



2012

Florida's First Constitution

M C. Mirow

Florida International University College of Law, mirowm@fiu.edu

Follow this and additional works at: https://ecollections.law.fiu.edu/faculty_books

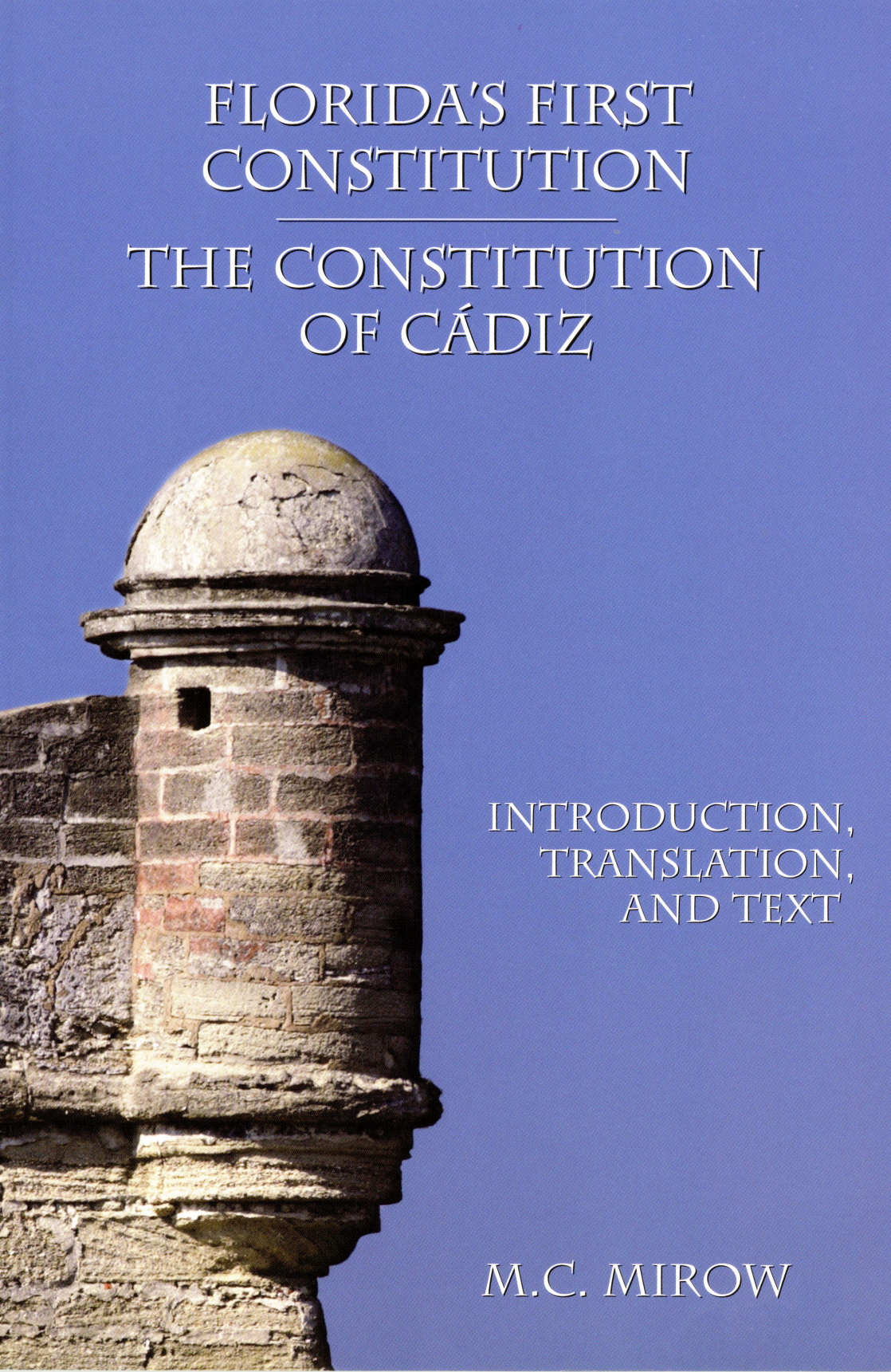


Part of the [Comparative and Foreign Law Commons](#), [Constitutional Law Commons](#), [Legal History Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

2012. FLORIDA'S FIRST CONSTITUTION: THE CONSTITUTION OF CÁDIZ (Durham: Carolina AcademicPress)

This Book is brought to you for free and open access by the Faculty Scholarship at eCollections. It has been accepted for inclusion in Faculty Books by an authorized administrator of eCollections. For more information, please contact lisdavis@fiu.edu.

A photograph of a stone tower with a dome, part of a fortification, against a clear blue sky. The tower is made of rough-hewn stone blocks and has a small square opening near the top. The dome is also made of stone and shows signs of weathering.

