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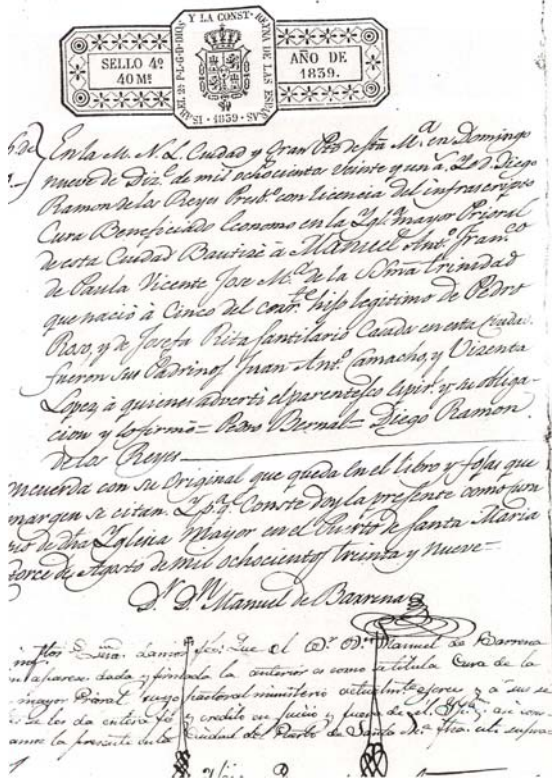
# IBERIAN EMIGRATION LAW: A COMPARISON STUDY OF LIBERALISM IN NINETEENTH- CENTURY EMIGRATION LAW OF SPAIN AND PORTUGAL

REBEKAH FAIRBANK

## INTRODUCTION

In 1839, Spanish immigrant Pedro Roso was becoming commercially successful in Puerto Rico, his adopted homeland. Earning money in Puerto Rico was so much easier than in the village of Puerto de Santa Maria in southern Spain that he sent a letter to his father requesting that his younger brother, Manuel, join him in Puerto Rico. On 17 August 1839, Manuel Roso was issued a passport, required by law, by the municipal authorities to travel the short distance to Cádiz. There the law dictated that he apply for another passport allowing him to continue his journey to meet his older brother Pedro in Puerto Rico. The passport that allowed him to make the first section of his journey is now found in the Provincial Historical Archives of Cádiz along with the indication of the subsequent grant of passport to Puerto Rico (see Figure 1).

Each document accompanying the passport in the Provincial Archives



**Figure 1: Manuel Roso Emigration File, Provincial Historical Archives, Cádiz, Spain, Section Gobierno Civil, Section Pasaportes, August 1839**

corresponded with specific legal requirements for emigration. In a letter of permission to the civil authority in Puerto de Santa Maria written by the Rosos' father, also named Pedro Roso, the elder Roso identifies himself as a baker who resides in the respective municipality. He states that he regrets having to part with his younger son, but explains that it is in the boy's best interest and requests that the passport be issued to allow his son to join his older brother. The passport file also includes a copy of the baptismal record of Manuel Roso, documenting his exact birth date and place as well as his parents and their marriage place. Manuel was seventeen years old when he left his home in Puerto de Santa Maria and traveled to Puerto Rico and his new home.

The "American Dream" stories of a better life and conditions in the Americas, like that seen in the case of Manuel Roso, can be found spreading through both Spain and Portugal during the nineteenth century. Both are nations that led the world in modern colonization. With figures such as Vasco da Gama and Pedro Álvarez Cabral from Portugal and Francisco Pizarro, Hernán Cortés, and Fernando de Ulloa in Spain, both countries created vast empires, establishing colonies all over the world. While the Portuguese empire stretched from Brazil to Africa and India, the Spanish empire stretched from South America to the Philippines. Many historic figures—mostly explorers and colonizers—made their fortunes in the new worlds, yet emigration was so tightly controlled during the colonization period that the "dream" did not become a reality for most before the emigration movements of the nineteenth and twentieth centuries. With the Napoleonic Era in Europe, however, things began to change. The absolute monarchies of Spain and Portugal ended and between 1830 and 1840 the nations entered—along with the rest of the world—the Liberal era of thinking, allowing for emigration of the common citizen.

Few statistics are available regarding emigration from these countries for the 1830s and 1840s, and those available often reflect only specific areas. For example, one estimate of emigration prior to 1860 in Spain provides a small but significant figure: between 200,000 and 230,000 emigrants left during the years 1830 and 1860 alone.<sup>1</sup> However, this particular estimate takes into consideration only the regions of Galicia, Canarias, Cataluña, Asturias, and parts of the Basque Country, rarely mentioning the regions of Andalucía, La Mancha, Castilla, and Extremadura. Estimates of this kind are created through time-consuming searches of emigration records in the regions being studied, whereas statistical reports began to be published after 1873 in Portugal and 1882 in Spain, allowing for a more accurate and easier-to-access picture of the emigration. During that time, the number of emigrants was reaching its peak. Between 1882 and 1930 alone, about three million people left Spain.<sup>2</sup> Most emigrants throughout the century, like Manuel and Pedro Roso, went to the Americas. In Portugal, between 1855 and 1930, estimates show that more than one million emigrants left (again, most went to the Americas).<sup>3</sup>

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<sup>1</sup> César Yañez Gallardo, *La emigración española a América, siglos XIX y XX: dimensión y características cuantitativas* (Colombre, Asturias: Archivo de Indianos, 1994).

<sup>2</sup> César Yañez Gallardo, *La emigración española a América, siglos XIX y XX: dimensión y características cuantitativas* (Colombre, Asturias: Archivo de Indianos, 1994), 36–37 (note that this figure is calculated from the tables of emigration statistics for these years).

<sup>3</sup> Maria Ioannis Benis Baganha, "Uma Imagem Desfocada—a emigração portuguesa e as fontes sobre a emigração" *Análise Social* 26 (1991), 723.

