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ENTREPRENEURIAL SPIRIT AND THE CLIMATE OF BUSINESS IN CASTILLE-ARAGON BEFORE THE INCORPORATION OF AMERICA

by

Carlos Alberto Campos

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements for the degree of Master of Arts.

The Norman Paterson School of International Affairs, Carleton University, Ottawa, Ontario, Canada August, 1980
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ABSTRACT

ENTREPRENEURIAL SPIRIT AND THE CLIMATE OF BUSINESS IN CASTILLE-ARAGON BEFORE THE INCORPORATION OF AMERICA

By
Carlos Alberto Campos

The entrepreneur's position in the political and legal system, and the Church's views on trade and merchants, are examined in that sequence to determine the diffusion of entrepreneurial spirit and the climate of business in Castille-Aragon.

Entrepreneurs participated in major administrative decisions of the realm, negotiated directly commercial treaties, and their contribution to the development of substantive and procedural law is seen to be most significant. The leadership shown by Castille-Aragon in banking, maritime, and insurance law cannot be explained in the absence of continuous business experience and a wide entrepreneurial endowment.
IV.

The well-disposed attitudes of the authorities towards merchants and trade were shared, sometimes inspired by the Church. To the extent they reflect society at large, their disposition suggests a generally favourable climate of business during the period under consideration.
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Entrepreneurial Spirit and the Climate of Business in Castille-Aragon Before the Incorporation of America

Introduction

In the XVI Century the holder of the Crown of Castille-Aragon reigned over the largest and the first world-wide Empire of the Modern Age. One in which he could exultingly proclaim that the sun never set, and do so without exaggeration for his was the first world-wide Empire in true geographical terms. In less than a century, a distant landmass many times the area of Europe, heavily populated and highly organised in some regions, had been incorporated to the realm. In the process, geographical accidents of a magnitude unmatched in Europe, and in many instances totally new to the European man, were overcome. At the same time, Castille-Aragon was the bastion of Christendom in the Mediterranean, blunting and keeping at bay the Turkish onslaught there as well as in Europe, where her land forces cooperated in the defense against the Moslem invaders. All the while Castille-Aragon successfully reduced France - the European ally of the Turks - to exist within her frontiers, intensified her activities in Northern Africa, participated in most of the European wars of the period, including the religious ones, in which she was the mainstay of the Catholic armies, could afford to donate Malta and Gozo long under the
the jurisdiction of Aragon - to the Order of Sain John, and managed to preserve her European possessions outside the Peninsula - and in fact to enlarge them, with the inclusion of the Duchy of Milan. After the coup d'état of Andrea Doria, in 1528, Genoa was also firmly enmeshed in the political, economical, and military interests of the realm, and became in effect a quasi-protectorate of Castille-Aragon.

The ability to accomplish so much simultaneously, or merely to use as regular avenues of communication what could otherwise have been mighty geographical barriers, such as the Atlantic and the Pacific, suggests the existence of an economic base with an outstanding degree of organisational, managerial, and technical skill. Nowhere is this reflected in the few incomplete works dealing with the economic history of the Peninsula in a general fashion or in the many fragmentary studies where, per force, the perspective of the whole is lost.

Our reasons for writing this thesis are thus uncomplicated. Little systematic attention has been given by scholars to the period preceding those events, when we might reasonably expect that those skills were learnt, developed and used in various ways, a process that required a good endowment of entrepreneurial spirit as well as a positive reaction to economic incentives of large sectors of the population if it was ever going to take place. Far more
The main purpose of this thesis is to contribute to the development of such a historical perspective. The expansion of the European world and the other momentous events mentioned in the opening paragraph were not, as is often assumed, the dawn of a new economic era, but rather
There are similarities in the economic attitudes of that period and those prevailing today. One of them was the pursuit of profits by men in order to satisfy their needs. In this regard, our findings for the period corroborate the views of

Long-distance and local trade were furthered in theory, applied to a large extent in practice, by the correct notion that exports had value only in relation to the accretion of welfare that could result from the imports bought with them. Exported goods were of "national pride" and "patriotism" which developed and still plague us, assigning a special virtue to particular exports, resulting in government directing economic forces to keep imports down and "desirable" exports up. The obvious corollary was a significant level of economic interdependence throughout the European world.

The later phase of an old one. These events were the culmination of a prolonged economic period characterised by a high volume of relatively free exchanges. Both, long-distance and local trade, were favoured by the "policy of abundance", endorsed by the Church and the Scholastics, generally adopted by all political jurisdictions, and, perhaps, the only "economic policy" in the Middle Ages that can be regarded as such.
Walter Eucken, Otto von Zwiedineck-Südenhorst and others, who stress the unity and constancy of this basic attitude in man's economic behaviour through the ages, and consider fallacious the urge to contrast antithetically the pursuit of monetary gain and the meeting of needs. On the whole, however, the economy of the period under consideration, along with the political and social institutions, and society in general, differed widely from our own.

As any historical period, the one under consideration has to be studied on its own terms, a fundamental premise to this thesis. Following the first philosophical principle of José Ortega y Gasset that "man is himself plus his circumstances", it is critically important in our view to re-create the world and the conditions surrounding and constantly affecting the actions of the Peninsular entrepreneurs and the economy at large. Reciprocally, the entrepreneurs influenced and to some extent shaped the world and the conditions around them. It is only after we have put ourselves in the position of the individual entrepreneur at the time and place under consideration that we can attempt to see "his world" through his own eyes, and then proceed to ask a number of decisive questions.

Two distinct tasks are determined by this approach: the first one is to establish the "climate of business"; the
second task is to test the manifestations of entrepreneurial spirit and the actual performance of the Peninsular entrepreneurs, both to a large extent contingent upon the "climate of business".

It is therefore important to seek answers about the position of the individual entrepreneur in the political, administrative, and legal world, and the regard in which he and his activities were held by the Church and society at large, before asking questions about the manifestations of entrepreneurial spirit and the performance of the Peninsular entrepreneurs compared to that of their European counterparts. Although we have made significant progress in the latter area, time, length, and other restrictions determine that the main objective of this study must be limited to the "climate of business". We shall be concerned specifically with the position of the individual entrepreneur with regard to the administration of the realm and the legal framework of the economy. Our interest shall be directed also to the status of trade and merchants in the eyes of the Church, by far the most important source of theoretical speculation in economic matters and the most comprehensive social mirror of the period under consideration.
The geographic and resource diversity of the Peninsula are such that they would, in themselves, be conducive to the growth of an economy characterised by variety, specialisation, and lively exchanges. Although its situation between the 44th and 36th parallels of latitude North places the Iberian Peninsula entirely within the temperate zone, its position between two seas - the Atlantic and the Mediterranean - and two continental masses, Europe and Africa, together with the peculiar arrangement of its soil relief, confer on the Iberian Peninsula the climatic variety of a small continent. Broadly speaking, four main climatic regions are distinguishable: sub-tropical in the southern coast, mild and temperate along the Mediterranean shores, a typically maritime climate on the Atlantic seaboard, rainy and cold in the Biscay and Galician coasts, progressively warming southwards through Portugal, and a harsh continental climate in the Meseta Central and the Ebro Valley, barred by high mountains from the moderating influence of the sea winds. These broad areas are, in turn, divided up in a large number of sub-zones.

If we add to that an equally large variety of soils, the significant degree of agricultural specialisation reached by the Iberian Peninsula at a very early date can hardly come
as a surprise.\textsuperscript{2} An extended coast and rich fishing grounds were an incentive for significant fishing activity, the importance of which, also in the distant past, is attested by the innumerable ancient coins of Cádiz, Cartagena, Lérida, and other cities. Bearing whales, tuna, sturgeon and other fish, the coins would seem to point to the importance of fishing and fish processing in those cities, as José María Blázquez suggests.\textsuperscript{3} Mining was even of more legendary fame. It was a magnet that since early antiquity attracted invaders to the Peninsula, and, most importantly, a large number of traders from far and near.\textsuperscript{4} Rich forests, praised by Plinio, were also exploited, and their products figured prominently in the early economic life of the Peninsula,\textsuperscript{5} which, as M.P. Charlesworth affirmed, "in its mineral and agricultural wealth (it) stood second to none of the provinces of the Empire."\textsuperscript{6}

All in all the Peninsula enjoyed a diversified resource base, recognised and fittingly sung in the famous De laude Spaniae,\textsuperscript{7} and one that would ideally lead to a certain degree of regional specialisation and a high level of economic exchanges. An early maritime vocation is to be expected, given the "condición marítima" of the Peninsula which, as Admiral Luis Carrero Blanco stresses, from the point of view of communications with Europe is very near to being an island, having 3,000 Km. of coastline and only 670 Km. of
land frontier with the continent that, for the most part, does not afford an easy access due to the abrupt orography of the Pyrenees. These conditions probably rendered the sea an easier, faster, and cheaper way of communication between the different regions than the overland routes, thus may have stimulated an all too obvious early maritime activity.

Just as a high level of economic activity at a given period does not automatically allow us to infer that this level must have been necessarily lower in the preceding one, the evidence of specialisation, exploitation of its various resources, and energetic trade at an early date does not permit us to assume that these features remained characteristic of the Peninsular economy. Nor can we take for granted those traits continued to be perceived as advantageous by the social body and were thus furthered by it. Production possibilities, or even output of any sort, are of little consequence in the absence of three basic elements: a legal framework and an authority with the power to enforce it, in order to assure peace, order, and a minimum of security to those engaged in economic activities; entrepreneurial spirit; and thirdly a business organisation capable of gathering the factors of production, combining them in a number of ways, and bringing together buyers and sellers.
The relative importance of entrepreneurial spirit is emphasised when we follow Kurt Weidenfeld and Fritz Redlich in considering the entrepreneur of theory as the man or team of men who makes the decisions for the enterprise and therefore brings risks into being, and, at the same time, tries to mould it so as to protect his concern.9 The centrality of this factor for the existence of an active economy acquires a new dimension when due consideration is given to some of the regularities that surrounded the life of a Peninsular entrepreneur in the late Middle Ages and early Modern Times. Specifically, we are referring to those concerning the relations between the individual and the political and legal system in which he lived and worked.

The reference to "Castille-Aragon" in the title of this thesis was deliberately chosen for its descriptive accuracy. "Spain", with the geographical and political connotation of the modern nation-state, neither existed nor had any meaning during the period under consideration. Although the word "Hispania" or "Spanya" was often used to refer geographically to the entire Iberian Peninsula, "las Spanyas", in plural, by the different Christian Kingdoms in which it was politically divided when speaking about themselves collectively - an acknowledgement of their formal union and common roots - and was common abroad as a synonym of Castille or her subjects, it had no other currency at the time. Castille-Aragon was a
personal union of two independent kingdoms brought about by the marriage of Isabel la Católica of Castille and Fernando el Católico of Aragon in 1475. Both Kingdoms maintained separate administrations and their own institutions even long after that personal union had been consolidated by the heirs of the Reyes Católicos.

The Kingdom of Aragon consisted of the Kingdoms of Aragon proper, the Kingdom of Valencia, the County of Barcelona in the Peninsula - the latter including Cerdagne and Rousillon in "Catalunya Nord", North of the Pyrenees, the Kingdom of Majorca - all the Balearic Islands, the Island of Sardinia, and the Kingdoms of Naples and Sicily. As it is common with states, who often shift their frontiers but retain their names, the Crown of Aragon had had jurisdiction over Montpellier, Provence, the Island of Corsica, the Duchies of Athens and Neopatria in Greece, Esclavonia, Epir, and Albania at various times. The Kingdom of Castille comprised the Kingdoms of Castille proper, and those of León, Galicia, Murcia, Jaén Córdoba, the Algarves, Algeciras, Gibraltar, and Sevilla, and the "Señoríos" of Vizcaya and Molina. The Kingdom of Granada was incorporated in 1492, and the Kingdom of Navarre, South of the Pyrenees, in 1515, after 700 years of independent existence and not without considerable resistance. The Crown of Castille, therefore, had jurisdiction over the entire land mass of the Peninsula.
West of Aragon and Valencia, with the exception of Portugal - which was itself incorporated to the Crown of Castille-Aragon at a later date. It had jurisdiction over the Canary Islands and several possessions in Africa, whilst the "Indias" (America) and all newly acquired territories were incorporated, as well to the Crown of Castille, as were the personal possessions in the Low Countries.

It is easily discernible from this brief sketch that the political landscape of the Iberian Peninsula was in many ways just as diverse as its geography and resources. The territorial expansion of the Crowns of Castille and Aragon took place over a long period of time and, as a rule, every new territory added, kept its status as a distinct entity, together with its laws, institutions, and the separate administration of the territory under its jurisdiction, all of which, of course, contributed to that political diversity. By no means alien to this body of practice was the traditional pre-eminence that local administrations enjoyed over the general administration of the realm. Throughout the late Middle Ages and early Modern Times this tradition was nourished by the approbation of the jurists, the Scholastics, the officials of government and the Crown, and the social body. This tendency was strengthened further by the legal system. Just as in Castille the Usus Terrae took precedence over the Lex Judiciorum, during the same period the Lex Loci
had priority over the *Lex Generalis*, both in theory and in practice, and not only in the Peninsula but also abroad.

Although the local differences in the main body of law were probably not very radical, since it was based in the same old Roman and Germanic laws, those in the area of *ad hoc* economic and commercial legislation were significant. A strong competition between the local jurisdictions to attract settlers and expertise - a feature of the re-population effort of the *Reconquista* that was maintained throughout the Peninsula during the period under consideration - was one of the reasons for differences in the local economic and commercial legislation. The tax mechanism was a major weapon used for that purpose, but not the only one. Natural advantages were at times reinforced by immunities, privileges, and monopolies, granted by the Crown at the request of local authorities or individuals. So was free-trade when proven necessary or advantageous. Differential tariffs and subsidies were standard fare at a very early date, in harmony with the common practice elsewhere in Europe, and neither of them were unified throughout the realm. Enacted by a number of authorities for a variety of reasons, a host of privileges, franchises and exemptions tended to strengthen the local character of the tariff structure, often to the point of favouring alien merchants and products to the detriment of fellow subjects of the Crown. One of the main underlying
reasons for this was the custom of the local authorities to negotiate directly reciprocal agreements on tariffs with foreign jurisdictions, a common practice that continued well after the XV Century.

The significance of the characteristics of the political and legal systems are enhanced when we consider the position of individuals with regard to the government and the law. As far as the former is concerned, individuals had a wide range of options to influence and participate in various ways in the decisions of both the local and the general administration of the realm. Within the legal system, individuals took part not only in the interpretative process and the application of laws, where local customs and trade practices played a vital part, but also in many creative aspects of the legal framework itself. Aside from those laws concerning the professional "universitas" and commercial and maritime activities, this crucially important area included what we would call today "international" trade agreements, negotiated directly by the interested parties and merely ratified by the authorities. Individuals, therefore, had considerable say in some of the man-made circumstances affecting their economic activities, which renders potentially very rewarding a study focused upon the nature, manifestations, and distribution of entrepreneurial spirit in the Peninsula and the business climate in which it had developed. Yet,
in spite of the obvious possibilities of such an enquiry
for a thorough understanding of the economic history of
Castille-Aragon - and that of America and other constituent
parts of the realm - and Europe it has, to our knowledge,
ever received the searching investigation it deserves.

Strong suggestions of a fairly widespread entrepreneurial
spirit are certainly not lacking; nor is there clear evidence
of an active economic life, which must have been necessarily
dependent upon it. Some evidence is physical and still
standing. The magnificent "Llotjas" (bourses) of Barcelona,
Valencia, Palma de Mallorca, and Perpignan, or even the
more modest but sturdy remains of that of Tortosa, are as
eloquent a testimony of a highly economic age as the Palacio
Clariana - Padellàs in Barcelona is of the monetary success
of some of the merchants taking part in it, or as the
"drassanes" (shipyards) of that city are witness of an
impressive shipbuilding industry. None of them are con-
ceivable in the absence of an active economic life and the
participation and positive response to economic incentives
of the large number of people required by the infrastructure,
services, and output indispensable to maintain it. In a
more round-about way, extant witness of such an economic
life is, of course, more abundant. "Jesús" and "María",
the right and left towers of the Cathedral of Burgos evoke
the Cathedrals of Strassburg, Ulm, and other Southern
German cities that inspired them, as well as an economy capable of generating sufficient surpluses for this type of investment and capable of offering sufficient incentives to attract foreign master-builders - Johannes von Köln in this case. These structures reflect an active economy as intensely as San Lorenzo del Escorial mirrors the ascetic soul of Felipe II, as the ceiling of the chapel of the Palacio Dalmases in Barcelona with its orchestra of 56 musicians speaks of the highly evolved musical life of that city around 1400, or the heroic proportions of the "clarines" (long reeds) of the organ at the Cathedral of Toledo echo the landscape and the skies of Castille, and, like every aspect of that great Cathedral, the spirit of its builder.

Evidence of abstract nature is of course more plentiful. The well known works on tariffs of Miguel Gual Camarena\(^\text{10}\) and Earl J. Hamilton\(^\text{11}\) are amongst many on the subject that would suggest an economy whose level of exchanges was significant and whose varied products were distributed over wide areas. Concrete examples of this exchange economy as a by-product of a vastly diffused transhumance and involving a variety of industrial and pastoral goods are afforded by Julius Klein in \textit{The Mesta}. It offers an example of an outstanding organisational achievement of Peninsular entrepreneurs of all sizes and backgrounds, which gathered
breeders from the greater part of Castille and major areas of Aragon. The composite picture emerging from these and other familiar works is also that of an economically active society. This impression is confirmed in many passages of contemporary chronicles and by the accounts of travellers especially by Dr. Hieronymus Münzer, a particularly acute observer, obviously knowledgeable about business matters, who visited the entire Peninsula in 1494. His economic observations, all the more reliable because of his own involvement in business and that of his family, the well known Nürnberg merchants, also reveal a brisk and rather complex trade with the world outside the Peninsula, corroborated by a XV Century Catalan merchant's manual.

An interest in the world as a whole and a striking degree of information about it, which was apparently common knowledge in Castille, is apparent in the Libro del Conocimiento de Todos los Reinos, Tierras, y Señoríos que son por el mundo, written by a Franciscan of Seville in the XIV Century. During the XV Century, this interest manifested itself in the numerous voyages of discovery and other related commercial undertakings carried out by the Castilean from the Southern ports in the Canary Islands - which were incorporated to the Crown - and along the African coast, rivalled in daring only by the Portuguese, and by the Basque and fellow Castilean from the Cantabrian ports who were
fishing and whaling from the Canary Islands to Northern waters and Greenland. The interest in the voyages of discovery is also highlighted by the keen competition and hard bargaining to finance Columbus's eventful expedition and the various projects that preceded it. Amongst the latter, at a much earlier date was one of Cardinal Don Rodrigo de Borja, from Valencia, then Vice-Chancellor of the Holy See and later Pope Alexander VI. 17

Perhaps no example is more suggestive of an active economic life than the incorporation of America and other far away lands to the realm. Even if we were to ignore the gestation period, on purely logical grounds it would seem apparent that that achievement could hardly have been the result of a stroke of good luck. It would appear obvious that in addition to military and naval might, an abundant supply of managerial and financial talent, organisational experience, and technical skills of diverse nature were required for that accomplishment. All these skills had to be at least equal to the best that Europe could offer at the time. It is significant that Castille-Aragon - and Portugal - had practically no European competitors in this type of enterprise during the XVI Century, except in the form of privateering.

The rapid "mise en valeur" of these vast territories -
a task in which Castille-Aragon vastly outdid Portugal, the
establishment of industries as complex as shipbuilding and
sugar growing and refining - hard on the heels and often
almost coetaneously with the military occupation and
administrative organisation of the new Kingdoms - and the
introduction and adaptation of practically all known domestic
plant and animal species, necessitated the mobilisation
of vast human and capital resources. These achievements
were partly the result of deliberate intentions that, some-
times, required a long term commitment, such as cattle
breeding. To a large extent these achievements were also
the unintended consequences of human acts. The man who
decided to buy a house, a pair of shoes or a vessel for
further exploration, by the very fact of entering the market
as a buyer was, without wanting it, the cause of a relative
rise in the market price of those products as well as that
of the tools, materials, labour and services required to
produce them. Given that these demands were met almost
exclusively by Peninsulars who could hardly have failed to
do as they have seen and done themselves at home, would
suggest that Castille-Aragon had had an active and diversified
economy for some time well before that increase in demand
occurred. The fact that that demand was at a rapidly in-
creasing rate satisfied directly in the new territories -
as a perusal of the export lists from the Peninsula would
confirm - by Peninsular immigrants, would suggest that a wide
cross-section of the population of Castille-Aragon was in the habit of responding positively to economic incentives and was willing to take risks. In other words, Castille-Aragon was seemingly endowed with a high dosis of entrepreneurial spirit.

Paradoxically, however, the pervading notion that that was not the case has been a common place in the academic literature and a steady diet for generations of students.

The legal savvy, especially that of the Castileans, has generally been extolled. So has been their ability to organise the administration of the new Kingdoms, their conception of that task in terms of impersonal institutions and their control of the officers, checking their powers in order to guard the ruled against persons and against their arbitrariness.18

Less frequently are acknowledged the efforts of the authorities to supervise the Christianisation of the Indians and their welfare, together with the widespread criticism permitted, and even stimulated by the Crown, which generated a vigorous controversy regarding the justice of the incorporation of the new territories and the just treatment of the Indians equal in size only to the magnitude of that enterprise. This created a polemical flood so free and open
that "really constitutes one of the glories of Spanish civilisation", according to Lewis Hanke. More rarely we hear of the three hundred years of relative peace, stability and prosperity, enjoyed by the new Kingdoms in marked "contrast to the squabbling nations of Europe" and the significant achievements in the fields of education, health, and welfare, achievements that deserve more honour than they have commonly received.

None of these acknowledged accomplishments are conceivable in the absence of a reasonably adequate economic base. It is simply not in the nature of man, for instance, to think of establishing universities, and doing so as early as 1538 in Santo Domingo and 1553 in Mexico, without having solved first the problem of supplying the basic requirements of life and thus satisfying more basic human needs beforehand. Such a reasonably adequate economic base, in turn, could not have existed if Castille-Aragon had not have been endowed with an entrepreneurial spirit relatively well distributed throughout the population. Yet, there has been a persistent tendency in the literature to assume that the spirit of enterprise was wanting in Castille-Aragon. This assumption is wrong and unwarranted. It continues to colour the view of an entire culture. It distorts our perspective of history and it should be cast aside if we are to be able to see the historic landscape as it really is.
To a large extent the foundations for the notion we are contradicting are the result of methodological approaches and the rather uncritical adherence to dangerously oversimplified assumptions, whose validity are more the product of repetition than of substance or serious analysis. A summary of both can be examined in a familiar work, *American Treasure and the Rise of Capitalism*, by Earl J. Hamilton, an author acquainted with economic theory, but careless and inconsistent in his use of it as an analytical tool. Showing little sense for economic reality and no concept of how business decisions are made, definitely unhistoric in his method, Hamilton's difficulty springs from the hypostatising of a concept and its treatment as a thing, an object or a person. A general personified concept of "capitalism", a concept that after its "birth" is conceived as having an independent existence of its own, divorced from the rest of history, is used as a substitute for the study of the economic landscape or economic reality, as Walter Eucken says. As he adds, with characteristic perspicacity, the followers of this idea "fail to perceive that economic life, and hence industrialism also, is always and at every moment a part of the whole process of history with which it is in constant interaction, and that is the whole time affecting and being affected by, every other department of human life."
There are two clear consequences derived from the approach of Earl J. Hamilton and others, who are basically associating a concept with reality. The first one, is that since "capitalism" says nothing about the structure of the economy it cannot be used to describe economic reality. The second, is that it is an obstacle for a true understanding of history. Since "capitalism" is assumed to have "arisen" in the early XVI Century, our quite staggering ignorance of the preceding historical period can be dismissed as unimportant. A lower level of economic activity during that period is taken for granted - even though a light perusal of the literature should be sufficient to caution against such automatic assumptions. Those "cases" where traces of "capitalism" can be found, such as Flanders and a few "French" and "Italian" cities, are considered exceptions, without questioning how they managed to become that and how they maintained such exclusive characteristics, given a constant intercourse with the rest of the world indispensable for their prosperity. In the eyes of Hamilton - and other followers of this method - "capitalism" becomes a causa efficiens not only of economic life but also of historical events. He sees it in the XVI Century, for instance, as the cause for the interest of the authorities in protecting trade and improving the transport infrastructure. This, however, was a constant preoccupation of the authorities in the Peninsula and many areas of Europe for at least four centuries before that, as will unambiguously
be shown in this thesis.

A fascination with business forms and methods has unfortunately obscured the view of many historians who had made a significant contribution towards a better understanding of the late Middle Ages. Just as double-entry bookkeeping is irrelevant for the choice between competing projects and other rational decision-making in business— as confirmed by standard business practice and historical evidence— the organisational chart of a company tells nothing about its efficiency. No matter how admirable the organisation of a business may be, and certainly the long-distance Genoese trading companies studied by Jacques Heers were so, one cannot examine and evaluate the performance of an entire economy from the viewpoint of these companies as this gifted historian has basically done. This is to ignore a number of fundamental considerations: first, and foremost, those companies and the Genoese merchants involved in the "grand commerce international" could not have functioned in a vacuum. Wherever they traded, an ample positive response to economic incentives was a condition sine qua non for trade to take place at all.

Secondly, the Genoese companies and merchants taking part in the long-distance trade cannot be used as the standard rod to measure business acumen, especially when
they are compared to entirely different endeavours, such as the transport services of the Basque and other Cantabrian shippers. The fact that the latter concentrated in providing shipping services does not mean that they lacked business vision and a wider horizon, but, quite simply, that they were in a different business. Incidentally, the independent existence of such a specialised business bespeaks of a complex economy and would caution against making grand generalisations.

Thirdly, the acid test of a business is its profitability, not its organisation. There are not only many ways of carrying out a given trade, and scores of them were used in the Peninsula, in Genoa itself, and elsewhere, but not infrequently certain modes may be chosen in spite of their efficiency. The different options open to a fledgling new starter and a well established business may alone force such a decision. The need to open a new market or to maintain one's position in an old one may also dictate those choices, as well as market conditions, even though as George Katona rightly asserts, "prevailing conditions are very often neither precarious nor highly prosperous."}

In the fourth place, the competing opportunities for local investments within many areas of Castille-Aragon cannot be ignored in any economic comparison to Genoa. Jacques Heers
and others do this implicitly, but such a comparison, if at all possible, requires careful consideration of the differences in local investment opportunities. Anybody who has sailed into the port of Genoa, and is able to mentally put aside all the manifestations of modern industry that characterise it now, can hardly fail to feel how few alternatives to trade, and certain transformation industries depending on it, were open to the inhabitants of Genoa. If we compare that to Valencia and the "albuferas" of its "Huerta", one of the oldest recovered land areas under cultivation, famous since Roman times and still one of the most productive agricultural lands in the world, the alternatives for local capital investments, with a faster turnover, relatively fewer risks, and the opportunity for direct supervision and control offered by Valencia become readily discernible. The investment alternatives offered within the Kingdom of Valencia or Castille-Aragon as a whole would of course have dwarfed by comparison those existing in the "Huerta". The obvious question is whether the many men who opted for local investment opportunities, as we shall show in the text, can be considered to have been wanting in entrepreneurial spirit or to have had less business acumen than their counterparts in Genoa, who made the best of the lesser economic options open to them.

Jacques Heers and others have been struck by the presence
of large numbers of Genoese merchants in the Peninsula and the assorted nature of their business undertakings. This phenomenon, in addition to some hasty conclusions about their "monopolies" and the nature of some of their enterprises in the Peninsula, have on the whole been interpreted as a sign that their presence there was required in order to fill a gap left by the lack of Peninsular entrepreneurship. Put into its proper perspective, however, it is clear that the presence of foreign merchants was characteristic of all the most economically active areas of Europe. Their presence was, furthermore, encouraged in Genoa itself, as well as in Venice, Flanders, and elsewhere. Therefore, the activities of the Genoese merchants and those from other Italian and German cities and many other jurisdictions, as well as their relative importance in the Peninsular economy, cannot be evaluated before examining the practices and effects elsewhere. Only then would we be able to attempt assessing the likely impact of their activities upon the Peninsular economy. Only then would we be able to compare their attitudes to that of the Peninsular entrepreneurs, in the Peninsula and abroad, where they also ventured in large numbers.

It is also in this light that we would be able to gain some understanding about the attraction of the Peninsula for foreign capital investment. Foreign investments have
been interpreted often as an indication of a dearth of local investors, capital, and the means of capital creation. Such an explanation resides well with the role assigned by many to foreign merchants, but it is certainly not the only plausible one. Foreign capital could have been enticed by an abundance of attractive investments in the Peninsula. In view of this, relatively higher rates of interest compared to other areas of Europe may have prevailed. Just as easily, it could have been safer to invest in the Peninsula than in other areas of Europe and the need for relatively higher rates of interest might not have arisen at all. This matter is far from settled. It is by no means sure, for instance, whether there were net inflows or net outflows of capital from the Peninsula up to the first part of the XVI Century. We will not make great progress in this regard, but we will show that the leadership enjoyed by Castille-Aragon in the fields of insurance, banking, commercial and maritime legislation cannot be adequately explained in the absence of a constant experience with the problems that those laws attempted to solve, and without an active participation of Peninsular entrepreneurs in all the fields to which these laws were directed. Neither capital investments of any sort nor an economic life of a significant level were likely in the absence of an adequate legal framework. As we shall see that of Castille-Aragon was well developed in all areas, including the critical one of credit creation.
A number of well known and often repeated assumptions inosculated to the conclusions and viewpoints reviewed so far have also contributed to create the picture of apparent economic languor and entrepreneurial ineptitude in the Peninsula that we refuse to accept at face value. A kernel of truth, some misapprehensions, and plain prejudice are common to those assumptions as well as the additional comfort of repeating something endorsed by the assent of many others over a long period of time for, basically, those notions are indeed quite old. Most of them can be found, for instance, in the Relazione di Spagna, written by Francesco di Piero di Guicciardini, Ambassador of Florence to the Court of Castille-Aragon in 1512-1513. The by now almost axiomatic dearth of a "commercial class" or of a "middle class" in Castille is as clearly spelled out in Guicciardini's Relazione as the apparent congenital indolence of the Peninsulars. It is said that the dislike of work was particularly intense amongst the "Hidalgos", one of the many constituent elements of the social segment known collectively - and inadequately - today as the "nobility". There is ample evidence, however, that this supposition, sometimes refined nowadays to differentiate the work-loving, business-inclined Northern European "nobles" from their Meridional counterparts, is as unwarranted as the so-called "social objections" to the use of the pen by the "nobles" which should in fact be a stern warning against hasty generalisations, given the "nobles" outstanding contribution
to the development of the Peninsular literature and languages. In stating his opinion that the "Hidalgos" considered work dishonourable, Guicciardini was following his own long held prejudices, not too different from those of a fellow Florentine, Niccolò Machiavelli. The latter, though confessing in private his ignorance about economic affairs, thought nothing of indicting in public the assumed "idleness" of the "Gentiluomini" - just as he distorted the life of Fernando el Católico in order to suit his "model" of a Prince.

Guicciardini's assertion that the Peninsula was simply an exporter of primary products and an importer of finished products, which he attributed squarely to the lack of working habits of its inhabitants, has been repeated often and has been the basic point of departure of those using "models" or simplified abstractions of modern conception, such as the "colonial economy" or the "dependent economy". Though their followers probably believe that by using them they can penetrate below the surface to what is essential, the Peninsular economy they describe bears no resemblance to what in reality it is likely to have been in form and substance. Like a Procrustean bed, the use of these "models" produce uniformity only by deforming or mutilating the historic panorama. This is brought forth nowhere more clearly than by an examination of Peninsular foreign trade.
itself. Far from being a plain exporter of primary products and an importer of finished goods - which in itself would shed little or no light on the character of the economy or the relative degree of prosperity attained by Castile-Aragon - the foreign trade of the realm was exceedingly complex, both on the import and on the export side.

Textiles, for example, were imported at different degrees of completion, re-exported with or without further processing, and manufactured for local consumption as well as for export. Involving as they did well in excess of one hundred products, some close substitutes and some others not, each with individual supply and demand curves, the consumption, production, import or export of any particular item may have expanded or contracted at very different rates and for very different reasons, including the building up or running down of stocks at home or abroad. In praesenti, we lack the indispensable data to establish the net movements of any single textile product at any given time during the period under study. All these considerations intimate the caution with which the textile sector, which is the aggregate sum of all those individual products, should be analysed. This is certainly not characteristic of those using the "colonial economy" and the "dependent economy" "models", though the textile segment of the economy has always been one of their favourite examples, and often the only one
presented. Its intricate nature is by no means reflected in the oversimplified, monistic description of the economy that emanates from that approach.

Failing to visualise the complex nature of the Peninsular foreign trade, its followers cannot but fail to put it into its proper perspective within the "grand commerce international" and to take notice of an important characteristic of the late Medieval and early Modern European economy: its interdependence. A rather large measure of freedom to trade, keen competition in the market, the encouragement and relatively high volume of exchanges, a significant degree of specialisation, and a considerable division of labour at the local and European levels are clear manifestations of that economic interdependence. A fortiori, the interdependent nature of economic life in general terms was recognised, explained, and encouraged for its efficiency in the theoretical writings of the Scholastics. Within this framework, a partnership such as the one formed by a landlord of Valencia and a large trading firm, the Grosse Ravensburger Handelsgesellschaft, to grow and refine sugar cane - which for some epitomises the idea of a "colonial economy" - can only be regarded as a perfectly ordinary business deal sensible from a strictly commercial point of view, and one that was carried out in similar terms everywhere, and, not infrequently, by Peninsulars abroad.
However, this economic interdependence at the European level co-existed with many other economic forms that complicate considerably the examination and analysis of any individual economy. Even within a single sector of a given economy, textiles for instance, it is impossible at the present state of knowledge to assert without hesitation whether the Peninsula was a net importer or a net exporter. To talk about Castille-Aragon being an "economic dependency of Europe"\(^{43}\), or of Genoa's economic "mastery" over Castille,\(^{44}\) or of an "Italian" "control" of the Castilean economy,\(^{45}\) is to disregard all that; besides ignoring that no conclusive proof of that "dependency", "mastery", or "control" has ever really been advanced by any of the authors cited. It is to ignore as well other potentially significant factors. In the case of Genoa, for example, her reliance upon the political and military support of Castille-Aragon, and the very likely possibility that over half of her commerce and financial investments were linked to Castille-Aragon,\(^{46}\) considerably further the possibility of a real economic interdependence and community of interest between the two.\(^{47}\)

The backward economy and the industrial and commercially passive population depicted by those who are persuaded that Castille-Aragon had a "colonial" or "dependent" economy or one that was "mastered" or "controlled" by third parties is the inevitable corollary of their basic proposition.
Francesco Guicciardini preceded them in much of that assessment, and, by logical deduction, it is an easy task to make him conform with most of it. We can understand and even sympathise with this highly cultivated man, who, probably, saw himself and his countrymen as the true heirs of Rome and was resentful of the prominence attained by those he may have regarded as little more than Barbarians from one of the outer Provinces of the Empire. He may not have forgotten Seneca, Trajanus and other glories of the Empire who were born there, but he may have - not unreasonably - considered them to be a product of the Roman civilisation. The naval and military might of Castille-Aragon, and her military successes in the Italian Peninsula may have been particularly bitter to him. We can also understand that Father Juan de Pineda later in the XVI Century was angered by the enormous sums of money spent by Castille-Aragon for the defense of the Mediterranean and for her other European commitments, and who, perhaps because foreigners were noticeable or convenient to censure what he regarded as complacency in his fellow Peninsulars, spoke with obvious exaggeration of a "Spain" perennially exploited and abused by foreigners.

We cannot, however, accept their statements uncritically. Neither can we ignore the personal reasons that may have generated them nor other evidence, just as common and freely available,
that contradicts their perceptions. The accounts of Baron von Rosmithal (1465-1467), Ritter Nikolaus von Popplau (1485), Dr. Hieronymus Münzery (1494-1495), and Antoine de Lalaing, Seigneur de Montigny (1501), convey the idea of an economically active society, exploiting the many resources of the land, engaged in local and foreign trade, and rather prosperous in some areas. This is roughly the idea that one would gather from men who were perhaps closer in background to Francesco Guicciardini; Gaspar Contarini, Ambassador of Venice to Carlos V (1521-1525) and Andres Navagero (1525-1527), also Ambassador of Venice. Much later, some of their successors such as Marino Cavalli (1551) and Leonardo Donato (1569), who report some, detailed information on the economy and expenditures for defense, do not mention any Genoese "control" of trade or finances, which is particularly interesting on account of the commercial rivalry between Genoa and Venice, and the inquisitive nature of these writers.

There are other indications that would make us suspect the credibility that Guicciardini can command. A foray into an area other than the economy can provide a useful test of his accuracy. He was perhaps not used to vast expanses of land, and we admit that the ability to feel bewitched by the Castilean plains or Las Marismas - the latter probably unkown to him - is a highly personal matter.
However, in his comments about some "desolate" areas in the Peninsula, he seems to have been unable to understand a different type of land to that which he knew and was accustomed. Such a landscape may not have conformed to his abstract notion of a "productive", "well exploited" land - a common problem and the cause of many misapprehensions - but in his indictment he seems to have forgotten regions such as the Po Delta, not too far from his native Florence, whose desolation was legendary even at a later date,\textsuperscript{58} and that could not have been unknown to a well travelled man like himself.