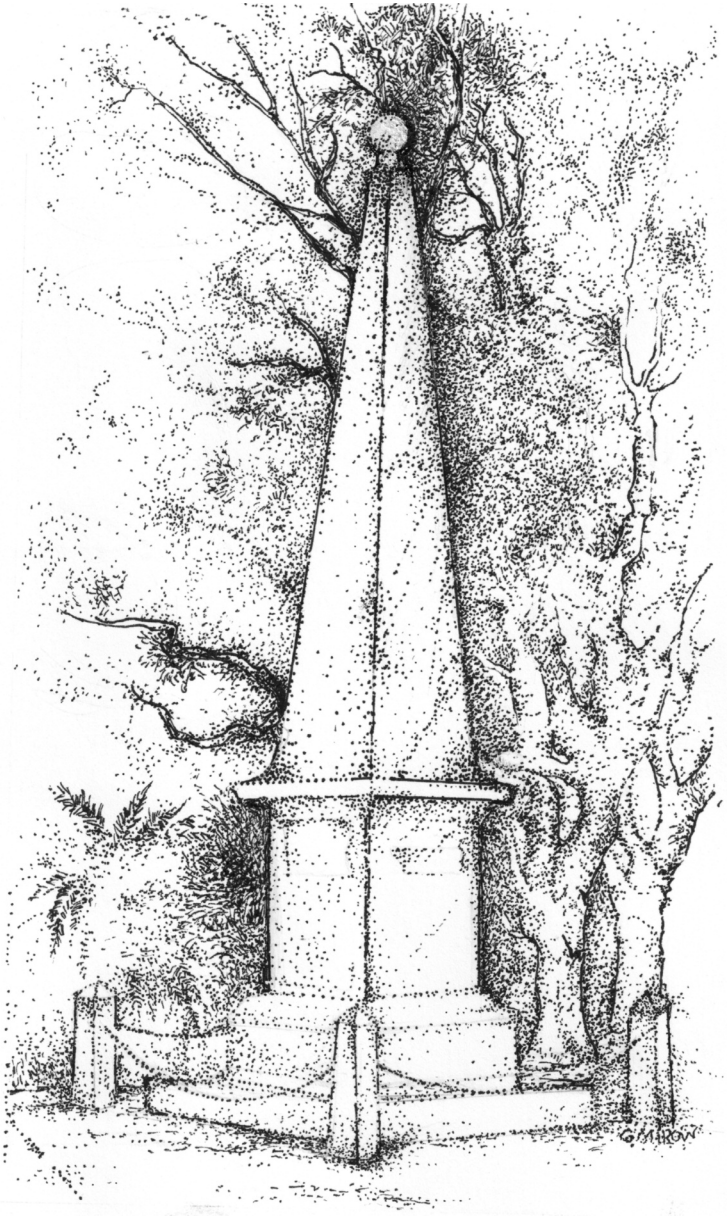
FLORIDA'S FIRST
CONSTITUTION

THE CONSTITUTION
OF CÁDIZ

INTRODUCTION,
TRANSLATION,
AND TEXT

M.C. MIROW

Florida's First Constitution



Monument to the Constitution of Cádiz, St. Augustine, Florida.
Drawing by Gregory Mirow.

Florida's First Constitution

The Constitution of Cádiz

Introduction, Translation, and Text

M.C. Mirow

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2012
M.C. Mirow
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Mirow, Matthew C. (Matthew Campbell), 1962-
Florida's first constitution, the Constitution of Cádiz : introduction,
translation, and text / M.C. Mirow.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-61163-189-0 (alk. paper)

1. Spain. Constitución (1812)
2. Spain. Constitución (1812). English.
3. Constitutions--Spain.
4. Constitutional history--Spain. I. Title.

KKT2064.51812.M57 2012
342.4602'3--dc23

2012010133

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668

www.cap-press.com

Printed in the United States of America

To Angela

Contents

Acknowledgments	xi
Introduction	3
Spain Resists Napoleon and France	3
Americans in Cádiz and in Drafting the Constitution	5
The Promulgation of the Constitution of Cádiz	6
Important Features of the Constitution of Cádiz	10
Constitution of Cádiz of 1812	15
Title I. Of the Spanish Nation and of Spaniards.	15
Chapter I. Of the Spanish Nation.	15
Chapter II. Of Spaniards.	16
Title II. Of the Territory of the Spains, Its Religion and Government, and of Spanish Citizens.	16
Chapter I. Of the Territory of the Spains.	16
Chapter II. Of Religion.	17
Chapter III. Of the Government.	17
Chapter IV. Of Spanish Citizens.	17
Title III. Of the Cortes.	19
Chapter I. Of the Manner of Forming the Cortes.	19
Chapter II. Of the Election of the Deputies of the Cortes.	19
Chapter III. Of the Electoral Meetings of the Parish.	19
Chapter IV. Of the Electoral Meetings of the District.	22
Chapter V. Of the Electoral Meetings of the Province.	24
Chapter VI. Of the Meeting of the Cortes.	28
Chapter VII. Of the Powers of the Cortes.	31
Chapter VIII. Of the Enactment of Laws and of the Royal Sanction.	32
Chapter IX. Of the Promulgation of Laws.	34