While historians have looked in detail into the demographics and statistics of emigration patterns within these countries during the late nineteenth century,<sup>4</sup> few have studied emigration during the first half of the nineteenth century, and even fewer have studied the laws governing emigration throughout the nineteenth century as a whole. These laws, however, are an essential part of understanding the national ideals and processes concerning emigration as well as the implementation of liberal tendencies in both nations. Emigration regulations during the first half of the nineteenth century in both nations present a liberal view, allowing freedom of emigration. In the last decades of the century, while neither openly prohibited emigration, both Spain and Portugal began to show a less liberal attitude toward emigration. Similar in initial official practice, the laws of each country have a unique way of demonstrating this change in attitude.

## **BEGINNINGS OF EMIGRATION LAW**

### **Early Colonial Time**

The historical context of emigration for these countries during the colonial period vividly contrasted the ideals of the liberal era, illustrating the significance in the shift to an open emigration policy. Prior to 1810 and 1820, both Spain and Portugal had a rigidly controlled government as far as trade was concerned, and this exactly paralleled control of emigration.

In Portugal on 20 March 1720, the first system regarding passports was set into place. Implemented to tightly control emigration, mainly to Brazil, the requirements limited the issue of passports to officials and others with proven business to attend. The law also specifically named the minister whose authorization was necessary for these officials to be able to leave the country.<sup>5</sup> The law even specifies that the reason for such limitation is

in order to prevent the leaving for the capitánias of Brasil many people that leave each year, particularly from the Province of Minho, which, being the most populated finds itself today in a state where there are not enough people to cultivate the land...<sup>6</sup>

Historians such as David Higgs paint a vivid picture of this tight control and possible additional reasons for it: “to stop men going to Brazil to seek their fortunes in the gold rush...”<sup>7</sup> In Portugal, as in Spain, a Conselho de Índias (or Council of Indies) was

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<sup>4</sup> This trend in study is due mainly to the availability of statistics on emigration beginning in the late nineteenth century for both nations as discussed. In 1884 the first issue of the *Estadística de la Emigración e Inmigración de España* was published, covering the years of 1882 through 1884. Similarly the official statistics of Portugal were published beginning in 1873, as seen in the *Almanaque do Emigrante para 1873*, published in Lisboa in 1873.

<sup>5</sup> J. Costa Leite, “Emigração portuguesa: a lei e os números (1855–1914)” *Análise Social* 23 (1987), 464; and *Legislação Portuguesa 1700–1970*, Biblioteca Nacional de Portugal, F 5632, microfilm 1700–1762, 23 March 1720.

<sup>6</sup> *Legislação Portuguesa 1700–1970*, Biblioteca Nacional de Portugal, F 5632, microfilm 1700–1762, 23 March 1720. All quotes have been translated by author.

<sup>7</sup> David Higgs, ed. *Portuguese Migration in Global Perspective* (Toronto: Multicultural History Society of Ontario, 1990), 18.

established to regulate and control all trade and migration to and from the nation of Portugal.

The Spanish control of emigration and trade can be most easily seen through the institutions of the Consejo de Indias—established to deal with colonial governance—and the Casa de Contratación—technically established to regulate trade, but dealing also with emigration. Spanish emigration and trade were both closely controlled before 1790 through these two organizations alone. While technically the Consejo de Indias had entire control over emigration, in reality the Casa de Contratación, a division of the Consejo, wrote most of the *licencias*<sup>8</sup> as well as other documents allowing emigrants to leave for the New World and, until 1701, they maintained passenger lists of all who left through legal processes. Thus, for an emigrant to leave, he or she had to apply for a *licencia* to be issued through the Consejo de Indias.

For most of the Spanish colonial period, as part of this tightly centralized control, Sevilla was the only authorized port for trade and emigration. This was moved to Cádiz, however, in 1717 as the Guadalquivir River silted over. Any ship leaving Spain left through this port, facilitating control of emigration and trade through a single institution. Additionally, destination ports were also severely limited.

A Royal Decree issued on 16 October 1765 ended the colonial restrictions and opened trade to the Caribbean to nine ports in Spain:<sup>9</sup> Alicante, Barcelona, Cádiz, La Coruña, Cartagena, Gijón, Málaga, Santander, and Sevilla. Since emigration and trade went hand-in-hand during the colonial time (as trade increased, so did emigration because emigrants left through the established ship and trade routes) and there is no indication that this changed with the decree of 1765, one must assume that as trade was opened emigration was also opened to these additional ports. By 1778 the time known as the “era of free trade” had begun in Spain. This formed the beginnings of the liberal era practices. By the Royal decree issued on 12 October 1778, trade was opened to an additional four ports: Almería, Palma, Santa Cruz de Tenerife, and Alfoques de Tortosa.<sup>10</sup> Additional ports in the Americas were also opened. Trade and emigration, however, remained under the control of the Consejo de Indias and the Casa de Contratación. Every emigrant technically still needed to obtain a license from the Consejo in order to leave Spain.<sup>11</sup>

In 1790 the Casa de Contratación was abolished as part of an ongoing lessening of restrictions on trade. Although the Consejo de Indias remained functioning until 1834, the end of the Casa de Contratación marked a key turning point in the history of Spanish emigration and trade. Reaffirmations of basic policies instituted by the processes of the Consejo de Indias continue to be seen in 1824, 1838, and even as late as 1846, but the government acknowledges that emigrants in reality no longer followed this system. Even

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<sup>8</sup> For our purposes *licencias* can be interpreted to mean passports even though they are not technically called passports. Additional information on the colonial era emigration records can be found online at [www.cubagenweb.org](http://www.cubagenweb.org). Access to these records is available through the Archivo General de Indias and published guides to their collections.

<sup>9</sup> John Fisher, *Commercial Relations between Spain and Spanish America in the Era of Free Trade (1778–1796)* (Liverpool, U.K.: Centre for Latin-American Studies, University of Liverpool, 1985), 9.

<sup>10</sup> Spain, *Reglamento y aranceles reales para el comercio libre de España a India : de 12 de octubre de 1778* (Madrid: Imprenta de Pedro Marín, 1778), 7–8.