His comments about Castille-Aragon being a cultural desert reflect a similar attitude. The military successes of Castille-Aragon in the Italian Peninsula may have contributed to form that impression, since the behaviour of victorious armies has seldom inspired the love of the vanquished. Though this did not prevent Ludovico Ariosto from being a firm admirer of the Emperor Carlos - "un principe, al valor del cual pareggio/nessun valor, di cui si parli o scriva"\textsuperscript{59} - others in the Italian Peninsula shared the views of Guicciardini.\textsuperscript{60} Another contributing factor to the latter's negative cultural image of Castille-Aragon may have been the whole idea of refinement and urbanity that a city like his native Florence could convey, with her great concentration of wealth and mature business and the
city's ability to patronise the arts, perhaps rarely matched anywhere at the time. None of these possible explanations however, render Guicciardini's views acceptable at face value, as, surprisingly, J.N. Hillgarth and others seem to have done. Guicciardini's youth at the time of his writing and his political nature alone should caution against an uncritical acceptance of his opinions.

Well known factual evidence would suggest a radically different cultural tradition and cultural reality to that depicted by Guicciardini. The enormous efforts of Fernando el Santo, Alfonso el Sabio and their successors to obtain the services of the best specialists in every field of knowledge, shared by the holders of the Crown of Aragon, and the participation of members of the Royal Houses alongside representatives of several sectors of society in a rather voluminous literary and scientific output hardly requires a special mention. Moreover, the success of Peninsular scholars abroad, the reputation enjoyed by several universities, with the newly founded University of Alcalá de Henares and its first European School of Oriental Languages completing the famous Biblioteca Complutense at the time of Guicciardini's stay, and the general emphasis on education, as strong and parallel to the re-population drive in the "reconquista" effort, would easily cast serious doubts upon Guicciardini's statements, and those who accept
them without a critical evaluation.

So would the fact that the astronomical tables of Alfonso de Córdoba or "Tablas de la Reina Católica", were published in Venice in 1502, 1506, and 1517, and along with other scientific publications and instruments were widely used in the Italian Peninsula - as well as in England, France, and other areas of Europe. Moreover, the famous Colegio founded in Bologna by Cardinal Alvarez Carrillo de Albornoz, the record of the Viceroy's and other administrators of Castille-Aragon in Naples and Sicily, or indeed that of the Aragonese Kings and private individuals there would also contradict Guicciardini and his followers past and present. The Crown and the administrators appear to have lent the same support to the universities and other studies in the Italian possessions as they gave in Flanders or at home, where an academy of "farmacia y secretos de la naturaleza", authorised by Queen María de Aragon in 1441 preceded any of that sort and where the first pharmacopoeia published by a pharmacist, probably a result of that early academy, saw the light in 1457. The influence of the choristers of Castille-Aragon in Rome during the XV and XVI Century, and of musicians such as Nuñez Calasanz, Escobedo, Ordóñez, and Cristóbal de Morales, or for that matter the obvious musical erudition displayed by Francisco Salinas, from Burgos, who was Abbot of Sancti Pancratii de Rocca
Scalegna in Naples and professor of music in Salamanca, are hardly compatible with the idea of men formed in a cultural desert.

A fortiori, Peninsular women - whose freedom in Castile-Aragon was criticised by many "Italians" along with the "generally loose" religious habits of the Peninsulars were as noticeable in the cultural field in the Italian Peninsula as they were at home. Luisa Sigeo, from Toledo, was a celebrated pettress there. Isabel Poya, from Lérida, held a public professorship in Rome, and Isabel Losa (1473-1546) opened a school in that city. In these endeavours, they seem to have acted with the same ease that Beatriz Garrido, "La Latina", (1475-1535), from Salamanca, professor of Latin to Isabel la Católica and founder of a school in Madrid, Francisca de Nebrija, who succeeded her famous father to his chair at the University of Alcalá de Henares, Lucía Medrano, who held the chair of Latin Classics at the University of Salamanca, qr, late in the XVI Century, Julia Morella, who learned fourteen languages and was able to earn a Doctorate at the University of Avignon in 1594. Venice was obviously not the only place capable of producing the intellectual peers of Christine de Pisan. None of these manifestations could, in our view, be the product of a culturally barren land. And, incidentally, they underline the need to fill another notorious void in the Peninsular
historiography.

Further evidence would confirm that Guicciardini was an unreliable witness. He did not know the legal system of Castille, but did not hesitate to jump to conclusions about legal matters. His logical reasoning can also be found to be at fault. If it was true what he said that "la ricchezza de' luoghi ecclesiastici è causata in gran parte dalle decime che pagono e' popoli, e' quali danno alla Chiesa la decima parte di tutto quello che nasce in sul loro, così degli animali come delle possessione, che è grande cosa; e di questa decima ne va circa a dua noni nel re, l'altra si distribuisce parte nel prelato della chiesa, parte nel vescovo della diocesi"7, it is hard to associate all the wealth generated by the 10% tithe on production and rents with a society composed of a majority of slovenly people living in abject misery.

On purely logical grounds it is obvious that the wealth created by this tax alone could neither have been the product of a rachitic economy nor of an inappetent society when it came to responding to economic incentives. Quite to the contrary of the assertions of Guicciardini and his followers past and present, our findings suggest the existence of an active economy and a rather widespread entrepreneurial spirit in Castille-Aragon. In their absence, the development of
of a legal framework of the economy such as we have found is hardly conceivable. As far as the climate of business is concerned, a critical element for the existence of an active economy and the open manifestation of entrepreneurial spirit, our findings will show that, to the extent that the attitudes of the authorities and the Church reflected those of society at large, merchants, trade, and economic activities were not only well understood, but enjoyed a significant measure of support.
Sources, Methodology, Usages, and Historical Perception

All our sources are clearly indicated in the text. The primary ones include legal texts and compilations, "Fueros" and other privileges, public and private laws, treaties between foreign powers and other diplomatic material, the accounts of travellers and other observers, chroniclers, autobiographical material, historical, political, theological, philosophical, scientific, technical, and literary works produced during the period under consideration and published documentary evidence of assorted nature.

The secondary sources are either works based on them or those of reputable authors in a number of disciplines that had a bearing on our study.

For the analysis of the "economic theories" of the Scholastics, to a large extent extrapolated from Confessionary Guides and other theological works, particular attention has been paid to the opinions of theologians and economic historians, such as Cardinal Joseph Höfner, or authors who are well versed in both fields, as Victor Brants, Amintore Fanfani, Gabriel le Bras, Raymond de Roover, Armando Saporì, Giauco Tozzi, and many others. Interpretative
sources of comparable quality were not available in the case of Bishop Francesc Eiximenis. In our examination of his economic thinking we have paid special attention to the peculiarities of the writings of the Scholastics and to their habit of mind which in general requires that their teaching has to be meditated all round and in many directions, not straight through. Consequently, we have not only used in toto his Regimen de la Cosa Publica, from which we mostly quote, but also his Doctrina Compendiosa, primarily a Spiritual Guide, written for a very different audience, yet fully supportive of the views we have deemed representative of his economic thinking.

A brief summary precedes each Chapter. They are hoped to be of assistance in focusing upon the main objectives of the Chapter. Pertinent passages in documents, legal texts, and other sources have at times been transcribed verbum pro verbo, particularly in instances in which they are essential and difficult to obtain. In the footnotes, which must be read as a parallel text, are also explanations that were felt to be too cumbersome to be included in the main body of the thesis. Many of these additional explanations refer to institutions, legal concepts, traditions, and historical events that may not be otherwise readily understandable to the readers who are not too familiar with the Peninsula; or, similarly, with points of doctrine or
articles of faith of the Catholic Church.

Proper names are normally used in their original language, except in the case of places such as Seville, when the well established English version was preferred. All quotations have been made in the language of the source. In our analysis and interpretation of old texts, which often have been the cause of misapprehensions, we have taken special care to follow Eduard Wechsler's idea of linguistic generation and meaning, trying to establish as accurately as possible what key words were generally understood to mean at the time they were used. The general context in which they were used - as well as cultural and linguistic differences - were also taken into consideration.

Similar care has been exercised in other areas. In the interest of precision and better understanding we have tended to use terms such as "caballero" or "mercader" when referring to specific social or occupational sectors, minimising the recourse to expressions such as "middle class" or "nobility", which as generally understood today were meaningless at the time. When we make references to morality we are clearly speaking about the moral feelings at the time we are writing, never to our own or those prevailing at any other time; as previously stated, we do not feel entitled to approach history as judges. In this area our
use of "good" and "evil" is always related to their true meaning as theological permanencies. Cut off from their base they are emotionally charged words, semantically vague and confusing. The moral duality represented by "right" and "wrong", strictly speaking within the province of the political authority, has been used in this context.

The time span of this thesis was kept wide enough to allow a good perspective view. We rarely go beyond the first two decades of the XVI Century, aside from the economic theories of the Scholastics, where in a few cases their development and interpretative value would be lost should we have used an arbitrary cut-off date. On the whole, as the title suggests, the idea has been to determine the presence of entrepreneurial spirit and the climate of business in Castille-Aragon during the period preceding the incorporation of América.

A chief concern has been to establish whether favourable conditions for trade and merchants and the presence of entrepreneurial spirit can be said to have existed consistently over a long period of time, and whether they were comparable to those of other areas of Europe. A rather greater amount of references pertaining to the XV Century, the result of available data, should not be taken to mean that there was necessarily a constantly increasing
level of activity during that period. This is possible and might even be probable, but there is no reason to assume that that was in fact the case. The ups and downs, which are as inherent to any economic activity as its life and death, are only too visible during the period under consideration, and the data is far from conclusive to allow us to be certain at this point.

Our references to "ideal types" are few and clearly confined to the realm of ideas, and, sometimes, used to compare them with real men. The entrepreneurs we mention and talk about are not "ideal types" in any sense but real men working in the field. "Ideal entrepreneurs" are of as little interest for the purpose of this work as "crises" and other ex post facto inventions.

Though we have attempted to re-create some fundamental aspects of the period under consideration in order to look directly into the historic landscape and enhance our chances of interpreting correctly, we are well aware of the difficulties of this task. We are aware of the difficulties of re-creating our own living past, distorted as it is by the selective nature of our memory and because it is entirely possible that actions precede reasons, as Karl E. Weick and others are inclined to think. An element of self-justification simply cannot be excluded from our "memories"
of past events. We are also aware of the impossibility of completely divesting ourselves from our own experience and the legacies of past generations.

Listening to Fray Tomás Luis de Victoria "Officium Defunctorum", for instance, immediately brings to our mind associations with the religious depth of the poetry of Santa Teresa de Avila and San Juan de la Cruz, and the dramatic polychrome statues of another contemporary Castillian, Alonso de Berruguete. It can render us motionless, in static expectation of the Judgement, with El Greco, the mourners, and the heavenly figures at the burial of the Conde de Orgaz. It can certainly bring us back in time to the XVI Century, make our imagination conjure up a "vivid" vision of XVI Century Castilla. At the same time, it is impossible not to associate and compare the majestically interwoven threads of sound of the "Officium Defunctorum" with Mozart's "Requiem". Both works have much in common: they were the final opus of their composers, they were composed to the praise and glory of God, with the presentiment of death, and welcoming Death the Deliverer. Both works have a great message for humanity: yet, for all they share, they are as different in the thoughts and emotions they convey as they are in musical structure and conceptual tenor.

As difficult as it is to isolate completely Father Victoria from Mozart, is to listen to the secular "villan-
cicos" of Juan del Encina or the "madrigales" of Cristóbal de Morales and Francisco Guerrero without bearing in mind Bach's humorous "Schweiget stille, plaudert nicht" and "Mer han en neue Oberkeet". It is simply impossible to hear music today exactly as when it was first played. This is so even in cases like Chopin, in which we have detailed witness accounts and an unbroken handed-down interpretative tradition. The composers that have since then enriched our musical inheritance, many interpretations, different instruments, circumstances and attitudes, and our own personal viewpoint, prevent us from hearing exactly what the composer and the first audience ever heard. We must, therefore, regard our ideas about the sound of that first performance and the world in which that music was created with considerable circumspection. A similar problem, perhaps compounded, confronts those endeavouring to re-create any historical setting. Yet, one must try, if one hopes to understand the actors, their actions, and the period itself.

Our personal viewpoint has to be considered at this juncture. A perfunctory declaration of objectivity is at best naive in any case. We happen to be one amongst many millions born in Spanish America who still consider a great privilege to be heir to the Faith, the culture, the language, and the traditions of Mother Spain. Regardless of other experiences, this patrimony has played a vital part in
moulding our way of thinking and our outlook in life, for
which we certainly can make no apology. However, as the
old Spanish saying goes: "Amor no quita conocimiento",
which we would freely translate as "Love does not necessarily
imply partisanship." Our knowledge of what we are may in
fact have been an important positive step towards being
truly objective; at least, it has forced us to put special
care in striving for objectivity and balance. It is to be
hoped that we have gone a long way in achieving those goals.
If there is an ounce of truth in what poets say, it might
even be that being what we are has helped us along in that
endeavour, for as Bartrina said:

"Hearing a man speak, it is easy to tell
where he first saw the light of day.
If he praises England, he will be an Englishman;
If he speaks evil of Prussia, he will be a Frenchman;
If he speaks evil of Spain, he is a Spaniard." 75

Having expressed the difficulties of re-creating the
past or even the atmosphere of the past it is in order to
say that this places also a heavy burden upon the reader.
No matter how gifted a writer may be in portraying his
thoughts, a large measure of his success always depends
on the reader. "Reality" lies very much in the eyes of
the beholder, and no medium of expression is complete in
itself, as music or painting will readily confirm. Music
exists to a large extent in the intellect of the listener.
A composer can write and an interpreter play from *alto fortissimo* to the almost inaudible *pianissimo*, but, ultimately, sounds would consummate their existence in the mind of the listener. So does painting. If we stand in the Titian Room at the Museo del Prado we can see on one wall the enormous portrait of Carlos V on horseback and in full armour, ready for battle, in the morning of his great victory at Mühlberg. On the opposite wall, there is a portrait of his wife, the beautiful Isabel de Portugal, looking on a landscape of mountains. There is nothing in that gaze of hers that seems to stare at us from another world, or in the determination of that pithy iron clad warrior, riding a dark Spanish horse — undoubtedly one of the finest equestrian portraits ever painted — that tells us of the deep love and affection that they felt for each other. At the time those portraits were painted Queen Isabel was long dead; yet, in spirit, she was very much with that great Emperor. She was a memory in every morning Mass, in the favourite music, another love they shared and an art at which they were both extremely accomplished, and physically no more than this and other portraits that accompanied the Emperor up to his last day at Yuste. It is only the knowledge of those details that confer upon those portraits a meaning, a warmth and human quality, a soul, and a palpitating life that transcends the canvas, and no brush, not even that of a giant like Titian, can
convey on its own. We certainly tend to look upstairs, but are under no illusion of being a Titian.

What we are trying to impress upon the reader is that aside from documenting our work we have tried to excite his imagination. We recognise, however, that a great deal of effort on his part will be required if the world and human actions we have tried to depict are finally going to come to life in his own mind. Besides, at the end of this thesis the reader will not find a grand finale; at this point this is merely a long term project. The reader will not find more than a first movement, and one where the coda is still a long way off.
INTRODUCTION

ENTREPRENEURIAL SPIRIT AND THE CLIMATE OF BUSINESS IN CASTILLE-ARAGON BEFORE THE INCORPORATION OF AMERICA

Notes and References

1. Juan Papadakis, Soils of the World, Amsterdam, Elsevier Publishing Co., 1969, pp. 130-131. There are six broad regions: 1) Atlantic podsol; 2) Brunisolic; 3) Mediterranean cinnamonic; 4) Arid cinnamonic; 5) High latitude humid mountains; and 5) Mediterranean mountains. Each of these broad regions is divided in a number of sub-regions.


--------, Economía de la Hispania, pp. 244-247.

5. --------, Estructura Económica, pp. 95-104.

--------, Economía de la Hispania, pp. 244-247.

6. Ibid., quoted on p. 247.


LIX


-----, Cabildos de indios en la América Española, Madrid, Ediciones Jura, 1951, passim.

-----, Los cabildos seculares en la América Española, Madrid, Sapientia, 1952, passim.

-----, El Protector de indios, Sevilla, Universidad de Sevilla, Escuela de Estudios Hispano-Americanos, 1945, (Publicaciones, X), passim.


For more on this vide:

Lewis Hanke, Bartolomé de Las Casas: An Interpretation of his Life and Writings, The Hague, Martinus Nijhoff, 1951.


Juan Ginés de Sepúlveda, "Diálogo sobre las justas causas de la guerra", Boletín de la Real Academia de la Historia, Tomo XXI, Cuaderno IV, 1892, pp. 257-369. One of the main opponents to the views of Fray Bartolomé de las Casas. Because of this and the general acceptance of the views of Fray Bartolomé de las Casas in the XVIII Century, this work, first published in Rome in 1550, was suppressed from the collected works of Juan Ginés de Sepúlveda published in 1780 under the direction of D. Fransisco Cerda y Rico, according to Don Marcelino Menéndez y Pelayo - pp. 257-259.

Fray Bartolomé de Las Casas, Obras Escogidas, Texto fijado por Juan Pérez de Tudela Bueso y Emilio López Oto, Madrid, Real Academia, 1957-1961, Biblioteca de Autores Españoles, Num. 95, 96, 105, 106, 110, passim, for a direct appraisal of Father Las Casas.

Rómulo D. Carbía, Historia de la leyenda negra Hispanoamericana, Madrid, Publicaciones del Consejo de la Hispanidad, 1944, pp. 179-238.


For information on all these topics, the following list - by no means exhaustive! - can be consulted:

Constantino Bayle, S.J., España y la Educación Popular en América, Madrid, Editora Nacional, 1941, (Biblioteca del Imperio, II), Segunda Edición Corregida y Aumentada, passim.


Rómulo D. Carbía, La Crónica Oficial de las Indias Occidentales, Edición definitiva, Buenos Aires, Ediciones Buenos Aires; 1940, passim.


John Tate Lanning, Academic Culture in the Spanish Colonies, New York, Oxford University Press, 1940.


21. Earl J. Hamilton, El Florecimiento del Capitalismo y otros Ensayos de Historia Económica, Madrid, Revista de Occidente, 1948, (Biblioteca de la Ciencia Económica, VIII, J. Vergara, Dir.), Traduccion directa del Ingles por Alberto Ullastres. This book gathers a number of Hamilton's articles in a single volumen. One of the better known ideas put forward by Hamilton follows along the line that if prices go up and salaries go up by a lesser amount real wages will decrease, therefore the rate of profits for the entrepreneur will increase. Based on a number of statistical correlations - a method that may suggest, but that in itself does not allow for cause-effect relationships - Hamilton asserts that this increase in the rate of profits for the entrepreneur resulting from the inflation of the XVI Century was the basis of the development of modern capitalism - and that which took place in the XVIII Century is the departing point of the Industrial Revolution. In Hamilton's view, in Spain the spread between the rate of profits and salaries was not big enough to allow the development of Capitalism - or, what is the same, salaries according to him kept up with the rate of inflation. The argument of Hamilton about the increase in the supply of precious metals as the sole cause for the XVI Century is surely oversimplistic: the effect of an increase in the supply of
precious metals upon the economy will be entirely contingent on the use to which they are put and the way they go through the economy. His use of statistical method is also subject to strong criticism. He reduces annual prices to a single figure: an index number. If we wish to know what the real salaries were, we must "weigh" each product forming part of the index number, not use the simple arithmetic calculation carried out by Hamilton. Similarly, he uses established prices, rather than market prices for his calculations for Castilla la Vieja, which surely says little about the market conditions. Furthermore he uses the prices of a few cities, which could, and almost certainly did vary considerably with those of the countryside, and it is misleading to make them representative of regions and the country as a whole.

For detailed criticism vide; amongst others:


23. Ibid., double-entry bookkeeping is utterly irrelevant to make "rational" business decisions.


31. Heers, Gênes, pp. 489-497.

32. ------, "Les hommes d'affaires italiens en Espagne au Moyen Age: le marché monétaire", Fremde Kaufleute, pp. 74-83.


34. Ibid., I, p. 44; II, pp. 68-69: The use of the term "middle class" or "bourgeoisie" - p. 73, with a modern connotation, is, furthermore, misleading.


36. Hermann Kellenbenz, The Rise of the European Economy. An economic history of Continental Europe from the fifteenth to the eighteenth century, Revised and edited by Gerhard Benecke, London, Weidenfeld and Nicolson, 1976, (World Economic History, General (Editor, Charles Wilson), pp. 10-11. With regard to the Meridional "nobles" it would appear that this gifted historian pays at times far more attention to what his sources claimed that people did than to the actual records, which tell a far different story. As far as Machiavelli is concerned we shall presently consider his credibility. We would also differ in the appraisal of the views of Count Baldassarre Castiglione - Il Libro del Cortegiano, A cura di Ettore Bonora, Commento di Paolo Zoccola, Milano, U. Mursia & Co., 1972, GUM, Grande Universale Mursia, 15, passim.
37. Robert B. Tate, Ensayos sobre la Historiografía Pen- 
insula del Siglo XV, Versión española de Jesús Díaz, 
Madrid, Editorial Gredos S.A., 1970, (Biblioteca 
Románica Hispánica, Dirigida por Dámaso Alonso, II, 
Estudios y Ensayos), p. 36.

38. Niccolò Machiavelli, Tute le Opere Storiche e Letterarie 
di Niccolò Machiavelli. A cura di Guido Mazzoni e 
Mario Casella, Firenze, C. Barbèra, Editore, 1929, 
Lettera a Francesco Vettori, In Firenze, a dì 9 
d'Aprile 1513, "... perché la fortuna ha fatto, che 
non sapendo ragionare né dell'arte della seta, né 
dell'arte della lana, né dei guadagni né delle perdite, 
e'mi conviene ragionare dello stato, e mi bisogna o 
botarmi di star cheto, o ragionare di questo." - p. 882.

39. Ibid., "E per chiarire questo nome di gentiluomini 
quale e'sia, dico che gentiluomini sono chiamati 
quelli che oziosi vivono delle rendite che loro 
possessioni abbondantemente, senza avere cura alcuna 
ne di coltivazione o di altra necessaria fatica a 
vivere. Questi tali sono perniciosi in ogni república 
ed in ogni provincia; ma più perniciosi sono quelli 
che oltre alle predette fortune commandano a castella, 
ed hanno sudditi che ubbidiscono a loro. Di queste 
due specie di uomini ne sono pieni il regno di Napoli, 
Terra di Roma, la Romagna e la Lombardia." - Discorsi 
sopra la Prima Deca di Tito Livio, Libro Primo, LV, 
p. 212.

40. Julio Valdeón Baruque, "Las Cortes de Castilla y los 
Hechos Políticos del Siglo XV (1419-1430)", Anuario 

41. Stanley J. Stein and Barbara H. Stein, The Colonial 
Heritage of Latin America. Essays on Economic Dependence 
in Perspective, New York, Oxford University Press, 
1970, passim, and especially p. 15.

42. Heers, Les hommes d'affaires, p. 74.

For actual contract and operations vide:

Aloys Schulte, Geschichte der Grossen Ravensburger 
Handelsgesellschaft, 1380-1530, Wiesbaden, Franz 
Steiner Verlag GmbH, 1964, Unverändelter Neudruck der 
1923 in der Deutschen Verlags-Anstalt Stuttgart und 
Berlin erchiienenen Ausgabe, Erster Band, p. 301; Zweiter 
Band, pp. 172-180.

44. Mers, Gênes, p. 2.


47. Carmelo Viñes y Mey, "De la Edad Media a la Moderna. El Cantábrico y el Estrecho de Gibraltar en la Historia Política Española", Hispania, I, Madrid, 1940-1941.

Though marred at times by what may be considered to be a certain amount of passion, or perhaps simply conscious exaggeration in order to make his point - which is only too understandable given the time and circumstances prevailing at the time of his writing - the conclusion of Viñes y Mey would appear to be correct on the whole. It is certainly supported by the evidence reviewed by us.


50. Viaje del noble bohemo León de Rosmithal de Blatna por España y Portugal hecho del año 1465 a 1467, in J. García Mercadal, Ed., Viajes de Extranjeros, I, pp. 259-305.


53. Antonio de Lalaing, Señor de Montigny, Primer Viaje de Felipe el "Hermoso" a España en 1501, in J. García Mercadal, Viajes de Extranjeros, I, pp. 429-548.


56. Marino Cavalli, Relación, in J. García Mercadal, Viajes de Extranjeros, I, especially, pp. 1048-1051.

57. Leonardo Donato, Relación de España, in J. García Mercadal, Viajes de Extranjeros, I, especially pp. 1189, 1237.


62. He was barely thirty at the time of his appointment as Ambassador and throughout his life he was a consistent and active political adversary of Castille-Aragon, the Empire, and their allies in the Italian Peninsula and a supporter of France. Vide Vittorio de Caprariis in Guicciardini, Opere, pp. VII-XV, and also Guicciardini, pp. 5-21, 39-40. It is obvious, a fortiori, that the Relazione was a "political" document, written for "political" consumption. This must be taken into account when using it as a historical source.

63. Felipe Picatoste y Rodríguez, Los Españoles en Italia, Madrid, Imprenta de la Víuda de Hernando y C.a, 1887, Tomo Primero, p. 258, ref. 3, p. 270.

64. Ibid., Tomo Primero, pp. 73-90.

65. Julio Cezador y Frauca, Historia de la Lengua y Literatura Castellana, Madrid, Tip. de la Revista de Archivos y Museos, 1915, Tomo II, Juan de Valdés, pp. 94-103, "'caballero noble y rico', 'gentilhombre
de capa y espada', vivió en Roma y Nápoles, respetado por su producción literaria y conocimiento de la lengua."

Many other examples throughout the volume.


Ernesto Pontieri, Alfonso il Magnanimo re di Napoli 1435-1458, Napoli, Edizioni Scientifiche Italiane, 1975, passim.


70. Guicciardini, Opere, Relazione di Spagna, pp. 31-32.

71. Ibid., 42.


CHAPTER I

THE POLITICAL STRUCTURE, THE INSTITUTIONS OF
PUBLIC LAW AND THE ADMINISTRATION OF THE REALM

Summary

Here the essential features of the government of the realm at the general and the local levels, the nature and scope of the authority of the Monarch, the ultimate judge and mediator, and the Municipality, the chief institution of local government, are outlined and examined in some detail. Special attention is given to the participation of individuals in government functions and the ways in which they could influence government decisions at both the local and general level, as well as the role they could play in the formation of laws. It will be shown that just as the Usus Terrae prevailed over the Liber Judiciarium in legal matters, the local authorities tended to display a pre-eminence over the general authority in administrative matters - neither of them being a particularly Peninsular phenomenon.

We shall see the Crown intervening in local affairs, but doing so at the request of the local authorities, to confirm decisions already taken by them or pre-existing agreements. The Crown also emerges as the ultimate authority whose seal of approval
was a condition sine qua non to sanction the legality of many acts, as well as appearing as an authority whose function is to buttress the local authority, the rule of law and order, and to no small extent those actions that by fostering peace, trade or otherwise were deemed beneficial for the common good. The ability of individuals to influence local and legal matters extended to the conclusion of what would be termed today "international agreements" which were later submitted for ratification by the Crown via the local "Consejo".
I. POLITICAL STRUCTURE AND INSTITUTIONS OF PUBLIC LAW

The Monarchy and the Realm

From an administrative point of view, the long title of the Castille-Leonese monarchs at the head of the state documents - King of Castille, Leon, Galicia, Murcia Jaén, Cordoba, los Algarves, Algecira, Gibraltar, and Seville, Lord of Vizcaya and Molina... - clearly indicates the slow gestation process of the realm, the personal and dynastic nature of the unions, the different source and character of the monarch's authority over each constituent unit of the realm, and, in a period dominated by custom, exceptions, and privileges, an enormous legal and organisational complexity.

The peculiarities of the Reconquest and the contemporary perception of law and custom explain, to some degree, those characteristics. War and fluid frontier were distinctive traits of the Reconquest, a period of constant expansion for the small Christian Kingdom that eventually became Castille-Leon, and, consequently, one of constant foundations of new cities or repopulation of abandoned ones. These cities were granted FUEROS, which were, according to the classical definition of Ricardo Levene: "A collection of privileges, franchises, and immunities conceded by the Royal power to a city, corporation
or individual." Thus, the cities enjoyed municipal institutions very similar to the Roman or Visigothic ones, with a council, municipal magistrates and IMPERIUM over the walled area and the surrounding rural district, where rural village councils were subordinate to the city council.

The concession of immunities, from the IX and X Century onwards, meant that the authority of the King ceased to be exercised directly over the whole territory of the realm and over all the subjects. This is the argument put forward by Luis García de Valdeavellano y Arcimís in his Historia de Las Instituciones Españolas. Although the King remained the ultimate judge in judicial disputes, and the same FUERO was often bestowed upon different cities - notably those of Sepulveda and Toledo, the autonomy enjoyed in local matters and varying local needs made for great diversity in the legislation of the realm. This means that when a whole kingdom was incorporated, neither identity nor autonomy were lost, as Toledo, Cordoba, or Seville well illustrate.

In the case of Aragon - aside from peculiarities that cannot be analysed here - José María Font y Rius comes to a very similar conclusion after a long study of documentary evidence and juridical works. According to him, the Catalan-Aragonese state was, in the XV century, a true Mediterranean imperial community, based on the most absolute respect for the autonomy of its
individual kingdoms. When not existing, autonomous institutions were created, as was the case with the parliaments of Sardinia and Sicily, which were obviously inspired by the Catalan Cortes. Other examples can be found in the short lived Greek possessions, the Duchies of Neopatria and Athens, Albania and, since the early XVI Century, the Duchy of Milan.

The marriage of Isabel of Castille-Leon and Fernando of Aragon simply meant the personal union of the two branches of the House of Trastamara. In accordance with the terms of the Concordia signed in Segovia in 1475, Isabel remained the Queen of Castille-Leon and Fernando the King of Aragon; the administration of the states of each Crown, and even the Royal finances, remained independent of each other. The descendants of the Catholic Monarchs plainly added the possessions of the two Crowns to their titles. Vanity had little to do with that. As Leopold von Ranke asserted, royalty had a different nature in Castille, Aragon or Sicily. Furthermore, in Barcelona, Flanders and Tirol the Kings were only Counts, in Burgundy, Brabant and Milan, they were Dukes, whilst in Guipúzcoa, Vizcaya and Molina the power of the rulers was based on the fact that they were Barons and hereditary Lords of those lands. The different titles expressed the differences of their power over the constituent units of the realm.

In spite of these limitations García de Valdeavellano sees the kingdoms of Castille-Leon and Aragon - as well as Navarre and
Portugal - as the legal and public expression of a political community made up by the Prince, the territory and the subjects with the purpose of attaining public ends and the common good. Those public objectives were, chiefly: the *utilitas publica* or the accomplishment of the common good, often expressed in the formula "procurar el bien del país", which has passed into most Spanish American constitutions; the maintenance of the peace and internal laws or *tranquilitas regni*; the preservation of the territorial integrity; the defense and war against external enemies; protection of the faith and of the Church; maintenance of the traditional legal order; and the administration of justice. 9

Subjects were the men and women born in the territory, habitually residents in it, and those who had become so by marriage or the acquisition of a permanent abode in the realm. 10 Their association with the crown was characterized by the oath of fidelity, loyalty and obedience given to the king on his accession to the throne. 11 The rights of the subjects varied considerably, and many of them had a purely local character, such as the exemption of taxes or personal services, the freedom enjoyed by the inhabitants of a town or village, the free choice of domicile enjoyed by many peasants with manorial duties, and many others. In conjunction with those ad hoc rights the subjects of the crown had the benefit of some general rights. The maintenance of the public peace, the respect of the local law and custom and the protection of the person and property of every subject against any "tropelia"
(vexation, injustice) or "desafuero" (transgression of fuero) were guaranteed to all subjects of Leon - and later of Castille-Leon - by King Alfonse IX in 1188 in the Cortes of Leon. These decrees, sometimes called the Magna Carta Leonese, were an oath of the King to uphold those general rights of his subjects, and not, as the English Magna Carta, a limitation of the royal power exacted by the nobility. The subjects of Aragon, Valencia and Catalonia were guaranteed similar rights by Pedro III of Aragon in the Cortes of Zaragoza of 1283. These decrees, known as the "Privilegio General de Aragon," were the basis of the political constitution of Aragon.

Being broad principles, and, like all laws, highly technical, the interpretation of the extent of these rights and their enforcement varied with time, place, and circumstances, as well as with the peculiarities of each case. Obviously all violations could neither be prevented nor amended, and, at times, the viability and good health of the realm, or less lofty motives, must have determined drastic curtailments of those rights. However, the large number of legal cases on record is a clear indication of the frequent recourse to court to have those rights upheld, a fact that makes very unlikely the possibility of any systematic transgression of them.

The monarch was the natural lord of all the kingdom - territory and subjects. His power - potestas regia, imperium - was
essentially a political one, though he added to that the personal rights (dominus) over his private domains (señorios) and property. The monarchy was not absolute. The royal power was limited, not only by the moral norms that forced the monarch to govern with honesty and with a view to the common good, but also by the constraints imposed by the local laws and customs, the statutory privileges of individuals or groups of individuals, corporations, and towns. Any violation of them, be it a "desafuero", "contrafuero" or "agravio", could be taken to the courts of law.  

This first duty of the king, to respect the law, was clearly stated in the Siete Partidas (II, 10,2) and the Espéculo (I,2,9):

"...todos los omes deven ser tenidos de obedecer las leves, e mayormente los Reyes..."  

As the first man and natural lord of the kingdom, the king was the supreme commander of its army. Along with this military power - potestas militaris - he enjoyed legislative and judicial powers and some prerogatives with regard to the Church. The Partidas ascribed to the king the power to make the laws and established that those decreed without the royal assent were null and void (Partidas, II, I, 12). The Ordenamiento de Alcalá de Henares, which in 1348 gave legal sanction to the Partidas declared that:

"...que al Rey pertenesce e a poco de fazer fueros, e leys, e de las interpretar de declarar, e emendar do vier que cumple...

(Tit. XVIII, ley 1).
The judicial power was perhaps the most important of the royal attributes, for the king was first and foremost conceived as a judge, with jurisdiction over all cases submitted to him, whether on first instance or on appeal. The idea of the king as a judge, protector and tutor of his subjects permeates the writings of the Infante Don Juan Manuel. This Royal Prince, grandson of King San Fernando, and nephew of King Alfonso el Sabio, was not only a prolific writer, but also a warrior, a diplomat, and a very active politician. Although hortatory, as were most of his contemporaries, his writings contain acute observations about current affairs, the social and political organisation of the Peninsula, and useful comparisons with contemporaneous institutions abroad. Thus, we may gather from his writings that this ideal concept of the royal office went beyond the philosophy of St. Agustín, San Isidoro de Sevilla or Ramón Llull or the legal speculations of Rodrigo Sánchez de Arévalo, Alonso García de Santa María, and the Canciller (Chancellor) Pedro López de Ayala. This concept was based on a generally accepted idea, explicitly stated in fundamental laws, and was very much in the popular mind, if we consider relevant the many instances in which it is expressed in the Poema del Cid.\(^{18}\)

It would appear that this idea of the king, his power and his functions survived for a long time, for a playwright so tuned into the spirit of his time as Félix Lope de Vega could, around 1600, make King Juan II reply to a request for justice: "Hacerla es mi oficio. Eso significa el cetro".\(^{19}\)
Perhaps, however, nothing could be more eloquent than the self-perception of two office holders, shortly before that time. Carlos V and Felip II saw themselves in that light in their last wills, a document that being written with death - and the Real Life that was to follow it - in mind, could be presumed to exude a great deal of sincerity. 20

As a protector or tutor, and governor of the kingdom, the monarch was the custodian of the legal order or public peace, and, consequently, within clear procedural limits, he enjoyed the faculty of ordering whatever measures made possible his protective role. As the natural lord of the realm he was the head of the administration - including the Real Hacienda, which comprised both the public and his personal finances - and had the prerogative of appointing and dismissing the public officers. 21

Exclusive rights of the monarch were the "REGALIAS" (Iura Regalia) a concept that changed over time but included in the late Middle Ages and the American period the inalienable right of the crown to vacant and uninhabited lands, and, most important, mines and salt deposits - regardless of the status of the surface land. 22 This was commonly the case in Continental Europe, where mining required a crown concession, but was a major departure from the English system. 23 Although inalienable, the usufruct of those rights could be given or rented out by the crown, a principle that was - and remains - the basis of the mining legislation in Spanish America. 24
Regalías were also certain faculties of the crown, which the Fuero Viejo de Castilla enumerated as follows:

"Estas cuatro cosas son naturales del señorío del Rey, que non las deve dar a ningun ome, ni las partes de si, ca pertenescen a el por razón de señorío natural, Justicia (justice), Moneda (minting of money), Ponsadera (redemption for cash of military duties), e suos yantares (obligation of the subject to supply food and shelter to the king or his envoys)."