Chapter X. Of the Permanent Deputation of the Cortes.	35
Chapter XI. Of the Extraordinary Cortes.	35
Title IV. Of the King.	36
Chapter I. Of the Inviolability of the King and of His Authority.	36
Chapter II. Of the Succession to the Crown.	39
Chapter III. Of the Minority of the King and of the Regency.	40
Chapter IV. Of the Royal Family and of the Recognition of the Prince of Asturias.	42
Chapter V. Of the Payment to the Royal Family.	43
Chapter VI. Of the Secretaries of State and of Office.	43
Chapter VII. Of the Council of State.	44
Title V. On the Courts and on the Civil and Criminal Administration of Justice.	45
Chapter I. On the Courts.	45
Chapter II. Of the Administration of Civil Justice.	50
Chapter III. Of the Administration of Criminal Justice.	50
Title VI. Of the Internal Government of the Provinces and of the Towns.	52
Chapter I. Of City Councils.	52
Chapter II. Of the Political Government of the Provinces and of the Provincial Deputations.	54
Title VII. On Taxes.	57
Single Chapter.	57
Title VIII. On National Military Forces.	58
Chapter I. On the Troops of Continuous Service.	58
Chapter II. On National Militias.	59
Title IX. On Public Education.	59
Single Chapter.	59
Title X. On the Observation of the Constitution and the Manner of Proceeding to Make Changes to It.	60
Single Chapter.	60
Constitución de Cádiz de 1812	69
Título I. De la Nación Española y de los Españoles.	69
Capítulo I. De la Nación española.	69
Capítulo II. De los españoles.	70
Título II. Del Territorio de las Españas, su Religión y Gobierno y de los Ciudadanos Españoles.	70

Capítulo I. Del territorio de las Españas.	70
Capítulo II. De la religión.	71
Capítulo III. Del Gobierno.	71
Capítulo IV. De los ciudadanos españoles.	71
Título III. De las Cortes.	73
Capítulo I. Del modo de formarse las Cortes.	73
Capítulo II. Del nombramiento de diputados de Cortes.	73
Capítulo III. De las Juntas electorales de parroquia.	73
Capítulo IV. De las Juntas de partido.	76
Capítulo V. De las Juntas electorales de provincia.	78
Capítulo VI. De la celebración de las Cortes.	82
Capítulo VII. De las facultades de las Cortes.	85
Capítulo VIII. De la formación de las Leyes, y de la sanción real.	86
Capítulo IX. De la promulgación de las Leyes.	88
Capítulo X. De la Diputación Permanente de Cortes.	89
Capítulo XI. De las Cortes extraordinarias.	89
Título IV. Del Rey.	90
Capítulo I. De la inviolabilidad del Rey, y de su autoridad.	90
Capítulo II. De la sucesión a la Corona.	93
Capítulo III. De la menor edad del Rey, y de la Regencia.	94
Capítulo IV. De la familia real, y del reconocimiento del Príncipe de Asturias.	96
Capítulo V. De la dotación de la familia real.	97
Capítulo VI. De los Secretarios de Estado y del Despacho.	97
Capítulo VII. Del Consejo de Estado.	98
Título V. De los Tribunales y de la Administración de Justicia en lo Civil y Criminal.	100
Capítulo I. De los tribunales.	100
Capítulo II. De la Administración de Justicia en lo civil.	104
Capítulo III. De la Administración de Justicia en lo criminal.	104
Título VI. Del Gobierno Interior de las Provincias y de los Pueblos.	106
Capítulo I. De los Ayuntamientos.	106
Capítulo II. Del Gobierno político de las Provincias y de las Diputaciones Provinciales.	108

Título VII. De las Contribuciones.	111
Capítulo único.	111
Título VIII. De la Fuerza Militar Nacional.	113
Capítulo I. De las tropas de continuo servicio.	113
Capítulo II. De las milicias nacionales.	113
Título IX. De la Instrucción Pública.	113
Capítulo único.	113
Título X. De la Observancia de la Constitución y Modo de Proceder para Hacer Variaciones en ella.	114
Capítulo único.	114
Bibliography	121
Index	123

