



**ORIGIN OF PARLIAMENTARISM: AN HISTORICAL REVIEW FROM ITS
CRISIS¹: LEÓN (SPAIN) AS CRADLE OF PARLIAMENTARISM**

**ORIGEN DEL PARLAMENTARISMO: UNA REVISIÓN HISTÓRICA DE SU
CRISIS: LEÓN (ESPAÑA) COMO CERDO DE PARLIAMENTARISMO**

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“Every subject in its simple elements has its basis in principle and its record in progress. In all this diversity truth demonstrates its harmony”.³

ABSTRACT

The recognition of *The Decreta of León of 1188* as the “oldest documentary manifestation of the European parliamentary system” by Unesco on 19th June 2013 and its inclusion in the International Memory of the World Register is the starting point of this paper. The explanation argues through a dialectic methodology. Thesis: England first developed the idea of representative government and parliamentary institutions. Antithesis: the Decreta of León 1188 predates any historical reference to parliamentary representation. Synthesis: the citizen attendance, the procedure and the content of the Decreta of León 1188, supported by the recognition of Unesco proves that León is the “cradle of parliamentarism”. This historical review stimulates a reflection about the present situation of parliamentary democracy and, mainly, its crisis. The need of a citizen re-engagement with processes political, especially in the amendment of constitutions through constitutional conventions should be our reference. What are the main lessons from history today?

Keywords: Parliamentarism. Origin. Historical review. Decreta of León of 1188.

RESUMO

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³ CAPEN, Nahum. *History of Democracy. Political progress historically Illustrated from the earliest to the latest periods*, Hartford, American Publishing, 1874. p. vi.



O reconhecimento da Decreta de León de 1188 como a mais antiga manifestação documental do sistema parlamentar europeu" pela Unesco em 19 de junho de 2013 e sua inclusão no Registro Internacional da Memória do Mundo é o ponto de partida deste artigo. A explicação argumenta através de uma metodologia dialética. Tese: Inglaterra desenvolveu pela primeira vez a idéia de governo representativo e instituições parlamentares. Antítese: a Decreta de León 1188 antecede qualquer referência histórica à representação parlamentar. Síntese: a participação cidadã, o procedimento e o conteúdo da Decreta de León 1188, apoiada pelo reconhecimento da Unesco comprova que León é o "berço do parlamentarismo". Esta revisão histórica estimula uma reflexão sobre a situação atual da democracia parlamentar e, principalmente, sua crise. A necessidade de um reengajamento dos cidadãos com os processos políticos, especialmente na alteração das constituições através de convenções constitucionais deve ser a nossa referência. Quais são as principais lições da história de hoje?

Palavras-chave: Parlamentarismo. Origem. Revisão História. Decreto de León de 1188.

1 INTRODUCTION

To talk about the crisis of present parliamentary systems is a very common topic nowadays and in the past⁴. We propose to look to the beginning, the cradle of parliamentarism as a point of departure on a final reflection about current situation. The main goal of this paper is to alert academics, especially from legal disciplines, to the consideration of Decrees of León (Spain), of 1188⁵ as "the oldest documentary manifestation of the European parliamentary system" as Unesco has declared on 19th of June 2013⁶. We will focus our arguments in providing a context for the event and in a discussion about its main features from a constitutional point of view. The method is a dynamic dialectic presentation in which we argue a thesis: the consideration of England as the traditional reference for historic parliamentary systems; an antithesis: the evidence of "The Decree of León, Spain, 1188" as the cradle of parliamentarism and a synthesis, where we try to outline the "basic" connection

⁴ SÁNCHEZ DE COCA, Joaquín. *La crisis de nuestro Parlamentarismo*. Madrid: Imprenta de Isidoro Perales, 1914. p. 508. The author refers a situation where the parliaments represents itself far from being a voice of the citizens.

⁵ The Decreta are reproduced in the appendix of this paper. The traslation has been done according the Spanish versión of José María Fernández Catón divulgada por el MECD.

⁶ 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 one year later, 2013.

(<http://www.unesco.org/new/en/communication-and-information/flagship-project-activities/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-8/the-decreta-of-leon-of-1188-the-oldest-documentary-manifestation-of-the-european-parliamentary-system/>)



between these Decreta and our present Constitutions. We will try to underline the constitutional value and constitutional heritage of Decreta 1188.

It is a very common topic in the present literature to discuss the legitimacy and effectiveness of modern democracy⁷, but if we look back, a possible gap between governors and people, later citizens, is the essence of the question. The slogan, “mind the gap”, has been behind the different proposals to achieve a satisfactory and viable answer to the link between power and citizens. The institutional framework is the institution of parliament. In addition, we focus our interest on Constitutions, far away from original constituent power; we should consider redefining derived constituent power and the moment to amend constitutions: constitutional conventions. In a different context, we should pay attention to constituted powers and the referendum as an instrument to reach these aims. If we are going to debate, as a major concern, about present parliamentarism, we may begin from the beginning. At this point we have to make a reference to León, Spain, why, where, when?