<sup>11</sup> Because of this tight control, the colonial documents created before 1790, including those dealing with emigration, are centralized in the Archives of the Indies located in Sevilla, and are fairly complete and accessible to the public.

as it attempted to continue the control of emigration, the government was acknowledging that after the dissolution of the Casa de Contratación in 1790 there really was no control.

### **Napoleonic Time**

Napoleon's 1808 invasion of the Iberian Peninsula triggered the emergence of key liberal philosophies in both Spain and Portugal. This occupation had unique consequences in each country, but a common thread ran through both nations: the beginnings of constitutionalism and limitations on the absolute monarchy.

In Spain the upheaval created by the French occupation was the perfect opportunity for Spaniards to take advantage of the chaos. Freedom to trade became a reality as the colonial institutions lost complete control over the processes. In fact, a later lawmaker within the Consejo de Ultramar in 1854 pointed to the time of 1818 and trade laws enacted during that year as the real beginnings of free trade and emigration and specifically cited decrees of that year as the reason for the rapid growth of Havana and other significant ports in the Americas.<sup>12</sup> During this time of the Napoleonic invasion, Spanish legislators as part of the Cortes of Cádiz of 1812 developed Spain's first constitution. Though it was not effective for long, it became a model for later legislation and constitutions.

In Portugal, Napoleon encountered a very different situation. The Portuguese king and government remained more intact than their Spanish counterparts, mainly because of the crown's removal to the Brazilian colony just as the Napoleonic invasion of the peninsula began. This is a major turning point both in Brazilian and Portuguese history because of the lasting effects of the direct contact of the Portuguese government with its colonies.<sup>13</sup> It was during this time of movement of the crown between Portugal and Brazil (generally between 1808 and 1826) that the Brazilian colony gained its independence from Portugal, and that the Portuguese and the Brazilians created their own constitutions.<sup>14</sup> Dom Pedro, first king of Brazil, was known for his efforts in cooperating with constitutional ideals. Since he and his father, Dom Joao of Portugal, had both been living in Brazil during the time of Napoleon's occupation, they were both sympathetic to the situations and ideals of the colonists. Independence, constitutions, and liberal ideas were more easily accepted by a monarch who had actually visited his colonies.

### **LIBERALISM**

In addition to important events and concepts, it is important to review how the concept of liberalism is being used here. Since this is such a crucial part of our topic at hand, there must be one common definition. Here, one of the key concepts in the use of liberalism is the idea of personal freedom, particularly where migration is concerned. Decentralization of government and lowering of controls plays an important part in bringing this about both in Spain and Portugal, as has been shown in both cases.

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<sup>12</sup> Memorandum: Madrid, to the president and members of the Consejo de Ministros, Spain: 4 May 1853 Edward E. Ayer Manuscript Collection, Newberry Library, Chicago, Illinois.

<sup>13</sup> In fact, D. João VI and his son D. Pedro I were the only European monarchs to have actually set foot outside of Europe and visit overseas colonies.

<sup>14</sup> For further information regarding the constitutions of Brazil and Portugal the reader may refer to *O Constitucionalismo de D. Pedro I no Brasil e em Portugal*, Introduction by Afonso Arinos de Melo Franco (Rio de Janeiro: Ministério da Justiça, Arquivo Nacional, 1972).

However, one of the best descriptions of the concept as it was viewed by those involved in creating these laws can be seen in the first Portuguese Constitution itself: “Any may stay or leave the Kingdom as he sees fit, carrying with him his properties, given that the requirements are fulfilled and that there is no injury to a third party.”<sup>15</sup>

Similarly, the Spanish Constitution of 1812 also contained provisions for the personal rights of emigrants, although the concept was not so neatly spelled out as it was in the Portuguese constitution. With Philip IV’s edict which initiated the tight control and *licencias* of the colonial era, there was also a statement indicating the “punishment of loss of goods left behind” to all those who left without royal permission or license.<sup>16</sup> In the Spanish constitution of 1812 as well as those of 1837 and 1845, this punishment was revoked.<sup>17</sup> More importantly, these Spanish constitutions officially recanted the national concept of emigration as treason to the nation.<sup>18</sup>

Thus, for our purposes the definition of the term “liberal” or “liberalism” can be viewed as the constitutional recognition and governmental guarantee of the rights of the individual. And more specifically in our context, that means the guarantee of the individual’s right to emigrate freely.

## **IMMEDIATE REACTION TO LIBERALISM/CONSTITUTIONALISM IN EMIGRATION POLICY Spain**

The beginnings of passport systems and requirements for migration both within the country and outside of the mainland began in the times of the initial attempts at constitutionalism.<sup>19</sup> However, many emigrants began to leave without following the prescribed procedures for obtaining *licencias* and other authorizations to emigrate. Because of complaints from the arrival ports, the Consejo de Indias in an 1824 *Decreto Real* recognized that such illegal emigration existed in practice, and reaffirmed that the Consejo still followed those regulations set forth in the Decree of 1778.<sup>20</sup> In 1827, these regulations were officially eliminated, although the Consejo de Indias still functioned for another seven years. As César Yañez Gallardo states, “the suspension of the regulations of 1778, made a legal reality with the R.O. of the Hacienda of 9 February 1827, only

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<sup>15</sup> J. Costa Leite, “Emigração portuguesa: a lei e os números (1855–1914)” *Análise Social* 23 (1987), 464.

<sup>16</sup> As quoted in “Emigración,” *Nueva Enciclopedia Jurídica*, Carlos E. Mascareñas, ed. V. 8 (Barcelona: Editorial Francisco Seix, S. A., 1956), 314.

<sup>17</sup> “Emigración,” *Nueva Enciclopedia Jurídica*, Carlos E. Mascareñas, ed. V. 8 (Barcelona: Editorial Francisco Seix, S. A., 1956), 315.

<sup>18</sup> Marcelo Martínez Alcubilla, “Emigración é Inmigración” in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 790.

<sup>19</sup> There are many minute details of the passport system during this time period; however, this is not our purpose to discuss each. Further information regarding these details can be found in Juan Carlos Galende Díaz and Mariano García Ruiperez, “Los pasaportes, pases, y otros documentos de control e identidad personal en España durante la primera mitad del siglo XIX: estudio archivístico y diplomático” *Hidalguía*, v. 302 (Madrid: Consejo Superior de Investigaciones Científicas), 113–208.