Acknowledgments

I thank Dean R. Alexander Acosta of the Florida International University College of Law and Professor Alejandro Guzmán Brito of the Faculty of Law of the Pontifical Catholic University of Valparaíso, Chile, for their support of my work. Essential research for this project was conducted at the Latin American Collection of the Smathers Library, University of Florida, Gainesville. I am grateful to the University of Florida's Center for Latin American Studies for a research travel grant and to Richard Phillips who assisted my work there. A portion of the introduction was presented to the Max Planck Institute for European Legal History (Frankfurt, Germany). I thank its director, Thomas Duve, for his hospitality. I have also addressed this topic at a Mellon-LASA seminar on the Constitution of Cádiz of 1812 and its Impact in the Atlantic World and Beyond at the Pontifical Catholic University of Peru (Lima, Peru). I thank Natalia Sobrevilla of the University of Kent (U.K.), Claudia Rosas of the Pontifical Catholic University of Peru, and Scott Eastman of Creighton University for their hospitality in Lima, and the Latin American Studies Association and the Mellon Foundation for sponsoring my participation. Marisol Floren-Romero provided excellent bibliographic support and advice. In addition to the institutions listed above, I thank the Fulbright Commission of the United States, the MECESUP2 program of the Chilean Ministry of Education, the Centre Georges Chevrier (UMR 5605—Université de Bourgogne/CNRS) (Dijon, France), and the Escuela Libre de Derecho (Mexico City, Mexico). My family, Angela, Camila, and Andrea, deserve more thanks than I can express.

I worked from the Spanish text of the Constitution of Cádiz as found in the Biblioteca Virtual Miguel de Cervantes as *Constitución de Cádiz de 1812*, <http://www.cervantesvirtual.com> and corrected and checked it with the version found in Miguel Artola & Rafael Flaquer Montequi, *II La Constitución de 1812* (Madrid: Iustel, 2008) and the fac-

simile edition found at <http://scholarship.rice.edu>. I thank Alejandro Gutiérrez and the Spanish Ministry of Culture for ensuring intellectual property rights to the Spanish text.

Introduction

*The Spanish Nation is the reunion of
all Spaniards of both hemispheres.*

Article 1, Constitution of Cádiz (1812)

The monument to the Constitution in the central square of St. Augustine, Florida, is not a monument to the United States Constitution, the constitution that has guided Florida since 1821 when it became a territory of the United States. Instead, this modest and somewhat puzzling “obelisk” or “pyramid,” as it was called when erected in 1813, celebrates the renaming of the central square to the Plaza of the Constitution after the Spanish Constitution of 1812 was promulgated in October, 1812, in the city. This Constitution goes by different names including the Constitution of Cádiz and the Political Constitution of the Spanish Monarchy. Its nickname, “the Pepa” (*La Pepa*), comes from its promulgation in Cádiz, Spain, on March 19, 1812, the feast day of St. Joseph. The Spanish nickname for Joseph, or José, is “Pepe” and to make it feminine, because in Spanish the word “Constitution” is feminine, one gets the word “Pepa.”

This Constitution was Florida’s first written constitution, and it governed St. Augustine and the Spanish province of East Florida from 1812 to the beginning of 1815 and again from 1820 until Florida became a territory of the United States in 1821. Indeed, it would be accurate to say that it was Florida’s first and second constitution because it was promulgated once in 1812 and again in 1820.

Spain Resists Napoleon and France

A series of unusual and far-away events led to this constitution governing Florida in the early nineteenth century. When Napoleon and his forces occupied Spain in 1808, he pushed loyalists of Spanish King Fernando VII south into the cities and towns of Andalucía and finally to the

important colonial trading seaport of Cádiz. Along the way, forces loyal to Fernando VII mounted military resistance to France and established provisional governments in the name of the king who was now in exile in France. In Cádiz, Spaniards planned their battles against the French occupiers, desperately tried to maintain the power, extent, and allegiance of the non-occupied colonial empire overseas, and seized the moment to dream of dramatic political changes in a Spain independent of France.

Running and financing a war of independence against France and trying to keep the American colonies from splitting away from the Spanish empire were the main concerns of the government in Cádiz. One concern was related to the other: American colonies loyal to Fernando VII bankrolled the Spanish resistance in Europe.

Despite these pressing concerns, the governing bodies in Cádiz moved towards various political and social reforms that were eventually written into a constitution, the Constitution of Cádiz. This was done through a relatively representative body running the empire called, with a rather extraordinary and long-winded name, the General and Extraordinary Cortes. “Cortes” is the traditional name for representative bodies that existed under the monarchy before Napoleon invaded. These were not law courts. They were groups of people who advised the king or local royalty. We might think of “King Arthur and his Court” in the same way.

In Cádiz, the king was absent, and the Cortes did everything in his name as if he were approving. The Cortes issued decrees in his name and ran the colonies in his name. The Constitution of Cádiz was also promulgated in his name and maintained Spain as a monarchy. This is one of many astounding differences between the United States Constitution and the Constitution of Cádiz found as we read the Spanish document. Because we often think of our own experience in the United States when we boldly rejected a king in 1776 and established a lasting republican Constitution in 1787, we might think that constitutions and republics are always tied together. They are not; the Constitution of Cádiz created a constitutional monarchy. This form exists today in many parts of the world including Belgium, Denmark, Norway, Sweden, Spain, the Netherlands, and the United Kingdom. In 1812, it was still a pretty new idea to place royal power, which was usually thought of as being absolute and unfettered, under the control of a written constitution. As might be expected because of the limits placed on the king in the Constitution, when Fernando VII returned to Spain and regained power, the Cortes found out that he was not as approving of the Constitution as they might have hoped.