2 THESIS: ENGLAND, WHERE THE REPRESENTATIVE GOVERNMENT FIRST DEVELOPED

The concept of representative democracy has been described as an oxymoron⁸, a contradiction between democracy that seems to refer to direct government and the need to channel the impossible participation of a huge population of present day states. Apart from the theoretical roots of the issue, related to Montesquieu, Madison, Hamilton or Paine, what interests us is to go back in time approximately to the years of the twelfth and thirteenth centuries, and to different locations, Runnymede (England) and León, situated in Spain. It could be said that the former precedents of popular representation, what were set in Greece, or with Phoenician or Babylonian, underwent a mutation. The proper date of birth of democracy is unknown, but if we are thinking about representative democracy we could made some proposals

An elemental concept of *representative democracy* refers to the existence of a governing body where decisions should be adopted by representatives of “various social

⁷ MAIR, Peter. *Ruling The void. The hollowing of Western Democracy*. London: Verso, 2013. p. 1.

⁸ KEANE, John. *The life and Death of Democracy*. London: Pocket Books, 2010. p. 161. First edition Simon & Schuster UK Ltd, 2009.



interests, drawn for a wide geographic radius”⁹. To delineate the birth of representative democracy is quite difficult. The Christian Church has included from an early date the idea of representation. In a secular sphere, the fields of administration and justice were the channels of representation, but far removed from a democratic approach. One important feature of these early moments of representation was to link its birth to a monarchy strong enough to control its use and its procedures. The introduction of representative government as a measure of popular control over the crown could be dated back to the fourteenth century¹⁰.

The institution that canalized this representation was called “Curia”, “Cortes” or Parliament.

2.1 Parliament

When we talk about Parliament we should distinguish between the word and its meaning.

According to Pollard¹¹, the earliest use of the word Parliament occurred in the phrase *en sun plenier parlement* of Jordan Fantosme, who wrote towards the end of Henry II’s reign¹², in the twelfth century. It is held that Bishop Stubbs uses it, inadvertently according to Pollard, in an assembly held at Gaitington in 1189¹³, but it does not occur in the authorities he cites so the reference is uncertain. In 1244, Alexander II of Scotland was granted of a safe-conduct “in coming to meet the King or his council in Northumberland And so long as the *parliament* there shall last”, and on 15th August following the sheriff of Northumberland was ordered to pay various sums for crops trodden down on account of “the parliament” held between the King and the King of Scotland (Bain, Cal of Docs. Relating to Scotland, i, Nos. 1647, 1651-2, 1658; Henry III was represented at this “parliament” by Richard, Earl of Cornwall). Here *parliamentum* means no more than a parley; and in this sense the word was used as late as the sixteenth century. In 1539 it is applied to the meeting between the King Charles V and Francis I (L. and P. XIV, ii 649) and in 1542 to one between Charles V and the Pope (ibid. Xvii 1103; State Papers, ix, 219). Any kind of consultation might be called a

⁹ URBINATI, Nadia. *Representative democracy: principles and genealogy*. Chicago: University of Chicago Press, 2006.

¹⁰ HATTERSLEY, Alan F. *A short history of democracy*. Cambridge: University Press, 1930. p. 78.

¹¹ POLLARD, A. F. *The evolution of parliament*. London: Longmans Green, 1920. p. 32, foot note 1.

¹² *CHRONIQUES of Stephen, Henry II and Richard I, Rolls Ser, iii, 226.*

¹³ Introduction to the Roll series. Ed. Hassall. p. 407.



parliament. So, the word has been traced as far back as the reign of Henry II, but it was certainly used in France in 1239¹⁴, by Matthew Paris about 1246.

Another clarification, when we are talking about the word Parliament, is that its ancient use should be changed to its plural, Parliaments. The plural, *parliamenta*, is more appropriate than the singular because there is no continuity between one parliament and another, and each may have had its individual constitution. Only as a result of the financial needs of the Crown and a growing pressure of financial and administrative business of the monarchy did a parliament become more frequent and more continuous.

Linked to the word Parliament, we should discuss a closely-related term, Cortes. The word Cortes has three overlapping meanings: “Corte” refers to the city or town where a monarch resides and holds his or her councils and tribunals. Those functions of advice and justice are mixed with the early nature of parliamentary institutions. This usage has its origin in the Latin *Cohors*, referring to a yard or enclosure or troops of one-tenth of a legion. Cortes also refers to the whole body of councils, tribunals, ministers and officials whose job is to advice and to serve the Monarch and the Kingdom. Finally, Cortes refers to the City Council whose representatives are empowered to make proposals, demands or petitions and granting services to the Monarch¹⁵.

The proper denomination of *Curia Regia*, in plenary or extraordinary session, is the closest institutional precursor of the Cortes. Basically, the common people’s representation in the Curia through citizens elected by each of the councils supports its consideration as a precursor of parliaments. This term is used in the Kingdom of León in 1188.

In addition to the usage of the word, the meaning of parliament or Cortes is linked to judicial and advisory functions, which then evolve into legislative activities. At the beginning, Parliament seemed to be simply a talk or parley of a council summoned in different ways. Soon, of course, it came to be used for parleys between the King in council and other constitutional elements, representative elements which alone could produce an adequate financial supply. But this financial business was not the original nor the most frequent cause of parliaments; these were war campaigns, regulation of prices, the administration of justice. The introduction of a representative principle implemented by parliaments as a possible measure of popular control over the crown is a postulate that can be assumed in general terms.

¹⁴ LUCHAIRE, Achille. *Manuel des Institutions Françaises*. Geneva: Megariotis Reprints, 1979. p. 562.

¹⁵ DICCIONARIO de Autoridades. Real Academia Española.[s.n.: s.l., 1737]. v. I, p. 627-628.



2.2 England and the root of parliamentary institutions.

According to Pollard, A. F., in *The Evolution of Parliament*, parliamentary institutions were incomparably “the greatest gift of the English people to the civilizations of the world”¹⁶.