Fuero Viejo de Castilla: I,1,1

The royal power included some ecclesiastical prerogatives. Their origin lies in the isolation of the small Astur-Leonés kingdom at the beginning of the Reconquest and to the peculiarities of this process. The Patronato (Ius Patronatus), the right to propose the names of the candidates for the Church offices was the most important of those prerogatives. This right was officially given by Pope Gregory IX to King San Fernando of Castille-Leon, in 1236 for the kingdom of Cordoba and in 1237 for all the churches reconquered from the Moslems. The same Pontiff conceded equal rights to Jaime I of Aragon in 1239 for the Kingdom of Valencia, whilst in 1486 Inocencio VIII made similar concession to the Catholic Monarchs for the Kingdom of Granada and the Canary Islands. The practice of the Castillean Kings to require euzquatur before the publication of the Papal Bulls in the realm, which started in the XIII Century, was also part of the Ius Patronatus. This prerogative was extended to America, where it still remains a feature of public law.
Constantly travelling and unable to be on hand at all times, the Peninsular Monarchs often delegated their royal powers. The vicarious representatives (Vicarit) who became permanent from the XII Century onwards, received different names in accordance with the faculties with which they were invested. Thus, there were Procuradores (procuratoris), Procuradores Generales, Lugartenientes (Locum tenens) - who, as the name suggests, acted in place of the king and enjoyed all his powers - Gobernador (gubernatoris), or Virreyes (vicereges). As permanent assistants to the king they helped him to discharge his duties, often the tenure of these offices was a training ground for the heir to the throne. This was officially decreed for Aragon by the Cortes of Calatayud, in 1366, which granted a special fuero for the office of the Gobernador General of the Kingdom of Aragon, to be occupied by the heir to the throne from his fourteenth birthday. He was assisted by Lugartenientes (Gerens vices gubernatoris) in Aragon, Cataluña, Valencia, Rosellon, Sardinia and the other territories of the Aragonese crown.
The Curia and the Consejo Real

The monarch could not possibly discharge his duties without the help of an administrative body, which grew in size and importance along with the realm. A royal or condal council (palatinum, concilium, curia), known as Curia or Cort, and formed by palace officials, members of the Royal Family, nobles, ecclesiastical authorities and "BUENOS COMES de VILLAS," was the first of such administrative bodies. The Curia Ordinaria was normally in residence at the court, but the king could convocate the dignitaries of the realm to a Curia Extraordinaria to attend to public matters of great importance and with a sphere of competence as wide as the government problems demanded.

A number of jurists or "sabidores de derecho" were added to the Curia Ordinaria of Castile at the end of the XII century, partly a consequence of the reception of Roman law and partly as a result of the increased complexity and volume of the administrative affairs. The Curia Ordinaria, aside from being a council was a tribunal of justice, presided over by the king and his wife, with jurisdiction over all the civil and criminal causes submitted to the royal justice. In Aragon and Navarra the King himself had to submit his disputes with the nobles to the judgements of his Curia Regia.

At the same time, the officials of the Curia Ordinaria in
charge of the custody of the Royal seal, and the dispatch and authentication of the royal documents - the Notario Mayor del reino and a group of notaries - were organised under a Canciller (Chancellor) into a special office for this specific purpose and separated from the Curia Ordinaria. The judicial nature of the latter was accentuated when the political and administrative matters were reserved to a group of counsellors that in time became a new organism: the Consejo Real (Royal Council). 32

The Consejo Real of Castile-Leon was organized as a permanent body by Juan I in the Cortes of Valladolid of 1388. The Consejeros had to stay at all times with the monarch ("ordenamos un consejo en que continuamente andoviesen conmucso") and were to deal with all important matters of government ("a los quales mandamos que libren todos los fechos del Reyno").

Judicial matters were specifically removed from the jurisdiction of the Consejo Real and reserved to the old Curia, now known as Audiencia (salvo las cosas que deben ser libradas per nuestra Abdiencia). A number of areas were reserved for the king himself: concessions of land, "gracias" and "mercedes" (special favours), pardon of homicides, and the appointment of palace and public officials.

The structure of the Consejo Real was changed on a number of occasions. In 1480, in the Cortes of Toledo, the Catholic
Monarchs reorganized it in a lasting fashion. The Ordenanza del Consejo Real de Castilla established a permanent body of Consejeros most of whom were legal experts (9 lawyers, 3 caballeros and 1 prelado). These Consejeros were in charge of the ordinary business of government and decided them by simple vote. The grandees of the realm, the bishops and archbishops and the grandmasters of the Military Orders were also Consejeros and had access to the council meetings but without vote.

The Consejo Real gathered daily in five different Chambers of the Royal Palace. In one of them, the King and Queen, and a group of Consejeros attended to international affairs and relations with Rome, whilst in another chamber a commission of Consejeros heard petitions for justice and could render sentence in some cases. All financial matters of the Real Hacienda were dealt with in a third chamber used by the Contadores Mayores (Chief Accountants) and other officials; a fourth chamber was the meeting place for the representatives of all the Hermandades del Reino; and, lastly, the fifth chamber was used by the nobles and lawyers of the kingdoms of Aragon, Valencia, and Sicily.

In 1489 there appeared for the first time a "Presidente del Consejo Real de Castilla", which later became the highest civil office on the land, deciding on all matters requiring its intervention as an advisory body (librar por cámara) and by its own authority on all other matters (librar por expediente). The
American affairs were discussed later in a special chamber until the formation of the Consejo de Indias, equal in rank to the Consejo de Castilla.
The Curia Extraordinaria, sometimes called Concilium del Rey, Concilium del Reino (Concilium Regis, Concilium regni), Curia Plena or Corte Pregonada - for the "pregón" (proclamation) that summoned its members to the meeting place - was convened from time to time to deliberate upon matters of great importance submitted by the monarch. The assembly was competent in all areas of the administration of the kingdom. It discussed war and peace and the relations with Rome, the award of local Fueros and Immunidades (immunities, privileges, franchises), the marriages of the monarch and his children, the investiture of the title of Emperor to Alfonso VII of Castille-Leon - in the Curia Plena of Leon, in 1135 - the imposition of extraordinary tributes, the maintenance of the public peace and other judicial affairs, and it was at the Curia Plena where the swearing of allegiance to the heir of the crown took place. The Curia Plena met in public, and from the XII century the representatives of the cities and town councils began to take part in the deliberations, modifying the character of the assembly, which began to be known as Cortes.

The participation of the representatives of the cities can be linked to the importance acquired by the free townsmen as a social group and the political and financial support that they were able to offer to the king. Many cities possessed abundant
economic resources and Milicias Consejiles (Municipal militiae) capable of defending the Frontiers and often attacking the Moors and other enemies.

In the XII Century the crown started the custom of requesting the payment of exceptional subsidies when in need of funds (Petitium Subsidium). Often such subsidies were given to the crown in exchange for its minting privileges for a number of years. This "compra de la moneda" (purchase of the currency) as it was known prevented the crown from minting or debasing the currency for a given period of time, which is seen by Claudio Sánchez Albornoz y Menduíña as the origin of the idea that all tributes should be voted in the Cortes. 38

The Cortes of Castille-Leon - unlike those of Aragon - comprised all the kingdoms and states under the Castille-Leon crown, except for the Basque regions of Vizcaya, Alava and Guipúzcoa, where city and district representatives assembled periodically in Juntas de Hermanadad. A further peculiarity is that the clergy, nobility, and commons do not appear to have been as conspicuously separated as in the Aragonese Cortes, for the king, without whom the assembly was legally impossible, could preside over the deliberations in the absence of any of the estates. The commons were often that absent estate, and in the XV Century it was replaced by the Procuradores or town representatives. 39
The commons had participated in the Cortes by means of representatives called "procuradores" - and sometimes "personeros", "hombres buenos" or "diputados" - since 1255. Their number depended exclusively on the will of the local community represented by them, and since the Cortes of Valladolid of 1371, they enjoyed special immunities.  

The method of selecting the Procuradores changed over time, sometimes it was by direct election of the "Consejo" (local Assembly) or the "Ayuntamiento" (municipal authorities) and on other occasions an "insaculation" (list of names was put in a bag) took place and one or more names were picked at random. Their expenses and emoluments were paid by the local council and since the second half of the XV century largely by the Hacienda Real.

The "Procuradores" were empowered by a special mandate called "Carta de Personería". The earliest surviving one of them date from around 1260, and although the "procurador" was a well established legal institution before that time, the survival of older specimens was rendered unlikely due to their temporary validity, observes Evelyn S. Procter. This particular one was incorporated into the Title 18 of the Tercera Partida, a short treatise on documents, and it is reproduced in the Ley 98 - a formula which was extensively used in America. The ad hoc mandate qualified the "Procurador" to appear before the Cortes
for the duration of the session and moreover authorised him to
cast a vote. It contained the city's official position in the
matters proposed for deliberation in the Royal Convocation and
a number of local petitions. Anything not covered by them
required a specific injunction.44
The Municipality

After a long period of development, towards the end of the XII Century the municipality was established as the basic unit of local government. Its political and administrative structure varied enormously throughout the Peninsula and it is hazardous even to speak of a Castille-Leon "type" - for there were vast differences amongst the municipalities within its territory. Partly, those differences derived from the Fueros granted to the towns, partly to whether the town and its surrounding district was in a "realengo" territory (under crown jurisdiction) or within a "señorio" (Lay or Church domain), and partly to its strategic and economic importance.45

In either case, the municipality had, by then, become an institution of public law. It was a legal entity capable of suing and being sued, had a common seal, jurisdiction, and autonomy, and it was ruled and administered by its own magistrates and officials. All those living within its jurisdiction, including knights and lesser nobles, were subject to the local "Fuero" and pleaded before the local court.46 García de Valdeavellano can, therefore, consider that during the XIII, XIV, and XV Centuries, the urban municipalities, with jurisdiction and authority over their "término" or "alfóz" (surrounding district) constituted the equivalent of a "señorío" with the "término" as a "coto" (territory enjoying legal privileges by virtue of
an immunity) and the municipality itself as a "Señor" (Lord). 47

Some of those "términos" were very large. In the frontier regions of the XII Century Castille-Leon, the lands between the Duero and the Tagus rivers, as well as in Calatayud, Daroca and Teruel in Aragon, the towns were bestowed with large surrounding districts which they were required to repopulate. Together they formed a "COMUNITAD de VILLA y TIERRA" (urban - rural community) where the interests of the main city and the encompassed rural villages were tightly interwoven.

Defensive and economic matters pointed heavily in that direction. The combined military strength of the district was a key to the well being of the "Comunidad" and so, no doubt, was the good management of the district's resources - says Garcia de Valdeavellano, 48 quite likely aided by the fact that there was no such thing as a clear cut distinction between urban and rural interests.

María del Carmen Carle has shown that in the Peninsula, as in most of Europe, investments in real estate often combined rural and urban properties. 49 At any rate, there was a clear interdependence within the district, and the tendency over time was for the "Concejos" (councils) of the rural villages to form a "COMUNITAD" with that of the main urban centre.
Towards the end of the XII Century there were in Castille and Leon many such large Comunidades headed by Salamanca, Avila, Segovia, Soria, Cuenca, Guadalajara, and Madrid, and in Aragon, those of Calatayud, Daroca and Teruel. However, from the XIV Century onwards a number of towns situated within the large municipalities separated from them to form their own municipalities after receiving from the crown the "privilegio de villazgo". 

Procter notes that the word "Consejo" (Latin Concilium), meaning the assembly or court of the town, by the XIII Century had become synonymous with the town itself. The elective nature of most municipal offices was a well established custom before that, even though the crown or the local lord - depending on the term - of the "Fuero" and whether the municipality was in "Realengo" or "Señorio" land - could exercise some restrictions in the appointment of certain officials. The "Fuero" generally established the conditions of eligibility to vote in the "Consejo", an institution that enabled the participation of the "estado llano" (the commons) in the local government and in many decisions affecting the realm.

The "Consejo" was made up by the urban and rural "Vecinos" of the district, though the latter were also members of the smaller rural councils. The requirements for "vecindad" were generally: birth or residence for some time in the town or village "encendiendo fuego" (forming a home), "tener raíz" (ownership of
real estate), payment of "pechos" (taxes), and admission as a "vecino" por el "Consejo". Nobles, unless there was a waiver of their privileges within the district, clergy, foreigners, and simple "moradores" (residents) were excluded from the "Consejo"; and, of course, from office. Towns had a vicarious liability for the actions of their "vecinos" outside their jurisdiction, which explains, to some degree, the requirements demanded for the conferral of such status. Foreigners and different religious groups often lived apart and in accordance to their own "Fueros" and laws, and with their own authorities within the municipality.53

A judge known as "Juez", "Justicia", "Zalmedina" or "Alcalde" was the head of the municipality. Aided by a number of officials, his duties were varied and included the convocation of the "Consejo", the maintenance of the public peace, the protection of widows and orphans, the administration of justice as president of the "Curia de los Alcaldes", and the gathering of the local militia, which he led, to join the King's army or in defense of the district.

The municipal jurisdiction included all aspects of the local life. Aside from being empowered with the administration of justice, the municipal authorities possessed normative faculties which materialised in "Bandos" (edicts) and "Ordenanzas" (statutes). They encompassed the regulation of the municipality's own political, administrative and judicial functions, the organisation
of the local defense, the supply of services, and many aspects of the local economy and social life.

The municipalities enjoyed a financial base of their own, made up by the exploitation of some publicly owned industries and services, such as the municipal butchery, bakery, oven and mill. To this they added the income from taxes on traffic, import and export, consumption and sales, exceptional taxes, mulcts, as well as from the rental of municipal properties, which included agricultural land, forests, and grasslands. 54

Jesús Fernández Viladrich has pointed out the considerable fiscal latitude at the disposal of the municipal authorities. 55 They were empowered to the local "Pecheros" (those paying a censo or rent for the use of the land, and by extension other tributes) to avoid depopulation, but it was widely used to encourage outside immigration into the frontier lands and the settling of merchants and artisans in the towns. 57

The real power of municipalities, of course, varied considerably. Time, circumstances, their location, and their economic and military strength were important determinent factors of the municipalities' real power. As a rule they fiercely defended their autonomy. The cities of the "Señorío" of Vizcaya give us a good idea of how autonomous the municipalities could
really be, for although their Lord was the King of Castille-Leon himself, up until 1484 naval service prescribed for the crews and vessels from the towns was subject to a treaty with the crown every time it was required. This right was only relinquished in that year in exchange for free fishing privileges in all Castilean waters.\textsuperscript{58} Barcelona, on the other hand, still maintained her own fleet in 1621.\textsuperscript{59} Furthermore, cities commonly sent their own ships abroad, and concluded treaties that were merely ratified by the Crown.\textsuperscript{60}
II. THE ADMINISTRATION OF THE REALM

The foregoing outline of the political structure and the main institutions of public law suggest a considerable degree of fragmentation in the administration of the realm. This was reinforced by the jurisdictional and legal fragmentation, the contemporary concept of law, and the mechanics of law making.

The presence of special privileges and immunities meant the coexistence of several jurisdictions in the realm. Broadly speaking, Luis García de Valdeavellano y Arcimis distinguishes four of them: (1) What he calls the jurisdiction of the "state", comprising the Royal jurisdiction, the popular justice of the free men of a place or territory, and later, in the local sphere, that of the municipality. (2) The "Senorial" jurisdiction, with which ecclesiastic and secular Lords were invested. (3) The Ecclesiastic jurisdiction — judges and courts of the Church after the Gregorian reforms. (4) A mercantile jurisdiction, for commercial matters, which in the Low Middle Ages and Modern time was carried out by the Consulate. 61 To those, we should perhaps add the jurisdictions of the different universitas and non-Christian religious groups, each with substantive and procedural laws to settle not only their internal affairs but also criminal, civil and commercial matters within the group. 62

The prevalence of the Usus Terrae over the Liber Judicorum
was to a large extent the result of the political and jurisdictional fragmentation and the granting of special privileges. As such, it was a common phenomenon throughout contemporary Europe. The liberty of the local judges to sentence in accordance with equity when there was no precedent, contributed further to the creation of a "Derecho Local" (local law) that was singularly different, often, even within the immediate surrounding region.63

The bases of this "Derecho Local" were of course the local customs and the old Roman and Germanic laws, many of which survived almost intact. Although the twin needs of consistency and predictability were clearly recognized, and the endeavours of the Cortes "to improve the 'Fueros'," together with compiling efforts such as the Partidas, were obvious efforts to assemble existing laws,64 the concession of privileges by the crown, the local lord, and the municipalities tended to create areas, legally differentiated within their own jurisdiction. Specific economic, social, and military circumstances often pushed further towards differentiation. 65

Claudio Sánchez Albomoz y Menduiña has singled out the innovative spirit of the Castilian judges.66 One is tempted to venture that the rapid changes of the Castilian language may have been a major factor making for innovation.67 Rarely, if ever, are two sets of facts identical, but a language in the midst of a very dynamic grammatical and syntactic transformation, with
marked regional differences, must have at times been vague enough to allow the local judges to draw distinctions between similar circumstances and find answers better suited to local conditions and current values. This also avoided a slavish following of the *stare decisis* doctrine.

Yet, this strong local differentiation was not confined exclusively to Castille or the Iberian Peninsula. It was even evident in Law Merchant, despite the peculiarities of its development. The early codes of maritime and mercantile law were derived directly from Byzantine and late Roman Law. The special jurisdiction of the mercantile courts allowed the incorporation in legal practice of specific aspects of the Roman Jurisprudence without an actual "reception" of the total body of doctrine in the *Corpus Juris*. However, as Abbot Payson Usher observed, Law Merchant was far from being a unified code accepted by all those trading in the European and Mediterranean world. He found very significant local differences in banking and credit, even within a region of the Italian Peninsula, where he thought that they appear to have had a common development. Florence Edler de Roover also noticed, in the same region, sharp local differences in the basic procedure and legal forms of insurance, after premium insurance was well established in business practice.

The desirability of special jurisdictions was in accordance with the conception of law and the role of judges at the time. Long
afterwards, in 1672, Joseph de Veitia Linage, a man with a vast legal and administrative experience, still considered that an ad hoc commercial jurisdiction, with judges chosen from amongst the merchants, as being ideally suited to assure prompt justice and the rule of law for the mercantile polity. 70

From a conceptual point of view, private law was in the hands of judges and jurists, not of legislators. The traditional concept of law-finding, in which judges and jurists endeavoured to articulate the abstract universal rules that had for long periods governed actions and the sense of justice, continued to develop undisturbed. Public law was not conceived then as the instrument of the government's own ends. It was erected to ensure the enforcement of private law and maintain the foundation of a pre-existing spontaneous order on which the working of society's every day-life existed.

The strength of this established order and the peril incurred by any contemporary government attempting an abrupt departure from it, are highlighted by the downfall of Siena as a commercial centre. The Municipality, reports Armando Saporì, modified by law the Usus Mercatorum, and abolished the immemorial rule of the tribunals that considered all partners in a company collectively and unlimitedly responsible for it. Although the law was repealed shortly afterwards, it was too late. Having lost confidence, businessmen abandoned Siena and moved instead to Florence. 71
The legislative concern of the government authorities lay primarily in matters of government proper. In the Peninsula, and everywhere, they were constantly reminded of their duty. The Ordenanzas of Peñafiel, in 1345, did so in no uncertain way:

"Per que todos los sennores son tenidos de pensar et meter en obra todas las cosas que son pro de las sus tierras, et que por ellos non podrian enriquecer a todos solamente con los sus dinero, por ende an a pensar et a fazer quanto pudieren, guardandoles en justicia et dandoles buenos ordenamientos porque puedan todos seer mas rricos et mas honrados." 72

Much of the legislative output of the authorities during the Middle Ages, and also through the period in which America was part of the realm, was the direct result of collective or individual petitions. 73 "A rogatory petition - "PETITIO" - of the interested party", says José Joaquín Real Díaz, "was the origin of the majority of the documents granting privileges and a good many of those of judicial or purely administrative nature, a fact clearly revealed in their explanatory clause." 74

Although Real Díaz is referring concretely to American laws and documents, the generally unchanged mechanics of this process can be examined in a series of Royal Decrees selected from a list published by Juan Torrés Fontes, and pre-dating by almost two hundred years the incorporation of America to the realm. The documents are concerned with the commercial relations between the Kingdoms of Murcia and Mallorca, which at the time belonged
respectively to the Castille-Leon and Aragonese Crowns, as well as some internal matters of Murcia.  

Document IV is a letter of King Alfonso XI of Castille-Leon to the Municipal Council of Murcia. In it, the King: (1) Acknowledges to have received a number of petitions from the Municipal Council through its "Procurador", Don Miguel de Rellat; (2) Recapitulates the information received from the Council regarding the commercial problems with Mallorca; (3) Confirms the agreement already concluded by the interested parties:

"E sobre esto que enbiastes alla vuestros mandaderos e vos abeniestes con ellos en tal manera que todos los mercaderes e veizinos de la mi cibdat de Murcia paguen de las mercadeorias que dalla troxieren dos dineros por libra de entrada e un dinero por salida. E los mercadores que venieren dalla a esa tierra que paguen por entrada medio dinero por libra e por salida non ninguna cosa, e esto que lo paguen demas de los mis derechos que an a pagar."

Finally, (4) Alfonso XI states his reasons to grant his Royal ascent to the agreement:

"E porque me embiastes dezir que esto que eran grant mio servicio e acrecentamiento de las mis rentas e poblamiento de la mi cibdat de Murcia e que plaze a todos los mercadores desa tierra e eran avenidos en ello, tengo por bien de vos lo otorgar que lo podades fazer fasta dos anos e non mas, en tal manera que se paguen todos los quereillosos de la renta que y montare."  

The Mallorcan side of the event is seen in Document V, which is the confirmation by Felipe of Mallorca, tutor of Jaime III,
of the agreement concerted by the merchants of Murcia and Mallorca. Succinctly, but in no uncertain terms we can see once more the process unfolded before us:

"Vidimus litteras vestras quas nobis direxistis super ordinacione que de consensu nobilis Arnaldi de Cardellacho, locumtenentis Maiorice, ut asseritis, facta extitit inter vos ex una parte et homines regni Murcie et altera super restituicione videlicet facienda pro damnis illatis illis de Murcia per homines regni Maiorice, que ordinacio est...si nobis dicta ordinacio grata existeret et accepta, quibus contentis in litteris vestris plenius intellectis, dileccioni et fidelitati vestris significamus, cum ordinacio ipso nobis placet eamque laudamus et approbamus et illam teneri volumus ad 77 beneplacitum tamen regium atque nostrum".

Document VI reveals King Alfonso XI of Castile-Leon undertaking to carry out as requested a number of petitions that the Municipal Council of Murcia had put forward to him through its "Procuradores" Don Diego Martinez de Ferreruela, Garcia Celrran and Bonanat de Valebrera. Among other things, the sovereign promises: (1) to write to the Kings of Aragon, Granada and Mallorca, as the Council solicited, regarding a number of abuses perpetrated by their subjects in Murcia, as well as a surtax charged to the Murcians in Aragon and Mallorca:

"Et a lo que me dexieron que vos enbiase dezir en como aviades a guardar la paz, yo enbiio mis cartas al rey de Aragon e al rey de Granada que las sus gentes non pasen por la mi tierra a fazer mal a otros....E ostrosy, de las cartas que me pidieron para el rey de Aragon e para el rey de Mallorcas sobre aquellos IIII dineros por dobla'que vos toman en la su tierra, que ge las mande dar."
In addition, (2) Alfonso XI informs the Council that his alter ego in Murcia, the "Adelantado Mayor" has been reminded of his duties, due to the complaints made by the Council:

"E otrosy, a lo que me dexieron en razon de los agravios que vos suelen fazer los adelantados, en esto yo porne y aquel recabdo que mio servicio sea guardado e vos pasedes bien". 78

Document VII is an order from King Alfonso XI of Castile-Leon to his Adelantado Mayor in Murcia, Don Alfonso Fernandez de Saavedra, given at the request of the Municipal Council of Murcia. He was to mediate in the conflict between the merchants of Mallorca and Murcia, and was to pass judgement in agreement with "omes buenos" and in accordance to law:

"E pedieromme merced que vos enbiasse mandar que librasedes este pleito en aquella manera que mas compliesse para mi servicio. E yo tengolo por bien, porque vos mando, vista esta mi carta, que libredes este fecho con acuerdo de omes buenos en aquella manera que fallardes por derecho e fuese mio servicio." 9

Document IX is a confirmation by King Alfonso XI of an Ordinance passed by the Municipal Council of Murcia prohibiting the exports of rice, which the scarcity of other grains made indispensable for the feeding of horses, ergo for the defense of Murcia, the Council argued:

"Sepades que el concejo de la noble cibdat de Murcia nos enbiaron mostrarn por sus cartas por Andres Montaner, escribano de la nuestra camara e su escrivano publico, que ellos usaron de tiempo aca, por ordenamiento que fezieron, porque non ay complimiento de cevada para las bestias e encarecia mucho, que el arroz que non se pilase para enblanqueeer en cuanto entendiesen que complia
porque se aprovechasen del para dar a los cavallos e a las otras bestias, porque se podiesen y mantener mas omes a cavallo para defensamiento de la tierra.... E nos mandamos por bien e mandamos que los ordenamientos que el dicho consejo a hecho en esta razon... que lo fagades complir e guardar; e non fagades ende al so pena de la nuestra merced e de ciento maravedis de la moneda nueva a cada uno por cada vez.  

Document III is a ratification by King Fernando IV of Castille-Leon of an agreement between the Municipal Council of Murcia and the "Adelantado Mayor" in that Kingdom, Don Johan Osórez. The accord, arrived at with the assistance of merchants and seamen, was for the purpose of building a seaport in Murcia. The sovereign, informed about it by the council, endorsed the decision, and commanded his "Adelantado Mayor" to divert 15,000 Maravedies of the "Moneda Forera" (a tribute due to the crown) towards the project. In his words:

"Sepades que el consejo de Murcia me enbiaron dezir que porque en Murcia nin en los otros mios logares deste regno non han puerto de mar, que vos e ellos fallastes con acuerdo de marineros e de mercaderes sabidores que se puede fazer buen puerto a un lugar que dizan Alcaçar, a teniente de la mar, termine de Murcia, e fazendo ay torres e camino que se puede y bien fazer. E enbiarome pedir merced que mandase y dar que se puede y bien fazer. E yo entendiendo que es mio servicio e acrecimiento de las mis rentas e gran mejoramiento de la mi tierra, tengolo por bien. Porque vos mando que de los maravedis de la moneda forera que vos auedes e echar en esa tierra, que les mandedes dar XV mill maravedis que pongan en lauor en dicho lugar. E mandat ge los dar de los primeros e mejor parados que y fueren e tomad dellos carta de pagamento, e yo recibirlos vos he cuenta".
A pattern becomes readily discernible in these documents: the Crown intervenes in a number of local affairs, but it does so at the request of the local authorities, to confirm decisions already taken by them, or pre-existing agreements, even those of international nature and concluded amongst private interested parties. It is also at the behest of the local authorities that the Crown carries out specific diplomatic initiatives, warns its agents to keep within the boundaries of their functions, prompts them to mediate in a dispute, and ask them to adjudicate in accordance to law and the council of local expertise.

Whilst the initiative clearly lay at the local level, the Crown emerges from this set of events still as the ultimate authority, one whose seal of approval is a condition sine qua non to sanction the legality of some acts. But it also appears as an authority whose function is very much to buttress the local authorities, the rule of law, and, to no small extent, those private actions that by fostering peace, trade or otherwise, were deemed beneficial for the common good.

This explains, to some degree, the fact that administrative decisions were predominantly local or regional, even though calamities such as drought or frost often widened their geographical area. It should be noted that in the latter case the decisions were taken at the "Cortes", where a problem could be assessed in its entirety, and a number of "Procuradores" were
likely to have a similar petition on hand. Pedro Aguado Bleye cites, for instance, the prohibition to export wheat and legumes from Castille by order of the "Cortes" of Valladolid (1351), Guadalajara (1390), Madrigal (1438), Valladolid (1442), Burgos (1453), and sometimes also wine, Valladolid (1351). 83

Such decisions, taken under exceptional circumstances, are rather improbable signs of an early centralisation of power or some incipient form of "national policy". Moreover, a number of practical, legal, and theoretical considerations would seem to point towards the prevalence of the local over the general in the administration of the realm.

Although we have examples of expediency, such as the foundation of the "Taula" or Bank of Deposit of Valencia, which was established by the City Council on October 15, 1407, chartered five days later by the Crown, and fully organised by February 15, 1408, 84 it would seem readily apparent that without a considerable degree of autonomous decision-making the local government - and indeed the local life - would have been paralysed for long periods of time.

At least two factors, from a practical point of view, reinforced the role of the local authority. First, the Curia was not served by a sufficiently large or well enough trained bureaucracy to aspire to the concentration of power in their
hands, nor had the bureaucracy, such as it was, established 
channels of routine communications, which are indispensable 
to control the flow of information and the implementation of 
decisions. All the Court had, as we have seen, was a retinue 
of notaries and legal experts attached to the "Curia", apparently 
ot noted for their expeditiousness. Secondly, the Court 
neither had a permanent seat nor even a number of fixed places 
of residence at established periods of time. Kings were itinerant 
rulers during the Middle Ages and early Modern times, and the 
Court, of course, moved along with them. This which only began 
to change late in the XVI Century as far as Castille-Aragon is 
concerned, would certainly had increased the difficulties of a 
very centralised decision making process.

From a legal point of view, the basis for a centralised 
administration of the realm were feeble. Although the King 
was indeed the supreme authority of the realm, his authority, as 
we have seen, emanated from the fact that he was the head of each 
of its political divisions - Count of Barcelona, for instance - 
and thus legislative or administrative acts were not automatically 
applicable everywhere. This was, at times, enhanced by specific 
undertakings of the Crown, such as the promise of Jaime I not to 
sanction an emission of Valencian currency without the previous 
consent of the City Council; a promise, Earl J. Hamilton adds, 
that was formally reiterated at the coronation of every successor 
of Jaime el Conquistador, and one which, the city made certainly
sure, was not taken lightly. 88

At any rate; a very strong local spirit was characteristic of the Middle Ages, and, as Manuel Fernández Álvarez observes, it persisted throughout the XVI Century. 89 Obviously, this ran counter to any centralist tendency, and must have been a factor contributing to the maintenance of the local privileges; a phenomenon which can hardly be called typically Peninsular. As Karl Ferdinand Werner notes, Marseille, as late as the French Revolution, only recognised the King of France as Count of Provence, and every decree had to be specially written for them. 90 A strong local spirit is detectable even amongst the closely knit cities of the Flemish Hansa, particularly in their commercial policies, which were often carried out at the expense of their allied cities and against the interests of the superior political jurisdiction that nucleated them, as documented by Edouard Perroy. 91 An interesting example of how these independent local policies could be pursued and secured is an agreement obtained by the Genoese merchants in Flanders. Although they and the city of Genoa were subjects of the King of France, Carlos, King of Castile and Count of Flanders, ratified in 1515 the privileges of the Genoese merchants in Flanders, as requested by them, and including a clause agreed upon in 1508, by virtue of which they could enjoy those privileges even in case of war between Castile and France as long as they remained neutral in the conflict. 92 It is, incidentally, also in Flanders, where we can see with
greater clarity than in other areas how the merchant "nations" of Vizcaya, Guipúzcoa, "Espagne" (Castille) and Aragon followed independent courses of action, which often put them at odds with each other and were the cause of frequent litigation. 93

In a society founded on law, where, as Claudio Sánchez Albórnoz stated it, no one was too mean to be beneath the protection of the law or so powerful as to be above it, 94 the limitations of the legal system were formidable for its Custodian: the Monarch. His power to change it was very nearly non-existent. Without charters or any contractual juridical instrument between the King and his subjects, "custom, stronger than law, enclosed the Monarch in a ring of iron", remarks Luis Suarez Fernandez. 95 The Church, as the Guardian of the Christian ethics, the local administrations, the nobles, and the many corporate bodies, were tangible reminders of that fact. Thus, de jure and de facto, the Monarch's power over all sectors of the Kingdom's public life - justice, treasury, army and administration - was severely curtailed. 96 On the whole, the idea of limited government and the supremacy of law was neither original nor exclusive to the Peninsula. Quite on the contrary, it was fully shared in other areas of Europe throughout the period under consideration. 97

From an organisational point of view, the only contemporary large scale administration that could have been used as a guide and source of inspiration was the Catholic Church. As laid down in
the Canon Law, eight hundred years ago, a large number of carefully defined canonical functions can only be discharged by the local administrator, id est, the Parish Priest. The Bishop, who is the regional administrator, enjoys wide powers in his Diocese, but within the Parish, only the Parish Priest can perform the exclusive functions reserved to his office. An administrative structure modelled after the Church's organisation would have been hierarchical, with well defined lines of authority and communication between the different administrative offices and officers, but also with considerable discretionary powers at the local and regional level. As Fray Justo Pérez de Urbel\(^9\) and Julio Puyol y Alonso\(^9\) have shown, the Monastic Orders enjoyed perhaps an even greater freedom of action at the local and regional level.

However, in terms of theory of organisation, the absence of the concepts of "nation" and "state" with today's general and precise legal meaning,\(^{10}\) including the abstract goals generally attributed to them, was probably more decisive in determining the administrative structure of the realm. If we think that structure is a means for attaining the objectives and goals of an institution, and if we have gathered correctly the prevailing ideas of justice and law, then it would seem more likely that the local administrations really enjoyed most of the powers they had on paper, whilst the Crown largely limited itself to the role of Iudex or Arbiter.\(^{101}\)
In a way, Petition CXIII of the Cortes of Madrid of 1534, and its reply, corroborate that view:

"Otroso, se de orden como no se saquen los cordouanes destos reynos, que a sido causa de encarcescer el calzado y cosas que se hazen dellos ye se ponga por capitulo de cosas vedadas. A esto respondemos que mandamos que los nuestros corregidores y otras justicias cada una en su jurisdicon prouean lo que mas convenga."  

In other words, despite a request for a general prohibition, it was left to the local authorities to allow or to forbid the exports of "cordoban" according to the available supplies of the product and other conditions of the local market. Abbot Payton Usher has shown that the regulation of the grain trade in France, before and after 1571, was based on the same principle and carried out in a similar fashion. An analogous pre-eminence of the local authorities in the regulation and control of food products is clearly discernible in Provence and in cities as far apart as Toulouse, Pavia, Bilbao, Avila, Sevilla, Zaragoza and Majorca.

We should hesitate to characterise the administration of the realm entirely in this manner. And we do. But the chief role of the Crown, the systematic use of "Petitiones", the routine consultation with experts and interested parties, the legal structure and the concept of law, and a significant degree of local autonomy - none of them typical or exclusively a Peninsular characteristic in any way - can explain at least a substantial amount of the prodigious legislative output of the period. Beyond
doubt, all those factors were major contributors to the fragmentary and often contradictory nature of a good deal of that legislation - particularly that regarding economic matters - when we examine it from the perspective point of the realm as a whole.

Much of that legislation was ultimately the result of compromise, even in instances when the Crown was the initiator of the original project. The Ordenanzas Generales para el obraje de paños en Castilla, finally signed in Seville in 1511, after almost twenty years of attempts, studies, projects, and deliberations, highlight the difficulties of passing general laws, and, once again, the characteristics of the administration of the realm. The process leading to the Ordenanzas of Seville started with the Pragmática sobre la venta de paños of Medina in 1494, which immediately elicited protests from Segovia, Avila, Palencia, Sepúlveda, Riaza, Santa María de Nieba, and the towns of the valley of Escaray, all of whom obtained immediate exemptions and amendments to this law. The Consejo Real subsequently decided to carry out an enquiry with expert merchants and producers of cloth, such as Francisco de Prato, a Lombard established in Huete, Francisco de Olmeda from Cuenca, and others, on whose advice was based a project of Ordenanzas submitted to the most important cloth-making cities along with the experts' reports for their comments and suggestions. This eventually resulted in the Ordenanzas de Granada of 1500, which created a new wave of complaints and exemptions. In view of this the Consejo Real
gathered in Toledo "algunos maestros e azedores de los dichos pannos" and other experts in the textile industry to prepare a new project of Ordenanzas Generales. Signed by Bartolomé Ruiz de Castañeda, the new project was sent in 1502 to the cities "para que 'tomeys maestros e personas que sepan de los dichos oficios, e juntamente con ellos veays las dichas ordenanzas, e veays si estan bien o si an menester emmyenda alguna dellas'." 112 Detailed replies were sent by Cuenca, Segovia, and other interested cloth-making cities, which led to a new project in 1504. When the Ordenanzas finally received pragmatic sanction in 1511, they were considerably watered down, contained no innovations, and produced no radical changes in the textile industry of Castille, in the estimation of Paulino Iradiel Murugarren. 113

This may or may not have been so, but it is of no consequence for our immediate purpose - though we would hazard that the original aim of the Crown was probably far more modest than Iradiel Murugarren seems to think it was. The Ordenanzas were clearly sanctioned by the Crown as required by law, but it is transparently clear too that they were the result of exhaustive consultations with interested individuals, "universitas" and local authorities, and extensive advice from merchants and other experts in the textile industry. Compromise is the hallmark of the mediator's work, and the Ordenanzas were manifestly a compromise, probably without victors or vanquished in any absolute sense, and reflecting the legal, political, administrative and
economic reality of the realm. This example gives a good idea of some of the demands that reality as much as law and theory imposed upon the Monarch. As the ultimate mediator, he required considerable skill and energy to preside over the rival claims of individuals and local administrations, who had varied and often conflicting needs, views, and perceptions of the "common good" and of their own interests. He had to ponder over a number of non-economic factors, be they of political, legal or even irrational nature, such as the vanity of his subjects, and he had to pay due attention to the ever changing momentary constellations of contesting forces in pursuit of power and advantages. Under these circumstances, the greatest triumph of the Monarch was to maintain a moderate and uncommitted stance, balancing forces whose balance was bound to change. Even if the King and the Consejo Real had had a well thought out plan for a general law, and even if such a project was supported by powerful groups, it is highly unlikely that its real outcome would have coincided with the original idea. Not only because historically the momentary constellations of forces are just that, and their balance tends to shift over time, but primarily because the legal, political and administrative structure of the realm obviously rendered that an extremely improbable result.