Americans in Cádiz and in Drafting the Constitution

The Constitution of Cádiz was the product of many meetings of the deputies of the Cortes who debated and drafted its provisions. Because the Spaniards on the peninsula knew the war against France would be impossible without American (Spanish-American, not people from the United States of America) help, Americans were represented at the Cortes and in the following general legislative assemblies under the Constitution, which were also called Cortes. American representation was debated during the drafting of the Constitution, and Americans made significant contributions to the proceedings and text of the Constitution.

Many areas of the empire were not able to send elected deputies to the Cortes and these regions were represented by temporary substitutes, often individuals already in Cádiz who had ties to the areas in the Americas they represented. Although their representation and power in Cádiz was never what they had hoped and they were clearly underrepresented in terms of population, the Constitution of Cádiz raised Americans to equal status with the Spanish Empire. Article I, quoted at the beginning of this introduction, shows just how important it was to make clear that the Nation included America, and this language is still often mentioned when Latin Americans, Hispanics, and European Spaniards gather. It was language that deliberately wove the empire and peoples together in a time when the empire was fraying for political and economic reasons. Relatively recent events showed that kings could be tossed to the side, as in the French Revolution, and empires could be smashed to pieces, as in the birth of the United States. In the Constitution of Cádiz, all Spaniards—Europeans and Americans, Spaniards in Bilbao, Seville, Lima, Mexico City, Bogotá, Havana, Pensacola, and St. Augustine—were literally all on the same page and all included at the very beginning of the Constitution. The words “both hemispheres” were important to the Spanish citizens of St. Augustine.

This was even more important to Spaniards around the globe because under their new Constitution, their tiny piece of the Nation was part of Spain’s claim to national sovereignty over the empire. The Constitution replaced the king as the sovereign with the nation. It was clear about this. Article 3 of the Constitution says, “sovereignty resides essentially in the Nation, and by the same, the right to establish its fundamental laws belongs exclusively to it.” Even though the Constitution established a con-

stitutional monarchy, sovereignty was in the nation. There was a place for the king, but underneath national sovereignty.

The Constitution also had to tackle the difficult task of defining who was a Spanish citizen. The question of who is a citizen and the idea of a written constitution are linked. In addition to defining how power is divided among different parts of the government, constitutions, like the Constitution of Cádiz and the United States Constitution and its Bill of Rights, set out rights that citizens under the constitution may have in relationship to their government and to each other.

By 1812, the Spanish empire already had over 300 years of experience in making distinctions between different people within the empire: different people had different rights and obligations, and Spanish law made traditional distinctions between men and women, children and adults, slaves and free people, Catholics and people of other faiths, nobility, clergy, soldiers, merchants, university personnel, native populations (*indios*), blacks, people of mixed race, and foreigners. Different rights, duties, and opportunities followed one's legal or social status. The Constitution of Cádiz did not reject these differences outright, but created new constitutional layers to legal and social status. It made distinctions between Spaniards (Arts. 5–9), citizens (Arts. 18–26). Blacks might be Spaniards, but they were usually not citizens and could only gain citizenship through exceptional contributions to the country (Art. 22). Citizens were “those Spaniards who through both blood lines trace their origin to Spanish dominions of both hemispheres” (Art. 18). There were many Spaniards, but fewer citizens; Spaniards might be passive participants in the government under the constitution, only citizens could actively participate.

The Promulgation of the Constitution of Cádiz

On October 1, 1812, the Constitution arrived in St. Augustine with a royal decree stating how it was to be published to the public, or promulgated, in the city. There were a number of legal requirements and a popular expectation that such an event would bring a celebration. Notice was given to the public and an official solemn ceremony was conducted. Like every legal event in the Spanish empire, sworn testimony was gathered and sent to the government in Cádiz. In addition to official acts and general celebrations, the orders also required a proposed

release of prisoners, something common to mark important political events. This was such an important change in St. Augustine that ceremonies and celebrations were held for several days.