Civilized man has drawn his religious inspirations from the East, his alphabet from Egypt, his algebra from the Moors, his art and literature mainly from Greece, and his laws from Rome. But its political organization, he owes mostly to English conceptions and constitutional systems all over the world are studded with words and phrases which can only be explained by reference to the medieval English parliament. Other nations have had their indigenous representative systems but they have all been abandoned or profoundly modified under the influence of English ideas.

In the same sense, Hattersley says that England is the country “where representative government first developed”¹⁷, although with the features we have explained about the first parliamentary conception. Sir James MacIntosh, equally, emphasises the importance of England and its Magna Carta in the consolidation of representative democracy and constitutionalism: “It (Magna Charta) presents, however, the first outline of a parliamentary constitution”¹⁸.

Against this background, the judicial purposes were the main purpose. In addition, attendance was an obligation attached to the holding of certain tenements and there was no opportunity for deliberation nor can we be certain that they were elected. The local courts of shire were considered the foundations of a national assembly.

After the Norman Conquest, the chief governing authority, apart from the crown, was the king’s Court or Curia Regis. A body partly composed of tenants-in-chief, and partly of advisers specially summoned by the king. Originally the Curia Regis performed universal functions, and the history of English government in the middle ages is largely the history of the gradual specialization and differentiation of these functions, which are entrusted in various offshoots of the parent Curia. Of these the largest, and ultimately, the most important, the Great Council (Magnum Concilium) was transformed into a national legislature by the device of summoning representatives of the shires and boroughs to confer with the king and his council at Westminster. This process was the origin of parliamentary institutions- the most valuable contribution of the English people to western civilization.¹⁹

¹⁶ POLLARD, A. F. *The evolution of parliament*. London: Longmans Green, 1920. p. 3.

¹⁷ HATTERSLEY, Alan F. *A short history of democracy*. Cambridge: University Press, 1930. p. 78.

¹⁸ MaCKINTOSH, James. *History of England*. London: Longman, 1830. p. 217.

¹⁹ HATTERSLEY, *op. cit.*, p. 80.



Other assemblies from different countries present a clearly parliamentary nature. This refers to²⁰: the Althing, in Iceland; the first German diet attended by the common people (1232) or the first meeting of the French States General (1302).

3 ANTITHESIS: ALFONSO IX AND SAN ISIDORO IN LEÓN (SPAIN), DECRETA 1188 THE CRADLE OF PARLIAMENTARISM

Here is however another narrative around the establishment of parliament. A different proposal was made to an international audience in 2009²¹. John Keane has said that “the first parliament has born of despair”²². This desperation refers to the Christian communities who lived in the northern parts of Spain and to the advance of the occupation by Muslims, especially from the seventh century (Syria, Palestine, Egypt, North African Coast, Spain in the eighth century, southern France, and Italy in the ninth century). The world of Christianity seemed to be frayed. The answer, from a simplistic point of view, was fighting. Fighting in the name of Europe, in the name of Christianity. To quote a reference, we might recall the Pope Urban II (1088-1099) and his call to fight in 1095 made from Clermont, a village of France²³, against the unbelievers.

This new narrative about the establishment of parliament includes a reference to several aspects. The key topics in this process would be to identify the main actor, Alfonso IX, to contextualize the circumstances where the Curia was held and to explain the form and the content, the presence of citizens and the covenant they made, the Decreta of 1188.

3.1 Who was Alfonso IX?

Alfonso was born in Zamora, on 15th August 1171; he was the only son of Ferdinand II of León and Urraca of Portugal. His father was the younger son of Alfonso VII of León and

²⁰ UNESCO. Declaration, p. 3

²¹ From the point of view of history we could find some documents from the beginning of XX Century what make a claim for this recognition. The first overt comparison between the English paternity of parliamentarism and the Spanish claim dates back to 1922. RAMÍREZ SANTIBÁNEZ, José, *Aventando cenizas: Estudio comparativo entre el ordenamiento de León de 1188 y la Gran Carta Inglesa de 1215*. San Juan, Puerto Rico: Tipografía Cantero Fernández, 1922. p. 147. (Library of the University of Illinois 946.2 RIa)

²² KEANE, John. *The life and Death of Democracy*. 1st ed. London: Simon & Schuster, 2009. p. 170.

²³ MUNRO, Dana C. The Speech of Pope Urban II at Clermont, 1095.” *American Historical Review*”, v.11, p. 231-42, 1906.



Castile, who divided his kingdom between his sons until they were reunited by Alfonso IX's son, Ferdinand III of Castile.

His first years were full of difficulties. Firstly, a disease: he suffered from fits of epilepsy, which earned him the nickname the "the dribbler" (*baboso*) and according to another author Alfonso IX was partially blind²⁴. Secondly, a familiar problem was created by the Pope's refusal to sanction the marriage of Ferdinand II and Urraca of Portugal. His father got married again, and the stepmother, Urraca López de Haro desired the throne for her own son. Childhood was very hard for Alfonso IX, whose mother had gone back to Portugal, and suffered an obligatory isolation. His life was at risk and he decided to abandon Spain and go back to Portugal. During the journey he received the news that his father had died and that he had the support of the Archbishop of Santiago, some relevant nobles of León and the Castilian King Alfonso VIII, his cousin, for backing his bid for the throne.

Alfonso IX became king of León at the age of seventeen. On the 23rd of January he was crowned king of León²⁵.