The tenor of the transcribed remarks accompanying one of the projects of the Ordenanzas sent to the local authorities for examination is highly suggestive of a large measure of autonomy
in economic matters. The local authorities were mainly responsible for economic "policy" in the Middle Ages - and early Modern times - stresses Walter Eucken, who sees in that factor the main reason why the towns and their immediate surroundings have been often 'Wrongly regarded as closed economic areas, the range of validity of their legal decisions being confused with the range of their economic relations'114 - conclusions that our findings will largely corroborate. The exemptions to the Pragmática of Medina and the Ordenanzas of Granada that were granted to many local authorities would point further towards their considerable freedom of action in the economy of their jurisdiction. Far from injuring the authority of the Crown or of the Law, the relaxation of general laws - a frequent case with those concerning general import or export prohibitions - made them probably more responsive to the real needs of a given area at a particular time, and thus of the people that in theory they were supposed to serve. Though time consuming, the procedural requirements to obtain such concessions were not entirely void of advantages for the parties involved. The most significant one was that by forcing the local authorities and interested individuals to prove the merits of modifying a general law or administrative decision, they forced them to re-evaluate the needs and conditions of a locality, and to discuss them, a step that allowed the Crown a close scrutiny of those circumstances and was not without value for the local authorities or the individual entrepreneurs.
As far as the latter are concerned, the process leading to the Ordenanzas of Sevilla illustrates yet another way in which they could and did participate in administrative decisions and the law making mechanism. The latitude at which individuals could exercise their influence in those areas was, as we have seen, very wide, extending to the ability of contracting agreements with foreign rulers or their subjects that included the payment of compensatory taxes, which were later submitted to the Crown for ratification. As late as 1553, a "Real Provision" from Carlos V ordered that the "Corregidor de Cuenca haga una investigación entre los fabricantes de paños de la ciudad acerca del precio de los paños y de las ganancias que sería justo asignarles," which evidences the continuous practice of consulting the interested merchants and producers before decreeing prices for their products. An even greater degree of participation of individual entrepreneurs and their "universitas" in the administrative decisions of the realm, and the development of the legal framework of the economy, will be clearly seen in the following Chapter.
CHAPTER I

THE POLITICAL STRUCTURE, THE INSTITUTIONS OF
PUBLIC LAW, AND THE ADMINISTRATION OF THE REALM

I. Political Structure and
Institutions of Public Law

Notes and References

1. Luis García de Valdeavellano y Arcimis, Historia de Las
Instituciones Españolas de los Orígenes al Final de la

Claudio Sánchez-Albornoz y Menduiña, "Repoplacion del Reino
Astur-Leonés. Proceso, Dinámica y Proyecciones", Cuadernos
Shows mechanics of the process.

Jörg Puchnert, Die Bundnisse der Bodensee-Städte bis zum
Jahre 1390, Göttingen, Vandehoeck & Ruprecht, 1970. Shows
that privileges obtained by many imperial towns resembled
the Castilian ones, for example vide pp. 166-167.

2. Emilio Sáez, Rafael Gibert y Sánchez de la Vega, Manuel
Alvar, Atiliano González Ruiz-Zorrilla, Los Fueros de
Sepúlveda, Segovia, Publicaciones Históricas de la Excma.

3. Julio González y González, Repartimiento de Sevilla, Madrid,
Escuela de Estudios Medievales, 1951, 2 Vols.

Ramón Carande y Thovar, Sevilla Fortaleza y Mercado,
Sevilla, Universidad de Sevilla, 1972

4. José María Font y Rius, "Las Instituciones en la Corona
de Aragón en la Primera Mitad del Siglo XV", Cuarto
Congreso de la Historia de Corona de Aragón, Palma de
Mallorca, 1955, IV, pp. 5-19.

5. Fernando Soldevila Zubiuri, Historia de España, Barcelona,
Ediciones Ariel, 1961, Segunda Edición, (Primera Edición, 1952),
1, pp. 403-404.

48
6. Julio Valdeón Baruque, El Reino de Castilla en la Edad Media, Bilbao, Ediciones Moreton S.A., n/d, The crowns of Castille and Aragon were united in two branches of the Trastamara family since 1410. pp. 121-22.

7. Fernando Díaz-Plaja, Otra Historia de España, Barcelona, Plaza & Jane, 1972, p. 85 et seq.


   Alonso García Gallo y de Diego, Curso de Historia del Derecho Español, I, Madrid 1946, pp. 176 and 278 concurs with García de Valdeavellano. (Cited by Isola, Las Instituciones, p. 71)

10. García de Valdeavellano, Historia, pp. 412-413

11. Ibid., 414.

12. Ibid., 416.


15. Isola, Las Instituciones, pp. 82-83.

   García de Valdeavellano, Historia, p. 424.


17. This was not a "national" army, but one formed by the King's own contingents drafted from his private domains, and, above all by the individual hosts of the lords and free cities of the land. (Vide: Fernando Díaz Plaja, Otra Historia, p. 88. form comment on the Catholic Monarchs' Army). The payment of cash for redemption of military duties was applied for part-payment of Mercenary Forces, a common feature in most armies in Medieval and Modern times.

"Dios puso en el mundo los Reyes et los senores para mantener las gentes en justicia et en derecho et en paz; les acomendo la tierra para hacer esto;..." los Reyes en la tierra son a semejanza de Dios, et creed por cierto, que segund los merecimientos del pueblo, andan et viven en las causas de Dios, et guardan las sos leyes et los mandamientos... dales Dios buenos reyes derechureros et piadosos que los mantengan en paz et en justicia". p. 75

"Ya las Partidas (2,1,4) declaraban: 'Vicarios de Dios son los Reyes, cada uno en su reyno, puestos sobre las gentes para mantenerlos en justicia e en verdad cuando en lo temporal, bien assi como el Emperador en su Imperio.'" p. 81.


"Puede afirmar Juan de Paris por eso, que no hay en lo temporal autoridad sobre los reyes ('Imperator in temporalibus non habens super se superiorem', 195); y puede presentar al monarca, en consecuencia, como ministro de Dios, como juez, y como ejecutor de la justicia" p. 101.


"El Rey es considerado cada vez más como una persona nombrada por Dios, no solamente investido con el derecho de ejercer el poder real, sino tambien con obligaciones siendo venerado juntamente con sus antepasados como guardián del bien común..." p. 122.

Valdeón Baruque, *El Reino*, pp. 80 and 104.


20. Santa Teresa, and other Spanish Mystics, referred to death as the Customs House to Life.

"...La Justicia, la cual haga a todos administrar sin excepción de personas...teniendo, como es obligado mucha vigilancia y cuidado de la buena gobernación de los reinos y señoríos en que después de Nos sucedera, y de la paz y sosiego dellos, y que sea muy benino y humano a sus subditos naturales, y no consienta que sean fatigados, ni les sean hechos agravios, y senaladamente le encomiendo la protección y amparo de las viudas, huérfanos y miserable personas, para que no permita que sean vexadas opresas, ni en manera alguna maltratadas de las personas ricas y poderosas, a lo cual tienen los reyes grande obligacion." Instrucciones de 1539 al Serenísimo Príncipe Don Felipe, pp. 68-69.

"Instrucciones de 1597 a Felipe III, en las que Felipe II daba consejo de moderación en el gobierno y respeto a la justicia: 'que se oiga con tanta atención y cuidado al muy pobre como al muy rico, dandole por muy deservido de los que en contrario de esto obraren'; de exigente cumplimiento en el oficio de Rey, que 'no es otra cosa que una esclavitud precisa que le trae consigo la corona'. pp. XXVII - XXIX.


25. Ibid., 445.


27. Ibid., 447-49

Isola, Las Instituciones, pp. 95-98.


28. Isola, Las Instituciones, pp. 89-94

"... la necesidad del consejo, por ejemplo, está en la mejor y más antigua tradición medieval;

Ca muchos son los hombres que se han de gobernarn,

Por lo que cuatro o cinco quieren de ordenar.

Y pues

Do ha muchas cabeças ha mas entendimiento
Los muchos porfianando toman mejor el tiento
A vecesfalla uno lo que non fallan ciento
Sobre los grandes fechos tener luego consejo
E sean los que y entren tan claros como espejo,

debera llamarse a consejo a

Perlados, caualleros, doctores e letrados
buenos omes de villas que hay mucho onrados.

En Francia el rey actúa acompañado por un conseil de prud'hommens, o sage conseil de bonnes gens, como los llama San Luis en los Enseignements a su hijo. Con ello se mantiene el rey en la regla de su tiempo, según la cual debe consultar a sus fieles - lo mismo rige para el jefe de todo grupo organizado - antes de decidir." p. 89.

29. García de Valdeavellano, Historia de España, I, De Los Orígenes a la Baja Edad Media, Segunda Parte, Madrid, Revista de Occidente, Cuarta Edic., 1968 (Primera Edic. 1952). For numerous examples of "Curias Regias" vide pp. 94-96; 105-108; 117-19; 201; 205; 247-50; 253; 265; 279; 286-89; 316; 343-44; 380; 388-391; 436-37; 464; 469; 470; 574-81; 586; 596.

García de Valdeavellano, Historia, pp. 452-3 (Structure of Curia Ordinaria), p. 455 (Curia Extraordinaria).


31. Ibid., 454
32. Ibid., 457
33. Ibid., 457-460
36. Ibid., 455-56.
37. Ibid., Historia de España, pp. 573-75-577.
38. García de Valdeavellano, Historia, p. 469.

José María Lacarra y de Miguel, "Las Cortes de Aragón y de Navarra en el Siglo XIV", Anuario de Estudios Medievales, A.E.M.. This author points out that the Cortes of Navarra (to improve the Fueros), id est: to legislate in civil, criminal, and procedural matters. Lacarra thinks that this activity was more important than experts had previously assumed (650). A good deal of ground work was carried out before the Cortes actually opened, in order to shorten the deliberations. Legal experts took part in the preparatory work, some of whom played a very prominent role in the legislation passed (650). The following fragment from the introduction to the legislative output of the Cortes of Olite, in 1342, is an excellent synthesis of the essential aspects of the institution:

"... et fueron hy los prelados, los ricos hombres, los cavalleros et infançones et nombres de bonas villas, et por auctoritad real e con consentimiento de los sobre-dichos fizimos por ameioramiento los fueros que se seguen..." (p. 651)

40. Ibid., 475.
41. Ibid., 474.

Manuel Colmeiro, Edits., Introdution, Cortes de los antiguos reinos de León y de Castilla, Madrid, Real Academia de la Historia, 1883, Primera Parte, Tomo I, pp. 28-34. "Las palabras 'elijades e nobredes' dirigidas a todas las ciudades y villas, debe interpretarse en el sentido que la elección y el nombramiento estaban en uso al principio del
siglo XVI según los estatutos y ordenanzas de cada consejo. La elección o el nombramiento de los procuradores era un acto propio del gobierno municipal, cuya variedad se reflejaba en el diferente modo de constituir su mandato el consejo de cada ciudad o villa de voto en Cortes. Burgos nombraba por sus procuradores dos regidores sacados por elección. León dos regidores por suerte. Granada dos veinticuatro. Sevilla un veinticuatro, alcalde mayor, y un jurado por suerte.... Galicia enviaba a las Cortes dos diputados elegidos por las siete ciudades del reino (Santiago, Coruña, Lugo, Orense, Betanzos, Tuy y Monzón)...." p. 33.

42. Ibid., 41-45; 305

García de Valdeavellano, Historia, p. 475.

43. Evelyn S. Proctor, "The Towns of Leon and Castille as Suitors before the King's Court in the Thirteenth Century", The English Historical Review, LXXIV, Num. CCXC, 1959, pp. 9-10.

44. Colmeiro, Cortes de las antiguos Reinos, pp. 37-41.

García de Valdeavellano, Historia, pp. 474 and 476. In Castille only the "Villas de Realengo" (cities and towns located within a royal territory or domain) send procuradores to the Cortes. Those within a "Señorio Abadengo" (Ecclesiastic domain) or a "Señorio de Solariego" (secular domain) made presentations to their local Lords, who, in turn, represented them at the Cortes. In a sense, this was also the case with the "Villas de Realengo", many of which, as the head of a "Comunidad de Villa y Tierra" (Vide "The Municipality" in main text) represented scores of smaller localities before the Cortes. In the Cortes of Madrid of 1435 their number was seventeen, and the Cortes of Toledo, in 1480, conferred a special status upon them. From then on, the cities with "Voz y Voto" (able to speak and vote) were considered privileged, and the order in which they could exercise their rights was hotly contended among them (476). (Also: Eloy Benito Ruano, La Prelacion Ciudadana. Las Disputas por la Precedencia entre las ciudades de la Corona de Castilla, Toledo, Publicaciones del Centro Universitario de Toledo, 1972, and Colmeiro, op.cit., pp. 19-28).

Colmeiro - op.cit., pp. 383-84, illustrates the real power enjoyed on occasions by the Procuradores of the cities:

"A estas Cortes - Madrid, 1390 - en las cuales se había de tratar y resolver lo conveniente a la crianza del Rey y gobernación del reino, acudieron los infantes, duques, prelados, maestres, condes, ricos hombres, caballeros, escuderos e hijosdalgos, y mas de ciento veinte y cinco procuradores de cuarenta y nueve ciudades y villas;..."
Después de platicar largamente y discutir cual sería el mejor medio de gobernar a todos en paz y en justicia durante la minoridad del Rey, acordaron que fuese regido el reino por Consejo, entrando en él así los grandes y caballeros, como los prelados y los vecinos de las ciudades y villas.

Nombraron las Cortes para componer el Consejo once señores entre prelados, ricos hombres y caballeros, y trece procuradores, a quienes entregaron las riendas del gobierno. De estos veinticuatro personajes, los principales de la nobleza y los prelados en número de ocho debían residir constantemente en la corte: los diez y seis restantes alternaban por mitad, rigiendo como consejeros ocho caballeros y procuradores seis meses del año, y otros seis los otro ocho. Es circunstancia notable que los procuradores "en una concordia e cada uno de ellos por si e en nombre de las cibdades e villas cuyo poder avian", eligieron los individuos del Consejo, y les otorgaron 'libre e llenero poder' para gobernar el reino, acto de soberanía en el cual no tuvieron parte ni la nobleza ni el clero. El estado llano alcanzo en esta ocasión la cumbre de su prosperidad y grandeza."

45. Ibid., S25-S26. The extent of the "Señoríos" varied considerably during the Middle Ages, and so did their power, which fluctuated in response to circumstances and the personality of the office holders. García de Valdeavellano finds "La Tierra de Santiago" as one of the few Spanish "Señoríos" comparable to the large trans-Pyrenean ones. This was particularly so during the time of Diego Gelmírez, the first Archbishop of Santiago, who in 1105 received the administration of La Tierra de Santiago and the right to mint currency from King Alfonso VI Leon and Castille. Queen Doña Urraca added to that in 1120 exempting the Archbishop from two of the fundamental duties of the "Señores de cotos inmunes": to join with their hosts the royal army, and to assist the king with his council in the Curias. An extraordinarily dynamic personality, Archbishop Gelmírez, expanded his domain, hired the service of Genoese ships, had the Genoese Augerio building galleys for him in Iria, and commanded powerful sea and land forces. In the XIII and XIV century there were other large "Señoríos" - as those of the López de Haro and the Condes the Lara - and large "Maestrazgos" of the Military Orders, which grew as a consequence of the Reconquista, but did not enjoy the privileges mentioned ut supra. In the course of the Low Middle Ages some of them were incorporated to the crown and became "bienes realengos". The "Señorío de Molina was in 1292 by marriage of Doña María de Molina with King Sancho IV. Similarly the Condado y Tierra de Alava (1332) and the Señorío de Vizcaya were incorporated during the reign of Juan I of Castille (1379-1390). (pp. 526-27). In the last third of the XV century the Catholic Monarchs incorporated to the crown the Canary Islands, until then,
divided in a number of "Señoríos" (1477) and the "Maestrazgos" of the Orders of Calatrava (1487), Santiago (1493) and Alcantara (1494). (pp. 527-28).


García de Valdeavellano, Historia de España, pp. 474-488.

47. García de Valdeavellano, Historia, p. 542.

-------, Historia de España, pp. 114-115. Hence their obligation to join the King's army, not necessarily as subjects, but primarily on account of the concession of lands as 2 "beneficio", "Prestimoni" or "honor"; id est, as a stipendium or avail for those services. It should be noted that the writings of Don Juan Manuel emphasized the special attention that the king should pay to these concessions on account of their general usefulness. (Isola, Las Instituciones, pp. 76-77).


Leopoldo, Torres Balbas, Ciudades Hispano/Musulmanas, 1971, Vol. I and II.

50. García de Valdeavellano, Historia, pp. 542-43.


52. García de Valdeavellano, Historia, pp. 544-45.


53. Ibid., 32.

García de Valdeavellano, Historia, p. 543.

54. Ibid., 554.
Sáez et al., Los Fueros, pp. 35-196, list most of those sources of income.

García de Valdeavellano, Historia de España, pp. 110-113.


56. García de Valdeavellano, Historia de España, pp. 74, 111, 484, 300-1.


60. Ibid., 32; 365-383.


Clavería Arza, Los Vascos en el Mar, p. 41.


Martín Fernández de Navarrete, "Disertación Histórica sobre la parte que tuvieron los españoles en las Guerras de Ultramar o de las Cruzadas, y como influyeron estas expediciones desde el Siglo XI hasta el XV en la extensión del Comercio Marítimo y los progresos del Arte de Navegar", Memorias de la Real Academia de la Historia, Tomo V, Madrid, 1817, pp. 118, 126-131. Doc. XXV, pp. 188-189.

Teófilo Guiard y Larrauri, Historia del Consulado y Casa de Contratación de la Villa de Bilbao, Bilbao, La Gran Enciclopedia Vasc, 1972, Reproduccion facsimil de la primera edición, 1913, Vol., I, pp. XV-LXL.

Wilhelm Heyd, Histoire du Commerce du Levant au Moyen Age. Edition Française Refondue et Considerablement Augmentée par l'Auteur, Leipzig, Otto Harrassowitz, 1923, Réimpression, I, pp. 325-328, gives documentary evidence of this practice in Barcelona and Montpellier during the XIII century, as well of the considerable independence with which both cities - then under the Crown of Aragon - run their own affairs. The material prosperity of these cities, a product of the enterprise of its inhabitants and the active support of the Crown in the estimation of Heyd, was a matter of genuine pride for Jayme El Conquistador. In a document dated in 1273, this great Monarch "montrait avec orgueil l'accroissement extraordinaire de cette ville (Montpellier), devenue, sous son règne, l'une des plus importantes du monde et il avait le droit d'être fier, car il y avait contribué pour sa part."

p. 328. Further examples of the manner in which European cities conducted their "foreign affairs" in the Levant can be found throughout the two volumes of this celebrated work.

Juan Torres Fontes, Relaciones Comerciales entre los Reinos de Mallorca y Murcia en el Siglo XIV, Murcia, Sucesores de Nogués, 1971, pp. 8-9.

Carmelo Viñas y Mey, "De la Edad Media a la Moderna. El Cantábrico y el Estrecho de Gibraltar en la Historia Política Española, Hispania, 2, 1940-1, p. 54 et seq.
II The Administration of the Realm

Notes and References


Specifically concerned with the very important commercial jurisdiction, both, in the Peninsula and abroad:


Antonio de Capmany y de Montpalau, Memoria Historica sobre la Marina, Comercio y Artes de la antigua Ciudad de Barcelona, Barcelona, Camara Oficial de Comercio y Navegacion, 1961 (reedicion, original MCCLXXIX), Vol. I, pp. 80, 338-413. The English obtained Consular Privileges in Flanders only after all the Spanish "Nations" (Kingdoms and individual Cities or jurisdictions) had done so, which underlines the commercial importance of the latter, p. 316.

------, Libro del Consulado de Mar, Edicion del Texto Original Catalan y Traduccion Castellana de Antonio de Capmany, Estudio preliminar por José María Font Rius, Revisión y Anotación por Ana María de Saavedra, Epílogo de José Morro Cerda, Barcelona, Camara Oficial de Comercio y Navegacion, 1965, passim, and specially pp. 9-69 for historical perspective.


Fernández de Navarrete, Disertación Histórica, pp. 129-134, Doc. XXVI, pp. 189-197.


Heyd, *Histoire du Commerce de Levant*, I, pp. 152, 158-160, 236, 257-262, 287-288, 329-340, for the origins and development of the office of Consul and its equivalents, Baile o Vicomte (Genoa and Venice), and Podestat (Venice), I and II, passim, to see the many facets of the institution.


Joseph de Veitia Linage, Norte de la contratacion de las Indias Occidentales, Sevilla, 1672, (Filmed from the holdings of the University of London's Goldsmith's Library), Libro I, Capitulo 17, pp. 102-118.

Georges Yver, Le commerce et les marchands dans l'Italie meridionale au XIIIe. et au XIVe. siecle, N. York, Burt Franklin, Publisher, reprinted 1968, originally published in 1903, p. 209. He stresses the importance of the Consular jurisdiction, which allowed foreign merchants residents in the Kingdom, and often also those from allied or client states of the one represented by the Consul, to be exempt from the local justice.


63. García de Valdeavellano, Historia de España, I De Los Orígenes a la Baja Edad Media, Segunda Parte, Cuarta Edición, Madrid, Revista de Occidente, 1968, pp. 118-120.

64. José María Lacarra y de Miguel, "Las Cortes de Aragón y de Navarra en el Siglo XIV", vide our footnote 38, Part I, Chapter I.

However, Petition XIX of the Cortes of Madrid, in 1534, and the official reply, are an obvious example of the difficulties of passing general laws and the reliance on the "Derecho Local"

"Otrosi, suplicamos a Vuestra Magestad que declare por ley la costumbre general destos reinos, que es que los parentes mas propinquis hereden ab intestato a los clérigos, como ellos heredan a los tales parientes, y si necesario fuere, dello se aya aprovacion de su Sanctidad.
A esto vos respondemos que mandamos que, cerca de lo que en vuestra suplicacion contenido, se haga justicia a las partes conforme a derecho."

Cortes de Los Antiguos Reinos de León y de Castilla, Madrid, Real Academia de la Historia, 1882, Tomo Cuarto, p. 587.

Claudio Sánchez-Albornoz y Menduína, Estudio sobre las Instituciones Medievales Españolas, México, Universidad Nacional Autónoma de México, 1965, pp. 807-809, for jurisdiction "Señorial".

Manuel Colmeiro, Cortes de los Antiguos Reinos de León y de Castilla, Introducción, Parte Primera, Tomo Primero, Madrid, Real Academia de la Historia, 1883, p. 298, for a decision regarding the Ecclesiastic jurisdiction that also illustrates the limitations that "privileges, fuero, use or custom" could interpose within a jurisdiction:

"Suplicaron los prelados que confirmase (to King D. Pedro in the Cortes of Valladolid, in 1351) y defendiese la inmunidad personal y real del clero escrita en los libros de la Partida y en los cuadernos de las Cortes que se celebraron en León el año 1208, en las de Valladolid de 1235 y en otras y sin embargo muchas veces violada. El Rey tuvo a bien mandar que los clérigos y religiosos no fuesen demandados ante los jueces seglares, 'salvo en aquellas cosas que deven de derecho'; que los adelantados, los merinos y los oficiales de las ciudades y villas respetasen la jurisdicción que las iglesias y las Ordenes tenían en ciertos lugares; que en estos no entrasen los jueces del Rey, si los prelados tuviesen en posesión de la justicia, ni los merinos, salvo en virtud de privilegio, fuero, uso o costumbre, y que no se librasen por la Cancillería cartas para que compareciesen en la corte los vasallos de las iglesias y los frailes de las Ordenes siendo demandados, sino que los demandantes ejercitasen su derecho ante los jueces naturales."


66. Claudio Sánchez-Albornoz y Menduína, Emilio Sáez et al., Los Fueros, p. XLVII, footnote 47.


70. Veitia Linage, Norte de la Contratacion, p. 102:

"Entre los otros privilegios que las Republicas bien governadas conceden a los mercaderes, refiere Don Juan de Solorzano (a leading jurist of the time), que es el mas considerable darles jueces particulares que salgan por suertes, o por eleccion todos los anos de entre sim si mismos, los que llaman Prior, y Consules, y su tribunal Consulado, porque se disputan para mirar, consultar, disponer, y componer todo lo que a la universidad del comercio entendieren que es conveniente, y siempre se ha juzgado que lo es, el que para semejantes Colegios, y Universidades se conceda jurisdiccion, no solo entre mercaderes, sino entre mareantes, con lo qual aconseja Bobadilla (another noted contemporary jurist) a las ordinarias que escusen competencias quanto pudieren..."

Sainz Díaz, Notas Históricas, p. 537, reproduces similar views expressed in a document from 1593, which in turn was a textual copy of a prior one dated in 1493.


Following García de Valdeavellano, we are matching the municipality with the notion of "Señor". Vide our pp. Part I, Chapter I.

73. Evelyn S. Procter, "The Towns of Leon and Catille as Suitors before the King's Court in the Thirteenth Century", The English Historical Review, LXXIV, num. CCXC, 1959, p. 22.


75. Juan Torres Fontes, Relaciones Comerciales entre los Reinos de Mallorca y Murcia en el Siglo XIV, Murcia, Sucesores de Nogues, 1971.

77. Ibid., Document V, pp. 15-16.

78. Ibid., Document VI, pp. 16-17.

The hostility of the population and the City Council towards the Adelantado Mayor, Infante Don Juan - who was a son of the Infante Don Juan Manuel, ergo, a Royal Prince - was such that they even resisted his entrance to the Kingdom, which suggest a tangible limitation of the Royal authority. Vide Delia L. Isola, "Las Instituciones en el Obra de Don Juan Manuel", Cuadernos de Historia de España, C.H.E., XXI-XXII, 1954, p. 97.


81. García de Valdeavellano, Historia de España, pp. 578-79.


85. Carpré, Barcelone, Vol. I, p. 61, footnote 2, shows some quaint records of gifts to high ranking officials, presumably to influence their decision or to speed it up. For instance: "... le 15 déc. 1433, on verse 5 l. 10 d. à Pere de Mantsos 'per confits que pres per dar los al vicicanseler; fou per ordinacio dels consols en consel, per la questio dels Jenovesos'..."

86. Felipe II was the first King to establish a more or less permanent residence in Spain. His father, the Emperor Carlos I (V of Germany) probably travelled more than any of his predecessors, having been away from the Peninsula for as long as twelve years. Vide: Fernando Díaz-Plaja, Otra Historia de España, Barcelona, Plaza & Janes, 1972, pp. 163 et seq.


88. Ibid., 32-34; 36-37, 39-40.


93. Ibid., 146-170.

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96. Isola, *Las Instituciones*, p. 86:

"Sea en la administracion de Justicia como en el gobierno del reino y de los señoríos, la sujeción a ley y a fuero se repite continuamente en Don Juan Manuel. Frente a sus vasallos el senor 'debes guardar de les non quebrantar nin les menguar fueros nin lees et privilejos et buenas costumbres que han'. Alcaldes y alguaciles someten su mandato a 'los fueros de los lugares que han los adelantados et merinos', los que a su vez ejercitan su función 'guardando derecho'. Y vuelve el Rimado a confirmar este sentido jurídico con su frecuente tono admonitório:

Caten leyes e fueros, e llamen y letrados
Si en lo que le demandan duda si es derecho
Mande que los letrados lo vean el tal fecho
E lo libren por fuero sin prescio e sin pecho."

Jose Orlandis, "El Cristianismo en la España Visigoda",
Estudios Visigóticos, I, Roma-Madrid, Consejo Superior de
Investigaciones Científicas, Delegación de Roma, 1956,
(Cuadernos del Instituto Jurídico Español, Num. 5), p. 12.
The formula of San Isidoro: Rex eris si recte facias (and
adding to this old maxim of Horatio the ) et si non facias
non eris, underlines how old this principle of the supremacy
of justice and the law really was. San Isidoro and his
brother San Leandro contributed a great deal to establish
this supremacy in the public life of their time.

Speculum, Vol. XVI, num. 5, 1941, p. 278.

F. Olivier Martin, Histoire du Droit Français, ed. Domat,
Montchesthesia, 1948: "Le Moyen Age ne s'est pas fait une
idée bien nette de l'état mais il a su affirmer la primauté
du droit", p. 209 (cited in Isola, Las Instituciones, p. 71,
footnote 2.).

R.W. and A.J. Carlyle, A History of Medieval Political Theory
in the West, Edinburgh and London, 1915, III, pp. 181-184,
cited by R.F. Treeharne, "The Constitutional problem in
thirteenth century England", in T.A. Sandquist and M.R.
Powicke, eds., Essays in Medieval History presented to
Bertie Wilkinson, Toronto, Toronto University Press, 1969,
pp. 46-47.

98. Fray Justo Pérez de Urbel, Los Monjes Españoles en la Edad
Media, Madrid, Ediciones Ancla, 1945, Segunda Edición,
Primera Edición 1934, 2 Vols., passim.

99. Julio Puyol y Alonso, El Abadengo de Sahagún, Madrid, Real
Academia de la Historia, (Imprenta de la Suc. de M. Minuesa
de los Rios), 1915, pp. 13-322.

100. José Antonio Maravall, El Concepto de España en la Edad Media,
Madrid, Instituto de Estudios Políticos, 1964, Segunda
Edición, pp. 476-477.

Otto Vossler, L'Idea di Nazione dal Rousseau al Ranke,
Traduzione di Giovanna Federici Airoldi, Firenze, G.C. Sansoni,
1949, passim.

101. This concept of the role of the Monarch is of course at the
centre of the idea of "De Monarchia Orbis". For its
development vide: José Antonio Maravall, "Sobre el concepto

102. Cortes de los Antiguos Reinos de León y de Castilla, Tomo 4, p. 616.


104. Louis Stouff, Ravitaillement et alimentation en Provence aux XIVe. et XVe. siècles, Paris/La Haye, Mouton & Co., MCMXX, pp. 125-130, "La réglementation de la boucherie: une affaire avant tout communale".


109. Carande y Thovar, Sevilla Fortaleza y Mercadeo, passim.


111. Antonio Pons, Libre del Mostassaf de Mallorca, Mallorca, Consejo Superior de Investigaciones Científicas, 1949, (Escuela de Estudios Medievales, Textos: XI; Sección de Valencia, No. 2), passim.

Paulino Iradiel Murugarren, Evolución de la Industria Textil Castellana en los Siglos XIII-XVI. Factores de desarrollo, organización y costes de la producción manufacturera en Cuenca, Salamanca, Acta Salmanticensia, IYSSV Senatus Universitatis Edita, 1974, (Filosofía y Letras, 84) p. 141.


CHAPTER II

THE LEGAL FRAMEWORK OF THE ECONOMY

Summary

Here we shall examine the cluster of institutions and recognised procedural forms to attain specific economic and legal goals, the remedies obtainable at a known and fixed place for breach of contract or any undue loss or patrimonial injury suffered during the course of a business transaction, as well as ad hoc measures to protect and stimulate production and exchanges, including the privileged commercial and maritime jurisdictions. This ensemble formed the legal framework of the economy, which we believe for the first time has been organised in a number of specific sectors. Our scrutiny shall reveal that the authorities recognised the importance of this legal framework to sustain a regular economic life, a recognition that went along with their wide and early acceptance that trade and merchants made an important contribution to the general welfare of the population.

Most important, we shall show in this Chapter the participation of individuals in the creative, interpretative, and enforcement aspects of much of that legal fabric. This was not only in the realm of taxes, many of which as late as in the XVIII Century were often negotiated, imposed, and administered by the merchants
and other professional *universitas* themselves, or in the "international" field, where many commercial treaties were negotiated by merchants and even survived wars and other political vicissitudes for as long as 241 years - 1492-1733 in the case of Bilbao and Nantes. Above all other areas, this was true of the privileged commercial and maritime jurisdictions. The most salient aspect of the latter was their law creating activity, highly innovative particularly in procedural, banking and insurance law, fields in which the Peninsulars were at times European innovators and leaders.

These laws were not born out of the sudden inspiration of a jurist or the fiat of the legislator. They were the product of custom, of a free exchange of ideas from far and near, and the practical decisions of countless anonymous merchant-judges, mariner-judges, and arbitrators from the same extraction, who - at least on occasions - did not hesitate to pass sentence against themselves. A surviving related institution is still functioning today. The *Tribunal de les Aigües* convenes in front of the Porta dels Apostols of the Cathedral of Valencia to solve, in an entirely oral procedure and without appeal, problems related to irrigation in the *Huerta* of Valencia. The judges are chosen amongst the "llauradors" from the *Huerta*, just as merchants and mariners were selected for the ad hoc mercantile and maritime tribunals. Seeing the judges of the *Tribunal de las Aigües* render prompt decisions with a cool, dispassionate approach to
the law, unconcerned with their personal moral views on the case, one is left with little doubts about the high legal standards of this tribunal and its ability to expedite justice. These qualities appear to have been present to a large degree in the old mercantile and maritime courts, whose procedures, in some instances, were probably very similar to those of the Tribunal de les Aigües.

Aside from voicing and displaying an understanding of the benefits derived for trade and merchants from the privileged jurisdictions for commercial and maritime affairs, the authorities showed a willingness to protect, organise, and promote trade and production in many other ways. One, of course, was the consolidation of the rule of law and the furthering of the general security of the realm. The protection of foreign merchants figured prominently amongst the concrete steps taken to attain this objective, and given that such special protection was already included in the Liber Judiciorum, it bears witness to the early interest of the authorities in commercial matters and to the importance attained by commerce itself at that time. Other important areas attracting the direct attention of the authorities were the maintenance of public goods and the infrastructural works necessary to trade being carried out, as well as the use of the tax apparatus to stimulate economic production and exchanges.
All these measures, which shall be examined in detail in this Chapter, were perfectly congruent with the repopulation "policy" that was the plinth of the Reconquista effort. Therefore, it cannot be surprising to see the concern of the authorities with the material well-being of the population - frequently expressed in the formula "para hacerlos mas ricos et mas honrados" - reiterated and materialised in a remarkably consistent fashion from the earliest Fueros to the XVI century. A similar pattern from a time perspective point of view will be clearly discernible with regard to the actual use of laws and legal institutions reviewed in this Chapter. Many of the examples cited did in fact precede their inclusion into compilations such as the Siete Partidas, and thus they will provide additional proof and valuable information about the historical evolution of some of those laws and legal institutions.
THE LEGAL FRAMEWORK OF THE ECONOMY

The legal framework, which this chapter endeavours to limn, fulfilled at least three vital roles in the economy: protection, organisation, and promotion. Basically, it consisted of a cluster of institutions and recognised procedural forms to attain specific economic and legal goals, a number of remedies obtainable at a known and fixed place for breach of contract and any undue loss or patrimonial injury suffered in the course of a business transaction, as well as some ad hoc measures to protect and stimulate production and economic exchanges.