In such matters, little was left to chance. The decree specified exactly what cities had to do. When the official copy of the Constitution arrived in a city, its leader selected a date to publish the Constitution in the most public area with as much ceremony as possible. This meant reading the Constitution and other decrees aloud followed by ringing bells, firing weapons, and illuminating houses with lights at night. On the Sunday after the promulgation, parish churches were to celebrate the Mass before city officials and residents. The Mass included the reading of the Constitution and a short homily on the text by the parish priest. It was then time to administer the oath: “Do you swear by God and these Holy Gospels to uphold the Political Constitution of the Spanish Monarchy as sanctioned by the General and Extraordinary Cortes of the Nation, and to be faithful to the King?” All responded, “Yes, I swear.” Religious ceremonies were not finished. The parish priest then celebrated the *Te Deum*, an ancient Latin hymn to the Father and Son. Similar procedures were used for all groups in Spanish colonial society including viceroys, archbishops, justices, universities, religious communities, and the military. Each step of the procedure had to be certified to the government in Spain.

Following these requirements, St. Augustine promulgated the Constitution in public on October 17, 1812, and in a more private ceremony of officials on October 22, 1812. The records of the City Council and other official documents recount with precision what happened. On the morning of October 17, 1812, Governor Sebastian Kindelán gathered the public, military, and religious officials of St. Augustine at the Casa Morada, his residence. The Governor, Captains of the Cuban Battalion stationed in St. Augustine, and others joined a procession led by a squad of American soldiers mounted on horseback and musicians. Reaching the central Plaza, soon to be renamed the “Plaza of the Constitution,” the Governor and others stood on a decorated platform. The Constitution was read aloud while the St. Augustine militia stood motionless with arms presented. As required by the royal decree, after the Constitution and decrees were read, bells rang and nearby artillery fired. The platform party then moved to another stage near St. Augustine’s Quarter of San Francisco. The Constitution was read again before similarly attentive black troops from Havana. There were more bells and artillery. The reading, bells, and shots were not over. The group continuing along San Car-

los Street, past the Treasury and Cuna Street, to the Puerta de Tierra. The Constitution was read again from another platform before black troops from St. Augustine. After more bells and artillery, it was time to return to the Governor's house for refreshments and music. St. Augustine's citizenry draped banners along the streets and illuminated their houses.

The religious portions of the celebration were conducted the next day, Sunday, October 18, 1812. Following the precise instructions of the decree, the Constitution was read in the church and a priest gave a brief sermon on the Constitution. He swore to the Constitution and celebrated a solemn *Te Deum*.

A few days later, on October 22, 1812, Governor Sebastian Kindelán gathered the chief public officials of the city. These important men included the treasurer and his staff, the guard of the general storage areas and his staff, the members of St. Vincent Ferrer, the tax collector and his staff, the staff of the Royal Hospital, and individuals of the army and navy. The Governor appointed two trusted men to administer the required oath. The oath was read: “[D]o you swear by God and these Holy Gospels to uphold the Political Constitution of the Spanish Monarchy sanctioned by the general and extraordinary Cortes of the Nation and to be faithful to the king? And to which all, in one voice, responded, ‘Yes, I swear.’” The transfer to constitutional power was almost complete. The military was placed under constitutional authority by Francisco Rivera, the chief commander of the Cuban Battalion at the Castillo de San Marcos. He certified that his troops took the same oath on the same day after having the Constitution read to them.

As required by the royal decree, St. Augustine and its province of East Florida promulgated and swore to Constitution of Cádiz with obedience and precision. The city created institutions following the Constitution and the Constitutional City Council was active in running the province under the Constitution for the next couple of years. In the region under its control, St. Augustine even assured that the Constitution was promulgated in Fernandina, now Fernandina Beach, in 1813 many miles to the north on Amelia Island. It also appears from the records of the Archivo General de Indias in Seville that the Constitution was promulgated in Pensacola, an area outside the control of St. Augustine and East Florida, but much less is known about this event. On the national level, St. Augustine (and Pensacola) were represented in Cádiz by Gonzalo Herrera who was elected to represent Havana and the Two Floridas. We may properly think of Herrera as Florida's first representative to a national as-

sembly. St. Augustine communicated its needs to him and he apparently raised these issues with the government in Spain.

One interesting and lasting activity of the City Council was its compliance with the requirement that the main plazas where the Constitution had been promulgated be renamed as “Plaza of the Constitution” with a stone or tile sign. St. Augustine fulfilled this requirement in 1813 and 1814. There are detailed records concerning the financing, construction, and local political infighting related to the monument to the Constitution. A marble tablet on the monument reads, as translated from the Spanish:

Plaza of the Constitution
Promulgated in the City of Saint Augustine of East Florida
On the seventeenth of October, 1812
During the governorship of
Brigadier Don Sebastian Kindelán
Knight of the Order of Santiago
being Governor
For eternal memory
The Constitutional City Council has raised this obelisk
Under the supervision of
Don Fernando de la Maza Arredondo, the Younger
Councilman and Dean
Don Francisco Robira
City Attorney
1813

The monument appears to have been the largest public works project of the time. Many of the city’s important individuals had ideas about how quickly it was to be done, but there were few funds to carry it out. It was the perfect setting for self-important local officials to battle with each other. Oddly, Fernando de la Maza Arredondo, whose name is carved into the monument, actually stepped away from being responsible for the monument because of these battles, but later became Constitutional Mayor when the Constitution was reinstated in 1820. Perhaps this tablet dated 1813 was really put in the monument in 1820?