3.2 Context of Decreta 1188

The problems he had to face were complex. Firstly, the intense military pressure experienced by his kingdom. Muslims armies had advanced with the main consequence of the abandonment unilaterally of the old covenant according to which Muslims governors contributed money to the Christian king, a custom called "parias". This military pressure led to the reconquest by Alfonso IX of Caceres (1227), Merida and Badajoz (1230)²⁶.

Secondly, the economic problems of a kingdom with empty coffers. This was partially a consequence of previous military problems, so new taxes were imposed on towns and even on the Church with a high degree of unpopularity. But the permanent warfare against the

²⁴ CAVERO DOMINGUEZ, Gregoria. Alfonso IX de León y el iter de su Corte (1188-1230). "e-Spania. Revue interdisciplinaire d'études hispaniques médiévales et modernes", parra. 26, dic. 2009. Disponible in: <http://e-spania.revues.org/18626?lang=en>.

²⁵ GONZÁLEZ GONZÁLEZ, Julio. Alfonso IX." *CSIC*", Madrid, v. 1, p. 334, 1944. II vols.

²⁶ CLEMENTE RAMOS, Julián: DE LA MONTAÑA CONCHINA, Juan Luis. *La Extremadura cristiana 1142-1230*, p. 83. Disponible in: <http://institucional.us.es/revistas/historia/21/05%20montana%20conchina.pdf>.



Muslims had a high cost. Alfonso IX decided to appeal to the towns whose spokesmen were called upon to contribute to support the expenditure of the kingdom.

Monarchs needed funds for their policy of reconquering new territories, particularly in order to finance repopulation; the common people of the booming towns and cities of the kingdom could provide that financial support for the crown. These people thereby had gained economic and social status for the development of new economic activities. In addition, León was a reference point in “El Camino de Santiago” (Saint James Path) and this circumstance increased the cultural and economic life of those villages.

The need to meet the Cortes had been supported by a climax of urgency and grievance. The need to calm the protest from each of those estates of the kingdom compelled this. So it was a necessary option for the monarch. The background was the threat of a developing alliance between local nobility and men of the towns.

Nevertheless, some authors speak of the “spontaneous” character of the summons and the invitation to people to take part in it²⁷, from the point of view of a comparative perspective with the climax where Magna Charta was created.

So from this socio-economic context we could define a political transformation of these assemblies from merely advisory institutions into an instrument compatible with a plan for political integration, a strategy to strengthen royal power by obtaining their institutional support, rather than a weakening of the monarch power. “The Decreta of León of 1188 can thus be considered an expression of a monarchy strengthened through the adoption of parliamentary tradition”²⁸.

3.3 Unique characteristics of Cortes of León 1188

Two perspectives could be adopted in support of the proposition of unique character of Decreta of 1188: a formal element referred to the presence of “elected citizens” in this Curia and a material/substantial perspective, from which we can identify the precedents of present constitutionalism in the rights in the Decreta. The enacted Decreta of 1188 could be considered to have a constitutional heritage

²⁷ RAMÍREZ SANTIBÁNEZ, José. *Aventando cenizas: Estudio comparativo entre el ordenamiento de León de 1188 y la Gran Carta Inglesa de 1215*. San Juan, Puerto Rico: Tipografía Cantero Fernández, 1922. p. 147. (Library of the University of Illinois 946.2 RIa), p. 18.

²⁸ UNESCO. Declaration. p. 2.



3.3.1 From a formal point of View: the presence of “good men” or elective citizens in the Curia

In March 1188, a generation before King John’s Magna Carta 1215, “Alfonso IX convened the first ever Cortes”²⁹. The triangle of representation was formed for the first time ever by the nobles, bishops and urban citizens, so we could describe it as a “modern” practice of parliamentary representation, an institution to advise and to serve the monarch. It moved with the changing residences of the monarch.

Delegates from the three region’s estates -the nobility, Church and towns- met for the first time to adopt decisions together, related to important issues that over time would form part of a constitution.

These men referred to as “cives” or “bonni hominess”, good men, were to present to the king all the issues affecting their towns and to contribute to the army and to give money to the kingdom on the king’s commands. Their leadership stemmed from their prior election as officers of the town councils called “fueros”. The other part of the compromise was Alfonso’s IX promise to provide protection for their towns, basically through a detailed regulation of a judicial procedure. It was the first foundation stone of rule of law and legality as we will try to show in the following paragraphs.

According to Keane, “it was the first recorded gathering of all three estates (the interests of the towns had hitherto been ignored in meetings convened by the monarchs of the region)”³⁰.

The absence of a journal of that Curia raises numerous questions about how those citizens arrived at the Curia. Two basic theses have supported the idea of popular presence in the Curia 1188. First, a wider appeal than previous Curia, based on the need of a special support for the first Curia to be held by Alfonso IX. This theory has been sustained by Estepa and the main reason is the inclusion of new members of bourgeoisie or lower nobility, not included in previous calls³¹. A second hypothesis is defended by Arvizu Galarraga. He

²⁹ KEANE, John. *The life and Death of Democracy*. London: Pocket Books, 2010. p. 173. First edition Simon & Schuster UK Ltd, 2009.173

³⁰ Ibid., p. 174.

³¹ ESTEPA DIEZ, Carlos. *Curia y Cortes en el Reino de León en Las Cortes de Castilla y León en la Edad Media*. Valladolid: [s.n.], 1988. v. 1.



explains the presence of people as result of their presence in the surroundings of the Church where the Curia was held. These people could present their proposals or their petitions and a young king needing to begin his reign with some stability decided, in a spontaneous decision, to open the gate to those citizens³².