The importance of this fabric to sustain a regular economic life certainly must have been heightened by the spread of urban life, which, though common to European development, was probably accentuated in the Peninsula by the wars of the Reconquista. A town, as Eli F. Heckscher pointed out, may adequately be defined, from an economic point of view, "as a community which is dependent upon exchange with the outside world."¹ The dissemination of towns, therefore, added weight to the fact that hardly any society is likely to have been able to dress, shelter, defend, and feed itself within the dietary prescriptions of the Church, entirely out of its own resources.² In view of this, it is not surprising to find a wide and early acceptance of the notion that trade
and merchants made an important contribution to the general welfare. 3

The Siete Partidas subscribed to that belief in no uncertain terms:

"Las tierras e los lugares, en que vstan los mercaderes a leuar sus mercadurias, son porende mas ricas, e mas abondadas, e mejor pobladas: e por esta razon deue plazer a todos con ellos..." 4

This Code, however, went beyond the mere extolling of the benefits derived from merchants and trade, to gather laws, jurisprudence, and doctrine in areas that were essential to the activities of the former and the growth of the latter. Those areas were:

1) Merchants, fairs, markets, and related taxes were the subject of the Quinta Partida, Titulo VII - De los Mercaderes, e de las Ferias, e de los Mercados; e del Diezmo, e del Portazgo, que han de daar por razon dellas. 5 Portazgos and other ad hoc taxes are discussed in extenso in Ley V to Ley IX, 6 with Ley V making a clear distinction between tools and things for personal consumption, which were tax-free, and those for sale. 7 Ley VII specified that these taxes were to be publicly rented out to the highest bidder, 8 whilst Ley VIII cautioned against abuses in the collection of such taxes. 9 Fairs are also treated in two collection of laws contemporary to the Partidas10 the Espéculo - Libro V, Titulo VII11 - and the Fuero Real - Libro II, Titulo V.12
2) Companies merited a separate title, Quinta Partida, Titulo X - De las Compañías que fazen los mercaderes, e los otros omes entre si, para poder ganar algo, mas de ligero, ayudando su auer en uno. The introduction, as well as Ley I and II, indicate clearly that a company, which could be formed for a limited or unlimited life span, could enter into the same contractual obligations opened to individual merchants. Ley III specified the manner in which a company could be formed, its object, scope, and the distribution of profits and losses, all of which was left at the discretion of the partners. The distribution of profits and losses is dealt with in extenso in Ley IV to Ley IX. Dissolution and renovation of the company, as well as liabilities and withdrawal of the partners are treated in Ley X to Ley XVII. According to Ley X, the death of one of the partners meant the automatic dissolution of the company, unless there was a specific agreement to the contrary in the contract of formation. The heirs could be part of the renewed company, but did not have to be.

3) Sale of real and personal property - both, choses in action and goods or chattels - are the subject of a long title in the Quinta Partida, Titulo V - De las Vendidas, e de las Compras. Included in its sixty-seven laws are easements and other restrictive covenants, as well as a number of vitiating elements, such as fraud, misrepresentation, undue
influence - presumed by Ley IV in the case of Guardians of minors,\textsuperscript{21} and by Ley V in that of Adelantados or judges,\textsuperscript{22} who were thus forbidden to purchase from these under their custody or within the jurisdiction of their office - error, and illegality. Bailment or mortgage by the buyer subsequent to his purchase, which are, of course, important financial tools, are included in Ley LXVII.\textsuperscript{23} Ley VIII\textsuperscript{24} is of singular importance, for it allowed the sale to take place in the absence of the object of the transaction and in the absence of both, seller and purchaser, who could be represented by procuradores. Some key general aspects of the sale laws are also included in the Fuero Real, Libro III, Titulo X.\textsuperscript{25}

4) The prior set of laws was complemented by those on possession, adverse possession, and the limitation statutes, expounded collectively in Tercera Partida, Titulo XXVIII, \textit{De las cosas en que ome puede auer señorio, e como lo puede ganar};\textsuperscript{26} Tercera Partida, Titulo XXIX, \textit{De los tiempos porque ome pierda las sus cosas, tambien mueble como rayzes};\textsuperscript{27} and Tercera Partida, Titulo XXX, \textit{En quantas manera puede ome ganar Possesion e tenencia de las cosas}.\textsuperscript{28} Principals could gain possession through their procuradores or agents, and masters through their servants or employees. This was clearly stated in the Tercera Partida, Titulo XXX, Ley III\textsuperscript{30} and Ley XI.\textsuperscript{31}
This topic is also set forth in the *Fuero Real*, Libro II, Titulo XI, and in the *Espéculo*, Libro V, Titulo V, and Libro V, Titulo VIII.

5) Easements and other restrictive covenants, an equally significant complement to the sale laws, were, in addition to their treatment in that title, dealt with specifically in the Tercera Partida, Titulo XXXI, De las servidumbres, que han unas cosas en otra, e como se pueden poner.

6) Barter and *contractus innominatus* were treated in the Quinta Partida, Titulo VI, De los Cambios que los omes fazen entre si: e que cosa es cambio. Cambios, which could be transacted by anyone legally capable of buying and selling, encompassed not only the simple *permutatio* or *do ut des* - exchange of one thing for another. It also included - through the *contractus innominatus* - the exchange of one thing for a service - *do ut facias*, the exchange of a service for a thing - *facio ut des*, and the exchange of services - *facio ut facias*. Thus, the contracting parties were able to choose a combination of transactions to suit virtually any business situation. Cambios were also treated in the *Fuero Real*, Libro III, Titulo XI.

7) Rentals and leases were the subject of the Quinta Partida, Titulo VIII - *De los Logueros, e de los Arrendamientos*. 

Ley III\textsuperscript{39} details the ample scope of rental and leasing, which included "obras que ome faga con sus manos", beasts, vessels - the latter further discussed in Ley XIII,\textsuperscript{40} the usufruct of land and other properties, and factors of production - which are dealt with in extenso in Ley XIV.\textsuperscript{41} Storage is treated at length in Ley XXV,\textsuperscript{42} and the liabilities of inn-keepers, hoteliers, and mariners in Ley XXVI and XXVII\textsuperscript{43}, whilst the \textit{contractus emphyteuticus} is the subject of Ley XXVIII.\textsuperscript{44} The price of renting or leasing, and its payment, was left open to the local use and custom - "segund la costumbre que fuere usada en cada lugar," as clearly stated in Ley IV.\textsuperscript{45} In the \textit{Fuero Real}, rentals and leases were the topic of Libro III, Titulo XVII.\textsuperscript{46}

8) Vessels also merited a special title, Quinta Partida, Titulo IX - De los Nayios e del pecio dellos.\textsuperscript{47} The obligations of the master and crew towards the shippers were clearly spelled out in Ley I\textsuperscript{48} and Ley II\textsuperscript{49}, liability and compensation for loss, damage or jettison of the cargo in Ley III to Ley XIII,\textsuperscript{50} and the special jurisdiction for all maritime matters in Ley XIV.\textsuperscript{51} Vessels were also the theme of a separate article in the \textit{Fuero Real}, Libro IV, Titulo XXIV.\textsuperscript{52}

9) General contracts are the subject matter of a long title,
which includes, of course, a number of vitiating elements, in Quinta Partida, Titulo XI - De las Promisiones, e Pleytos, que fazen los omes unos con otros, en razon de fazer, o de guardar, o de cumplir algunas cosas. Ley X is of particular importance for it contains the essential elements of what later became a bill of exchange. Although this law described an oral procedure, and acceptance was expressed by the words "I promise", the basic concept of what later was to be the drawer, the payee, and the acceptor, would appear to have been, we would venture, distinctly present. Ley VII to Ley IX dealt with the obligations contracted by procuradores on behalf of their principals.

10) Cautions, guarantees, and other securities given for the performance of contracts and other obligations are treated in Quinta Partida, Titulo XII - De las Fioduras que los omes fazen entre si, porque las promisiones, e los otros pleytos, e las posturas que fazen, sean mejor guardadas. Ley XVI established that the death of the guarantor did not extinguish the guarantee, pro tanto adding a necessary element of stability to a business transaction secured in that fashion. Ley XIX complemented the prior law. Whilst Ley I declared that anyone legally capable of entering into general contracts could be party to a contract of suretyship, Ley XX to Ley XXXIV contemplated a number of circumstances in which such engagements could be carried out.
by procuradores, servants or employees, and third parties. In the latter case, Ley XXII is of particular importance for it recognises that interest could be paid in such circumstances. The topic was also included in the Fuero Real, Libro III, Título XVIII, and in the Leyes Nuevas, Ley XXIX.

11) Pledges, bailment, chattel mortgages, and mortgages are the object of Quinta Partida, Título XIII - De los Penos que toman los omen muchas pagadas, por ser mas seguros, que les sea mas guardado, o pagado los que les prometen de fazer, o de dar. Ley VIII is of particular interest, for it allowed the personero or procurador and the mayordomo - manager or administrator - to enter into such contractual obligations. Ley VI and Ley IX complemented the prior law. The subject was also treated in the Fuero Real, Libro III, Título XIX.

12) The discharge of contracts by performance, by agreement - material alteration of the terms, accord and satisfaction, and novation, by tender of performance, by the contract provision of its own dissolution - conditional contracts, by frustration, perishing of the thing or act of God, and by operation of law is treated in great detail in Partida Quinta, Título XIV - De las Pagas, e de los Quitamientos, a que dizen en latin Compensacion, e de las Debdas que se
pagan a aquellos a quien las non deuen.\textsuperscript{70} Restitution, substitution, and compensation, are interspersed throughout the title. Ley XXII and XXIII\textsuperscript{71} deal with the compensation of losses amongst the partners in a company due to negligence, fraud or other reasons. Ley XLIV\textsuperscript{72} stipulated the restitution of any prepayment given to a messenger of envoy, whether in a master and servant or an arm's length relationship, when the mission's departure was prevented through acts of God or the decision of the sender, or when it could not be carried out due to the envoy's fault or volition. Ley XLVI\textsuperscript{73} extended that remedy to prepaid services in general, and specifically those of procuradores or lawyers. Ley V,\textsuperscript{74} VII,\textsuperscript{75} and XXIV,\textsuperscript{76} allowed the procuradores to discharge contracts in any of the prescribed forms if the powers conferred by their principals so entitled them. The discharge of contracts is also treated in the Fuero Real, Libro III, Titulo XX.\textsuperscript{77}

\(\text{(3)}\) Insolvency and bankruptcy are dealt with in Partida Quinta, Titulo XV - Como han los debores a desamparar sus bienes, quando no se astraen a pagar lo que deuen: e como deue ser reuocado el enagenamiento, que los debores fazen maliciosamente de sus bienes.\textsuperscript{78} Ley I\textsuperscript{79} establishes the bankruptcy proceedings, which could be initiated by the debtor himself, in person, by letter or through a procurador, and, of course, by a court decision. Ley II\textsuperscript{80} makes a clear distinction
between preferred and ordinary creditors. Ley III\(^8\) instituted that the discharge of a bankrupted debtor cancelled the unpaid portion of his debts remaining after their reduction by the liquidating dividends, and, subject to interpretation, it left an honest but unfortunate debtor free to resume business life.\(^8\) However, the guarantor or surety remained liable for the unpaid portions of the primary debt. Ley V and VI\(^8\) provided for a scheme of arrangement or composition as an alternative to bankruptcy proceedings. Ley IV\(^8\) - which committed a recalcitrant debtor to gaol until payment was made or bankruptcy proceedings started - and Ley VII to XII\(^8\) dealt with the unauthorised transfer of assets made by a debtor in order to defeat his creditors, which were either void or both void and fraudulent, whilst Ley X specified how to deal with the absconder and any property found on him.\(^8\)

14) Representation and notarial acts, a singularly important area, merited extensive passages in the Tercera Partida, and some specific laws in the Quinta Partida, aside from those already mentioned in the law of contracts and complementary legislation. There are five major topics in this area:

a) Personeros or Procuradores are the subject of the Tercera Partida, Titulo V - De los Personeros.\(^8\)

We have already discussed them in Part I, in connection with the administration of the realm. They could
equally represent cities, individuals or corporations before the courts, carry out their petitions to administrative bodies and the King, and enter into a wide range of contractual agreements on behalf of their principals.

In addition to the Partidas, Personeros or Procuradores were treated in the Espéculo - Libro IV, Titulo VIII, the Fuero Real - Libro I, Titulo X, and in the Leyes del Estilo - Ley XII to Ley XVII.

b) Agency proper, both as an arm's-length agreement and within a master and servant relation, is specifically dealt with in the Quinta Partida, Titulo XII, Ley XX, XXI, XXII, XXIII, XXIV, XXV, and XXVI. These laws are complemented by those of the Tercera Partida, Titulo XXX, Ley XIII, Titulo XXX, Ley III, and Ley XI, as well as Titulo XXXII, Ley I. An agency relationship could also be established by ratification, as it can clearly be seen in Quinta Partida, Titulo XII, Ley XXVI, Ley XXVII, Ley XXVIII, Ley XXIX, Ley XXX, Ley XXXI, Ley XXXII, Ley XXXIII and Ley XXXIV.

c) Witnesses, who had a prime role in the formalities of notarial acts, in those surrounding a contract, and in the court proceedings that could arise from it, were the
object of the Tercera Partida, Titulo XVI - De los Testigos. The laws of this long title attempted by every means possible to ensure the trustworthiness of witnesses and avoid situations where a conflict of interest was likely to arise. In keeping with that ideal, were the barring of lawyers and procuradores from acting as witnesses for their principals - Ley XX\textsuperscript{112} - and the partners from being each other's witness - Ley XXI.\textsuperscript{113} Ley XXXVI compelled the broker to be a witness if all the parties of a transaction carried out through him were in agreement.\textsuperscript{114} Witnesses were also the subject of a long title in the Espéculo - Libro IV, Titulo VII.\textsuperscript{115}

d) Notarial documents were dealt with in a long title in Tercera Partida, Titulo XVIII - De las Escrituras, por que se preuan los pleytos.\textsuperscript{116} This long title detailed in precise fashion the requirements and formalities of a large number of notarial acts, both public and private in nature. Amongst the former, the "Quita de pecho por el Rey" (Royal Grant of tax exemption) was the subject of Ley X;\textsuperscript{117} the "Carta de quitamiento del portadgo" (Royal Grant of exemption of Portazgo duty) was treated in Ley XI;\textsuperscript{118} Ley XIII\textsuperscript{119} - Como deue ser fecha la Carta de los arrendamientos, que el Rey faze - dealt with the rental of taxes, ports, salt deposits and other
Royal rights; Ley XVI\textsuperscript{120} with the contracts for public works ordered by the Crown; Ley XIX\textsuperscript{121} with the security of cattle in transit; and Ley XX\textsuperscript{122} with the special Royal Permits required to export forbidden items.

Amidst the very many private notarial acts prescribed in this title, the most significant for our purpose were those treated in Ley LVI\textsuperscript{123} - real estate transaction, Ley LVII\textsuperscript{124} - Carta de fiadura de la vendida (sureties), Ley LXI\textsuperscript{125} - sale by personero, Ley LXIV\textsuperscript{126} - quando un come a otro vende el derecho que el ha en alguna cosa (sale of choses in action), Ley LXV\textsuperscript{127} - sale of beasts, Ley LXVI\textsuperscript{128} - Carta del cambio (barter agreement), Ley LXX\textsuperscript{129} - Carta de los emprestidos, sobre las cosas que suelen medir, o contar, of pesar (loan agreements, including those secured by pledges or mortgages), Ley LXXI\textsuperscript{130} - loan of beasts or chattels, Ley LXXII\textsuperscript{131} - money on deposit, Ley LXXIII\textsuperscript{132} - carta del alquiler - tenancy of a house, Ley LXXIV\textsuperscript{133} - arrendamiento de viñas, o de huertas, o de otra cosa (tenancy of rural property, which, similarly to the prior law appear to contemplate only the creation of a leasehold interest in which the lessor granted a term certain to the lessee), Ley LXXV\textsuperscript{134} - Carta de la lauor (contract of services), Ley LXXVI\textsuperscript{135} - contract of rental of beast of burden, Ley XXVII\textsuperscript{136} - Carta del afletamiento de la nave (charter
vessel), Ley LXXVIII\textsuperscript{137} - Carta de la compañía (company formation act), Ley LXXIX\textsuperscript{138} - Carta quando algund ome da a otro su heredad a labrar a medias (moiety agreement), Ley LXXXI\textsuperscript{139} - Carta del quitamiento de la debda (discharge of debt agreement), Ley XCVII\textsuperscript{140} - Carta de la Personeria (agency contract) and Ley CVI\textsuperscript{141} - Carta del compromisso (\textit{comprimissi in arbitrum} or arbitration agreement).

e) Notaries were the subject of the Tercera Partida, Titulo XIX - De los Escriuanos, e quantas maneras son dellos, e que pro nasce de su oficio quando lo fizeren lealmente.\textsuperscript{142} There were two classes of notaries, according to Ley I: "los vnos que escriuen los preuillejos, e las cartas, e los actos de la Casa del Rey" - Crown Notaries concerned exclusively with public administration and the Royal Chancellery, "e los otros, que son los Escriuanos publicos, que escriuen las cartas de las vendidas, e de las compras, e los pleytos, e las posturas que los omes ponen entre si en las Cibdades, e en las Villas" - Public Notaries, who were concerned with the business of private persons.\textsuperscript{143} Ley VIII\textsuperscript{144} - Que pro nace en fazer los Registros, e que deuen fazer, e guardar los Registradores - establishing the registry that was to be kept by Crown Notaries; Ley IX\textsuperscript{145}, prescribing a similar one for the Public Notaries; Ley X\textsuperscript{146} - Como el
Escriuano deue refazer la Carta otra vez, quando aquel a quien la dio dixe que auia perdido - determining the manner and circumstances in which copies from the registry to renew damaged originals, were probably amongst the most significant legal contributions to the stability and predictability of the economic life of the period. Notaries were also dealt with in the Espéculo - Libro IV, Titulo XII, and in the Fuero Real, Libro I, Titulo VIII.

The Ley III of the Tercera Partida, Titulo XIX - Quien deue poner los Escriuanos en la Corte del Rey, e en las Ciudades, e en las Villas determined that only the King or Emperor and those cities with a "speciale privilegium" had the authority to install escrivanos in office - an exclusivity reiterated in the Fuero Real, Titulo VII, Ley I, and in the Espéculo, Libro VI, Ley I. Abbot Payson Usher, who discusses in detail notaries and notarial acts in the Siete Partidas, finds them largely similar to those of the later and less explicit French legislation on the subject, both set of laws having shared a development common to Italy and other Western European areas. Renée Doehaerd, who analyses notaries and laws of the notarial acts of Lombardy and Genoa, depicts a panorama strikingly similar to that of the Partidas, including the
special privilege given by the Prince to cities like Genoa and Pavia so that they could invest notaries in office, as well as the registration and formalities involving representation agreements and the law of contracts.

Since in the Peninsula, in France, and Italy, the basis of a contract remained, as in Roman Law, the oral agreement of the parties, and the role of the notary was to record what he saw and heard, the legislation on representation, notaries, and notarial acts, had a crucial importance for the development of business. By freeing the parties from having to contract in person and, as clearly stated in the Partidas, from having the thing sold in front of them, the legislation removed all legal obstacles regarding the area and volume of transactions into which a single party could enter. Furthermore, it not only allowed a person or business entity to get simultaneously into any number of contractual engagements, but also to sue or be sued, and to plead before the Crown or any administrative authority, in virtually any jurisdiction. In addition to enhancing the possibilities of doing business, this set of laws added a degree of certainty and predictability to it. A notarial act attested the date, place, and basic details of a contract until it was successfully challenged in court, which together with the fact that one of the originals was kept permanently in the notary's register, must have certainly contributed to
facilitate the control of agents, procuradores, and business in general, as well as to reduce misunderstandings and litigation.\textsuperscript{163}

The Siete Partidas - as well as the Especulum, the Fuero Real and other contemporary Codes - were not a set of innovative laws. This, as we have seen,\textsuperscript{164} was beyond the powers of the legislator at the time. Like their great predecessors, the Digest and the Codes of Theodosian and Justinian,\textsuperscript{165} the Siete Partidas were essentially a vast compiling effort, a gathering of existing laws, jurisprudence, and doctrine with a very practical purpose in mind: to unify their common denominator. Although they had great legal authority, the Siete Partidas were not, strictly speaking, Castillean law between 1263 and 1348, and then, only on a supplementary basis to the local laws.\textsuperscript{166}

For our purpose, the greatest significance of this Code lies in the fact that its laws on contracts, association and the other essential areas that we have outlined were a reflection of existing laws, jurisprudence, and doctrine. Each of them contained a number of exceedingly complex legal abstractions, developed through accretion over a long period of time. It is unlikely that they would have survived, let alone evolved, unless they had been subject to constant use.\textsuperscript{167} Even if we ignore the large body of legal historians who sustain the notion that the reality of law ultimately reflects the reality of life in a given period,\textsuperscript{168} it would appear clear from an
examination of the text that King Alfonso el Sabio and his team of jurists were not interested in collecting oddities. Although, in accordance with the stylistic standards of the time, a certain amount of hyperbole and a hortatory note are not infrequent, the laws are well founded and for the most part straightforward. Often they are so to the point of being terse, as the "compra-venta" - sales law,¹⁶⁹ which is a good example of what a general legal definition should be like. In other instances, in a very specific law such as the "Carta del afletamiento de la nave" - chartering of vessels,¹⁷⁰ all the essential aspects of a complex operations, including the customary credit terms, are set forth in a fresh, easy manner, which would suggest a close acquaintance with an everyday affair. All in all, the solid legal fabric of the Partidas would seem to point towards the existence of an intense economic life in the Peninsula; or, at least, and by the most cautious reckoning, the possibility of it cannot be dismissed.

That legal fabric was strengthened by other pieces of legislation and administrative decrees whose specific objective was to protect, organise, or promote trade and the economy as a whole. The sources of this ad hoc legal framework were varied, and included the Crown, the local authorities, the professional corporations, a number of functionaries who acted on their behalf,¹⁷¹ and the Cortes. Privileges and exemptions formed probably the bulk of it, and, for the most part, these concessions were the result
of petitions from the local authorities, or individuals. They encompassed a wide variety of subjects, covering the entire spectrum of the Peninsular economic life, and made use of a number of devices to attain their goals, from the granting of tax exemptions and monopolies to the induction into the ranks of the nobility of all merchants and "gentes de la mar" of Seville by its reconqueror, King San Fernando of Castille.

Even though any such measure, whatever its ostensible purpose, is bound to have had an effect through the entire economy, we will divide the ad hoc legal framework into two major areas, according to whether the main objective for its enactment was the promotion of security or that of trade and production. The jurisdictional privileges of merchants and other professional corporations will be gathered into a third group to facilitate its consideration.
I. Promotion of Security

A guaranteed peace of the Market that, as Luis García de Valdeavellano y Arcimis points out,\textsuperscript{177} compounded the crime of whoever broke it by adding the violation of a Royal dispense to an ordinary offense, was chronologically amongst the first such ad hoc measures in the vital area of security. The protection of the merchants and the "iram et indignationem" of the monarch incurred by those violating his dispensation were clearly stated in the concession of fairs. José Mut Remola shows that it was reiterated in the many instances in which the concession of the fair to Lérida was reconfirmed;\textsuperscript{178} always, as most Royal decisions of economic nature, at the request of the inhabitants of the city.\textsuperscript{179}

In Castille, the same principle was embodied in the formula "salvos y seguros", says María del Carmen Carlé,\textsuperscript{180} with which the safety and freedom of merchants were guaranteed, as can be clearly seen in the Privilegios given by King Alfonso X to Seville\textsuperscript{181} and Badajoz.\textsuperscript{182} The Siete Partidas repeated that formula in the Quinta Partida, Título VII, Ley IV,\textsuperscript{183} a very explicit law that extended that protection to the merchandise and all the belongings of the merchants, not only in the fairs, but en route to and from them. In addition, the city council or the local lord were made liable for the restitution of any property taken from those merchants, plus a compensation for any loss or

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damage. The law also provided for a cash reimbursement in lieu of restitution when the property could not be found.

Ley III of the same Quinta Partida, Titulo VII,\textsuperscript{184} forbade the exaction of tributes from merchants other than those expressly granted in the privilege of the fair. It also protected the coming merchants from execution orders against tangibles, attachennents against choses in action, and the outright seizure of their property, except for their own debts and sureties, if they were contracted during the fair, in a previous one, or were due to be discharged during the fair in question.\textsuperscript{185} The sequestration of the merchant's mules was specifically prohibited on a number of occasions, at the request of cities and individuals.\textsuperscript{186}

These safeguards were part of a customary Ius Fori, which evolved with common characteristics throughout Europe, as shown by García de Valdeavellano,\textsuperscript{187} Pierre Huvelin\textsuperscript{188} and Adolf Schaube,\textsuperscript{189} amongst many authorities. In the Peninsula, they were reiterated ad infinitum in successive issues of fair privileges,\textsuperscript{190} in the Cortes,\textsuperscript{191} in a number of documents,\textsuperscript{192} and were also inserted in numerous Fueros.\textsuperscript{193} Pro certo habere the special rights were restated once more in the Cortes of Nieuw, in 1473, as petitioned by the Procuradores of several cities,\textsuperscript{194} as well as in the Novísima Recopilación.\textsuperscript{195}

Foreign merchants were the object of a very early attention, which would suggest that their presence was a common event and that
it was considered important for the common good. The Liber
Judiciorum, as we have seen, was already concerned with the
"transmarinis negociatores", and recognised them the right to be
judged by special judges. This concern for the well being of
foreign merchants, and the special protection given to them,
was shared in contemporary France, according to Pierre Huvelin,
and, generally, elsewhere in Europe, as the classic study of
Wilhelm Heyd would appear to indicate.

According to Florentino Pérez-Embí, a number of ambiguities
in the legal status and fiscal responsibilities of the merchants
in Seville gave rise to a joint petition to King Alfonso X.
The Monarch answered with the "Privilegio a los mercaderes de
dentro y fuera del reino", signed in Burgos in 1281, which gave
equal privileges to all merchants, subjects and foreigners
alike. In Aragon, a Pragmática - Royal Ordinance - of Martín I,
in 1401, conferred to foreign merchants the same rights enjoyed
by the subjects, merchants or not, as it had been demanded by
the main trading cities of the Kingdom. This attitude of the
cities was consonant with the many instances in which local
merchants rallied in support of foreign merchants, petitioning
against expulsion orders. Therefore, even though here as
elsewhere, the status of foreign merchants was subject to the
vagaries of local and international politics (and that could
mean a considerable number of ups and downs) the tendency,
as Claude Carrère concluded, appears to have been for foreign
merchants to enjoy a considerable amount of freedom, in addition to the customary protection afforded to them.

Security, in general terms, was strengthened with the development of the Hermandades. Originally they were associations of municipalities created at the initiative of the town councils, often together with the local lords and nobles, which were conceived primarily to provide a regional police force, so as to enforce peace and order, particularly on the highways, and probably to prevent smuggling.\(^{204}\) Rafael Gibert y Sánchez de la Vega sees the Hermandades as one of the few instances in which the extreme political and administrative localism of the time was transcended.\(^{205}\)

In 1476, in the Cortes of Madrigal, at the initiative of the Procuradores of Burgos, and after repeated petitions and efforts going back to 1370, an uneasy agreement was reached, by which many of those forces were gathered in a single Hermandad, much later known as the Santa Hermandad.\(^{206}\) The intricate gestating process of this agreement,\(^{207}\) and that of the Ordenamiento de Madrigal, a set of rules establishing the jurisdiction of the Hermandad,\(^{208}\) have been studied in detail by Luis Suárez Fernández, and constitute an interesting example not only of the intricacies and vicissitudes leading to many administrative decisions, but also of the tendency of the time for the small, local outlook, to prevail over the large, general one.\(^{209}\)
II. Promotion of Trade and Production

The "Privilegio de Mercado", be it in its daily or in its many periodical forms, was one of the earliest recorded privileges granted with the deliberate aim of promoting trade. The power to make such concessions, when there was not an already established customary market, laid on the Crown, or on those bodies - generally the cities - to which the Crown delegated it, according to the Quinta Partida, Titulo VII, Ley III - De las Ferias, e de los Mercados, en que usan los ones fazer vendidas e compras. The Royal prerogative to grant "ferias" was recognised also in the Segunda Partida, Titulo I, Ley II - Que poder ha el Emperador, e como deue usar el Imperio.

Ad hoc privileges granting the freedom of trade, monopolies, and special permits were prominently used to promote trade and production in its many ramifications. So were subsidies, and a host of local statutes that endeavoured to make economic transactions easier and safer through the provision of an equal and predictable treatment for all those taking part in them. Highly noticeable amongst these statutes were those stipulating the use of a uniform set of weights and measures, and the many ordinances, often self-imposed by the professional groups, which attempted to secure a standard quality for their goods and services, and to clarify the established liabilities of professionals and independent contractors.
However, out of all the legal means available for the promotion of trade and production, perhaps none was employed more frequently and in a greater variety of situations than taxes. The Crown was unequivocally invested with the basic power to tax, as clearly stated in the Tercera Partida, Título XXVIII, Ley XI - En quales cosas los Emperadores, e los Reyes, han señorío propriamente. In spite of that, the tax structure in the Peninsula, like elsewhere in Europe, was exceedingly complex, not only on account of the many layers of government and universitas to which taxing powers had been delegated, but also because many taxes varied considerably according to the local Fueros, special concessions, and the status of those who were liable to pay them.

One of the fundamental functions of taxes was to provide funds for the construction and maintenance of a basic number of public goods, without which no economic activity could have taken place. The division between private and public goods was made clear in the Tercera Partida, Título XXVIII, Ley VI - Como de los puertos, e de los caminos puede usarse cada uno; complemented by Leyes III to V, and VII to X of the same title. Rivers, ports, public highways and bridges were recognised as public goods, and, as such, the access to them was made available to all. This condition was also stressed in the Fuero Real. Further reference to the proper upkeep and legal status of ports was made in the Tercera Partida, Título XVIII, Ley XVII; to that of
bridges in the Tercera Partida, Titulo XXXII, Ley XX;\textsuperscript{231} and, as far as public highways were concerned, in the Primera Partida, Titulo VI, Ley LIV,\textsuperscript{232} Segunda Partida, Titulo XI, Ley I,\textsuperscript{233} and Tercera Partida, Titulo XXXIX, Ley VII.\textsuperscript{234}

The local authorities had the responsibility of maintaining those public goods, which aside from the local transportation infrastructure, included defense works, such as forts, city walls and gates, indispensable to protect that infrastructure and the community as a whole. There were three main sources of revenue for that purpose. The first one was a number of local taxes and mulcts that the local Council was empowered to collect, and the rents of pastures, forests, and other publicly owned property, often granted collectively in the \textit{Fueros}, \textit{Cartas Pueblas}, and other privileges extended to the town for that specific purpose.\textsuperscript{235} A second source of revenue were ad hoc taxes raised to pay for a particular facility.\textsuperscript{236} The third source of revenue was the town's share of the Partazgo duty. According to the Quinta Partida, Titulo VII, Ley VII,\textsuperscript{237} this and all Royal taxes were to be publicly rented out to the highest bidder. The same law established that two thirds of the proceeds from the rent of the Partazgo duty was to go to the Royal coffers and one third to the place of collection, where it was to be used in public works. In practice, it was common for the Crown to donate its share,\textsuperscript{238} and not unusual for the cities to purchase it.\textsuperscript{239} Private interest played also a significant role in the maintenance of
these essential public goods. Aside from farming taxes, merchants and other individuals or corporations were frequently concerned with the upkeep of vital facilities, contributing to it with self-imposed taxes or subsidies. They also brought to the fore the need for new ones, contributing with designs and amortisation plans, and, on occasions, individuals built and outrightly owned important public works.

The general taxing power of the Crown included the faculty of levying duties on the production, trade, and transit of goods. The Portazgo, Almoxorifazgo, and other tributes specifically related to the transit of goods for sale were dealt with in the Quinta Partida, Titulo VII, Ley V - De los Portadgos, e de todos los otros derechos, que han a dar los Mercadores, por razon de las cosas que lleuan de vnos lugares a otros. Whilst there were clear dispositions to prevent double taxation in Castille and in Aragon, the large number of granted or restated tax waivers, the obvious success of the "Ferias Francas" and the keen competition to establish them, clearly evidenced in the records of the Cortes, which portray rather vividly the inability of the Crown to control the competition of the Señoríos and the cities to grant "Ferias Francas" in open defiance of the exclusive jurisdiction of the Crown, would seem to indicate that tax exemptions were amongst the most favoured promotional instruments.
This old and tried practice was used with remarkable frequency and consistency over an extremely long period of time with regard to Portazgos and other transit duties; and, as the documentary evidence collected by Father Andrés Marcos Burriel and other writers clearly show, those exemptions often covered the entire area of the realm and were granted already in the X Century. A vigorous litigation was pursued by cities and other beneficiaries of those exemptions in order to enforce them - which on occasions led to further confirmations of the privileges, sometimes stressed by a flat refusal to pay and threats of violence. In addition to that, the purchase of taxing rights was used as a viable alternative, and a relentless fight against unauthorised transit duties of any kind was carried out at all times.

If we add to all that the fact that credit terms for the payment of taxes were by no means unusual, even in the case of exported goods, the casting of some doubts upon the hindrance value traditionally assigned to transit duties in Medieval trade would appear to be warranted, at least as far as the Peninsula is concerned. The fact that the merchants of Burgos were repeatedly forced to underwrite the maintenance of the roads and bridges to the northern ports, even at the height of their use for a very profitable trade, would seem to lend further ground for those doubts, since the insufficiency of taxes ostensibly levied to maintain those facilities would suggest that they were not
collected in full. The *Alcabala*, a universal and by far the most generalised consumption tax, according to Salvador de Moxó Ortíz de Villajos, was levied *ad volorem* on all purchases, sales, and barter, although it was also exacted at times as a transit tax. Conspicuously enough, the *Alcabala* was waived for all sorts of promotional purposes by the Crown and by private holders of the right, generally nobles. In an unauthorised fashion, city councils and Señoríos, eager to further the fairs and general trade of their jurisdictions, frequently avoided the imposition of this tax. Royal exemptions from *Alcabala*, of varying length and amplitude, were granted in the XIII Century and consistently confirmed thereafter to cities, fairs, institutions, and geographical regions throughout Castille. Córdoba, Xerez, and Seville, Cádiz, Málaga, Medina Sidonia, Gibraltar, Osuna, Arcos de la Frontera, and in general the cities of Southern Andalusia, were repeatedly endowed with that privilege. Similar exemptions were granted to the fairs of Segovia - in terms that show a clear understanding that the benefits derived from a tax-free fair transcended the city itself and even the realm, and illustrate the way of publicising the privileges of the fair - and the market of Sigüenza. Guadalupe and the Monastery of Santa María del Río Seco were granted territorial exemptions from *Alcabala*, and so were Simancas, the Tierra de Ayala, in Alava, and many localities in the North-Western
area,\textsuperscript{278} where it was given in conjunction with other extensive
tax exemptions and special privileges.

Special concessions were granted to San Sebastián,\textsuperscript{279}
Bilbao,\textsuperscript{280} and in general to the "Villas" and localities of the
"Señorío de Vizcaya", where the exemption from Alcabala\textsuperscript{281} was
added to very ancient and extensive trade and tax privileges.\textsuperscript{282}
The heavy dependence of the area upon trade to compensate for
its food deficiency\textsuperscript{283} was probably instrumental in obtaining many
of these privileges. Thus, we see already in the Fuero Viejo
de Vizcaya that foreign seamen were free to sell victuals, and
in general to buy and sell at will upon arrival,\textsuperscript{284} whilst
"Labradores",\textsuperscript{285} "Hijosdalgos",\textsuperscript{286} and "Vizcaínos" in general were
allowed to wholesale and retail in their houses.\textsuperscript{287} This would
in fact strengthen the notion that trade was by and large a
tax free activity in Vizcaya, for although similar concessions
were granted elsewhere,\textsuperscript{288} notably to "los de la mar" in Seville\textsuperscript{289}
and the "Hijosdalgos" in Seville and Toledo,\textsuperscript{290} the generalised
fashion of the privilege in Vizcaya would suggest a lack of
concern with tax evasion, which was the main reason to restrict
trading activities to a number of fixed and known places.\textsuperscript{291}

While the privileges of Vizcaya were resented and challenged\textsuperscript{292}
they were vigorously defended with very extensive litigation\textsuperscript{293}
and a steady stream of petitions to the King and the Royal
Councils,\textsuperscript{294} as well as by means of the Hermanad, an ad hoc
association of the "Villas". Although it was unable to abate the fierce individualism and intense rivalry of its constituent members, the Hermandad was nevertheless able to realise the manifest purpose of its creation: "guardar los privilegios que nos el - King Fernando IV - dió, é nos otorgó, é lo que el juró, é prometió, é fizo nos jurar." In fact, the Monarchs had to swear to preserve the integrity and the privileges of the Señorío de Vizcaya, and not only made the point of reiterating them, but on occasion even augmented these privileges, as Teófilo Quiard y Larrauri and Estanislao Jaime de Labayru y Goicoechea have shown in their well documented studies. The exceptional status of the Señorío was also reflected in the fact that the "Mercedes" of Vizcaya were reserved for resident 'Vizcaínos', and the economic privileges of the region were incorporated into international treaties as late as 1665 and 1713.

Ramón Prieto Bances has depicted very similar tax exemptions and economic privileges in Oviedo, Asturias, which also shared the food deficiency and need to trade of Vizcaya. San Antonio de la Barquera, together with Castro Urdiales, Laredo, and Santander, the other main "Villas" on the Biscay shores of Castille proper, enjoyed a very similar status. Documentary evidence presented by Valentín Sainz Díaz reveals that all of them were founding members of the "Hermandad de las Marismas", formed to defend their privileges menaced by a Diezmo tax on all
imports and exports. The privileged condition of the members and the economic benefits derived from it were described in no uncertain terms by Cesáreo Fernández Duro: "Causa y fundamento de la expansión y prosperidad de las villas marítimas era la libertad absoluta de que habían gozado y gozaban, no interviniendo para nada la Corona en sus presupuestos y operaciones."  

A very ample freedom of trade, in the current sense of the term, was also a characteristic note of Catalonia since its earliest days, and very much a factor of its economic success, according to Antonio de Capmany y de Montpalau and Charles Verlinden. As we have seen, the use of tax exemptions to promote trade was very visible there, and, in general throughout the territories of the Crown of Aragon.

