuser and the accused, or if they fail to reach an agreement were those who were designated for the lands. If the justices and mayors or those that have my land were designated to do justice by consent of the aforementioned men, those should have seals, through which they should subpoena men to respond to the plaintiffs' demands and through them give me testimony about what complaints of the men are true or not.

[IX]

Ditto. I also decreed that if one of the justices denied justice to the plaintiff or delayed it maliciously or did not recognise his right by the third day, he should present witnesses before one of the aforementioned

justices whose testimony stating the truth of the matter and compel the justice to pay the plaintiff twice as much of his demand and the costs. And if all the justices of that land deny justice to the plaintiff, he should take witnesses from good men by whom it is proven and give pledge without responsibility instead of the justices and mayors, as much for the demand as for the costs, so that the justices would satisfy twice and also concerning the damage, that would ensure whom guarantees, the justices would pay double.

[X]

Ditto. I also added that no one should appeal to the justices nor grab the pledges when he did not want to comply with the justice; and if he should do this, he should repay twice the damage, the demand and the costs and also pay the justices 60 *sueldos* [or wages]. If any of the justices require any of his subordinates to do justice and they should refuse to help him, they remain bound to the aforesaid penalty and also pay the lord of the land and the justices 100 maravedis; and if the defendant or the debtor were unable to pay the plaintiff, the justices and mayors without liability should seize his person and any assets he had, and deliver him with all his assets to the plaintiff, and if it were necessary, guard him under their protection, and if anyone were to take him by force, they would be punished as a violent invader. If any of the justices suffered any harm in carrying out the justice, all the men of that land will reimburse him for all the damage, in case he who did him harm should not have means to pay him; and if it happens, that one in addition may kill him, he would be taken as a traitor and a treacherous.

[XI]

Ditto. I stated that if anyone were summoned by the seal of the justices and he should refuse to appear before the justices, all this proven by good men, he should pay the justices 60 *sueldos*. And if anyone were accused of theft or other wrongdoing and the accuser should summon

him before good men so that he would bring to justice, and he should refuse to come within nine days, if it were proven that he has been summoned, he would be considered criminal; and if he were noble he should lose the 500 *sueldos* rank and those who capture him should have justice without any liability; and in the case that the noble at any time should make amends and satisfy all defendants, he should regain his nobility and then repossess the rank of 500 *sueldos*, as he had before.

[XII]

Ditto. I also swore that neither myself nor anyone else should enter by force the home of another or do any damage to it or to their assets; and if he should do this, he should pay the owner of the house twice its value and also to the lord of the land nine times the damage caused, if he does not promise to satisfy it, as it is written. And if it happens that he killed the home owner, man or woman, he should be declared treacherous and betrayer. And if it happens that the home owner, man or woman, or any of those who should help them to defend their home should kill him, they will not be punished as a murderer and the damage they caused they will never be required to answer for.

[XIII]

Ditto. And I established that if anyone should want to do justice to anyone who had a grievance against him and the aggrieved should not want to receive justice from him, as stated above, he should do him no harm; and if it should do, he should pay double, and if also he should kill him, he should be declared treacherous.

[XIV]

Ditto. I also established that if someone should wander by chance from one city to another or from one town to another or from one land to

another and someone with seal should come from justices to justices from that land in order to detain him and to do justice to him, immediately and without delay they should not hesitate in detaining him and doing justice. If the justices should not do this, they should suffer the punishment that the wrongdoer should suffer.

[XV]

Ditto. I also forbid any man who possesses assets, for which he pays me taxes, should give them to any ecclesiastical establishment.

[XVI]

Ditto. I also ordered that nobody should go to trial in my curia or to trial in León unless for those causes for which he should go according to their own ancient laws (*fueros*).

[XVII]

Ditto. All the bishops also promised, and all the knights and citizens confirmed by oath to be loyal to my advice, to maintain justice and keep the peace in my kingdom.