At the bottom of the large plaque on the monument is a Masonic square and compass symbol. The symbol was probably not sanctioned by the City Council in 1812 or 1820 and was probably added sometime later, although it is hard to say when. Its presence on the monument remains a mystery.

When Fernando VII came back into power in Spain in 1814, he repudiated the Constitution of Cádiz. It was not until early 1815 that the Constitutional City Council of St. Augustine complied by winding up its activities. It took down the plaques to the Constitution and put them into storage, transferred all its authority to the military commander of the fort, and closed its Books of Acts. There is some indication that the City Council of St. Augustine may have even considered declaring itself independent from Spain at this moment. This, however, can only be gleaned from a document to Spain stating that the idea never really crossed its mind!

Through a series of political changes, Fernando VII in Spain was forced to swear allegiance to the Constitution in 1820. The Constitutional City Council of St. Augustine sprang back into action, promulgated the Constitution again in the streets of St. Augustine, dusted off its Book of Acts, and removed the Constitution plaques from storage and affixed them to the monument. The City Council ran the town under the Constitution of Cádiz until Spain and its representatives in St. Augustine fulfilled their obligations under the Adams-Onís Treaty of 1819, transferring Florida to the United States. The transfer is recorded in the Book of Acts of the Constitutional City Council. This moment transferred Florida from one Constitution, the Constitution of Cádiz of Spain, to another, the Constitution of Philadelphia of the United States of America.

Important Features of the Constitution of Cádiz

The language of the Constitution is clear and easy to follow. It is written in the enlightened spirit of the time.

If we think of the essential elements of a constitution as providing the structure of government and its powers and limiting its action to protect individual rights, the Constitution of Cádiz does these things in some unexpected ways.

We are so used to the Constitution of the United States and the Constitution of the State of Florida that to see things handled in a different way is somewhat surprising.

Many experts on constitutions often call the Constitution of Cádiz a “liberal” constitution. Of course, when we talk about a liberal constitu-

tion from the time of the Constitution of Cádiz, we are not talking about what is considered “liberal” or “conservative” today. Liberalism in this period had to do with the protection of security, liberty, and property and the state generally keeping out of economic and social activity. Although it is hard to draw comparisons over time, “liberalism” in the nineteenth century is in some ways closer to today’s “conservatism” in the United States than today’s “liberalism.”

The requirement that only the Roman Catholic faith is permitted in the Spanish Empire or that every government action is done in the name of the Spanish King were quite traditional and politically conservative ideas, and yet these requirements are found throughout the Constitution of Cádiz. Similarly, we have come to expect modern liberal constitutions to contain some sort of list of rights of citizens. The United States Bill of Rights found in the first ten amendments of the United States Constitution, along with the French Declaration of the Rights of Man, has led constitutions and governments of the world to adopt clear lists of rights to protect citizens and individuals from the abuse of power by the state. Yet again, the Constitution of Cádiz contains no list of protections, no bill of rights.

How then are some scholars so comfortable calling the Constitution of Cádiz a liberal constitution? There are some important changes the Constitution of Cádiz introduced to Spain and its empire. First is the Constitution’s broad structure of elections and representation that was unheard of in the Spanish world. Over 75 articles of the Constitution’s 384 articles directly address elections to representative bodies on the parish, district, provincial, and national levels. These elections are all pointed towards a large representative national assembly, the Cortes, that is responsible for making the laws. The Cortes makes laws, takes the oath of the King, approves treaties, grants admission of foreign troops into the kingdom, regulates the military forces, sets the national budget, taxes, establishes customs and duties, standardizes units and money, promotes industry, sets policies for public education, and approves general regulations for the police and health of the kingdom. One will note that the Cortes of the kingdom of Spain under the Constitution of Cádiz is very different from our limited Congress under the federal structure of the United States Constitution. Power in the Spanish kingdom under the Constitution all flows towards the central state; there are no individual states with separate reserved powers as in the United States Constitution. The Cortes, as legislature, is supreme.

This brings us to another essential element of the Constitution of Cádiz, the separation of powers of government into legislative, execu-

tive, and judicial branches. This is very familiar to us in the United States and in the state of Florida. It is something taken for granted. For Spain and for the Constitution of Cádiz, this was a drastic change and a very new way of looking at how government ought to function and to check itself. Under the Constitution of Cádiz, the Cortes were the legislative branch, the King and his Secretaries were the executive branch, and the courts were the judicial branch.

With the King placed as the head of the executive branch, he is no longer the sovereign, no longer the embodiment of the entire government, state, and empire. Thus, another very important change found in the Constitution of Cádiz is the idea of national sovereignty. It is the nation, represented in the Cortes, that is sovereign, and not the King. No wonder Fernando VII repudiated the Constitution on his return to power in 1814!