Tax exemptions were also extensively employed to promote the settlement of land and urban centres. These incentives, continuously used from the very early days of the "Reconquista" "para que la dicha ciudad se pueda mejor poblar," were not only granted by the Crown but also by nobles, city councils, the Church and the Military Orders and were frequently enhanced with the remission of debts and other crimes. They often applied to a whole Kingdom, such as the exemptions of Portazgo, Almoxorifazgo and other duties granted by the Catholic Monarchs to those willing to settle in the newly reconquered Kingdom of Granada in 1490. Asides from the universal condition
that in order to enjoy the temporary exemptions, the settlers had to be from another territorial jurisdiction; these promotional grants made no distinctions between subjects of the Crown and foreigners. Immigration was thus encouraged and tax exemptions to new settlers "quier de Francia, quier de España o de cualquiera nación que vengan hi poblar" were common and general. Further examples of this policy are amongst many to be seen in Seville, Toledo, Burgos (where Julián García Sainz de Baranda has shown that many of the original settlers were "Franceses" - French and Flemish - Germans and Gasconas) as well as the other cities along the road to Santiago de Compostela, in Navarra, La Rioja and Aragon, where the presence of immigrants is also a matter of fact.

Economic production was stimulated in several ways. Aside from the obvious potential benefits derived from the repopulation "policy" as well as from transit and consumption tax waivers - which should have generally increased the demand for goods and services, production was also directly promoted by means of tax reductions or exemptions. Often these specific measures were designed to aid exports and give incentive to the consumption of local products, or even those made elsewhere in facilities owned by "vecinos" and local "residentes." A typical example of the latter is the complex tax structure and regulations governing the commercialisation of wine in Seville, analysed by Ramón Carande y Thovar. Tax exemptions for migrant workers,
including their families, implements, and personal belongings, were used "since time immemorial," as asserted in the documentary evidence presented by Antonio Collantes de Terán Sánchez, to ensure the supply of labour for the harvest of olives in Seville. From 1419 onwards these tax exemptions were made part of the conditions imposed upon the rentiers of the taxes of that city. Given the fact that olives and olive oil were one of the chief export items of Seville, these tax exemptions could be considered a hidden export subsidy, in so far as they reduced production costs. Julio Valdeón Baruque has shown the use of tax exemptions to be what we would call today fringe benefits, for all those working in the mint of Seville, which presumably, reduced the wage bill of that institution; Hipólito Sancho de Sopranis has shown tax exemption to be part of the encouragement made of productive investments in rural property in Jerez de la Frontera, to assure the supply of Cádiz. Further stimulus of agricultural production and tool making should have resulted from the fact that working tools "o otras cosas, para labrar sus vinas, o las otras heredades que ouiere" were - provided that they were kept for the owner's use - exempted from Portazgo duty, according to the Quinta Partida, Titulo VII, Ley V. The same law exempted from the Portazgo duty writing paper, books, and other materials for students. The Cortes of Toledo, in 1480, made all books, including the imported ones, absolutely duty free in the entire realm, on account of the universal benefit derived from them. The same Cortes also sought to enforce the tax
exemptions and the regulations prohibiting the exaction of more than one Montaigo duty from the flocks of sheep and the herds of cattle, swine, and other animals, in terms which suggest a very close interdependence of those industries with several others throughout the realm and beyond it.\textsuperscript{334}

There is a considerable amount of literature on the use of taxes as a promotional instrument but we are without a sufficiently comprehensive survey of its impact in the entire economy at any given time. It is beyond the scope of our study to overcome this deficiency, but it would seem to be in order to stress the existence of evidence of a wide and persistent use of tax exemptions to promote trade and production,\textsuperscript{335} per se and to ensure the settlement of land. Of the noticeable success of many such schemes,\textsuperscript{336} none was perhaps more obvious than the famed fairs of Medina del Campo, at one time the "plaza principal del tracto y ferias de toda España."\textsuperscript{337}

It would also appear important to underline the fact that taxes - in some cases as late as the XVIII Century, according to the testimony of Rafael Antúnez y Acevedo, a distinguished Minister and Judge of the Supreme Council of the Indies\textsuperscript{338} - were often negotiated,\textsuperscript{339} imposed\textsuperscript{340} and administered\textsuperscript{341} by the merchants and other professional universitas. This may have accounted for the respect shown on some occasions for special privileges;\textsuperscript{342} above all, the ability of those liable to pay the
taxes to do so without undermining their competitive position was presupposed. If that was not the case, merchants and producers had channels to voice their complaints and obtain legal redress, be it as members of the local government,\textsuperscript{343} as a collective group,\textsuperscript{344} as individuals\textsuperscript{345} or through their condition of "vecinos" or "avecinados"\textsuperscript{346} of a city\textsuperscript{347}.

The keen competition amongst the cities and other local jurisdictions to attract settlers and new businesses, which occurred everywhere\textsuperscript{348} - to the point of requiring some worried counter-measures\textsuperscript{349} - gave merchants and producers a leverage that could hardly be overlooked.\textsuperscript{350} The Crown, as the ultimate judge of all disputes, was often placed in the unenviable position of having to settle irreconcilable claims and conflicts of interest. The endless nature of some of those conflicts suggests the tactical use of litigation by merchants to protect certain economic advantages\textsuperscript{351} which, of course, could not be prevented by the Crown. The suggestion of trying "una avenencia por medio de amigables componedores"\textsuperscript{352} was often advanced, and, naturally, not all decisions were economically sound - particularly when we analyse them with the benefit of hindsight, and without knowledge of the pressures and other considerations under which they were made. However, it is to be pointed out that in carrying out this duty, the Crown displayed, at times, a remarkable ability to recognise changing needs and circumstances, and to adjudicate or give legal sanction to actions that were in accordance with
them. The flexibility shown in granting monopolies or withdrawing them, in providing the legal basis for some economic activities, or in removing a tax that experience had shown to have caused "grandes danyos et inconvenientes," are clear evidence of this.

The Crown also played a prominent supportive rôle in the diplomatic field. In this area, Antonio de Capmany, y de Montpelai, Jules Finot, Teófilo Guiard y Larrauri, and other historians, document an intense activity of the Castilian and Aragonese merchants, their universitas, and cities on behalf of them, as well as revealing routine business operations in places as far apart as Frankfurt and Damascus, Bruges, Cyprus, Rhodes, Marseille, Ragusa, Northern Africa, England and Byzantium. In the pursuit of these diplomatic endeavours, often carried out by permanent representatives in loco or ad hoc envoy, the merchant universitas and the local authorities displayed imagination, resilience, and an enduring independence, to the point that even in the middle of the XVI century, a number of Castilian and French cities concluded several trade agreements in spite of the war between the two Kingdoms; in the case of Barcelona, that independence remained in evidence as late as in the XVIII Century. The Crown's endorsement of many of these diplomatic efforts, its attitude towards the requests for help from cities and merchants, and its own diplomatic drives in response to them would seem to indicate a significant
awareness of the intricate needs of trade and the general good that could be derived from it. Judging by the responsiveness showed by Moslem as well as Christian states, and from the more general picture drawn by Wilhelm Heyd and Adolf Schaub, it would indeed appear that the Crown's awareness of the importance of trade was widely shared at the time.

Perhaps, it could be argued that a certain degree of economic interdependence was already present at an early date. This, to some extent, and particularly with regard to some products, is fairly obvious. Indeed, the diplomatic efforts before the King of England by Guy de Dampierre, Count of Flanders, and the cities of Ghent, Ypres, and Bruges, on behalf of merchants and shipping from Castille, Aragon, and Majorca, and their successful results, would lend support to the suggestion of an early economic interdependence of a more general sort. Still, what does appear to be beyond speculation is that the necessity of conducting international exchanges within an ad hoc legal framework, capable of providing a minimum of security and predictability, as well as a mechanism to solve disputes, and the economic advantages that could be derived from it, were clearly felt everywhere.

Tangible proof of the intensity of those feelings were the resolute efforts of the Crown and every interested party to constrain privateering within the boundaries of a "justa represalia." Moreover, there are numerous trade agreements -
often explicitly proclaiming their trade promotion value - between such diverse jurisdictions as Barcelona-Aragon and Bougie, Egypt, Fez, France, Morocco, Tunis, and Venice. Equally revealing a promotional objective are the agreements between Castille or Castillian cities and England, Flanders later accorded by Flanders and Aragon in very similar terms - France, the Hanseatic League, and Portugal, as well as treaties concluded by the province of Guipúzcoa and England in 1481, and the extremely curious "Confrérie de la Contractation," agreed upon by the merchants of Bilbao and Nantes, sanctioned by Charles VIII in 1492 which remained operational until after the first quarter of the eighteenth century.

Even though the Catholic Monarchs took a first step to rationalise the "tratos e fazimentos" of the newly united Kingdoms of Castille and Aragon in the Cortes of Toledo, in 1480 - limited to eliminate the "cosas vedadas" - it should be stressed that in keeping with the administrative divisions of the realm, commercial treaties seldom applied to its entire territory. They were for the most part restricted to a given area of it, just as the commercial agreement between Murcia and Majorca, in the XIV century, never included the rest of Castille or Aragon. In fact, by an ironic coincidence, as Finot noted, at the very moment that Fernando and Isabel had united the Peninsula, the old and uneasy combined representation of the Iberian merchants in Bruges broke down in 1494. The merchants
of Vizcaya and Guipúzcoa, Aragon, Catalonia, and Portugal left the "Hôtel des Espagnols" or Casa Negra", the premises of the Consulado de Castilla and their joint centre in Bruges, and finally, after many disputes, they went their separate ways. 393
III. Jurisdictional Privileges

No review of the legal framework of the economy could be completed without considering the jurisdictional privileges of merchants and the professional universitas. With illustrious advocates since antiquity, as shown by Paul Huvelin and Robert Sidney Smith, from very early times the advantages of a special jurisdiction for commercial and maritime matters did not go unnoticed in the Peninsula. Even in the late XVII Century, a man with a vast legal and administrative experience, Joseph de Veitia Linage, together with Solórzano y Pereyra and Bobadilla, two of the best jurists of that period, were firm advocates of an ad hoc commercial and maritime jurisdiction, independent from the general judiciary. Towards the close of the XVIII Century, Antonio de Capmany y de Montpalau was still in full agreement with them. A consistently repeated argument in favour of a special jurisdiction was that speed was of the essence in the solution of commercial and maritime disputes, and that that could be better ensured by an ad hoc tribunal than by the ordinary courts.

In addition to that, the pronouncement of "omnes buenos e sabidores," men of good moral and professional standing, and well acquainted with the use and customs of a given trade at a given place, was a cornerstone of legal procedure and judicial fairness. As such, judgement by peers and a special jurisdiction for
professional matters was a rule rather than an exception, and it was enjoyed by the members of institutions as diverse as the University of Salamanca and the Confraternity of Fishermen of Seville. In fact, in these two cases, the jurisdictional scope and autonomy was significantly greater, since the University court was competent to judge criminal offenses committed by students and professors,\(^{399}\) and both kept their own gaols for, as in the case of the Seville fishermen, the "yerros cometidos en razón de su oficio."\(^{400}\) Neither of these were common attributes of the commercial jurisdictions.\(^{401}\)

The basic criteria for an ad hoc commercial jurisdiction was clearly recognised in the Siete Partidas. In the Quinta Partida, Titulo IX, Ley XIV - Como los Judgadores que son puestos en la ribera de la mar, deuen librar llanamente los pleytos que acaescieren entre los Mercaderes,\(^{402}\) stated clearly:

"...que estos Judgadores atales (merchants and mariners) deuen a guardar, que los oyan, e los libren llanamente, sin libelo, e lo mejor e mas ayna que pudieren, e sin escatima ninguna, e sin alongamiento, de manera que non pierdan sus cosas, nin su viaje, por tardacion, nin por alongamiento..."\(^{403}\)

The Tercera Partida, Titulo IV, Ley I - Que quiere decir Juez, e quantas maneras son de Judgadores\(^{404}\) - was equally explicit:

"...E aun otros (judges) y a, que son puestos por todos los Menestrales de cada logar, o por la mayor partida dellos: e estos han poderio de juzgar los pleytos, que acaeciesen entre si por razon de sus menesteres..."\(^{405}\)
The territorial limits of that jurisdiction were made clear in the same law:

"...E todos estos Juezes, que auemos dicho, llamamos en latín Ordinarios; que muestra tanto, como omes que son puestos ordinariamente, para fazer sus oficios sobre aquellos que han de juzgar, cada vno en los logares que tienen."\(^{406}\)

Institutionally, the development of a separate maritime and mercantile jurisdiction followed a different path in Castille and Aragon. In Castille, it consisted, for a number of centuries, of a special court presided by an Alcalde, who was assisted by six good men "entendidos en cosas de la mar,"\(^{407}\) and under the overall jurisdiction of the Admiral.\(^{408}\) In Aragon, this judicial junction - after a very similar initial period - was carried out by the Consulado.\(^{409}\) Essentially a Mediterranean institution, the Consulado combined the functions of a maritime and mercantile court with that of a merchant's Guild,\(^{410}\) thus centralising a number of activities that in Castille were carried out by separate institutions.\(^{411}\) First in Barcelona, according to Capmany,\(^{412}\) or in Valencia, as stated by other sources,\(^{413}\) the Consulados of those two cities played a significant role in the development of the institution. Well known amongst those of Aragon were also the Consulados of Majorca, Tortosa, Girona, and Perpignan.\(^{414}\)

Even San Feliu de Guixols, a small port not far from Barcelona, had a Consulado,\(^{415}\) and so did Sardinia and the other Italian possessions of the Crown of Aragon.\(^{416}\)
In Castille, the Consulado was adopted by Burgos in 1494, and Bilbao in 1511, and, after numerous petitions from the merchants engaged in the trade with America, a Consulado or Universidad de los Cargadores a las Indias was established in Seville in 1543. On the whole, the Castilean Consulado followed the pattern of the Mediterranean ones, the advantages of which were extolled by the promoters of the Consulado of Burgos. However, they appear to have been far more independent from the local authorities than the Consulado of Barcelona and the others in Aragon. Perhaps this was to some extent due to the long autonomy enjoyed by the Consulado of the Castilean merchants in Bruges, an obvious inspirational source in the case of Burgos, with a tradition going back to the early XIV Century. At any rate, the only mention of the local authorities of Burgos in the Real Cédula of 1494 was the obligation of the Merino and his Lugartenientes to assist in the execution of the sentences passed by the Prior and Cónsules or to provide help as requested, a task that in the case of the Consulado of Seville was reserved to the Executor and Alguaciles of the Casa de Contratación. It would also seem worth noting the very considerable maritime and commercial jurisdiction of some universitas, such as the Cofradía de Pescadores de San Vicente de la Barquera.

The benefit of a special maritime and commercial jurisdiction was enjoyed by merchants and mariners, whether they were "vecinos", local residents or foreigners. Although we do not
know of any specific reciprocity statute in either Castille or Aragon comparable to the Luccan one, there was hardly any need for it. On the whole, standard procedural laws determined that the plaintiff must follow the fuero of the defendant. There were significant differences as to what constituted a mercantile act that could determine the need to sue at a different court, but even someone as far removed from a merchant as a priest could clearly, and successfully, be brought to a commercial court if he was buying and selling "pro lucro captando."

In addition to that, foreign merchants and mariners had recourse to their own consuls in loco for the resolution of their internal conflicts and when mediation with the public powers was required, which was an old established and generalised privilege. It should be noted that the word "foreign" had a much wider connotation throughout the Middle Ages and early Modern times than nowadays. It virtually encompassed all those who were not "vecinos" or "avecinados" in a given local jurisdiction. King Don Alfonso, as early as 1280, made that quite clear when he reorganised the Puerto de Santa María and granted:

"a todos los castellanos, leoneses, e valoneses, o portugueses, e a todos los del senorio del Rey de França, e del Rey de Anglaterra, e del Rey de Aragon, e a los de Marsella e a todo el otro senorio del Rey Charles, e a los de Benosa, e de Pisa, e de Venecia, e a todos los otros logares qualesquier que sean, que an común sobre si, que
Accordingly, the merchants and mariners of Genoa, Portugal, and Barcelona, along with those of many other places, had their consuls in Seville and the Southern ports. Included amongst them were those from the towns of the Bay of Biscay, as stated in the studies of Carmelo Vinas y May and Teófilo Quiard y Larrauri. In the late XV Century the Universidad de Mercaderes of Burgos still had exclusive consuls not only in Flanders but also in the main commercial centres of Castille, and so did Barcelona, after the union of Castille and Aragon.

As may be expected, the co-existence of several jurisdictions led to a number of conflicts; more visible, or at least better studied, are those that concerned the Consulado. Its jurisdictional competence was challenged first, and quite naturally, by those who by so doing were able to gain time, or thought that other jurisdiction could be more advantageous to them. Challenge also came from the ordinary courts and from institutions with judicial privileges, such as the mints of Barcelona, Perpignan, and Valencia. The jurisdiction of the Consulado was disputed as well by individuals with judicial prerogatives, like the Comisario General de la Cruzada, and last, but not less vigorously, by other Consulados. To a large
extent these conflicts were unavoidable. They were also the
healthy sign of the slow but constant creative process by which
Law Merchant developed. The jurisdictional boundaries of the
Consulado, clearly but widely defined, expanded together with
Law Merchant, and so, in due course, the "Jurisdicción Privativa" of
the Consulado stretched from its original role as a maritime
court, to include a comprehensive commercial jurisdiction and
the custody of statutory regulations on bankruptcy, banking, bills
of exchange, insurance and sea-tans.

Far from being entirely detrimental, jurisdictional
conflicts forced legal argumentation and the cautious pondering
of lawyers and merchants, and thus made not a negligible
contribution to the honing and perfecting of Law Merchant. They
were also, in all probability, not an insignificant factor in
the popularity of private arbitration, which by no means
abated the vitality of the Consulado. The defense of the
independence and continuously expanding privileges of the Consulado
was as energetic as any of the ones reviewed so far, and often
enlisted the support of the cities, which considered that
institution as one of their own fundamental privileges. On
the whole, the privileges of the Consulado were confirmed and
enlarged. Nothing, however, is a better proof of its success
as an independent tribunal than its survival until well into the
XIX Century, when its judicial role was taken over by a newly
created branch of the ordinary judiciary.
It is beyond the scope and possibilities of this study to attempt an evaluation of the role played by the Consulado in the development of the Peninsular economy. For the purpose of this Chapter it is sufficient to record its existence and its institutional vigour as a necessary support of an economic activity commensurated with that of the most advanced European and Mediterranean areas during the period under consideration. As such, the Peninsular Consulados and other commercial and maritime courts were part of a general Western European legal development, but their role in it was by no means that of passive travellers. They were highly innovative in at least two areas, Procedural Law and Insurance Law.

Specifying the number and sequence of acts that must be performed by the interested parties in a conflict and those called to decide it and enforce the judgement, procedure is the instrument of coordination, a method for the formation and application of law. The critical importance of Procedural Laws was widely recognised at the time, as can be gathered from the precise and detailed fashion in which they appear in all the compilations we have seen - notably in those of the Tercera Partida dealing with Civil Procedure. In the Consular courts, where even the main activity that takes place during the process - the examination of the applicable norm (Quaestio Juris) and the facts to which it is to be applied (Quaestio Facti) - was not as well defined as in the old established courts, Procedural Law was absolutely
crucial in order to achieve an equitable solution of disputes. 462

Valencia was amongst the undisputed leaders in Procedural Law. The Orde Judiciari de la Cort dels Consols de Valencia, 463 with all its numerous references to the Costums de mar of Barcelona 464 and - as stressed by José María Font Rius - its open clause allowing for the incorporation complementary legislation or new judgements, 465 was the first known procedural code of its kind. 466 It was not only followed in Valencia, but also in Majorca - where an official copy was forwarded, 467 Barcelona, Perpignan and other courts of Aragon, as well as in Castille, France, and Italy. 468 Other well known rules of procedure complementing and updating those of Valencia were the Orde Judiciari de la Cort dels Consols de Mar de Barcelona, 469 and those found in the Ordenanzas of the Consulados of Burgos, Bilbao, 471 and Seville. 472

In the area of maritime insurance, the Ordenanzas de Seguros Maritimos of Barcelona, written by the merchant's "Universitas" and sanctioned by the authorities in 1435, 1436, 1458, 1461, 1481, and 1484., formed a veritable insurance code, which included a first attempt to control the solvency of the insurer. 473 "La sistemazione giuridica presupone ovviamente l'esistenza di una pratica assicurativa," says Mario Del Treppo, who adds that "a Barcellona, tra il 1435 e il 1484, l'assicurazione maritima fu l'oggetto di un profondo e originale lavoro di sistemazione e
In Castille, the Prior and Cónsules de la Universidad de Mercaderes de Burgos compiled the Ordenanzas para los Seguros Marítimos of 1537 - where reference is made to a similar codification made in 1500, now lost - established a compulsory policy type that could not be altered in any way without permission from the Prior. 475 The Ordenanzas of Bilbao of 1520, 1526, 1531, and 1560, 476 and those of Seville of 1553 and 1556, 477 which contained a variety of policy types for specific uses - incorporated in the Ordenanzas of Bilbao of 1560, were equally innovative at the time of their appearance. All these Ordenanzas, in conjunction with the first Ordenanzas de Seguros para la Bolsa de Amberes, promulgated by Felipe II in 1563, and the Estatutos de Seguros y Averías para Holanda y Zelanda decreed in Amsterdam in 1598, gave to the Peninsulars the world's leadership in this legal field during the XVI Century. Then, according to L.A. Boiteux - who in part reflects views expressed much earlier by Antonio de Capmany y de Montpalau, those: "Ordenanzas ont, en fait, réglementé l'assurance maritime non seulement en Espagne mais aussi en France, dans les Flandres, à Londres et jusque'à Hambourg où de nombreux marchands espagnols s'étaient installés." 478
Another area in which those associated with the Peninsular maritime and commercial courts showed a considerable adroitness was in the codification of laws. The Llibre del Consolat del Mar, probably the outcome of the efforts of a Secretario of the Consulado del Mar of Barcelona, was the most comprehensive maritime code of its time. Praised in later days by a host of well known jurists, including Hugo Grotius, it was translated into a number of languages and served as the standard maritime code in several jurisdictions outside the Peninsula. Here it was in continuous use from the XIV century until the promulgation of the Código de Comercio in 1829. The Llibre del Consolat del Mar, and other compilations that were incorporated into it, such as the Ordinacions de la Ribera marítima de Barcelona, the Costums de Tortosa, the Capitols del Rey En Pere sobre los fets e actes marítimes and the Capitol del Libre del Consolat de Mar sobre esportades d'Alexandria, share a common denominator: directness and simplicity. This, which was also characteristic of more specific ordinances, is a clear evidence of the eminently practical purpose with which those laws were collected: to clarify a number of contractual relations and to render fast judgements possible.

Whilst the impressive record of the maritime and commercial courts in the realm of law reception, creation, and codification is readily apparent, how well they lived up to their avowed purpose of delivering prompt and equitable justice is much more
difficult to assess. If one relies on the perceptions of the users, some very positive, others very negative, the most sensible answer has been provided by Manuel Basas Fernández: their opinions varied in accordance to the way their personal case fared at the court. As to the probity of judges, another basic element of the courts capacity to achieve just settlements, there is evidence that it was by no means uncommon for the judges to pass sentence against themselves which was indeed a rather remarkable feature. The case of Jaume Pou also shows that for all their prestige and importance in the local government, the Cónsules were not always able to interfere with it, or change the course of the ordinary justice.

Perhaps, the most relevant aspect of the maritime and mercantile courts was their laws. They were not born out of the sudden inspiration of the jurist or the fiat of the legislator. Their laws were the product of custom, of a free exchange of ideas, and the practical decisions of countless anonymous merchant-judges, mariner-judges, and arbitrators of the same extraction. Two historians as far apart in time as Antonio de Capmany y de Montpalau and José Maria Font Rius are in full agreement on that. Ferran Valls i Taverner has shown that at least part of the codification effort was entirely private, without any intervention of the public authorities. But nothing can reflect more eloquently the spirit of those courts, their mixture of respect for tradition and precedent with a
practical open mind to solve unforeseen problems than the article 41 of the Orde Judiciari de la Cort dels Consols de Mar de Valencia:

"Les sentències que por los dits consols e jutge son donades, se donen per lurs Custumes scrites de la mar, segons que en diversos capitols d'aquelles és declarat. E là on les dites Custumes e capitols no basten, donense ab consell dels dits prohòmens mercaders e de mar, co és, tota hora a les mèus veus del conseyll haut suart a les persones qui donen aquell." 499

As clearly stated in the first paragraph, once passed by the Consules and the Judge, the sentences became law, and part of the Custumes scrites de la mar. 500
IV. Concluding Remarks

Even though an adequate legal framework is a condition sine qua non for a complex economic activity, it neither fully guarantees it nor constitutes a conclusive proof of its existence. It might, however, be strongly suggestive of it; particularly, if we take into account the way in which the greatest part of that legal fabric developed in the Peninsula. Similarly, promotional decisions may not, and often did not go beyond a mere declaration of intent. They may cancel each other out, a danger singularly acute in the Peninsula, given its administrative divisions and the power of the local authorities. Finally, they may not work at all. But in any case, at the very least, they indicate an understanding of their likely effect in the economy, of the requirements of trade and merchants, and, most important, evidence of a favourable attitude of mind towards business, trade, and the economy at large.

If we think for a moment in hypothetical terms, and in terms of taxes, it is easy to envisage a number of combinations by means of which a businessman could have turned that legal system very much to his advantage. He could marry someone exempted from Alcabala, or, less drastically, he could acquire residence in the most advantageous place, or enter into a series of partnerships that would secure him an array of tax exemptions over the area in which he was interested to trade.
These perfectly legal and fairly obvious ways of reducing the tax burden were used, and were just a few of the many options available to achieve that. If we consider credit, another crucial factor for a high level of economic activity, it was common, as we have seen, for things as diverse as shipping and the purchase of land. It was also sanctioned and practiced for something as official as export taxes, not to mention purchases to satisfy the requirements of life, and that borrowing at various rates of interest by cities and professional universitas was normal and endorsed by the Crown. The Bishop of Burgos agreeing to pay punitive interest for delays in the discharge of a contract and the role of the Church amongst the creditors reaching a composition with Lérida to re-finance the debts of the city are instances that would suggest that the Church, a major actor in the economic life of the period, understood and participated in those activities. They would also endorse the well substantiated views of Raymond de Roover and Abbot Payson Usher who asserted that the Church neither held a monolithic attitude towards money lending and interest nor was it entirely opposed to it, and thus it was not per se an obstacle for the development of an active economic life. The lending and general economic activities of the Orden de San Juan de Jerusalén in Aragon and Navarre would also corroborate their views.

Proceeding in the realm of actualities, examples of loans...
often "international" in nature, pledges, mortgages, sureties - often given by none other than the King, unsecured debts, contracts of services, sales, and "ad plantandum", usufruct, emphyteusis, rental of beasts of burden, tools, and other means of production or transportation, rental of rights, rents, and taxes, as well as "permutas" and contracts of "cambio", all of them indicative of an economically active society, are by no means uncommon. In addition to that, the very considerable expenditures for defense and public works carried out by the merchant universitas and the cities via taxes, presupposes a tax base capable of bearing them without major detriment to its revenue generating power. The cities were, according to Ramón Carande y Thovar, unsurpassed, amongst the public institutions, in their debt contracting capacity, probably a significant factor behind their high visibility in the economic life of the period. Legally, one can see them engaged in such diverse acts as buying and selling titles, purchasing cities, "lugares", water works or the privilege of incorporation into a larger city, floating "baratas" and other financial obligations, guaranteeing large debts for military services rendered to them on credit, or increasing their landholdings via adverse possession, with considerable ease and dexterity.

The views of Carande y Thovar regarding the financial capacity and activities of the cities are largely shared by José
María Lacarra y de Miguel. He notes, for instance, that the "Ayuntamiento de Zaragoza podrá resarcir con mil monedas de oro a los ganaderos de la ciudad de las pérdidas sufridas en la guerra (1301); comprar la Puebla de Alfandén en 13,000 sueldos (1315); hacer al rey donativos de mil cahíces de trigo y otros tantos de cebada y avena (1344); dar para la guerra con Castilla 50,000 sueldos y poner en pie de guerra mil hombres, 500 ballesteros y 500 lanceros (1356); comprar la villa de Zuera en 170,000 sueldos, ayudando en esa forma al rey a resarcirse de los gastos de la guerra (1366)." Lacarra y de Miguel sees a general expansion in the financial capabilities of the municipalities during the XIV and XV Centuries. Such development required a corresponding growth of their tax base, unattainable without a parallel movement in the general level of economic activity. This, in turn, implied the increasing use and refinement of the legal institutions and the entire legal fabric of the Peninsular economy.

Though not necessarily saying that the economy moved in the direction suggested by the above mentioned authors, or even that the number of economic transactions actually increased, the documentary evidence examined in this Chapter clearly reveals the existence of an ongoing process of maturation at the legal end of the Peninsular economy. Further to the manifest liveliness of the Peninsular legal framework, both cause and effect of its development, the concessions obtained in France, Flanders...
and England, 556 and treaties such as the one concluded with the Hansa, 557 with Tunis, 558 with Bougie-Tunis - which assured the Aragonese the equivalent of the most favoured nation clause, 559 or the long standing one between Castille and France - which as Carmelo Viñas y Mey noted, it survived for one hundred and forty years the turbulent relationship with that Kingdom 560 would suggest that economic exchanges with the Peninsula and the Peninsulars seemed rather important to the signing parties. Moreover, the relentless and successful litigation carried out in Flanders by the Peninsular "nations" against the "nations des Ytales" (Genoa, Venice, Florence, and Lucca) to force them to pay the "Derecho de Avería" - due on all merchandise loaded on Peninsular vessels in the Italian Peninsula and Southern France and payable to the "nations" of Vizcaya and Catalonia up to the Strait of Gibraltar and to those of "Espaigne" (Castille) and Guipúzcoa from there to Flanders 561 - is another indication that the economic activities of the Peninsulars were not limited to the home market, and that abroad they may have been a force to be taken into consideration. This example is all the more suggestive when one takes into account that the Peninsular "nations" were far from united in Flanders, and were often litigating amongst themselves over this issue. 562

We may, in the final analysis, agree or disagree with the contention of Capmany that the bank insurance laws, enacted like most ad hoc legislation at the request of the interested parties,
could only be the result of a relatively important banking activity.\textsuperscript{563} We are hesitant to generalise his viewpoint. However, from our examination of the legal framework, both local and "international", it does not appear to be far fetched to conclude that the limits for a high level of economic activity in the Peninsula are not to be found there. Friedrich Augustus von Hayek emphasises the significance of the predictability of the legal framework within which economic activities take place.\textsuperscript{564} In the case of the Peninsular legal framework the element of predictability was present, and sometimes refined to a high degree by virtue of its ability to incorporate automatically the customs and terms of business peculiar to each trade, which as Hans Grossmann-Doerth notes, even today regulate the internal transactions of each one of them and have a quasi-legal nature.\textsuperscript{565}

In addition to this, and to offering a wide variety of ways by which economic transactions and productive activities guided by individual decisions and circumstances could be carried out, the Peninsular legal framework allowed an extensive personal input into its own development from those taking part in economic endeavours. \textit{A fortiori}, the vigorous litigation in which all economic actors seem to have engaged at one time or another, which in itself was an important part of the law creating process, suggests that recourse to the courts was open and accessible to all. As far as the civil authorities are concerned, we have
documented *ex abundantia* the support lent by all layers of government to the legal framework in every one of the vital roles it played in the economy, as well as the generally favourable attitude of the authorities to trade and merchants. Far from encountering serious inhibiting factors in the area under scrutiny in this Chapter, our findings suggest that an active economy and the presence of a rather widespread entrepreneurial spirit were a conspicuous part of the Peninsular reality during the period under consideration.
CHAPTER II

THE LEGAL FRAMEWORK OF THE ECONOMY

Notes and References


2. Ibid., 32-41. Heckscher, who tackles the "Naturalwirtschaft" versus "Geldwirtschaft" controversy in general terms, rather than restricting himself to Sweden, adds the compulsory payment of taxes and dues, which implies the need to produce in excess of consumption, as a further argument to support his view of an open economy in which movements of goods played a considerable role. (pp. 40-41).

Karl Bücher, Die Entstehung der Volkswirtschaft, Tübingen, Verlag der H. Laupp'schen Buchhandlung, 1913, pp. 92-116, for one of the most lucid argumentations of the opposite viewpoint, the "geschlossene Hauswirtschaft" or closed economy.

Luis García de Valdeavellano y Arcimis, El Mercado. Apuntes para su estudio en León y Castilla durante la Edad Media, Sevilla, 1975, Segunda edición corregida y aumentada, passim, and particularly pp. 11-53, where the author, who endorses a position similar to that of Heckscher, analyses a considerable body of bibliography and Spanish documentary evidence. The considerable degree of dispersion of the property in Castille and León, and the scattered nature of most Señoríos, is one of the reasons advanced by García de Valdeavellano to support his position in favour of an open economy (p. 49). Obviously, any surpluses could have been disposed of more conveniently at the nearest market, and, similarly, any needs could have been satisfied from it.

3. This can be easily corroborated by the administrative decisions to promote and protect trade and the security of those engaged in it, often clearly spelled out in their introductory clause or under the general formula "para facer bien et merced," as well as by the opinions expressed in most contemporary literary sources. The increase in tax revenues derived from an increase in trade was not alien to the favourable attitude of the authorities. A decision of King Alfonso XI of Castille to extend the duration of the fair of Santiago, as requested by the procuradores of
that city in the Cortes of Valladolid, in 1351, plainly acknowledges that interest: "A lo que digan que en la cibdad de Santiago que hay dos fferias en el anno, et que non dura la fferia mas de tres dias; et porque la dicha cibdad esta en tal comarca que de todos los logares del dicho rregno van alas dichas fferias con sus mercaderias, et que quando a ellas lliegan, quelas ffalian desffechas por rrazon que non duran mas de los dichos tres dias como dicho es, et por esta rrazon que los mercadores e las otras gentes non pueden comprar nin vender las mercaderias, et que rreciben grant danno e yo grant menoscabo en mis derechos. Et pedieron me merced que mande e tenga por bien que cada vna delas dichas fferias que dure quince dias. A esto rrespundo quelo tengo por bien." Cortes de Valladolid de 1351, 47, Cuaderno II, reproduced in María del Carmen Carlé, "Mercaderes en Castilla. (1252-1512), Cuadernos de Historia de España, C.H.E., XXI-XXII, 1954, p. 153, footnote 53.

García de Valdeavellano, El Mercado, pp. 36-37, 107-108, for the special privileges of the "transmarini negociatoris," contained already in the Liber judiciorum, during the Visigothic period.


4. Las Siete Partidas del Sabio Rey Don Alonso El Nono, glosadas por el Licenciado Gregorio López, del Consejo Real de Indias de S.M., Madrid, En la Oficina de Benito Cano, Año de MIIIICLXXXIX, Tomo II, que contiene la IIIa. IVA. y VA. Partida, Quinta Partida, Título VII, Ley IV, p. 723-724: Como los Mercadores, e sus cosas, deuen ser guardados. The original spelling has been respected in this and all further quotations. Amongst many differences, V appears frequently instead of the modern Spanish U - vsan instead of usan - and U in lieu of B - deuen for deben.

5. Ibid., 721-729.

6. Ibid., 725-729.

7. Ibid., 725-726.
8. Ibid., 727.
9. Ibid., 727-728.

10. Real Academia de la Historia, Opúsculos Legales del Rey Don Alfonso el Sabio, Publicados y Cotejados con varios Codices Antiguos, De Orden y a Expensas de S.M., Madrid, En la Imprenta Real, Año de 1836, Tomo I, El Espéculo o Espejo de Todos los Derechos, one of such contemporary legal collections, is considered by several legal authorities as a preliminary draft of the Siete Partidas - Prologo, pp. IV - VI. The Fuero Real, another such collection of laws, appears to have been the actual Fuero granted by King Don Alfonso el Sabio to the cities of Santo Domingo de la Calzada y Burgos - Prologo, pp. VII and VIII respectively.


12. Ibid., Tomo II, 41-42.


15. Ibid., 770-771

16. Ibid., 771-776.

17. Ibid., 776-782.

18. Ibid., 776-778. Certainly a contentious issue, but the large body of doctrine cited under heading (I) of Ley X appears to be inclined to support this interpretation, p. 776.

19. Ibid., vide under heading (I), p. 776: Secundo limita, nisi testator in testamento praeciperet haeredi, ud ad certum tempus perseveret in societate...; and Tercio limita, nisi post mortem defuncti haeres cum sociis continuaret societatem, quia videretur tunc renovata cum eo...

20. Ibid., 668-718. The sale of choses in action, so important in business affairs, is specifically treated in Ley XIII, pp. 675-676.

21. Ibid., 670-671.

22. Ibid., 671-672.

23. Ibid., 717-718.
24. Ibid., 673. Contrahitur venditio etiam inter absentes per procuratorem ad hoc constitutum, vel per nuncium, vel per epistolam, etiam si res non sit in presentia. Hoc dicit.