<sup>20</sup> As quoted in César Yañez Gallardo, *Saltar con red: la temprana emigración catalana a América ca. 1830–1870* (Madrid: Alianza Editorial, 1996), 28.

reflected a reality that had been manifested throughout the previous decades....”<sup>21</sup> With the 1827 suspension of the regulations of 1778, however, there were no new regulations set forth to replace those of 1778, leaving essentially a vacuum in the official process of emigration.

This vacuum in policy on emigration, however, did not last long. In 1833, with the end of the reign of Fernando VII, Spain fully entered what historians call the “liberal era” and emigration procedures were soon changed. At that point, along with other traditional Spanish institutions such as the Inquisition and nobility status, the Consejo de Indias was dismantled and with it any vestiges of the old system of emigration and trade.<sup>22</sup> A shift in power away from a centralized and controlling monarchy restructured political divisions and reorganized Spanish provinces. More procedures were left in the control of the provincial governments, the *gobierno civil* or *diputación*. In 1835, amidst the Carlist struggles for liberalism, a new decree was issued that entirely changed the way passports were issued. On 10 July 1835 the *Real Orden de Hacienda* took effect,<sup>23</sup> decentralizing and simplifying the process of emigration existent during the colonial times, while maintaining the same requirements as far as eligibility to emigrate was concerned. This was closely followed by the *Real Orden* issued on 18 August 1838, clarifying the use and issue of passports.<sup>24</sup> Instead of having to apply to one central organization that controlled emigration, an emigrant simply had to certify to his local government that he was qualified to emigrate and that he had justifiable reason to emigrate.<sup>25</sup> During this time this was often done by means of a letter written to the local authority within the port province.

Several requirements to emigrate that existed in the Decree of 1778 were maintained throughout these laws: first, that the emigrant had no military responsibilities in Spain; second, that he or she was not wanted for criminal offences in Spain or trying to flee any authority; third, that he or she was not trying to abandon family; and fourth, that he or she had permission from his or her family if underage. Certification of these requirements was left to the discretion of the local authorities,<sup>26</sup> who often required either a series of three witnesses or a published intention to emigrate in the local *Boletín*.<sup>27</sup> It

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<sup>21</sup> César Yañez Gallardo *Saltar con red: la temprana emigración catalana a América ca. 1830–1870* (Madrid: Alianza Editorial, 1996), 27.

<sup>22</sup> César Yañez Gallardo, *Saltar con red: la temprana emigración catalana a América ca. 1830–1870* (Madrid: Alianza Editorial, 1996), 30.

<sup>23</sup> César Yañez Gallardo, *Saltar con red: la temprana emigración catalana a América ca. 1830–1870* (Madrid: Alianza Editorial, 1996), 30.

<sup>24</sup> Spain, Real Orden 18 August 1838, *Colección legislativa de España*, Madrid; Imprenta Nacional, 1815–1893, v. 24, p. 361. This law also introduces the concept of interior passports where, as seen in the case of Manuel Roso, those traveling even short distances within the country carried passports to facilitate their travel.

<sup>25</sup> *Ibid.* and César Yañez Gallardo, *Saltar con red: la temprana emigración catalana a América ca. 1830–1870* (Madrid: Alianza Editorial, 1996), 31.

<sup>26</sup> Spain, Real Orden 18 August 1838, *Colección legislativa de España* (Madrid: Imprenta Nacional, 1815–1893), 24: 361.

<sup>27</sup> Though there is no specification in the law how the local authority was to certify the validity of this information, these are the principle ways visible through the documentation remaining. For example, as late as 1858, a provincial decree was issued in Asturias requiring the published intention in the Provincial Bulletin—Gobierno de la Provincia de Oviedo, “Circular número 295,” as published in the *Boletín Oficial de la Provincia*, number 171, 25 October 1858.



was therefore this law that in practice in the case of Manuel Roso, as his father wrote to show his permission for Manuel to emigrate and to certify that he had met all of these requirements for a passport.

## **Portugal**

The Portuguese system of passports and controls, although changed, did not suffer the radical vacuum of policy and shifts that the Spanish system of passports did. Because the passport system in Portugal was set in place in 1720, these processes appear to have continued throughout the tumult of the early nineteenth century. Many of the same decentralization issues occurred in Portugal; however, the passport system continued to hold throughout this time. In 1826, the Portuguese constitution was written and put in place and the first modern decentralized governments of Portugal, the *comarcas*, were organized. These did not last long, but were the basis for the Portuguese Districts created in 1835 and have lasted with only minor adjustments (there has only been one additional district created since the original 17 were created).<sup>28</sup> Passports were delegated to the authority of the district governments and collections can still be found in many of the district governments as early as 1835. Although the format of the passport has altered slightly over time, this has legally been a main focus of emigration processes since the law of 1720.<sup>29</sup>

In 1837 a law was passed in Brazil that regulated the systems of labor contracts,<sup>30</sup> a device used particularly in Portuguese emigration for centuries (including throughout the nineteenth century). These contracts, similar to what Americans think of as indentures, were designated to help emigrants pay for their passage to the new world in exchange for years of labor. These contracts remained an issue throughout the nineteenth century and were often referred to in subsequent laws. The law of 1837 was referred to in many documents presented as late as 1873, at the conference on emigration issues, and was referred to as the decisive legislation on these contracts.<sup>31</sup>

## **1850**

### ***Spain Real Orden of 1853 Issued on 16 September 1853***

Although the *Orden* of 1835 simplified the process of emigration and codified the first practices after the end of the Casa de Contratación, the *Orden* issued on 16 September 1853 is considered by many historians the first of regulations on emigration. Once again, many of the themes of the law of 1853 follow very similar practices that were already in place through the *Órdenes* of 1778 and 1835. Like in the *Orden* of 1835, passports were to be issued by the provincial or local governments after certification that

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<sup>28</sup> The district of Santarem was created in the early twentieth century.