This aspect of the process does not affect the relevant presence of citizens in the Curia. A different question is to identify the role of these citizens in the curia. If we look at the text the conclusions are, basically, *advice*. i.e Decree IV: “Also promised 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”. *Witness*, Citizens, described as good men, should be authors of a testimony denouncing the official who should apply justice. The inclusion of citizens as the evidentiary support of a basic judicial procedure is provided in Decrees V, IX and XI). Finally, in the Decree XVII the citizens are responsible for “confirming with their oath” to be faithful to the king, to maintain justice and to preserve peace in the kingdom. So three basic roles were adopted by citizens according to those Decreta, to advise, to cooperate as witness in the rule of law and to watch over the compliance of the agreements and to contribute to the stability of the kingdom. Furthermore in these roles, the citizens had co-decided with other branches who took part in the meeting/curia and who supported the final will of the king. This could be deduced from the Decree I. “In the name of the Lord. I. D. Alfonso, King of León and Galicia, having held Curia in León, with the archbishop and bishops and barons of my kingdom and with *elected citizens* of each one of the cities, set and confirmed under oath to all of my kingdom, clergy as well laity, I will respect the good traditions what have been established by my ancestors.

In addition, the character as a deliberative body of the Curia 1188 could be supported by the presence of “bonni homme”. The good men were *not* in the condition of *sycophants*³³. The main target of this gathering was to be consulted, to debate and to give an advice what should be achieved by the King.

From this formal approach, we might speak of a peculiar *deliberative democracy*, where many issues were decided by talk. All was committed to open discussion. It was very

³² ARVIZU GALARRAGA, Fernando. Mas sobre los Decretos de las Cortes de León de 1188. “*Anuario de Historia del Derecho español*”, 63-64 p. 1193-1238, p. 1227, 1994,

³³ There are historical references to a solemn gathering a few months earlier in Carrion between King Alfonso IX and the governors (maiores) of forty-eight cities from the kingdom of Castile, with members of the church and nobility. The issue was the betrothal of Conrad of Swabia, the son of Emperor Frederick Barbarossa, to the Infanta Berenguela. (KEANE, John. *The life and Death of Democracy*. London: Pocket Books, 2010. p. 1. First edition Simon & Schuster UK Ltd, 2009).



far removed from those assemblies of citizens of the Syrian, Mesopotamian, Phoenician, Greek or Islamic kind where did not exist a real difference between their members. It became those precedents in a forum of discussion but over a homogeneous composition. The bases showed an undivided sense of political community³⁴. Here the premise is absolutely different, as we found members of different estates, three estates, church, nobility and men of the town (good men), according to their competing and potentially conflicting interests were the point of departure. The goal to reach was a peaceful compromise among them. “A new mechanism for resolving disputes and striking bargains among interested parties who felt they had a common interest in reaching compromise, so avoiding internecine violence”.³⁵

Another formal difference concerned the effectiveness of the decision taken. This was based on the self-interest of Alfonso IX and his determination to build up his realm. To get an effective government he realised he needed this institution with authority to make binding decisions. In this regard we have to make a reference to the compromise of perpetuation, the feature of *continuity*. This forces us to revisit subsequent assemblies called by Alfonso IX. In 1202, in the city of Benavente, in the presence of Queen Berenguela and their son Don Ferdinand were hold a Curia with the presence of citizens³⁶.

In addition, the importance of limiting the numbers of decision makers, as a requirement for getting a workable agreement was recognised. For that goal, it was necessary to use subjects who preserved the trust and consent of their “constituents”. They should travel long distances to defend their respective interests in the presence of the king, for that reason they would be called representatives or procuradores.

The social target of these documents is the entire body of the kingdom, the population living in all its regions and all the groups making up feudal society: nobility, church and common people. This fact should be considered at the same time as the determination of King Alfonso IX to achieve political, social and financial stability in his kingdom. This was the challenge.

This representation broke with the tradition of an exceptional presence of common people in the assemblies³⁷. The presence of the common people’s representatives has been

³⁴ RHODES, P.J. *Athenian Democracy*, Oxford: Oxford University Press, 2004.

³⁵ KEANE, John. *The life and Death of Democracy*. London: Pocket Books, 2010. p. 176. First edition Simon & Schuster UK Ltd, 2009.

³⁶ ARVIZU Y GALARRAGA, Fernando de. Las primeras Cortes leonesas. In: BENAVENTE, Ayuntamiento. *Regnum: Corona y Cortes en Benavente (1202-2002)*. 2002, p. 37-46.

³⁷ The presence of town representatives at these parliamentary type assemblies occurred on various occasions before the reign of Alfonso IX of León. I.e. The solemn setting for the coronation in León of the Emperor



characterized as “revolutionary”³⁸, creating new parliamentary customs and contributing to significant changes in the institutional structure of the kingdom. These circumstances were due to a particular socio-economic and political situation to which we have referred. “The Spanish case points unquestionably to the early maturity of certain sectors of the urban population, a maturity reflecting less rigid and binding feudal systems than in the rest of the western world”³⁹.