27. Ibid., 397-415.

28. Ibid., 415-423.

29. Ibid., 405.

30. Ibid., 416.

31. Ibid., 419.

32. Opusculos Legales, Tomo II, pp. 54-56.

33. Ibid., Tomo I, 314-330.

34. Ibid., 337-356.


36. Ibid., 718-721.


39. Ibid., 730-731. Quaelibet res in commercio hominum existens potest locari, vel conducti. Item & usufructus alicujus rei pro certo pretio annuatim... In the rental of the usufruct of land and other property, the death of the lessee brings about the automatic termination of the contract (sed tunc motuo conductore, expirat locatio; cum de sui natura morte usufructarii finiatur).

40. Ibid., 738.

41. Ibid., 738

42. Ibid., 749-750.

43. Ibid., 750-752.

44. Ibid., 752-758. Emphyteosis est datio res immobiles ad annum censum in scripta celebrata; & fit cum partium voluntate ad vitam recipientis, vel etim haeredum; & si res tota casu perit, est emphyteota liberatus... (p. 752).
45. Ibid., 731.
47. Siete Partidas, Tomo II, pp. 761-769.
48. Ibid., 761-762.
49. Ibid., 762-763.
50. Ibid., 763-769.
51. Ibid., 769.
52. Opúsculos Legales, Tomo II, p. 161. An interesting inclusion if indeed this was the Fuero granted to Burgos and Santo Domingo de la Calzada, two inland cities of Castilla la Vieja.
53. Siete Partidas, Tomo II, pp. 782-811. Ley I - pp. 782-783 - described thus the essence of a contract: Promission es, otorgamiento que fazen los omes vnos con otros, por palabras, e con intencion de obligarse, auiniendo sobre alguna cosa cierta, que deuen dar, o fazer, vnos a otros. E tiene grand pro a las gentes, quando es fecha derechamente e con razon..." The law accepted the oral agreements carried out through interpreters when the contracting parties spoke different languages.
54. Ibid., 790, Como Puede ser demandada lo promission, que es fecha en nome de otri sin carta de personeria. Debda de dineros, o de otra cosa, deuiendo vn ome a otro, si este debedor rescibiese promission de otro, en nome de aquel cuyo debedor es, diziendo assi: Prometedesme, que dedes a fulano tantos maravedis, o tal cosa, que le deuo yo; si el otro respondiere, que si promete, finca porende obligado, e es tenudo porende, de complir la promission. E puedele apremiar este que la rescibio del, que la cumpla; como quier que el otro, en cuyo nome las rescibio, no le podria apremiar, nin le podria demandar, que le compliesse tal promission. E non tan solamente es tenido de cumplir la promission, mas aun de pechar todos los daños, e los menoscabos, que fizo por razon de que la non quiso complir.
55. Ibid., 788-790.
56. Ibid., 811-836.
57. Ibid., 824.
58. Ibid., 826.
59. Ibid., 811-812.

60. Ibid., 826-834.

61. Ibid., 828. "... E esto seria, como si alguno ouiesse menester marauedis, e rogasse, o mandasse a algun Judio, que le diesse, o le emprestasse estos marauedis a ganacia, a el, o a su mayordomo, o a su personero, de aquel que lo mando fazer. Tal mandado como este es a pro del que lo manda fazer, porque se aprovecha de los marauedis, en aquellas cosas que mande fazer a su mayordomo, o a su personero. Otrosi es a pro del que rescibe el mandado,porque le den ganacia de los marauedis que presto. E porende dezimos, que aquel que manda esto fazer, es tenudo de pagar los marauedis, con la ganacia, a aquel que rescibio el mandato del. Ca, pue su mayordomo, o su personero, los rescibe por mandado del, tenudo es, como si el mismo los rescabiese. La quinta manera de mandamiento es, quando vn come manda a otro manda que faga, o de alguna cosa, a pro tan solamente de aquel que rescibe el mandado, e de otro tercero. E esto seria, como si alguno mandasse a otro que diesse sus marauedis a ganacia a otro tercero, nombrandolo. En tal caso como este dezimos, que si este que dio los marauedis, non los pudiesse cobrar de aquel que los rescabio, que los puede demandar despues, a aquel que geli mando dar. Esso mismo seria, si alguno mandasse a otro, que prestasse cierta quantia de marauedis a otro tercero, sin ganancia, o otro pro que esperasse auer del prestamo." An interesting body of doctrine is cited in support of this law. From the text itself one would gather that there was considerable room to manoeuvre lending operations, and obviously to guarantee business transactions by means of loans or ad hoc deposits.


63. Ibid., Tomo I, Prologo, pp. X-XI, also issued by King Don Alfonso el Sabio, to clarify some aspects of the Fuero Real.

64. Ibid., Tomo II, p. 197, Ley XXIX, Titulo de las fiaduras y de las debdas.


66. Ibid., 841.

67. Ibid., 840.

68. Ibid., 841-842.

71. Ibid., 887-888.
72. Ibid., 897.
73. Ibid., 897-898.
74. Ibid., 875-876.
75. Ibid., 876-877.
76. Ibid., 888.
77. *Opúsculos Legales*, Tomo II, pp. 112-117.
79. Ibid., 903-904.
80. Ibid., 904.
81. Ibid., 904-905.
82. Ibid., 904-905, "El desamparamiento que faze el debdor de sus bienes, de que fablamos en las leyes ante desta, ha tal fuerca, que despus non puede ser el debdor emplazada, nin es tenudo de responder en juyzio, a aquellos a quien deuiesse algo; fueras ende, si ouiesse fecho tan gran ganacia, que podria pagar los debdos todos, o parte dellos, e que fincasse a el de que podiesse biuir..."
83. Ibid., 905-907.
84. Ibid., 905.
85. Ibid., 907-911.
86. Ibid., 909-910.
87. Ibid., 70-88.
89. Ibid., Tomo II, pp. 24-28.
90. Ibid., Tomo I, Prologo, p. XI, the Leyes del Estilo are not one of the codifications made under King Don Alfonso el Sabio. Also known as Declaraciones sobre las Leyes del Fuero, they appeared probably during the reign of his son, Don Sancho, and were a clarifying set of laws, which accompanied the Fuero Real.
93. Ibid., 827.
94. Ibid., 828.
95. Ibid., 828-829.
96. Ibid., 829.
97. Ibid., 829-830.
98. Ibid., 405.
99. Ibid., 416.
100. Ibid., 419.
101. Ibid., 438.
102. Ibid., 830.
103. Ibid., 830-839.
104. Ibid., 831.
105. Ibid., 832.
106. Ibid., 832.
107. Ibid., 833.
108. Ibid., 839.
109. Ibid., 833-834.
110. Ibid., 839.
111. Ibid., 169-195.
112. Ibid., 179.
113. Ibid., 180.
114. Ibid., 191.
116. Siete Partidas, Tomo II, pp. 204-289.
117. Ibid., 210.
118. Ibid., 211.
119. Ibid., 212-215.
120. Ibid., 213.
121. Ibid., 214-215.
122. Ibid., 215.
123. Ibid., 238-239.
124. Ibid., 239-240.
125. Ibid., 243.
126. Ibid., 245-246.
127. Ibid., 246.
128. Ibid., 247-248.
129. Ibid., 252-253.
130. Ibid., 253-254.
131. Ibid., 254-255.
132. Ibid., 255.
133. Ibid., 255-256.
134. Ibid., 256-257.
135. Ibid., 257.
136. Ibid., 257-258.
137. Ibid., 258-259.
138. Ibid., 259.
139. Ibid., 260-261
140. Ibid., 270.
141. Ibid., 274.
142. Ibid., 289-301.
143. Ibid., 289.
144. Ibid., 294-295.
145. Ibid., 295-296.
146. Ibid., 296-297.
147. Ibid., 298-299.
148. Ibid., 299.
150. Ibid., Tomo II, pp. 20-22.
153. Ibid., Tomo I, p. 248.
155. Ibid., 58-61.
156. Ibid., 49-50.
158. Ibid., 17-18.
159. Ibid., 111-115.
160. Ibid., 40-60, 106-141.
162. Siete Partidas, Tomo II, p. 673, "Estando delante el comprador e el vendedor, pueden fazer la vendida: e avn podria ser fecha, maguer el vno estouisse en vn lugar, e le otro en otro, por cartas, o por mandaderos, consintiendo ambos a dos en vno en la vendida, e pagandose el comprador de la cosa, e el vendedor del precio. E avn dezimos que se podria fazer la vendida, maguer non este la cosa delante del comprador, e del vendedor, consintiendo ambos en ella, segund que es sobredicho."
163. This was the avowed desire of the compilers, clearly expressed in the introduction to the corresponding sections in the Siete Partidas, Tomo II, Tercera Partida, Título XVIII, p. 204; the Espéculo, Opusculos Legales, Tomo I, p. 247; and the Puero Real, Opusculos Legales, Tomo II, p. 20.

164. Ibid., Chapter I, Part II.

165. Ibid., 56.

166. Ibid., 56.

167. Claudio Sánchez-Albornoz y Menduíña, Investigaciones y Documentos sobre las Instituciones Hispánicas, Santiago de Chile, Editorial Jurídica de Santiago, 1970, particularly Documents num. VII, VIII, IX, pp. 169-170, for sales of property by husband and wife collectively; and Document XIII, p. 172, for a donation of a woman to a monastery of her paternal inheritance plus half of what she acquired during her marriage. These examples, from the early period of the Astur-Leonés Kingdom, illustrate not only the presence of complex legal concepts, but also that these legal acts were already being carried out in a manner essentially similar to that prescribed in the Partidas.

Federico Udina Martorell, El Archivo Condal de Barcelona en los siglos IX-X. Estudio Crítico de sus fondos, Barcelona, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales, Publicaciones de la Sección de Barcelona, No. 15, MCMLI, Doc. 142, p. 305, sale of land by husband and wife in the County of Vich; Doc. 159, pp. 326-328, sale by Borrell II, Count and Marquess of Barcelona, of freehold land; Doc. 161, pp. 329-330, sale of some houses and land in the territory of Barcelona, with recognition that they were in the "Señorío" - Lordship or Seigniory - of the Monastery of San Cugat; Doc. 162, pp. 330-332, and Doc. 163, pp. 332-334, barter of freehold land; Doc. 164, p. 335, sale of land with a water dam and irrigation canals. These Catalan examples, of a later date than those mentioned ut supra, but preceding the Partidas by about three hundred years, already contained the essential requirements for the acts as set down in that Code. This illustrates the common development of the Peninsular Law, and also the common use of the general principles and laws compiled in the Partidas.

169. Siete Partidas, Tomo II, p. 668, Quinta Partida, Título V, Ley 1. Que cosa es vendida: "Vendida, es vna manera de playto que van los omes entre si; e fazese con consentimiento de las partes, por precio cierto en que se auyienen el comprador, e el vendedor."

170. Ibid., Tercera Partida, Título XVIII, Ley LXXVII, pp. 257-258, En que manera deue ser fecha la Carta del afelemento de la naue, "... e la carta del afelemento deue ser fecha en esta manera. Sepan quansos esta carta vieren, como Don Jordan, Maestre de la naue que ha nome Buenauntenura, afleto essa misma naue a Aleman el Mercadero, para lleuar a el con todas sus cosas, e con tantos quintales de cera, e con tantos frexes de cuerus, desde Seuilla fasta la Rochela. E prometio, e otorgo el Maestre sobredicho al Mercador, de lleuar esta naue bien aquisada de velas, de antenas, e de masteles, e de xarcias, e de ancoras, e de restas; e con dos naucheles, e quarenta marineros, e con diez sobresalientes armados, e guisados con sus balleitas, e quatro seruientes, e vn batel; e de todos los otros gouernos, e guarnimientos que perteneues, e son menester a naue que va en tal viaje. E otrosi prometio el Maestre, de entrar con su naue en el Puerto de Lisbona, o en el de Ribadeo, o en el de la Coruña, o de Santander, por lleuar ende- tales Mercadero que son sus compañeros, o tales mercadurias que tiene y el Mercadero allegadas. Otros prometio el Maestre al Mercador, de entrar; e de salir del Puerto con la naue a su voluntad, e a su mandar, e de guiar, e de guardar Mercador, e a sus cosas bien e lealmente en todo este viaje. E este otorgamiento, e este afelemento fizo el Maestre al Mercader por dozientos marcos de plata, los quales marcos de plata le prometio el Mercador, de dar, e de pagar, a ocho dias que la naue fuese llegada al Puerto de la Rochela. E otrosi le prometio el Mercador al Maestre sobredicho, de auer cargada la naue en el puerto de Seuilla en todo el mes de Marco de tantas mercadurias quantas dichas son de suso; de manera que el Maestre pueda mover de Seuilla en Calendas de Abril, dandole Dios buen tiempo..."
171. Such as the Mayordomo de la Cofradía de mareantes de San Vicente de la Mar, who, by virtue of the Privilegio de los Pescadores Mareantes, reconfirmed by a Royal Letter of 1453, was empowered to distribute the "pechos de la mar, según sus privilegios y costumbre" amongst the members of the corporation. In Valentín Saint Díaz, Notas Históricas sobre la Villa de San Vicente de la Barquera, Santander, Institución Cultural de Cantabria, Centro de Estudios Montañeses, Patronato "José María Quadro" del Consejo Superior de Investigaciones Científicas, 1973, p. 142, Disposición 4a.

Amongst the many public officials the Almirante de Castilla, could be cited as an example. The powers, duties, and jurisdiction of the Admiral were clearly defined in the Siete Partidas: Segunda Partida, Titulo IX, Ley XXIV, and Segunda Partida, Titulo XXV, Ley III - Tomo I, pp. 422-423, and 582-583 respectively. The anchorage and other duties of the port of Seville were codified by order of Almirante Alvar Paes and Almirante Alfonso Jofre Tenorio, acting in their official capacity. This remarkably early attempt to organise the perception of taxes in the port of Seville was carried out in four Ordenanzas, between 1302 and 1318, well before Alfonso V of Aragon established a similar one for Barcelona, in 1438; Florentino Pérez-Embíl, "Navegación y Comercio en el Puerto de Sevilla en la Baja Edad Media," Noveno Coloquio Internacional de Historia Marítima, Sevilla, 1967, Anuario de Estudios Americanos, XXV, 1968, pp. 66-68.

172. Carlé, Mercaderes, p. 155, Cortes de Nieva de 1473, Seguro Real concedido a las personas y bienes de los que fueren a las ferias, a petición de los Procuradores de las ciudades.

Carrère, Barcelone, II, p. 898, Royal interdict to ship in foreign bottoms, granted at the request of the Barcelona Council.


Enrique Mut Remola, La Vida Económica en Lérida, de 1150 a 1500, Lérida, Instituto de Estudios Llenguajes, 1953, pp. 114-117, different requests of City Council to the Crown regarding the local fairs, all of them granted.
Antonio de Capmany y de Montpalau, Memorias Históricas sobre la Marina, Comercio y Artes de la antigua ciudad de Barcelona, Barcelona, Cámara Oficial de Comercio y Navegación, 1961, Reedicón Anotada, versión original Madrid, MDCCCLXIX, Volumen II, Primera Parte, pp. 25-30, Real Cédula of Jayme I (1258) confirming the Ordenanzas para la policía de la marina mercantil del puerto de Barcelona made by the municipal authorities; pp. 174-175, Real Cédula of Jayme II (1326) confirming the new Ordenanzas del Gremio de los Texedores y Tintoreros de fustañás o cotonalías de Barcelona as approved by the municipal authorities; pp. 630-631, Real Cédula of Fernando el Católico (1505) confirming new Ordenanzas del Gremio de los Algodoneros as approved by the municipal authorities. These series of Royal Letters would appear to indicate a remarkable consistency, over a very long period of time, in the administrative mechanism of the realm. The discretionary power and freedom of action of the local authorities would seem underlined by a Privilegio granted by King Fernando el Católico in 1506, which gave them the faculty to change and revoke the ordinances regulating the professional corporations, even if they were in agreement with a Royal Privilege - pp. 631-632. In practice, the professional ordinances and any changes to them were made by the members of the professional corporation themselves, or in conjunction with the city authorities. An example of the former is the Privilegio of King Fernando el Católico (1493) confirming the new Ordenanzas del Gremio de Pelaires de Barcelona - pp. 611-612. Another example of the same tenor is the Real Privilegio of King Juan II (1459) approving and confirming the Ordenanzas del Montepío y Cofradía del Gremio de los Barqueros nuevos (bargemen) of Barcelona, which had been agreed upon by the bargers themselves, lacking until then a professional corporation of any sort - "... qui no han conferria, desijant haver-ne, presenten a vostra excellent majestat los capitols deus scrits..." - pp. 554-557. A clear illustration of a professional ordinance resulting from the combined efforts of the local authorities and the members of the corporation are the Ordenanzas de los Correderos de Lonja y Oreja (Broker's Ordinances) of 1271, establishing the rules of conduct of the members and the fees for their professional services - Volumen II, Segunda Parte, pp. 866-873.

173. Capmany, Memorias, Vol. I, pp. 799-800, several petitions from the merchants of the Lonja (stock exchange) of Barcelona to King Alfonso V in 1453, requesting him to make peace with the Sultan of Egypt in order to restore to normality the very important Levantine trade - in very similar terms to a 1448 request from the city council, Vol. II, p. 526, taxes and other every-day business matters.
Carlé, *Mercaderes*, pp. 194-196, for a number of privileges requested and obtained by the weavers of Segovia, Palencia, Murcia, Soria, and other cities.

Carrère, *Barclone, II*, p. 902, Insurance Ordinances of 1435 and 1436 were no longer considered adequate in 1452. "Once more" Miss Carrère says, the initiative came from the merchants who prepared the new Ordinances, which were accepted by the city council and were to be published "in the usual manner." They have not been found, but Miss Carrère thinks that they were or bore a close resemblance to those published in 1458 - which she examines on pp. 902-905, complete text in Capmany, *Memorias*, Vol. II, pp. 547-553.

Manuel Basas Fernández, *El Consulado de Burgos en el siglo XVI*, Madrid, Consejo Superior de Investigaciones Científicas, Escuela de Historia Moderna, 1963, pp. 33-35, petitions of Diego de Soria on behalf of the University of Merchants of Burgos to obtain from the Consejo Real a mercantile jurisdiction similar to those of Valencia, Barcelona and other cities, finally granted in the Pragmática of 1494.


Capmany, *Memorias*, Vol. I, p. 804, "A instancia de Pedro Vendrell, Pedro Oliver y Bernardo Bonet, mercaderes de Barcelona, que como vecinos de esta ciudad eran inmunes de lezdas en todos los puertos de la corona, expidió la Reyna Governadora Doña María en 1458 una cédula al Bayle General de Cataluña, para que los recaudadores de la lezda de Tortosa en Palamos y San Feliu de Guixols restituyesen integramente a dichos agravados las mercancías embargadas, o la cantidad que hubiesen exigido y percibido de ellos por los géneros que llevaban las dos naves con que tuvieron que arribar a aquellos dos puertos, forzados del temporal."

Julian García Sainz de Baranda, *La Ciudad de Burgos y su consejo en la Edad Media*, Burgos, Tip. de la Editorial "El Monte Carmelo", 1967, Tomo Segundo, Doc. Num. 22, pp. 429-431, Letter of King Alfonso el Sabio to Arnaldo de Manchester and Aparicio Guillin, merchants of Burgos, clarifying for them and the council a number of legal matters related to trade, as requested. The equivalent today would be, of course, an 'opinion' from a superior court. Doc. num. 23, pp. 431-433, tax privileges given to the "mercaderes de dentro y fuera de Burgos" by King Alfonso el Sabio, at the request of Rodrigo Ibañez de Zamora and Pedro Riba de Gordon and a number of merchants represented by them.
175. Carlé, Mercaderes, pp. 229 and 240.


177. García de Valdeavellano, El Mercado, pp. 105-133.


178. Mut Remola, La vida económica, p. 115, "La protección al comerciante se establece en la siguiente manera: Statuentes firmiter quod quilibet hominum undecumque sit veniens ad nudinas sive ferias supradictas sive sit debitor sive sit fideiussor, sive alias malefactor excepto homicida, sit in nostra protectione et guidatico speciali cum omnibus rebus et mercaturis suis quas secum duxerit vel portaverit usque quo ad propia sit reversus. Los que alteraran esta tranquilidad incurrían en "iram et indignationem" del Monarca, veniendo obligados a restituto damno prius in duplum passo et penam mille morabatinorum se noverit absoque remedio incursorum." Those principles were reiterated in many confirmations and other documents related to the fairs, vide pp. 114-117; Doc. num. 29, pp. 271-272, which is a confirmation of the privilege for the Pentecost fayf, given by Alfonso V in 1437; Doc. num. 30, pp. 273-274, in which the same Monarch authorised a change of a fair from August to September, in 1440, clearly due to a request from the city: "Ad supplicationem humilen vestri dilectorum, et fidelium nostrorum Patriarioum, et Proborum hominum, Civitatis Ilerdae" p. 273.

Sainz Díaz, Notas Históricas, shows that the same formula and extra penalties were used to protect other Royal Privileges granted to the fishermen universitas and the town of San Vicente de la Barquera, in Biscay, even as late as 1563. Vide Pergamino Num. 29, pp. 596-601, "Ca qualquier de qualesquier que lo fisieren o contra ello o contra alguna cosa o parte dello fueren, o viniesen avrián la mia yra e pecar me han la pena contenida en dicha carta de privilegio," p. 600; Pergamino Num. 30, pp. 602-614, "E defiendo firmemente que ninguno ni algunos no sean osados de vos yr ni passar contra esta dicha carta de previllejo... ca qual quier e qualesquier
que lo fiscieren o contra ello fueren o'passaren, avra la nuestra yra, e demas pecharme yan la pena contenida en la dicha carta de previlegio...," p. 613; Pergaminio Num. 32, pp. 614-621, a confirmation of several privileges by King Felipe II, in 1563, "... y mandamos y defendemos firmemente que ninguno ni algunos no sean osados de vos yr ni pasar contra la dicha carta de previlegio y confirmacion... e a qualquier o qualesquier que lo fiscieren e contra ello o contra alguna cosa o parte dello fueren o pasaren, abran nuestra Yra, e demas pechamos han la pena contenida en la dicha carta de previlegio e confirmacion." p. 620.

179. Mut Remola, La vida econômica, p. 117, "Como vemos, el Rey no hacía más que sancionar lo que le proponían los mismos habitantes de las ciudades." Vide exampli gratia: Doc. num. 35, 36 and 37, pp. 281-286, for different Royal confirmations concerning regulations for the sale of foreign wine in Lerida.


181. Ibid., 155, "E mando que todos aquellos que vinieren a estas feryas de mio señorío o de fuera de mio señorío a comprar e vender, christianos e moros e judios, que vengan salvos por mar e por tierra por todo mio señorío con sus mercadurias, e con todos sus averes.... Et mando e,defiendo que ninguno non sea osado deles contralar, nin deles fazer fuerça, nin tuerto, nin mal ninguno a ellos, nin en ninguna de sus cosas. Ca el que gelo fiziese, pecharme ye en coto mill mrs., é a ellos todo el daphno doblado...." Privilegio de Alfonso X a Sevilla.

182. Ibid., 155, "Y mando que todos aquellos que vinieren a esta feria de mio señorío y de fuera de mio señorío a comprar y a vender, christianos, y moros, y judios que vengan salvos y seguros por mar y por tierra y por todo mio señorío con sus mercadurias y con todos sus haberes." Privilegios a Badajoz.


184. Ibid., Tomo II, p. 723, De las Ferias, e de los mercados, en que los omes fazen vendidas, e compras.

185. Fairs, with a known and fixed place and date of meeting appear to have been a much preferred spot for the discharge of contracts. Both, the Fuero Real and the Espèculo, stressed that aspect of them - Opusculos Legales, Tomo II, Libro II, Titulo V, pp. 41-42; and Tomo IV, Libro V, Titulo VI, pp. 330-337, respectively.
186. Carlé, Mercaderes, p. 221.

Presbítero Dr. Estanislao Jaime de Labayru y Goicoechea, Historia General del señorío de Bizcaya, Bilbao, Biblioteca de la Gran Enciclopedia Vasca, 1966, Segunda edición, facsimil de la primera, Bilbao/Madrid, 1897, Tomo II, Apendice num. 24, pp. 813-814, Cédula del señor de Bizcaya D. Juan Nuñez de Lara sobre las acémitas detenidas por el preboste de Bilbao Juan de Arbolancha, a judgement of the Lord of Biscay, confirming this general principle.


------, Compra a desconocidos, pp. 397-445.


190. García Sainz de Baranda, La Ciudad de Burgos, Tomo II, pp. 326-328, Doc. Num. 47, pp. 459-460, Privilegio del Rey Don Alfonso XI concediendo a Burgos el tener una feria que durara quince días, comenzando el día de San Juan, 1377, "... e que vengan todos los que quisieren a la dicha salvos e seguros, e que puedan en ella comprar e vender e trocar en aquella manera que se avinieren, e que en este tiempo de la dicha feria todos los que a ella vinieren que sean quitos de portazgo que lo non paguen de las cosas que truxieren, e levaren en quanto dure la feria e que ninguno non le faga fuerza nin tuerto nin otro mal ninguno, nin sean prendados, nin tomados ninguna cosa de lo suyo pór deuda nin por otra razon ninguna salvo si fuere pos contrato que allí ficiieren en otro logar...."

García de Valdeavellano, El Mercado, pp. 62-63, 121-123, 128-129.

Capmany, Memorias, Tomo II, pp. 681-684, Privilege conferred by the Viceroy of Catalonisa, in 1577, confirming and extending, at the request of the city and Consulado of Barcelona, the two fairs held in that city since very early days. The standard special assurances are repeated in this late XVI century example: "Volentes et concedentes inter cetera, quod in predictis nundinis et rëtrumundiis possint fieri omnes et quoscumque contractus, solutiones, negotiationes, cambia et acta mercantilla... sint salvi et securi veniende, stando ac etiam redeundo, et sub speciali protectione, empramiento, salvaguardia ac guidatico regiis contintuti; sic quodnon possint capi, detneri, pignorari, mercari seu
aliquatenus impediri, culpa, crimine vel debitis alienis, nisi ipsi in eis principaliter fuerint aut fidejussorio nomine, obligati..." p. 683.

Mut Remola, La vida economica, Doc. num. 27, pp. 267-268, and Doc. num. 28, pp. 269-270, privileges of annual fairs to Lérida from Jaime I (1232) and Fernando I (1414), both reiterating the special guarantees in very similar terms—vide pp. 267 and 270 respectively.


192. García Sainz de Baranda, La ciudad de Burgos, Tomo II, pp. 431-433, Privilege granted to the merchants "de dentro y fuera de Burgos" in 1319, at their own request, and in order to protect them from the abuses of the "diezmeros" and "portazgueros" (tax collectors). The document restates the special protection and immunities assured to them by the Crown (p. 432).

García de Valdeavellano, El Mercado, pp. 124-126, t28-130. Some extended the special privileges enjoyed by the merchants in the fairs to the daily and weekly markets, such as the privileges granted by Fernando IV to the weekly markets of Villalpando, Benavides and Lara, pp. 125-126. Other documents making specific mention of the special guarantees were safeconducts, such as the one granted by the Count of Galicia to the merchants of Galicia—p. 124, footnote 329, which according to Huvelin - Essai Historique, pp. 362-382—evolved from this individual contract of insurance into a generalised guaranty of peace and security, for which the Crown became entitled to perceive an ad hoc tax.

Carlé, Mercaderes, pp. 155-156, ref. 58; Letter of Alfonso X to the City Councils of the realm. Also pp. 223-225 for further examples.

193. Labayru y Goicoechea, Historia General, Tomo II, p. 782, Fuero antiguo de la merindad de Durango, "Otro si cualquiera mercader que vender de cualquier lugar si non fuer enemigo de nuestro Senor que sea franco y quito de comprar y de vender asi ganado como otra mercaderia cualquiera que sea."

García de Valdeavellano, El Mercado, pp. 64-68, 116-122, 126-131. Many of these Fueros extended the special privileges to the ordinary market, notably that of Leon: "Qui mercatum publicum quod fit in secunda feria pertbaverit cum mudiis gladiis, slicet ensibus et lanceis, XLa. solidos monetae regis persolvant, mediatatem domino et mediatatem Concilio. Qui in die predicte mercati a mane usque as verperum aliquen pignoraverit, nisi deitorem aut fidiatorem suum et istos
extra mercatum, pectet LX solidos domino et duplet pignoram
illi quem pignoravit...." p. 117, footnote 304.

Carlé, Mercaderes, p. 224, ref. 363, Fueros de Salamanca y
Ledesma.

194. Cortes de los Antiguos Reinos de León y de Castilla,
Publicadas por la Real Academia de la Historia, Madrid,
Rivadeneyra, 1856, Tomo Tercero, pp. 869-870, Cortes de
Santa María de Nieva de 1473, Petition 19. The reply clearly
said: "... qual quiera que lo contrario fuziere caya e
ycurra en las penas en que caen los que quebrantan tregua
y seguro puesto por su rrey e sennor natural, e demas quelas
justicias que sobre ello fueren rrequeridas luego que lo
supieren, tornen e reesistuyan los tales bienes alos quelas
fueron tomados e delibren las personas sin costa e dilacion
alguna, so pena que pierdan los oficios e paguen las costas
dobladaras al que rrecibio el dannio" p. 870.

195. Carlé, Mercaderes, p. 155, footnote 57, Novísima Recopilación,
IX, VII, III. "Here, it was further clarified that "por
obligaciones ni por deudas, que qualesquier Consejos ni
personas singulares debiesen a qualesquier personas, ni por
sus cartas o otras sentencias, que sobre esto tuviesen los
acreedores, no pudiese ser fecha ni represaria, ni execucion
ni prision en las dichas personas de los que fuesen a las
dichas ferias, y por la estat y tornada de ellas, salvo si
fuese por su deuda propia."

196. García de Valdeavellano, El Mercado, pp. 36-37, Liber
Iudiciorum, Libro XI, Titulo III, Ley II.

197. Huvelin, Essai Historique, p. 152, and according to a letter
from Charlemagne - ref. 3 - was considered part of the custom-
ary law already in 796: "De negotiatoribus quoque scripsisti
nobis. Quos voluimus ex mandato nostro ut protectionem et
patrocinium habeant in regno nostro legitime iuxta antiquam
consuetudinem negotiandi." The Church, according to Huvelin,
exercited a great influence in the development of a special
legal protection for the merchants. "A côté de la royauté,
l'Eglise affirmait de plus en plus son influence. Cette
influence qui tendait à faire prévaloir des idées d'égalité,
dégageait peu à peu les notions élémentaires du droit des
gens, devait avoir une importance particulière au point du
vue commercial. C'est par ell que peu à peu se formulait
l'idée de la protection des pauvres et des faibles, idée
qui n'était point étrangère à la sauvagearde prêtée par le roi
aux marchands voyageurs." pp. 155-156.


Carlé, Mercaderes, p. 224. This privilege was reiterated two centuries later by Juan II, Nueva Recopilacion, IX, XXXI, IV, as the author demonstrates, pp. 224-225.

200. Carrère, Barcelone, I, p. 28. The Pragmática was requested by Barcelona, Valencia, Majorca, Tortosa, and Perpignan.

201. Ibid., I, 30-32. A letter from the Jurats of Valencia to the Council of Barcelona, congratulating them for their defense of the German merchants of that city against an abuse of privilege of the Governor - p. 32 - shows that more than one city would join in the support of foreign merchants. The excerpt reproduced by Carrère refers, sensibly, to the damage that could be caused by such abuses to the trade of the whole Kingdom, particularly in a case like that, for all the merchants were members of the powerful Ravensburger Handelsgesellschaft. The expulsion orders against Italian merchants were resisted by the Barcelona Council and Consulado, probably for the same reason, and in spite of the intense competition between the two merchant groups, and the many factions in which they were divided.

202. Capmany, Memorias, Tomo I, pp. 87-116, for a summary of the many ups and downs in the relations between Genoa and Barcelona, implacable rivals, even though they started off their relations as close allies - Tomo II 2 - with the Genoese cooperating in the Reconquest of Tortosa, in 1148, and receiving for their trouble important privileges from Ramon IV, Count of Barcelona, including - apparently - the use of the cross of St. George in their coat of arms.


An examination of the Cedula of King Alfonso V, establishing, in 1420, the rights and duties of the subjects of the German Emperor and the Duke of Savoy in Aragon - Capmany, Memorias, Tomo I, pp. 780-783, would corroborate the views of Carrière. A succinct argument is made in the preamble to the Cedula to defend the fairness of demanding certain duties in exchange for the security guaranteed to the foreign merchants and the profits derived from it, a rationale that bears out the conclusion of Huvelin - vide footnote 192 - regarding the evolution of this principle. If for any reason, the Crown terminated the guaranteed safeconduct, the foreign merchant
was given six months to wind up his business and leave in peace. This too, was an old established custom - Heyd, Histoire du Commerce, I, p. 323, rights of Pisans in Tripoli.

204. Probably a significant problem, if we consider Ley VI of the Quinta Partida, Titulo VII - De los Mercadores que andan descaminados, por furtar, e encubrir los derechos que han a dar, de las cosas que lieuan - a relevant witness of the time - Siete Partidas, Tomo II, pp. 726-727.


Gibert y Sánchez de la Vega, El Consejo, pp. 107-108, already in 1315 the cities and towns of Castile presented to the tutors of the infant King Alfonso XI a "cuaderno de Hermandad" that they had to approve as a condition to remain in office. There were also two failed royal initiatives to unify the Hermandades in the XV century; one from Juan II in 1453, and the other from Enrique IV in 1464. This would suggest a generalised concern about the problem of security and the belief in all circles that a unified Hermandad could contribute to lessen it. It would also suggest a great deal of difficulty in reaching a consensus - perhaps, in the case of Enrique IV, a by-product of the political upheavals of his time - and that no political actor was remotely near to enjoying a monopoly of power.

García de Valdeavellano, Historia de las Instituciones, p. 420.

207. Suárez Fernández, Las Bases, pp. 238-239. The Council of Burgos instructed the Procuradores of the city, García Martínez de Lerma and Juan Martínez de Burgos, to argue the petition at the Cortes on the strength of two basic problems: the need to increase the security of the traffic on the roads and the need to prohibit the illegal drain of gold and silver from the realm, two points on which probably there was a coincidence of feelings. Prior to that, the city of Burgos was engaged in a great deal of canvassing, with all the cities interested in the traffic of wool, and at the Court, where it had two powerful allies: Juan de Ortega, Arcipreste (Archpriest) of Palenzuela, and Alonso de Quintanilla, Accountant of the Catholic Monarchs. The actual record of the Cortes de Madrigal - Cortes de los Antiguos Reinos, Tomo Cuarto, p. 2, show that the matter had been carefully
discussed beforehand by the Procuradores of the cities and the Royal Council, and, we would gather that the decision was reached prior to the actual meeting of the Cortes.

208. Cortes de los Antiguos Reinos, Tomo Cuarto, pp. 2-11.


Suárez Fernández, Las Bases, pp. 239-240. Suárez Fernández sees the influence of merchants in the very interesting article VI of the Ordenamiento, which compelled those residing where the traveller halted for rest, to provide shelter and to sell supplies and food for him and his beasts at the normal prices. If they refused to do so or they tried to overcharge the traveller, he could take what he needed, depositing "el prescio rreasonable" with a third party. Complete text in Cortes de los Antiguos Reinos, Tomo Cuarto, pp. 8-9.

209. Suárez Fernández, Las Bases, pp. 232-250, part. 241-250, for a number of objections from the cities to the workings of the agreement and their withdrawal from it. The root of the problem seems to have been the unwillingness of the cities to relinquish part of their jurisdiction on the Hermandad, for, as Gibert y Sánchez de la Vega says - El Consejo, p. 110: "La Hermandad se coloca en la esfera de sus atribuciones sobre los Consejos, tomando disposiciones que son acatadas por este." A further problem was the extraordinary contributions that the Hermandad was empowered to exact from the local Councils, which, judging by the case of Murcia in 1480, forced the Councils to impose additional taxes - Ángel Luis Molina Molina, "La Economía Concejil Murciana en 1479-80", Miscelánea Medieval Murciana, Departamento de Historia de España, Murcia, Universidad de Murcia, 1973, pp. 124-126. A Real Cédula of 1498 simplified the organisation of the Hermandad and terminated it power to collect a special tax, making it dependent on the ordinary contributions assigned by the local Councils for police purposes - probably an assuaging gesture of the Catholic Monarchs, we are tempted to speculate - Gibert y Sánchez de la Vega, El Consejo, p. 110.