<sup>29</sup> Maria Ioannis Benis Baganha, "Registros de pasaportes: sus limitaciones y sus posibilidades para el estudio de la emigración" *Estudios Migratorios Latinoamericanos* 11 (1996), 303. She cites the passport collections as the major Portuguese source of emigration information and the one used most by historians in the study of Portuguese emigration.

<sup>30</sup> Miriam Halpern Pereira, *A Política Portuguesa de Emigração (1850 a 1930)* (Lisboa: A Regra do Jogo, 1981), 25.

<sup>31</sup> See the documents presented at the 1873 conference on emigration as transcribed in Miriam Halpern Pereira, *A Política Portuguesa de Emigração (1850 a 1930)* (Lisboa: A Regra do Jogo, 1981), 119, 151, 156, 159, etc.

the applicant was free to emigrate.<sup>32</sup> The *Orden* of 1853, though, was the first to state exactly where Spaniards could emigrate to, officially expanding the number of possible destinations. After 1853, emigration was freely allowed to all of the Spanish colonies, and the South-American nations and Mexico if there was a Spanish consulate able to protect the rights of the emigrant. Additionally, the *Orden* of 1853 put restrictions on the ships carrying emigrants.<sup>33</sup> A remaining vestige of the *Orden* of 1778, the law required that every ship that left had a doctor, specifically *un médico cirujano*, on board to care for the medical needs of the passengers.<sup>34</sup> Before leaving any port, each ship had to be approved by the *subgobernador* and show that it was not overloaded and had the required medical assistance.

## Contracts

Other requirements that were set forth in the *Orden* of 1853 dealt with documents known as *contratos*.<sup>35</sup> These contracts were different from those Portuguese contracts of labor discussed earlier. Beginning in 1853, the Spanish contracts discussed here were between the ships' captains or owners and the passengers. The *Orden* stipulated that each of these contracts had to be approved by the *subgobernador* and that each contract had to specify the quality of transportation to be provided, including the exact quantity and quality of food and water rations, as well as the destination of the ship and the payment terms for the passenger.<sup>36</sup> Many often listed names of numerous passengers, up to as many as 200 individuals, giving the place of origin or last residence and occupation for each.

Additionally, Article 13 of the *Orden* of 1853 stated that the contracts must be copied three times. One copy was to remain with the *contratista*, one with the emigrant himself, and one with the provincial government of the respective province where the document was created.<sup>37</sup> In 1865, the Spanish government also required that a fourth

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<sup>32</sup> The majority of the legal points from the major laws in this discussion were taken from the respective legislative collections for the years the laws were passed. Many thanks go to Stephen Wiles of the Harvard Law School Library for his help in accessing these documents.

<sup>33</sup> Spain, *Colección legislativa de España: Continuación de la Colección de decretos* (Madrid: Imprenta Nacional, 1854), v. 60, 1853, 89–90.

<sup>34</sup> Spain, *Reglamento y aranceles reales para el comercio libre de España a Indias: de 12 de octubre de 1778* (Madrid: Imprenta de Pedro Marín, 1778), and Marcelo Martínez Alcubilla, “Emigración é Inmigración” in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 791.

<sup>35</sup> These documents may possibly have originated out of the contracts between *hacendados* and the *colonos* who were to work the land. The *hacendados* guaranteed a passage to the Americas for the emigrant and in return the emigrant was to settle on the *hacendado's* land and labor without pay for a certain period of time (often four to seven years). During the colonial times, this was one of the ways that the Americas were settled. In this way the origination of the contracts appears similar to that of the Portuguese contracts.

<sup>36</sup> Spain, *Colección legislativa de España: Continuación de la Colección de decretos* (Madrid: Imprenta Nacional, 1854) v. 60, 1853, 89–90, and Marcelo Martínez Alcubilla, “Emigración é Inmigración” in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 798.

<sup>37</sup> Spain, *Colección legislativa de España: Continuación de la Colección de decretos* (Madrid: Imprenta Nacional, 1854) v. 60, 1853, 89–90, and Marcelo Martínez Alcubilla, “Emigración é Inmigración” in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 798.

copy of these contracts be sent to the Spanish embassy in the country where the ship was to arrive.<sup>38</sup>

To some, these requirements could be seen as unnecessarily controlling the freedom to emigrate; however, these regulations on emigration were for the most part created to protect the emigrant and to facilitate emigration and travel. Put in place to protect the emigrants' rights to fair treatment in passage, the contracts did not prevent the emigrant from leaving. The proviso stipulating the need to have a Spanish consulate in the place of arrival protected the Spanish emigrant upon arrival in his destination. In this view, the laws to this point in liberal Spain can be seen as paternalistic and protective of the emigrant instead of as a limit to emigrants' options.

### **Portugal — Lei de 20 Julho 1855**

The Portuguese law passed in 1855 set up similar regulations designed to protect the emigrant's rights and safety. The law, while not stipulating requirements for the emigrant, still provided strong guidelines for protection of the emigrant during the voyage. Beginning in Article 1, the law regulated the number of passengers on board each ship based on the tonnage carried in the ship, to provide that ships did not leave port overloaded. Article 2 followed in the steps of Spanish requirements by requiring each ship to maintain certain standards of health and hygiene. Following in that same vein, Article 5 required that each ship prove that provisions had been made for adequate quality and quantity of food.<sup>39</sup> As in Spain, Article 5 also provided for a *facultativo* (doctor) on board accompanying each voyage that had more than fifty passengers on the ship.

Many of these provisions seen in the Portuguese law were essentially the same as in the Spanish practice of contracts between ship captain and passengers. However, implementation of the concepts were significantly different. In this case, the government itself assumed the responsibility of the safety of the emigrant, not requiring the participation of the emigrant as much. While in Spain, the conditions were determined between the captain and the emigrant who was to sail on the ship; in Portugal, the government set the conditions for the emigrant and took the entire responsibility of assuring those conditions. The active role of the emigrant in guaranteeing his or her own safety and comfort was significantly different between the two countries.