Unesco has recognised that there is no original diplomatic copy of Decreta of León of 1188, but they have been preserved through other mediaeval documents, some original and others in the form of mediaeval cartulary copies in the 13th century⁴⁰. This documentary support has been considered by Unesco sufficient to back authenticity of its decision. “This documentary heritage regarding the Decreta, enacted in the royal Curia held in León during the months of July and August 1181, enables us to demonstrate that the birthplace of the Parliamentary System was the kingdom of León in 1188, where the people were present for the first time through the city and town representatives”⁴¹.

Details of the documentary Heritage:

- 1 Mandate by Alfonso IX (1188-1230), king of León, delivering to Alfonso, Bishop of Orense, a copy of the legal texts of the Constitution of the Royal Curias of 1188 and 1194.
- 2 *Forum Judicum sive Leges Gothorum, cum nonnullis Capitibus Concillorum Tolerantium in principio et fine aliquibus decretis Regnum et foro Sancti Facundi (collection Canonum et Legum Gothorum)*, compendium of laws by Diego and Antonio de Covarrubias y Leyva (1512-1577), where are included the Decreta of León (1188).
- 3 Codices and written documents compilation directed by Ambrosio de Morales (1513-1591), which includes the “*Tumbo Colorado*” or cartulary of the Santiago de Compostela Cathedral, where are included the Decreta of León (1188).

Alfonso VII, included an exceptional participation of common people in the 1135 Concilium. Representatives of some towns and cities of Aragon attended the “Peace and Truce Assemblies” held by Alfonso II during the second half of the 12th century, which guaranteed the future marriage of Princess Berenguela, daughter of Alfonso VIII, to the German Prince Conrad of Staufen.

³⁸ UNESCO Declaration, p. 2.

³⁹ UNESCO Declaration, p. 3.

⁴⁰ UNESCO, Declaration, p. 4.

⁴¹ See. Note 2.



- 4 “*Tumbo Viejo*” or cartulary of the Lugo Cathedral (1231-1232) which includes the legislative decrees by Alfonso IX (1188-1230), king of León, 1204.
- 6 Spanish 18th century copy by the Astorga Cathedral Chapter of the “*Tumbo Negro*” of the Astorga Cathedral (13th century) in which are included legislative references from 1208 about the holding of the Cortes.

3.3.2 Material approach: Issues addressed:

The Decretas or Decrees of León of 1188 consist of a group of documents that contain the oldest known written information regarding the European Parliamentary System, originating in mediaeval Spain and based on the holding of a Curia Regia (Royal Council) during the Reign of Alfonso IX of León (1188-1230). They reflect an original model of government and administration within the framework of Spanish mediaeval institutions, with the institutional presence of common people in higher-level decision making, together with the King, the church and the nobility. For the first time, representative citizens of the towns and cities took part in those institutions of government.

Two fundamental decisions were made during the assembly. Firstly, the enactment of regulations, a set of Decreta, which, according to the text itself, served to maintain justice and ensure peace throughout the kingdom. This is the most important content for our interests. Secondly, the cancellation of many of the donations that the father of Alfonso IX, the King Fernando II (1137-1188) had made during his reign.

The first content was structured along two main lines: 1) Maintaining justice and ensuring peace in the kingdom, making the principle of legality prevail, imposing the rule of law; 2) achieving a certain level of joint participation by all sectors in the kingdom in the tasks of governments, as the key to strengthening the throne and increasing the stability of the political system.

The *Decreta* of 1188 include the following⁴²:

- 1 The solemn and express royal commitment to observe and contribute to compliance with the good practices established in the kingdom by the new monarch’s predecessors. This implied scrupulous respect for laws established by use and

⁴² UNESCO Declaration, p. 3.



- considered effective, special attention being paid to local law and jurisdictions. A basic foundation of rule of law (Decree I).
- 2 Suppression of prevarication; justice would not be denied or delayed. (Decree IX).
 - 3 The King will offer a guarantee that only accurate, well founded evidence would bring home an accusation; the royal curia will act as the highest court of appeal (Decrees II, III).
 - 4 Scrupulous respect for judicial procedure. No one may take the law into his own hands. In the case of disagreement or violation of rights, the parties would have recourse to royal justice or, where relevant, that of the nobility of the church. (Decree V).
 - 5 Society's respect for the judges and their decisions and the obligation of the government's legal officers to carry out their duties faithfully. (Decree VIII).
 - 6 Reinforcement of the figure of the "good men" as adviser, arbiter and witness in disputes, as a precursor to the legal representatives of subjects and townsmen. (Decrees IX, XI).
 - 7 The guarantee of correct conduct of judicial proceedings through a mechanism agreed by the parties. (Decree VIII).
 - 8 A guarantee of public order and private property. (Decrees V, VI, VII and XII).

The content of Decreta 1188 includes other interesting references, from the point of view of its constitutional legacy. In the matters of war, peace, pacts and treaties is required to call to the council of bishops, nobles and good men (Decree IV). It is important because the process of waging war appears as a collective proposal with binding effect for the King. This would be taken up in future Constitutions where the king would declare the war but with the previous approval of Parliament, i.e Spanish Constitution. Art. 63.

Another relevant element of Decreta 1188 is the consolidation of the right of property. Decrees V, VII and XII emphasises the protection of properties, from home to land and all real and personal property considered essential for surviving in middle ages (vineyards, trees). In this sense, "this legal document was much more advanced in the defence of the citizen that one might expect, taking into account the time in which was written"⁴³.

⁴³ LOPEZ GONZALEZ, Hermenegildo. *The leones Parliament of 1188: the first parliament of the western world* (The Magna Carta of Alfonso IX). Disponible in: <
http://www.interun.ru/ss/interun/u/files/charterv_e.pdf>.