What about constitutional protections for citizens? First, one must note again that the Constitution of Cádiz carefully spells out who is and who is not a “Spaniard” and who is and who is not a “citizen.” By creating these categories and setting their boundaries, the Constitution not only created groups who could use constitutional rights, but also defined away many whose status was uncertain before being excluded by the new language of the Constitution. The Constitution of Cádiz declared all free men to be Spaniards, and this included indigenous peoples and free blacks. Many indigenous peoples also fit under the more limited definition of citizen (Arts. 5 and 18). Second, like the United States Constitution, the Constitution of Cádiz perpetuated slavery; despite strong abolitionist voices in Cádiz, enlightenment arguments were not successful in abolishing slavery. Third, we have to remember that the Constitution of Cádiz does not contain a Bill of Rights.

The freedoms and protections the Constitution of Cádiz provided are found scattered throughout the document in some odd and unexpected places. They come up only where a particular branch of the government might interfere with something that is of specific concern. For example, freedom of expression and of the press are mentioned in the provisions dealing with public education and the power of the Cortes (Arts. 131(24) and 371).

More broadly, the Constitution protects civil liberty, property, and other legitimate rights (Art. 4). The King is prohibited from taking property and must provide compensation if it is taken for a public purpose and may not deprive anyone of liberty on his own (Art. 172). Everyone

accused of a crime is entitled to trial in an established regular court (Art. 247) and laws have to be uniform and written in clear codes (Arts. 244 and 258). There are a number of provisions in the Constitution protecting the rights of the criminally accused including limitations on imprisonment, the proper use of force, the right to be presented before a judge, the right to a written record of detention, the protection of goods from seizure, the prohibition of torture, and the nature of imprisonment itself which is to hold rather than to disturb the convicted (Arts. 286–308).

The Constitution of Cádiz required a balanced budget; taxes were to be collected in proportion to the expenses that were budgeted and decreed. Public debt was constitutionally made a priority with the Cortes acting to extinguish it (Arts. 338–355).

The Constitution of Cádiz was an important step into the modern world of good structures for government, the balance of powers between branches of government, and the creation of national sovereignty. It did much to define ideas of citizenship, representation, and voting. Its presentation of the rights of individuals when faced by oppressive government action is less notable. Its many provisions for the king and the perpetuation of the royal family also ensured that Spain under the Constitution would be a monarchy. Giving the Roman Catholic Church a privileged constitutional status was at odds with early changes in the North American world. Slavery continued under its provisions.

If anything, the reader of this introduction should appreciate the complexity of the Constitution, the strange historical circumstances that brought it to become the law of Florida for several years, and the very peculiar mix of liberal and traditional ideas found in the document.

The Constitution of Cádiz was profoundly influential in the creation of constitutions for new independent republics in Latin America as these countries rejected Spanish control. The notions of broad voting rights and representative local institutions were models for new republics. The Constitution of Cádiz also offered a model constitution that clearly separated the legislative, executive, and judicial branches without adding the complexity of federalism found in the United States Constitution. Scholars have noted the importance of the Constitution of Cádiz in the history of Mexican and Central American governments. Its place in the history of “liberalism” is still discussed and debated. It is an important point to consider in current questions such as why some constitutions work in some countries and others do not work in other countries. Article I of

the Constitution of Cádiz memorialized forever a sentiment that many Latin Americans or Hispanics share; that they are, for good or bad, in some sense culturally, historically, or emotionally tied to Spain and its historical expansion throughout the world. Such sentiments may, of course, quite rightly be rejected by many of America's indigenous communities in former Spanish territories. Nonetheless, the history of Spanish domination remains, and the language of the Constitution of Cádiz apparently permitted indigenous peoples and free blacks some access to the representative structures of local, regional, and national government.

Floridians should take note of our complex history and of the unexpected fact that the land that now makes up our state was subject to a constitutional form of government before it joined the United States. As noted, the constitutional government was not without substantial political and social flaws. Nonetheless, it was a government that Spanish Floridians were strongly attached to. When the Constitution fell out of favor, the stones reciting "Plaza of the Constitution" were not smashed or used in other construction, and the Book of Acts of the Constitutional City Council was not used to start fires on cool St. Augustine nights. Instead, it appears these constitutional items were carefully stored for years for the moment when they might be used again. Reading the accounts of the Constitutional City Council of St. Augustine, one also appreciates the way these Spanish government officials took the Constitution to heart and did their best to give daily life to its provisions. One document from 1812 from the City Council touchingly thanked the central government in Cádiz for the Constitution of Cádiz and stated that it would be defended by Floridians until their last breath. Despite the Constitution's complex place in history and the unusual provisions one finds in it from today's perspective, the Constitution of Cádiz was indeed Florida's first constitution.