Additional provisions in the law of 1855 include those regarding the advent of steamships. Steamships were not required to comply with the previously mentioned standards, presumably because of the shorter passage times.<sup>40</sup> In Article 11, further provisions were made for the indenture contracts, also designed to protect the emigrant from exploitation. This article stipulated that each contract must specify to whom the emigrant was contracting labor in return for passage.<sup>41</sup> Thus each provision in the Lei de

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<sup>38</sup> Marcelo Martínez Alcubilla, "Emigración é Inmigración" in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 793.

<sup>39</sup> Portugal, *Colecção Oficial da Legislação Portuguesa*. Redigida por José Maximo de Castro Neto Leite e Vasconcellos, v. 1855 (Lisboa: Imprensa Nacional, 1856), 228.

<sup>40</sup> Article 9 from Portugal, *Colecção Oficial da Legislação Portuguesa*, Redigida por José Maximo de Castro Neto Leite e Vasconcellos, v. 1855 (Lisboa: Imprensa Nacional, 1856), 228.

<sup>41</sup> *Ibid.* 228, article 11.

20 Julho 1855 was designed to protect the emigrant rather than to hinder emigration in any way.

In a *portaria* of January 1859, the Portuguese government went even further toward protecting the emigrant from fraudulent labor contractors and clandestine emigration. In this *portaria*, Portugal required all of its Brazilian agents to inspect any ship arriving in Brazil from Portugal and to remit a report of any illegal arrivals, including who assisted the illegal arrivals.<sup>42</sup> In this way the Portuguese government was attempting to eliminate and prosecute those who assisted emigrants leaving illegally and people illegally contracting emigrant labor, much like what was seen in immigration laws in the United States in the early twentieth century.

## 1860

### Spain — Orden de 12 Enero 1865

The Spanish Law of 1865 added little to the process of emigration. Some minor adjustments were made in the contracts and requirements of the contracts. Most notable of the adjustments was the requirement previously mentioned that added the consulate to the list of places that must receive a copy of the contract with the ship captain.<sup>43</sup> There were additional provisions for breaking of contracts. The law stipulated when contracts could be broken by either party. And more interesting yet, there was a set of specific requirements for those going to Brazil. The contracts for those going to Brazil were more easily broken.<sup>44</sup> There were no specific reasons given for the special considerations given to Brazil, yet one can easily imagine what those reasons would have been. One need only refer to the letters from Brazil discussing immigrant conditions as presented in 1873 in Portugal to see the need for these special considerations.<sup>45</sup> If they were dealing with similar exploitations such as provided against in Portuguese law, the need for such a stipulation in the Spanish law is more apparent. Additional factors could refer to the still-legal slavery in Brazil in comparison with other nations where it had been abolished. In any case, the law of 1865 protected emigrants in allowing them to break a contract in which the other party had not held with an agreement specified and where exploitation had become a relevant issue to the case.

### Portugal — Lei de 7 Abril 1863

Similar to the Spanish law of emigration of 1853, the Portuguese law passed on 7 April 1863, while certainly not the first legislation regarding emigration, is considered by

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<sup>42</sup> Portugal and Carlos Vieira Ramos, *Legislação portuguesa sobre emigração e passaportes: repertorio alfabético com a summa de todas as disposições das leis e regulamentos em vigor* (Lisboa: C. Ramos, 1913), 3.

<sup>43</sup> Marcelo Martínez Alcubilla, “Emigración é Inmigración” in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 792.

<sup>44</sup> Marcelo Martínez Alcubilla, “Emigración é Inmigración” in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 792.

<sup>45</sup> Miriam Halpern Pereira, *A Política Portuguesa de Emigração (1850 a 1930)* (Lisboa: A Regra do Jogo, 1981), appendix documents.

most historians the first law on emigration.<sup>46</sup> The reason is apparent when viewing the previous laws. While previous laws prove important legislation in the evolution of liberal emigration, the Law of 1863 was the first to compile the provisions of previous legislation and to provide guidelines for the emigration process. It abolished the need for passports for interior travel, thus leaving the passport system to document specifically emigration rather than all types of migrations.

Similar to earlier Spanish laws, the Portuguese Law of 1863 provided specifics in emigrant qualifications. The law established the need for (1) authorization from parents of minors under twenty-five, spouses, or superiors where necessary; (2) military duty being completed or paid/provided for; (3) freedom and absence of debts or criminal offences; and finally (4) the presentation of either a contract of specific labor or proof of payment of passage.<sup>47</sup> These provisions were designed to promote emigration of the best citizens, hence the need to be free of debts and to assure that the emigrants were not abandoning family or responsibility. Additionally, one will note the continued provisions against exploitation of labor, thus requiring the emigrant to show proof that either labor is not an issue (if the emigrant is able to pay for his or her own passage) or that there is a specific contractor of labor in return for passage. Costa Leite, while discussing provisions of this law, talks of the dangers of exploitation and the importance of this particular provision. He says, “This requirement was designed to avoid incidents like those occurring in the 50s: the ‘transfer’ of workers from one contractor to another: and the ‘sale’ upon arrival in the port of emigrants who owed their passage fare to the captain of the ship.”<sup>48</sup>

One additional provision in the law of 1863 also indicated the need to specify the port from which the emigrant was leaving and the emigrant’s destination.<sup>49</sup> This is particularly important since interior passports were no longer a necessity, and since passports could be issued in landlocked districts and would entail travel to the port of embarkation. By specifying embarkation port on the passport, officials had a better ability to monitor the accuracy of the passports upon inspection for embarkation.

### **Beginning of the Shift away from Liberalism**

It is during the decade of the 1860s, exactly while some of the most important liberal legislation was passed regarding emigration, that we first see the shift in some attitudes toward the discouraging of emigration. It was in a *portaria*, or decree, of 1860 that the government began to require certain discouragement of emigration even while the official law of emigration remained and continued to freely allow emigration. In this *portaria*, the government “actually orders that lists are read in the churches containing the names of those emigrants who have died, with the warning of the risks of emigration:

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<sup>46</sup> Maria Ioannis Benis Baganha, *Portuguese Emigration to the United States, 1820–1930* (New York: Garland Publishing, 1990), 106.