The context in which the Decreta were passed is significantly reflected in its content. For instance, the prohibition of a type of disentanglement (Decree XV) served to avoid any diversion from the empty coffers of the Kingdom. The preservation of public security is the main argument to base, in Decree VI, a rule supporting prohibition of riots. This goal of Decreta is connected to the last rule where is established clearly the general sense of these legal decisions: “to maintain justice and keep the peace of the kingdom”. (Decree XVII).

A brief comparison to the Magna Carta of King John of England, signed 17 years after the Decreta of León, emphasises common elements from this substantive perspective. So, the King’s need of social support was met and the result of passing a legal text was achieved through summoning different representative sectors of the kingdom in order to obtain their cooperation in the interest of strengthening the crown. It is not about a restriction on royal power, but rather agreements tending towards the pacification of the kingdom, capable of guaranteeing the prevalence of law, the crown pursuing a political and socially integrating policy with a clear desire to strengthen its material support. The quality of these supports is basically different in both texts. Magna Carta’s context is very different as the barons presented heads of their grievances, and the means of redress⁴⁴. Nevertheless, we have worked on this comparative study in other work forthcoming and from this article we would like to suggest that Decreta of 1188 and Magna Carta should be considered for the combined historical value of both documents rather than the differences between them.

4 SYNTHESIS: CITIZEN’S ATTENDANCE IN REPRESENTATIVE DEMOCRACIES AND CONSTITUTIONS, CONSTITUTIONAL CONVENTION.

A lesson from the past is the need of taking into account the citizen in the process of adopting political decisions.

The most relevant decision in a present democracy refers to a constitutional moment and, basically, to a derived constitutional power that we know as the process of amending constitutions. Economic and financial crisis has motivated the creation of new instruments for facing the citizen’s demand to take part directly in a process of constitutional relevance, in addition to traditional means of representation. The direct presence of citizens in the constitutional process has been traditionally focussed on the original constituent power. The

⁴⁴ MaCKINTOSH, Sir James. *The History of England*. London: Longman, 1830. v. 1, p. 215.



institution of referendum is the traditional tool for this direct participation. But in the present democracies we have passed our Constitutions and we experience a process of amending constitutions in order to update their content or to introduce different issues not relevant in the past. In addition, we could identify, again through the institution of a referendum, how citizens express their will at the end of the process, accepting or rejecting a constitutional amendment, but at the beginning of that process citizens are far removed from the proposal, the contents and the debate.

Recent evolution of constitutional law has offered an alternative, according to historical lessons, for including citizens in the process of amending Constitutions: constitutional convention⁴⁵. The main guidelines for this process should be traced in terms of:

Legality

According to the Irish case⁴⁶, and other experiences of deliberative democracy, it has been developed from a secondary range legal decision (EU)⁴⁷ or from a political agreement or electoral compromise. This weak departure point could be linked to the degree of effectiveness of the results of a constitutional convention. A first level legal background, such as its inclusion in a constitution would reinforce its strength. But for that inclusion we need a high degree of political consensus, far removed a provisional or coalition majority in the government and this is very difficult to achieve.

Legitimacy

Who is going to take part in a Constitutional Convention? According to the Irish experience, random election of the citizen members should be decisive. Previously, it is necessary to specify whether if a State should include political representatives, academics, or

⁴⁵ Main references: O'DOWD, T. J. «In the Constitutional Hall of Mirrors: Reflections of the Irish Constitution from abroad». Irish Society of Comparative Law, 30 de abril de 2011. (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1938692). SEIJAS VILLADANGOS, E., "Irlanda: Reforma constitucional versus convención constitucional", en *Teoría y Realidad Constitucional*, n. 30, 2012, 409-430. FARRELL, D.; SUITER, J.; O' MALLEY, E. When do deliberative citizens change their opinions? "*International Political Science Review*", 2014, n.1-15.

⁴⁶ SUITER, Jane; FARRELL David M.; O'MALLEY, Eoin; HARRIS, Clodagh, *It's good to talk: Citizen-politician deliberations in Ireland's Constitutional Convention of 2012-14*. Draft Paper ECPR, 2014.

⁴⁷ KILJUNE, K. *The European Constitution in the making*. Disponible in: <http://aei.pitt.edu/32581/1/20_EU_Constitution.pdf>



only citizens. A pure constitutional convention as an instrument of popular participation in the procedure of amendment of a constitution may include essentially citizens, and others' presence may be reduced to helping, advising or assisting, but should not duplicate the role that representatives have in the respective parliaments.

Another important question is how citizens are enrolled in a constitutional convention. It should be a voluntary choice, open to all citizens who have a right to vote and should represent differences in the society, as regards gender, education, social status and geographical origin.

The proposal may include a list of matters that never could be included, a negative delimitation of the debates, and a short list of general possible issues that may be included. New proposals can be added by members of the Constitutional convention with a minimum support of 60%-80%.

Effectiveness

The conclusions reached in a constitutional convention should be referred to all citizens to get their support through a referendum. For that reason the consent of the authorities implied in the holding of a referendum should be required. This could be considered as an additional filter for the citizens' will, but it is absolutely necessary to provide a secure legal foundation.

The importance of deliberative democracy at the current time is the main lesson that we have obtained from the past. The presence of citizens was the departure point of parliamentary systems, the need to reengage population to political process is the lifeline of representative democracy.