<sup>47</sup> Portugal, *Colecção Oficial da Legislação Portuguesa*, Redigida por José Maximo de Castro Neto Leite e Vasconcellos, v. 1863 (Lisboa: Imprensa Nacional, 1864), 145 article 10.

<sup>48</sup> J. Costa Leite, “Emigração portuguesa: a lei e os números (1855–1914)” *Análise Social* 23 (1987), 466. Cites as the examples of these occurrences those documents and letters transcribed by Miriam Halpern Pereira, which indicate specific examples of these injustices.

<sup>49</sup> Portugal, *Colecção Oficial da Legislação Portuguesa*, Redigida por José Maximo de Castro Neto Leite e Vasconcellos, v. 1863 (Lisboa: Imprensa Nacional, 1864), 146 article 12.

also the newspapers published similar lists and apparently provided notice of each of the various epidemics....”<sup>50</sup> Joaquim Costa Leite further reminds that though these were requirements by law, they never did result in legal prohibition of emigration. These attitudes never specifically prohibited emigration, but, as can well be seen, were there to discourage emigration.

## CENTURY’S END

As the century continued into the later years, more of this discouragement of emigration was visible in apparent forms in Portuguese laws and requirements, although never in outright prohibition of emigration or changes of the actual process of emigration. Laws published in 1886 and 1894 continued to limit or discourage emigration.<sup>51</sup> In 1896, the Portuguese government, in an attempt to encourage movement to colonies while discouraging emigration outside of the Portuguese empire and Brazil, passed a law that continued to charge the normal fee for passports to leave the country, but which lifted the fee for all passports to the African colonies. Travel to Africa no longer cost the emigrant more than the passage to the destination point and his own expenses, whereas travel to any other place cost the emigrant a passport fee as well.<sup>52</sup> This law continued in the vein of an earlier law passed in 1877 by the Ministry of the Kingdom that authorized the Portuguese government to expend any necessary funds to help in the transportation and aid to Portuguese colonists desiring to go to Africa.<sup>53</sup>

By 1899 efforts to discourage emigration became more blatant while still conforming to the constitutional guarantee of the right to emigrate. On 12 March 1899 a *portaria* was passed ordering that “emigrants soliciting passports be questioned—although with prudence—if they go ‘spontaneously,’ and that it is attempted to discourage them from emigrating, putting into perspective the risk that they run.”<sup>54</sup>

In 1873, the Portuguese nation held its first parliamentary study on emigration, where many

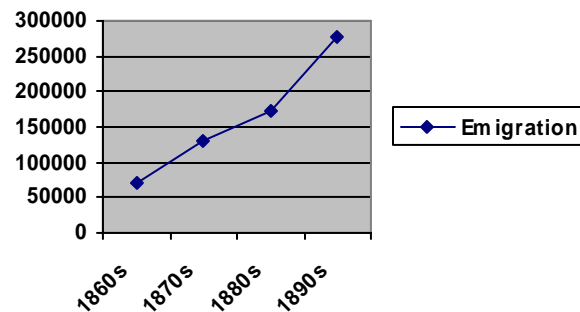


Figure 2: Emigration from Portugal

<sup>50</sup> J. Costa Leite, “Emigração portuguesa: a lei e os números (1855–1914)” *Análise Social* 23 (1987), 465.

<sup>51</sup> “Emigracao Clandestina” *Biblioteca Popular de Legislacao*, Lisboa (1904): 77–79.

<sup>52</sup> Portugal, *Polícia de repressão da emigração clandestina: lei de 23 de abril e regulamento de 3 de julho de 1896* (Lisboa: Imprensa Nacional, 1896), 3, and Maria Ioannis Benis Baganha, *Portuguese Emigration to the United States, 1820-1930* (New York: Garland Publishing, 1990), 108.

<sup>53</sup> Portugal and Carlos Vieira Ramos, *Legislação portuguesa sobre emigração e passaportes: repertorio alfabético com a summula de todas as disposições das leis e regulamentos em vigor* (Lisboa: C. Ramos, 1913), 55.

<sup>54</sup> Miriam Halpern Pereira, “Algumas observações complementares sobre a política de emigração portuguesa” *Análise Social* 25 (1990): 736. Translation by author: “ordena-se que se indague – ainda que com prudencia – junto dos emigrantes que solicitam passaportes se procedem <<espontaneamente>> e se procure dissuadi-los de emigraram, pondo em relevo o risco que correm.”

letters and complaints were presented. These letters and documents presented showed that emigrants had been exploited and had suffered.<sup>55</sup> It was also during this time period that Portugal first kept statistics on emigration, which began to reach epic proportions. A committee was shortly organized to study the question of emigration and possible solutions to the growing number of emigrants leaving the country. In answer to this study, Thomas Ribeiro's comments published in his *Questions on Emigration* showed an important change in the views of emigration from the liberalist ideals of the constitution. In fact, Ribeiro used the same section from the constitution discussed earlier, but with a very different view. He argued that the final phrase was the important one to be used at the time. He indicated that it was time for the government to institute the clause allowing for "reasonable regulations by the government" in order to "invite and employ the arms of the workers that keep fleeing it."<sup>56</sup>

With the abolition of slavery in Brazil in 1889, there arose a demand for manual labor, which was, in significant proportions, supplied by the Portuguese emigrants. The numbers of emigrants during the last three decades of the nineteenth century rose significantly.<sup>57</sup>

In fact, Maria Ioannis Baganha stressed this supply of the increased demand for labor as the principal reason for the restrictions and discouragement of Portuguese emigration.<sup>58</sup> Even Ribeiro acknowledged the impact of Brazilian politics on emigration. He cited the need to improve relations with Brazil, assuring the government that this would serve to decrease emigration rather than encourage it.<sup>59</sup> As the need for workers in Brazil increased and more emigrants left Portugal, the Portuguese government was forced to look at national losses from the increase in emigration.

Interestingly it was in these last decades that illegal emigration also increased dramatically. Maria Ioannis Baganha indicated in her study of passports and immigration manifests that clandestine emigration rose from about five percent of emigrants before 1878 to between thirteen and fifteen percent of emigrants during the years between 1878 and 1910.<sup>60</sup> These numbers demonstrate significant ramifications of the emigration system of the time. The laws and requirements shown provide evidence that restrictions had been set on emigrants. These numbers indicate a feel of the increased restrictions and sentiments against emigration. If emigrants truly felt that their right to emigrate was being protected and facilitated, there would not have been so many people leaving the country without going through the proper channels.

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<sup>55</sup> J. Costa Leite, "Emigração portuguesa: a lei e os números (1855–1914)" *Análise Social* 23, (1987) 466, and Miriam Halpern Pereira, *A Política Portuguesa de Emigração (1850 a 1930)* (Lisboa: A Regra do Jogo, 1981), appendix documents.

<sup>56</sup> Thomaz Ribeiro, *Questões sobre emigração: projecto de lei* (Lisboa: Imprensa Nacional, 1891), 7, 3.

<sup>57</sup> J. Costa Leite, "Emigração portuguesa: a lei e os números (1855–1914)" *Análise Social* 23 (1987): 474. Refer to data from Figure 2, numbers were also taken from same source.

<sup>58</sup> Maria Ioannis Benis Baganha, *Portuguese Emigration to the United States, 1820–1930* (New York: Garland Publishing, 1990), 107.

<sup>59</sup> Thomaz Ribeiro, *Questões sobre emigração: projecto de lei* (Lisboa: Imprensa Nacional, 1891), 12.

<sup>60</sup> Maria Ioannis Benis Baganha, "Registros de pasaportes: sus limitaciones y sus posibilidades para el estudio de la emigracion" *Estudios Migratorios Latinoamericanos* 11 (1996): 306.

## Spain

In Spain there occurred a similar discouragement of emigration, although not necessarily in the same procedures imposed on the Portuguese. In Spain, collection of statistical information began with an order issued in 1882. These statistics collected must have begun to worry the Spanish legislators, because in 1888 the Real Orden imposed significant bureaucratic steps that the emigrant needed to pass through before gaining permission to emigrate.

### Real Orden 1888

In 1888 the government was concerned with emigration and, interestingly enough, illegal emigration.<sup>61</sup> Yet more passport requirements were set in place for emigrants. The *Orden* of 1888 created a *Junta* or committee on emigration to review emigration documents in all of the border or port provinces. The emigrant was required to present his documents, fully certified by a notary, at least fifteen days before he planned to emigrate. The *Junta* then reviewed the documentation to assure that the emigrant met the qualifications to emigrate (these were the same qualifications as set forth in previous laws).<sup>62</sup> If the *Junta* denied emigration, the emigrant could appeal and with more time, the governor had the power to override that decision. Additionally, all ships leaving ports were required to obtain authorization from the provincial governor and to submit to mandatory inspections of the ship by delegates of the governor prior to departure.<sup>63</sup> Although the qualifications for emigration did not change and technically any person still had the right to emigrate, the requirements for receiving approval suddenly became much more stringent and difficult for a prospective emigrant to meet.

Perhaps yet a stronger indication of the sentiments of Spanish lawmakers regarding emigration can be seen clearly by looking at the preface to the entry on emigration in the *Dictionary of Spanish Administration (Diccionario de la Administración Española)*, published in 1892. In the opening entry on emigration, the author stated the following:

Those who emigrate abandon their country to establish themselves outside of it... Emigration can be voluntary or forced. The first occurs when the emigrant leaves of his own will: the second, when he is forced to leave to free himself of some evil that afflicts him either directly or indirectly. Generally, the first is due to speculation, and the second is when the laws of country do not protect the individual within the nation sufficiently, and when civil war or partisans produce insufferable persecutions. Whatever the reason, though, the country of emigration suffers, as seen through an economic point of view, when the general riches and work of the nation are diminished, and through a political and social [point of view], when the deplorable state of the nation by lack of security or resources to survive is demonstrated by emigration.<sup>64</sup>

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<sup>61</sup> Marcelo Martínez Alcubilla, "Emigración é Inmigración" in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 797.

<sup>62</sup> *Ibid.*

<sup>63</sup> Spain, *Colección legislativa de España: Continuación de la Colección de decretos* (Madrid: Imprenta Nacional, 1854) v. 140, 1888, p. 822.

<sup>64</sup> Marcelo Martínez Alcubilla, "Emigración é Inmigración" in *Diccionario de la Administración Española: Compilación de la novísima legislación de España peninsular y ultramarina*, 5 ed., v. 4 (Madrid: Administración, 1892), 789.



The author expressed his feelings that emigration is either in speculation or the blame of the emigrant nation. He placed high levels of blame on the country that forces emigration as he explained the hurt caused by emigration, either voluntary or forced. This author's opinion of emigration is certainly not positive, and if he is any indication of general sentiment of his day, by 1890 in Spain, emigration was not viewed favorably.

## **CONCLUSION**

The liberal era opened emigration to many more individuals and promoted the ideals of free emigration in Spain and Portugal. The laws in the first half of the century reflected the idea that all good citizens of the nation were free to emigrate as they pleased as long as they did not leave debts and obligations behind. In fact, the laws often went so far as to protect the emigrant in this process of leaving. However, toward the end of the nineteenth century, because so many people were emigrating, the governments of both nations began to implement measures designed to maintain the individual's right to emigrate, while discouraging such emigration at the same time.

As in most cases, the differences between Spain and Portugal, as well as the shift from liberal ideals to limitations, are not black and white. There were instances where laws from Portugal appeared to be almost identical to laws in Spain, and those from Spain to those in Portugal. There are also instances where liberal ideas appeared to be promoted later in the century. However, with close scrutiny, the general trend was definitely away from liberal ideas in the regulation of emigration towards the end of the nineteenth century. While Spain increased the bureaucracy of the process for emigrants, Portugal attempted to literally frighten emigrants out of leaving the Portuguese kingdom through various methods of propaganda.

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