5 FINAL REFLECTION

The Decreta of León of 1188 are considered to be the oldest preserved written records of the parliamentary tradition in the western world and, by extension, of modern parliamentary democracy. The main lesson from this, apart from its historical recognition, is the importance of taking into account the citizen's will. The substance and the method of



agreement was essentially the key point because León should be considered the cradle of parliamentarism.

On 19th June 2013, the Unesco recognized León as Cradle of Parliamentarism. The 'Decreta' of León was written during the celebration of a 'curia regia' during the reign of Alfonso IX (1188-1230). The 'Decreta' de León of 1188 has been declared a "Memory of the World" by the Unesco for being "the oldest written document of the parliamentary system in Europe". To be exact, the documents of these decrees make reference to the oldest European parliamentary system known to date⁴⁸. We have reflected about the constitutional value of these Decreta 1188.

The crisis of governability in modern States and the connexion to its efficacy has to get back to the past and reflects on heroic decision of taking into account the citizens in a direct query.

But Europe is not in the time of passing constitutions, but in the period of their change. The complex process for amendment constitutions has included, recently and in many countries, a constitutional convention to rebuild trust among citizens in the political process of amending constitutions. Canada, Iceland, Brazil and Ireland have developed that process. This does not imply the disappearance of political parties and traditional parliaments as mechanism of representation in modern societies. The major value of these practices should be their contribution to re-engaging citizens in political debates. Many centuries ago, one young king, Alfonso IX realized that importance, now political leaders and scholars may think about the idea of how necessary it is to open the door to politics and democracy to citizens.

REFERENCES

ARVIZU Y GALARRAGA, Fernando de. Las primeras Cortes leonesas. In: BENAVENTE, Ayuntamiento. **Regnum: Corona y Cortes en Benavente (1202-2002)**. 2002, p. 37-46.

CAPEN, Nahum. **History of Democracy. Political progress historically Illustrated from the earliest to the latest periods**. Hartford: American Publishing, 1874. p. vi.

⁴⁸⁴⁸The proposal was submitted in 2012 and registered one year later, 2013.
<<http://www.unesco.org/new/en/communication-and-information/flagship-project-activities/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-8/the-decreta-of-leon-of-1188-the-oldest-documentary-manifestation-of-the-european-parliamentary-system/>> .



CAVERO DOMINGUEZ, Gregoria. **Alfonso IX de León y el iter de su Corte (1188-1230)**. “e-Spania. Revue interdisciplinaire d’études hispaniques medievales et modernes”, parra. 26, dic. 2009. Disponible in: <http://e-spania.revues.org/18626?lang=en>>.

CLEMENTE RAMOS, Julián: DE LA MONTAÑA CONCHIÑA, Juan Luis. **La Extremadura cristiana 1142-1230**, p. 83. Disponible in: <http://institucional.us.es/revistas/historia/21/05%20montana%20conchina.pdf>>.

DICCIONARIO de Autoridades. Real Academia Española.[s.n.: s.l., 1737]. v. 1.

GONZÁLEZ GONZÁLEZ, Julio. Alfonso IX.” **CSIC**”, Madrid, v. 1, p. 334, 1944. 2 vols.

HATTERSLEY, Alan F. **A short history of democracy**. Cambridge: University Press, 1930.

KEANE, John. **The life and Death of Democracy**. 1st ed. London: Simon & Schuster , 2009.

KEANE, John. **The life and Death of Democracy**. London: Pocket Books, 2010.

LOPEZ GONZALEZ, Hermenegildo. **The leones Parliament of 1188: the first parliament of the western world** (The Magna Carta of Alfonso IX). Disponible in: < http://www.interun.ru/ss/interun/u/files/charterv_e.pdf>.

MAIR, Peter. **Ruling The void. The hollowing of Western Democracy**. London: Verso, 2013.

MaCKINTOSH, James. **History of England**. London: Longman, 1830.

MUNRO, Dana C. The Speech of Pope Urban II at Clermont, 1095.” **American Historical Review**”, v.11, p. 231-42, 1906.

POLLARD, A. F. **The evolution of parliament**. London: Longmans Green, 1920.

RHODES, P. J. **Athenian Democracy**, Oxford: Oxford University Press, 2004.

SEIJAS VILLADANGOS, María Esther. **El origen del parlamentarismo como referente del patrimonio cultural: implicaciones socioeconómicas, jurídicas y culturales**. Research Project - Universidad de León, España. 2017-2018.

URBINATI, Nadia. **Representative democracy: principles and genealogy**. Chicago: University of Chicago Press, 2006.

UNESCO. Declaration, p. 3



APPENDIX A - English version of The Decreta of León 1188

English version of The Decreta of León 1188 of Esther Seijas Villadangos, prof. Constitutional Law, University of León from the Spanish version of Jose María FERNÁNDEZ CATÓN: *La curia regia de León de 1188 y sus "Decreta" y Constitución.*: Centro de Estudios e investigación "San Isidoro" - Archivo Histórico Diocesano, 1993: pp. 93-117. (http://www.mecd.gob.es/cultura-mecd/dms/mecd/cultura-mecd/areas-cultura/archivos/novedades/documentos-novedades/3/Decreta_Documento6_es.pdf).

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 object of the complaint wants to present a guarantor or give a guarantee according to the ancient law (*fuero*) he will nor 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 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 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 to 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 recognize his right by the third day, he should present witnesses before one of the aforementioned justices 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 ensue whom guarantees, the justices would pay double.

[X] Ditto. I also added 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*. 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 captures 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 in 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 reasons 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.