210. Carlé, Mercaderes, pp. 146-154. The objective can be clearly seen in the Privilegios al Consejo de la villa de Riazza, 16 de Mayo de 1304: "Don Fernando... Sepades que por fácer bien y merced al Consejo de Riazza, porque son pobres dereigados de lo que habian por razon de las guerras, e porque se pueble el lugar mejor para nuestro servicio, y sean mas ricos, y por razon que ellos no han mercado ninguno, tengo po bien de los dar que hayan mercado un dia en la semana..." p. 147, ref. 2.
As the author points out - p. 89, ref. 245: "En las concesiones de mercado es frecuente indicar que tal concesión se hace por favorecer al lugar en que se otorga." Thus, the formula "por fazer bien et merced" of the document quoted above, embodying that purpose, is often repeated. We find it in earlier concessions, such as the one to Haro: "Por fazer bien et merced al Conceio de Haro, et por que me lo pidieron por merced, doles que ayan mercado" p. 89, ref. 224; and, again, it is repeated by the Catholic Monarchs in 1476, in a concession to the Villa of Villada: "... e porque la dicha villa de aquí adelante se pueble y ennoblezca más, y sea mejor poseida e abastada de los mantenimientos e cosas necesarias, tenemos por bien y es nuestra merced que agora y de aquí adelante por siempre jamás haya en esa Villa de Villada un mercado franco por el día miércoles de cada semana...." p. 92.

211. Siete Partidas, Tomo II, p. 723.

212. Ibid., Tomo I, pp. 360-362, "... E otrosi ha poderio... e otorgar ferias nuevamente, en los lugares que entendiere que lo deue fazer, e non otro ome ninguno...."

Huvelin, Essai Historique, pp. 177-190, for the evolution of this principle in France and particularly p. 186, for same prerogative of French Monarch, later rather relaxed, as in the Peninsula, but also never relinquished.

García de Valdeavellano, El Mercado, pp. 76-88, 95-102. In the early period of the Reconquest only the King granted Ferias - p. 96 - but in later years the Señores did so as well, sometimes, in spite of strong opposition from the Crown and litigation at the Cortes - pp. 100-102.

213. Capmany, Memorias, Volúmen I, pp. 404-406, Privilegio of King Pedro to Barcelona - 1343 - granting freedom of trade to Barcelona, including free export of coin, bullion and precious metals in any form. Volúmen II, pp. 651-652, Cédula of King Fernando el Católico - 1512 - imposing severe penalties on any Royal Officer trying to tax the free trade and navigation granted to Barcelona in the new conquests of Africa.

Cortes de los Antiguos Reinos, Tomo Cuarto, pp. 152-152, Petición 79, Cortes de Toledo de 1480, Procuradores requested and obtained freedom of trade for hides and the cancellation of monopolies.

Guiard y Larrauri, Historia del Consulado, Volúmen Primero, pp. LXXI-LXXIV, freedom of trade of Bilbao. "La libertad de comercio declarada en la carta-puebla, y en el privilegio
de Doña María, se complementa con las expresiones de las sucesivas cartas ganadas a los Señores, y en las declaraciones del Puerto del Senorío, cuyo era parte la villa." - LXXII-LXXIII. The privilege of 1372, ratified in 1379 declared that the townsfolk of Bilbao could: "comprar e vender francamente heredades y todo lo vuestro como homes frances e libres e que fagades en guisa lo que vieredes que mas vuestro pro sea" p. LXXIII.

Mut Remóla, *La vida económica*, pp. 251-252, Documento Anexo num 20, Jaime II revokes - 1315 - privilege of shoemakers of Lérida to prohibit the sale of shoes made outside, at the request of the city Council.


214. Carrère, *Barcelone*, I, p. 432, for a succession of monopolies for dyeing works, followed by declarations of freedom to establish more, both requested and obtained by Catalan towns.

Ramón Carande y Thovar, *Sevilla, Fortaleza y Mercado. Las Tierras, Las Gentes y la Administracion de la Ciudad en el Siglo XIV*, Sevilla, Universidad de Sevilla, 1972, pp. 174-176, for the administration of the Royal monopoly of the salt, normally rented out, and often donated by the Crown.

Isabel González García - J. Ignacio Ruiz de la Peña, "La Economía Salinera en la Asturias Medieval", Asturienia Medievalia, Oviedo, 1976, pp. 115-155, for the administration of the Royal monopoly of the salt, over several centuries, in this big importing region. The normal form of perception of the rent from the "alfolies" - magazines of salt - was through a farming contract along the lines specified in the mentioned Tercera Partida, Titulo XVIII, Ley XIII and the Espéculo - Libro IV, Titulo XII, Ley XXI, according to the authors - vide specially pp. 103-104.

Ramón Prieto Bances, "El abasto de Oviedo en el siglo XIV y sus problemas", Homenaje a Don Ramón Carande, Madrid, Sociedad de Estudios y Publicaciones, 1963, II, p. 362, rental of exclusive right to store and sell hides for a six year term at 83 Maravedis per annum.

215. The procedural form for special export permits was specified in the Tercera Partida, Titulo XVIII, Ley XX - Siete Partidas Tomo II, p. 215. Horses - according to that law - coin and bullion - Carlé, *Mercaderes*, pp. 305-306 - were amongst the
items requiring special export permits on a permanent basis. Wool - Carlé, op. cit. p. 307 - and a number of essentials on an ad hoc basis according to the supply conditions - Pedro Aguado Bleye, Manual de Historia de España, Madrid, Espasa-Calpe, 1958, Vol. 1., p. 923. The Cortes, almost invariably contained petitions concerning either the inclusion of some item in the forbidden list or its exclusion from it. For instance, Petition 10 in the Cortes of Cordoba, in 1455, was a request to forbid the exports of grain, cattle, and sheep, by land and by sea, from Castille to the Kingdoms of Aragon, Navarra, Granada, Portugal, "E a otras partes" (and to other places) - which incidentally would suggest a rather intense trade. It was granted, but, in the case of Navarra and Aragon only after the extant tax-farming contracts for the Diezmos y Aduanas (Customs) Duties had been discharged - Cortes de los Antiguos Reinos, Tomo Tercero, pp. 684-685. An example of this type of special permit is the one given by Queen Isabel to Pedro de Stumiga in 1476 to export duty free wheat from Andalusia to the frontier garrisons - Suárez Fernández, Las Bases, p. 290, ref. 52. From a promotional point of view, the most significant feature of the system of special permits was the standard practice of giving an automatic permit plus a rebate of all paid taxes to any local or foreign merchant exporting product - including currency - for an amount equal to the one imported. This practice, requiring a special document, the "Alvada", certifying the total value of imported products, to be presented at the moment of exportation, was current in Castille since 1281 - Carlé, Mercaderes, pp. 224, 312 Carrère, Barcelone, I, pp. 19-22, for special license system in Barcelona.

216. Capmany, Memorias, Volúmen II, Primera Parte, pp. 760-761, Real Pragmática of the Catholic Monarchs, granted in Alfaro, in 1495, establishing a complex system of subsidies to promote the construction and maintenance of large vessels, from 600 to 1,000 tons and above.

Joseph de Veitia Linage, Norte de la Contratacion de las Indias Occidentales, Sevilla, 1672, Filmed from the Holdings and with the Permission of the University of London's Goldsmith's Library, Libro II, Cap. 14, pp. 167-170, cites an earlier subsidy of very similar tenor, from 1458 (p. 170) and a reiteration of this policy up to the time of publication of his book.

217. Carandé y Thovar, Sevilla, pp. 112-119, points out to some remarkably early attempts of the Crown to obtain a uniform system of weights and measures for the entire Kingdom of Castille. It was not entirely successful, but, according
to the author, as a consequence of those efforts, the differences of weights and measures within the Kingdom of Castille were not as wide as elsewhere - pp. 112-113. The Ordenamiento of 1344 included a rigid method of control of weights and measures and severe penalties for infringements. Article XIII of the Ordenamiento epitomized those characteristics: "Primera-
mente, que fagan padrones de pesos et de medidas, de todas
las maneras et que sean de cobre. Et que estos padrones que
los tengan dos fieles que sean omnes buenos sabidores; el uno,
que tenga los padrones de los pesos, et el otro, los
padrones de las medidas; et que en toda la cibdad, nin en su
termino, non tengan ninguna pesa, nin balaca, para uender nin
para comprar, si non de cobre o de fierro. Et que sean
afinadas por el fiel que touiere los padrones de las pesas,
et que sean selladas con el sello del concejo, et del fiel
que las afinare; et que cualquier que por otro peso uendidre
o comprarere que, por cada uez, que peche dose marauedis, et,
port la segunda, ueynte et quatro, et por la tercera, quel
tomen la quarta parte de todos sus bienes, et le den ciento
acotes." p. 113.

Mut Remola, La vida económica, pp. 127-128. In Lérida, like
in Seville, the merchants and the city Council were extremely
concerned about establishing a uniform system of weights and
measures. In 1340 they requested from the Council a ruling
on standard measures. In 1383, Pedro III of Aragon granted
a privilege on the matter, giving power to the Paheria, with
approval of the Veguer, to establish ordinances about weights
and measures and the corresponding penalties for the in-
fractors. The standards were to be kept in the Paheria, where
the tuning and certification was to take place.

Jules Finot, Etude Historique sur les Relations Commerciales
entre la Flandre & l'Espagne au Moyen Age, Paris, Alphonse
Picard et Fils, Editeurs, 1899, pp. 24-29, for the same
concerns and a similar ordinance sanctioned by the Count of
Flanders in 1282, at the request of the Castilean and other
Peninsular merchants, who also represented those of Lübeck and
other German cities.

Carlé, Mercaderes, pp. 175-177, with numerous references
to local laws concerning weights and measures, often included
in the local Fueros. All stipulated that the units used
should be the same for the local inhabitants and for the
foreigners, which Carlé sees as the source of a similar clause
in the Fuero Real - Libro III, Titulo X, Ley I: "Mandamos que
los pesos e las medidas porquè venden e compran, que sean
derechos e iguales a todos, tambien a los estranos como a los
de la villa..." Opusculos Legales, Tomo II, p. 87. Carlé
also mentions several decrees of the Castilean Crown,
establishing the compulsory use of certain units for some
specific items in all the territory of the realm. For cloth, for instance, was the vara of Burgos, where all the cities and "villas" which were head of a "partido" had to send representatives to receive the standard units in front of a Notary.

_Siete Partidas, Tomo III, Setena Partida, Titulo VII, Ley VII, Como fazen fasedades, los que tienen pesos, o medidas falsas; e que pena merecen porende, with abundant commentaries, gathered basic criminal elements and punishment for using false measuring units.

Capmany, Memorias, Volúmen II, Segunda Parte, pp. 1060-1062, for some of the variations of the measuring units.

González García - Ruiz de la Peña, La Economía Salinera, pp. 154-155, for an example of the profuse litigation engendered by the existence of an array of measuring units. This one dated in 1507.

218. Capmany, Memorias, vide footnote 172 in this chapter. Also Volúmen I, pp. 471-479, for general comments on these ordinances. He stresses the input of the members of the universitas in these ordinances - particularly p. 474 - and the fact that most of them, even the oldest known to him, made reference to prior ones, which may have existed in written or in simple customary fashion - p. 479.


Labayru y Goicoechea, Historia General, II, pp. 820-838, Ordenanzas de la Cofradía de Pescadores del Puerto de Bermeo, made by the members of the universitas, in accordance with their ancient customs - "costumbre immemorial" - in 1353. Confirmation and approval of the Ordenanzas by the city Council, in the same year, pp. 839-840. Tomo III, pp. 724-730, Apéndice num. 39 (segundo) Ordenanza de los pañoeros de la Villa de Durango, 1496.

219. Capmany, Memorias, Volúmen I, pp. 479-555, for commentaries on a large number of ordinances. Generally, a concern of the members of many universitas about the quality of their products is clearly discernible. Many of them required a stamp of approval from the Prohombres or Consules of their universitas before the sale of the product.

Carlé, Mercaderes, pp. 177-183, for many regulations concerning the quality of products in Ordenanzas and Fueros.
Carrère, *Barcelona*, I, pp. 438-458, 470-475, for many ordinances establishing the standard quality of Barcelona made and Barcelona dyed cloth respectively. The process to be followed and the raw materials allowed were clearly specified, and the final product must conform to the official sample in the Draper’s Hall, before receiving approval and the "Bolla", Barcelona’s official seal for export.

220. Capmany, *Memorias*, Volumen II, Segunda Parte, pp. 866-873, Ordenanzas de los Corredores de Lonja y Oreja, of 1271, regulating the services of brokers in that city, and their responsibilities and fees. Carlé, *Mercaderes*, p. 166, for one of the oldest testimonies of self-policing of services by the Cofradia de Tenderos de San Miguel de Soria, authorised by King Don Alfonso el Viejo to select two of their members for that purpose.

Heredia Herrera, *Los correderos*, pp. 185-186, for added responsibility of the brokers of Sevilla, who were public functionaries in the same sense that the escribanos were, and who did not require the presence of the latter to formalise contracts.


221. *Siete Partidas*, Tomo II, Quinta Partida, Titulo VIII, Ley X to Ley XVII - pp. 736-741, Ley XVII and Ley XV pp. 750-752, dealt with the general liabilities of professional and independent contractors. The core of that liability, in general terms was happily summarised in the Ley X: "... E esto que diximos de los oreyes, se entiende tambien de los otros maestros, e de los Fisicos, de los Cirujanos, e de los Albeytarees, e de todos los otros que resciben precio, para fazer alguna obra, o meleznar alguna cosa, si errare en ella por su culpa, o por mengua de saber" - p. 736. Incidentally, it would appear from this paragraph and the commentaries that the liabilities were quite considerable.

222. Ibid., 377-378, "Las rentas de los puertos, e de los portadgos que dan los mercadores, por razon de las cosas que sacan, o meten en la tierra, e las rentas de las salinas, o de las pesquerias, e de las ferrerias, e de los otros metales, e los pechos, e los tributos que dan los omes, son de los Emperadores e de los Reyes: e fueronles otorgadas todas estas cosas, porque ouissen con que se mantouissen onrradamente en sus despensas; e con que pudiesen amparar sus
tierras e sus Reynados, e guertear contra los enemigos de la Fe; e porque pudiesen escusar a sus Pueblos, de echarles muchos pechos, o de fazeilles otros agraulamientos." This law was complemented by the Ley II, of the Segunda Partida, Titulo I - Tomo I, pp. 360-362.

223. García de Valdeavellano, Historia de las Instituciones, pp. 599-612, for succinct overview.


Salvador de Moxó Ortíz de Villajos, "Exenciones tributarias en Castilla a fines de la Edad Media", Hispania, XXI, num. LXXII, Madrid, 1961, pp. 163-188.

Hipólito Sancho de Soprani, "La repoblación y el repartimiento de Cádiz por Alfonso X", Hispania, XV, Madrid, 1955, pp. 521-529, for a number of tax privileges of the "vecinos" of Cádiz. Amongst them was the right to buy rural property in Jerez de la Frontera, and enjoy there, a separate jurisdiction, of the same privileges would enjoy in Cadiz. This privilege, perfectly justified at the time, given the frontier condition of Cádiz, its strategic importance, and the poverty of its small rural "término", is a good example of some of the reasons behind the complexities of the tax system. The "vecinos" of Cádiz were also exempted of Diezmo duties throughout the entire territory of the realm.

Julio Valdeón Barúque, "Un Ordenamiento de Enrique II a Sevilla", Archivo Hispalense, Tomo LVI, 2a. Epoca, num. 171-173, 1973 Sevilla, privilege of the labourers, officers and renters of the mint of Seville, by which they were exempted of all municipal taxes and of conscription for the military duties of "Hueste" and Armada, given in 1370, and confirmed by the Catholic Monarchs in 1478.

Perez-Embínd, El Puerto, pp. 64-65.

Capmany, Memorias, Volúmen II, Primera Parte, Doc. num. 6, pp. 14-15, for special grant of Jaime I to resident of Barcelona giving them freedom of trade by land and by sea, exempted of all duty, in Majorca and all adjacent islands; Doc. num. 7, pp. 15-16, similar grant from the same Monarch, one year later, in 1232, extending those franchises to the entire realm of the Crown of Aragon. Both privileges were given for the maritime services rendered by Barcelona to the Crown; a very common source of a special tax status for cities, individuals or corporations.

González y González, Repartimiento, I, p. 50, ref. 124 bis, privilege of the clergy of Córdoba and its "quinteros".
"pastores", "Hortelanos" and "paniaguados" (rural workers, shepherds and other dependents) given by King San Fernando, in 1279, exempting them of all taxes in perpetuity, with the only obligation of saying a daily prayer and two anniversary Masses for him and Queen Beatriz and celebrate solemnly the festivities of Santa María and San Eustaquio in the chapel of the Alcázar. The clergy of Seville had obtained a similar privilege in 1271. Both are good examples of the many instances in which pious reasons determined the status of those subject to taxes.


226. Ibid., 373-375.
227. Ibid., 375-377.
228. Ibid., 374, Ley VI: "Los rios, e los puertos, e los caminos públicos pertenecen a todos los omes comunamente; en tal manera que tambien podereis usar dellos los que son de otra tierra estrana, como los que moran, e biuen en aquella tierra do son."

231. Ibid., 448-449.
232. Ibid., Tomo I, pp. 151-152.
233. Ibid., 432.
234. Ibid., Tomo II, pp. 401-402.
235. García Sainz de Baranda, La Ciudad de Burgos, II, pp. 460-465, Doc. num. 48, Privilege of Alfonso XI, granting Burgos a "segund que lo avian fasta aqui" (463), in 1345.

Carande y Thovar, Sevilla, pp. 128-192
Labayru y de Goicoechea, Historia General, III, pp. 206-207, Fuero Viejo de Bazcaya, Título de los caminos e senderos y como an de ser. It should be noted that the general principles of law gathered in the Siete Partidas existed in written form in many fueros or were kept orally, as in this case, in which the Fuero Viejo de Bazcaya was only written down in 1452. Vide pp. 686-687 for Concession of taxes to city.


Siete Partidas, Tomo II, Tercera Partida, Título XXVIII, Ley X, Quales son las cosas del comun de la Cibdad o Villa, de que non puede cada vno vsar. This law gave the legal basis by which a city, as a corporation, could own private property. However the production or rent of any such property should be put to public use, such as bridges, walls, fortresses or "en las otras cosas semejantes destas, que perteneciesen al pro communal de toda la Cibdad of Villa."

236. Mut Remola, La vida económica, Documento Anexo num. 22 - pp. 255-256; num. 23 - pp. 257-258; num. 24 - pp. 259-261, all concerning the granting of special taxes for the bridge of Lérida.


238. Carande y Thovar, Sevilla, pp. 172-173, 179, numerous donations of taxes to Seville. Often, as the author points out - p. 173 - these "mercedes" originated in services rendered by the city to the Crown.

Mut Remola, La vida económica, Documento Anexo num. 25, pp. 262-263, Privilege of Alfonso IV, in 1431, giving bridge and the toll duty rights to Lérida, without having to report to the King about its administration. The author also underlines, as does Carande y Thovar, the role of past services in many of these donations (pp. 178-180) and the particular ability that Lérida seems to have had in making use of them. In 1289, for instance, the city gave a voluntary subsidy to Alfonso II, then at war with France, but in the following year, the King confirmed that the city was not obliged to contribute anything it did not wish to contribute.
to the King (p. 178).

239. Ibid., 177.

240. Carande y Thovar, Sevilla, pp. 143-157, the leasing of these taxes involved a public auction procedure (pp. 156-157) and a number of obligations for the lessee, amongst which was the provision of adequate sureties - pp. 152-153, according to the XIV and XV century ordinances studied by the author. The lessor was also to furnish sureties, specially when the adjudication was made to satisfy a debt of the city (p. 149) and the ordinances also contemplated the inclusion in the contracts of an escalation clause, allowing for increases of rents and duties in case of devaluation (p. 154), a very common affair at the time. The same rules of bidding in public auction and provision of sureties applied to the leasing of public property, rural, industrial or otherwise - pp. 147-150, for the purchase of public offices - p. 145, and for the awarding of contracts for public works by the city Council - p. 143.

241. Manuel Basas Fernandez, El Consulado de Burgos en el Siglo XVI, Madrid, Consejo Superior de Investigaciones Científicas, Escuela de Historia Moderna, 1963, pp. 149-152. This practice often extended beyond the local jurisdiction, to include areas of use for business, in this case within the legal jurisdiction of the institution, the Consulado of Burgos. The Consulado took care of a considerable network of roads and bridges. It did so throughout the XVI century, and had probably done it for a very long time, judging by a paragraph of a plead in a 1547 litigation between Burgos and Bilbao: "... la ciudad de Burgos... que siempre los d'esta dicha Universidad de Burgos an tenido e tienen cargo de aderezar caminos ansí para la villa de Bilbao como para otras partes" - p. 150, ref. 46.

Carrère, Barcelone, I, pp. 58-69. The upkeep often included the payment of personnel, such as the salary of the keeper of the lighthouse in Montjuic - p. 61.

José Tudela, "La Cabana Real de Carreteros", Homenaje a Don Ramon Carande, Madrid, Sociedad de Estudios y publicaciones, 1963, 1, p. 364, The Consejo de la Mesta built and repaired bridges, not only for its flocks of sheep, but also for the use of wool carrying carts to the washing and drying areas and elsewhere.

242. Basas Fernandez, El Consulado, pp. 149-150, "Una de las inversiones mas interesantes del dinero de averias (special tax) era para cubrir los gastos, 'en edificios de puentes y caminos d'esta ciudad e de los puertos de la costa de la"
mar para poder llevar y carretear las lanas y otras mercaderías d'est dicha Universidad a los dichos puertos para las navegar e para traer d'ellos los fardeles'."

This provision from the Ordenanza XXI of 1538 was reiterated in the Ordenanza of 1572 as well. The Avería duty charged on the merchandise handled by the merchants of Burgos was collected in that city at least since 1455, and much earlier in their consulate in Bruges - p. 129-131.

Carrère, Barcelone, I, pp. 52-69. The Dret de la Mercaderia or Dret del Periatge was the Catalan equivalent of the Avería tax in Castille.

243. Ibid., I, 62-63, such as the artificial port and the pontoon in Barcelona; II, pp. 789-792, and a new breakwater in that city, noticeable for some very innovative techniques employed. All three works, carried out between 1439-1454, were substantially defrayed with proceeds from de Dret del Periatge.

244. Chabas Llorens, Historia de la ciudad, Tomo II, pp. 76-77, lighthouse of Denia, built and owned by the Marqués of Denia, Don Bernardo de Sandóval, by special Royal Privilege.

245. García de Valdeavellano, Historia de las Instituciones, p. 601, the old Roman - Visigothic Portorium or Telonum tax, and indirect duty on the transit of goods for sale, paid, as the name suggests, normally at the gates of the cities, and also, with different names at sea and river ports, bridges, "puertos secos" (inland custom houses), and other locations. The equivalent in Aragon was known as Peaje (as well as Pedaticum, Pedagium, and Peagem) - p. 606, Leuda or Lezda - p. 607.

246. Ibid., 604-606, the Almoxorifazgo or Almofarifazgo, also known as Diezmo in Northern Castille - for the 10% rate - was an import - export duty applied to all merchandise leaving or entering the realm. The equivalent in Aragon was known as Dreytos de la Generalitat, Generalidades, and in Navarre as Tablas - p. 605.

247. Siete Partidas, Tomo II, pp. 725-726. Incidentally, the introduction of the law - "Vvisada cosa es, e con razon, que pues que los mercadores son seguros, e amparados del Rey, por todo su Señorio, que ellos, e todas sus cosas le conozcan Señorio; dandole partagdo de aquello que a su tierra traxeren a vender, e sacaren ende." - and particularly commentary (I), elaborating on the rationale for the levying of these taxes, bear out, once more, the argument of Pierre Huvelin about their evolution - vide references 192 and 203 in this chapter.
248. Carlé, Mercaderes, pp. 233-234, Privilegio de Alfonso X, in 1281: "Otorgamosles otros, que los mercaderos que pagaren el diezmo de lo que truixieren en nuestros puertos segund es ordenado, que non sean escatimados de entrada por los caminos, nin en las villas, salvo ende en los puertos que han a pagar su diezmo mostrando alvala de los desmeros de que como han pagado su derecho, e jurando sobre los Santos Evangelios que nos (sic) train al, sinon aquellos que desmaron en los nuestros puertos..." Text also in Garcia Sainz de Baranda, La ciudad, II, pp. 431-433.

Capmany, Memorias, Volúmen II, Primara Parte, Doc. num. 37, pp. 55-56, Privilegio del Rey de Castilla D. Alonso, granted in 1284 to the Catalan merchants, exempting them of the payment of Diezmo in Seville if they had already paid it at the frontier, provided they could produce the Alvala (receipt) to prove the prior payment.

García de Valdeavellano, El Mercado, pp. 159-160, Fuero de Nájera.

249. Ibid., Volúmen I, pp. 782-783, Cédula del Rey Don Alonso de Aragón, granting privileges to the Germans and Saboyans, in 1420: "En el Séptimo: Que para quitar toda duda o disputa, las mercaderias que viniesen de países extraños, o saliesen para ellos, y hubiesen de pasar por las sobredichas provincias o reynos, no pagaren derecho de transito de una a otra, habiendo pagado y la primera." Article 8 of the Privilegio added that the status enjoyed by the Germans and Saboyans was the same as that of the Italians.

250. Carlé, Mercaderes, p. 156, Privilegio del Rey Don Alfonso X, exempting those going to the Seville fairs of Portazgo and other duties, in 1255: "... por fazer bien e mercet a todos los cavalleros filjos dalgo e a todos los cibdadanos e a todo el pueblo de la noble cibdat de Sevilla, quito e franqueo a todos los que vinieren a las ferias de Sevilla vezinos e extraños todos los portadgos e todos los derechos que y avien a dar..." In similar térms exemptions were granted to Badajoz, Cadiz, Talavera de la Reina, Jumilla, Segovia - pp. 156-157; and had been included before that in a number of Fueros. In that of Oreja, in 1129, it was granted in clear and very comprehensive terms: "Los pobladores de Oreja en cualquier cibdat, o en cualquier Castillo, o en cualquier villa de mi Reino estuvieren, no paguen ningun portadgo, si no fuere en Toledo. E en Toledo si alguno vendiere alguna cosa propia suya, o se de su propio dinero alguna cosa en la dicha cibdat algo comprarre, no pague ningun portadgo; empero si de otro dinero en la dicha cibdat algo comprarre o trogiere a vender cosa agena, pague el portadgo..." - p. 225, ref. 267. Thus, even in
Toledo, the tax exemption still applied if purchases were for personal needs, though it did not apply for business purposes; a clause that was frequent in this type of concession. Privileges of exemption of Portazgo resembling that of Oreja were also given to Calahorra, Santiago de Compostela, and to a large number of big and small towns throughout the XII, XIV, and XV centuries - p. 225-226. As the author puts it: "En el siglo XV disfrutaban de ese privilegio (exemption of Portazgo duties) no solo poblaciones de importancia como Sevilla, Soria, Logroño, Laredo, Córdoba, Valladolid, Burgos, Zamora, Segovia, Santiago, Simancas sino también pequeñas villas y aldeas como Chinchilla, Tamajón, Muela de Moron, Pareja, Fria, Almanzor, Peñas de San Pedro, Hellín, Issas, Ojacastra, Escaray, Zorraquín, Valgañón, Yanguas, et." - pp. 226-227.

García de Valdeavellano, El Mercado, p. 152, even earlier examples of Portazgo exemption were those of the Fuero de Melgar de Suso, approved by Garci Fernandez in 950 - "Et esta villa non den portazgo en las tierras, nin en los mercados de Castiella" - and the Fuero of Sepulveda of 1076 - "et non den portazgo in nullo mercado." Numerous exemptions can also be found in pp. 155-159.

Mut Remola, La vida económica, pp. 110-111; Documento Anexo num. 8, Exemption of "Leuda" for the "Vecinos" of Lerida, p. 229.

251. Carlé, Mercaderes, pp. 226-227, 'Don Fernando...Sepades que el Consejo de la-mi villa de Chinchilla se nos enviaron querellar, y dicen: que ellos teniendo previlegio y cartas del Rey don Alfonso, mio abuelo, y del Rey Don Sancho, mio Padre, que Dios perdone, que Yo les confirme, que non den Portazgo... nin otros derechos ningunos en ningunos lugares de mis reinos de las mercadurias que ellos o algunos de sus vecinos trogieren por mar o por tierra, salvo ende en Toledo y en Sevilla... '. The excerpt clearly reveals the practice of restating the tax waivers, probably as a result of litigations and at the request of the local Councils. Further examples in pp. 226-228.

García de Valdeavellano, El Mercado, p. 155, Confirmation by Sancho IV of the privileges given by Alfonso X to Cádiz in 1284: "e otrosi les otorgaba que hobiesen feria, y que durare un mes, y los mercaderes que hi viniesen que fuesen frances y quitos de portazgo y de maltota y de los otros derechos que mercaderes debiesen dar, y esto mismo otorgaba a los vecinos de Cadiz que non diesen portazgo ni maltota de quanto comprasen, o vendiesen, o sacasen del reino, nin en las tierras de las ordenes, ni de los otros lugares ningunos."
Mur Rempol, La vida económica, 112-113; Documento Anexo num. 9, pp. 230-231, and num. 10, pp. 232-233, Confirmation of tax waivers by Alfonso III (1332), and Pedro III (1340) respectively.

Prieto Bances, El abasto de Oviedo, p. 362, exemption granted in the Fuero given by Alfonso VII, in 1145, "los hombres pobladores de Oviedo no den portazgo, ni ribaje, desde la mar hasta Leon" is confirmed by Alfonso IX, Fernando III, and Alfonso X.

252. Carlé, Mercaderes, pp. 162-164

Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Burgos de 1430, Peticion 25, pp. 89-90, "Otro si en razon de lo que me fezistes rrelacion que muchos delos senorios de ciertas villas e lugares delos mis rregnos, veyendo la grant poblacion que en Medina del Campo rrecrescia por ser las ferias francas, han arrendado e tomado e toman de cada anno las rentas de las alcazales delos dichos sus lugares, e que fecho nueva mente ferias en las dichas sus villas e lugares, e que avn eso mismo fizieron muchos mercados en dias sennalados, e que franquean las dichas ferias e mercados para que non paguen alcazales delo que asi vendieren, todo esto acaescio por se poblar las dichas villas e lugares, e por quoylos sus tributos valgan mas..." Cortes de Palencia de 1431, Peticion 16, p. 103, "... las quales ferias e mercados franquean e non pagan alcazal delo que ende se vende, lo qual todo fazen los dichos senores por poblar las dichas sus villas e logares e acrescentar sus tributos...”


Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Madrid, 1435, Peticion 40, pp. 237-239; Cortes de Toledo, 1436, Peticion 3, pp. 260-263 - with particularly interesting arguments; Cortes de Madridal, 1438, Peticion 14, pp. 324-325, where the failure of many attempts to stop the practice of having "Ferias Francas" in the Senorios without Royal consent was expressed unequivocally: "... e como quiera senor, que vuestra alteza asi lo mando, nin por eso non se guarda nin cumple asi ante en ello e por ellos se fazen muchos engannos e colisiones en tal manera que non cesan las ydas delas dichas ferias e mercados asi para vender como para comprar." The problem persisted, receiving new attention in the Cortes de Santa Maria de Nieva, 1473, Peticion 19, pp. 869-870. In 1491, the Catholic Monarchs tried once more to prevent cities and Senorios from organising "Ferias Francas" without permission from the Crown. The manner in which they addressed the problem would suggest a widespread practice:
"Por quanto algunos Perlados, Duques, Condes, Marqueses y Maestres de la Ordenes, y otros Caballeros y personas, y otros algunos Consejos de algunas ciudades villas y lugares de los nuestros reynos y señorios, por su propia autoridad sin nuestra licencia y mandado han fecho y cada dia facen ferias y mercados, contra lo que esta proveido por leyes destos Reynos..." - Carlé, Mercaderes, p. 164.

If the practice of organising "Ferias" and "Mercados Frances" was as widespread as the words suggest, it could also be taken as an indication of the existence of a rather well developed business sense throughout the Peninsular population.

254. Heyd, Histoire du Commerce, I, pp. 319-320; II, pp. 11-12, for some old examples of tax reductions for promotional purposes.


Schaube, Handelsgeschichte, pp. 80-93.

It should be noted that even in those fairs that were only partially, or not exempted at all, Portazgo and other taxes were only paid on the goods sold. Those taxes were normally not levied on unsold stock, which could be withdrawn from the fairs without any payment. In this respect, legislation and custom in Castile - Nueva Recopilacion, Libro IX, Titulo XIX, Ley XXIX and Ley XXX, Carlé, Mercaderes, pp. 157-158, ref. 65 and 66 - and Catalonia - Libre Dels Quatre Senyals, Folio 56, Drets de entradas y eixides, Capitulo XVIII - Capmany, Memorias, Volumen I, p. 407 - appear to have been very clear: This would seem to have been a common practice in France as well - Huvelin, Essai Historique, pp. 589-590. In Portugal, in the Fuero de Quimaraes, where a fair or significant importance for the economy of Castile was held, it was established that sales below the amount of 12 Denarios were automatically free of Portazgo-duty - García de Valdeavellano, El Mercado, p. 157.

255. Andrés Marcos Burriel, S.I., Memorias para la vida del Santo Rey Don Fernando III, anotadas y editadas por Miguel de Manuel Rodríguez, Madrid, MDCC, Ediciones El Albir, Barcelona, 1974, Carta Puebla de Cartagena, 1246, p. 484, "... vecino de Cartagena, è que sea franco, è en todo el regno de Murcia...," pp. 420-421, confirmation of privilege granted by his father exempting from Portazgo in all Leon,
and extending it to all Castille. San Fernando confirma el privilegio de exención de todo tributo que su abuelo don Alfonso el VIII había dado a la villa de Aceca, estando a 16 de noviembre de 1188 - en Toledo a 9 de Abril de 1218. Confirma uno y otro diploma don Sancho el IV, en Toro a 2 de noviembre de 1284 - pp. 260-262. El fuero de Ledigos dado por San Fernando en la era de 1256 y sus confirmaciones - pp. 263-268. Confirma a los de Frias, y la Mola, que es su puebla, el fuero de Logroño, y todo lo que le había concedido su abuelo don Alfonso el VIII (1217) - "Et homines de Fridas non persolvant portaticum in regno meo de propriis rebus suis" - p. 255. Confirma los fueros dados a Zorita por su abuelo don Alfonso el VIII, con el maestre de la orden de Calatavas en el año 1180 - "Los hombres de término de Zorita no den portago en alguna tierra" - p. 272, pp. 270-274, confirmada in 1256. Exime la Villa de San Mancio de todo pecho y tributo - "Abolvo itaque vobis Villam illam, quae dicitur villa sancti Mancij, ab omni fonsado, fonsadera et pedido, et ab omni prorsus regio pecto, et gravamine in perpetuum." - p. 281, confirmada in 1218. Confirma la exención de tributos que su abuelo había concedido a la villa de Saelices de Ceas - "concedo, roboro, et confirmo cartam absolutionis..." in 1218, also confirmed by his son, Alfonso X, in 1256 - p. 282. Hace libres de todo portazo en el reyno a los hombres del Hospital Real de Burgos por loas cosas del hospital - "Abolvo, itaque, et concedo, quod homines predicti Monasterii non den portaticum in aliqua parte regni mei de rebus propriis hospitalis." en 1219 - p. 287. Confirmada por don Sancho IV, en Toledo a 24 de Mayo de 1285 - pp. 287-288. Confirma los fueros de Castro Xeris, que venían autorizados desde el conde de Castilla Garci Fernandez en, el año 974 - "Et varones de Castro non dant portazo, ni montazo..." - p. 415, extended in 1234 to "... in tota terra de illo rege..." - p. 417 - pp. 415-418. Confirma el privilegio que el monasterio de Valverde tenía de su padre, librándole del portazo en todo Leon, que extiende a Castilla, 1234 - pp. 420-421. This privilege was also confirmed by Sancho IV, in 1286, and Fernando IV, in 1301 - p. 421. Da al Monasterio de Palazuelos, y a su abad Emiliano, privilegio para que sus ganados apacenten por todo el reyno, y ni los monges y sus criados paguen portazo en parte alguna por lo que lleven a comprar o vender, 1238 - pp. 439-440. Confirma los fueros de Melgar de Suso, que dio su señor Fernando Armentales, y aprobó el conde de Castilla Garci Fernandez en el año 950 - "Et esta villa non den portazo en las tierras, nin en los mercados de Castilla." - (p. 524) in 1250 and 1251. This privilege was also confirmed by Alfonso X in 1255, Sancho IV in 1285 - who extended it to all the realm, except Toledo, Sevilla, and Murena, Fernando IV in 1296, Alfonso XI in 1229, 1336 and 1346, Enrique II in the Cortes of Toro, in
1371, and Juan I in the Cortes of Burgos, in 1379. Further confirmations were issued by Enrique III in the Cortes of Madrid, in 1393, and by Juan II in 1408 and 1420 (pp. 523-525).

Capmany, Memorias, Volumen I, p. 805, Cédula of Fernando el Católico of 1497, confirming exemptions of Portazgos, Leudas, and other Royal taxes that Barcelona enjoyed in all the territory of the Crown. Volumen II, Primera Parte, pp. 14-15, Privilegio of Jaime I, 1231, granting Barcelona the exemption of all duties in the sea and overland trade with Majorca and adjacent islands; pp. 15-16, Privilegio of Jaime I, 1232, granting Barcelona complete and perpetual exemption of all Royal and local taxes in all the territory of the realm, whether they carried their trade by sea or by land.

Carle, Mercaderes, pp. 224-229. For instance Privilegio de varias exenciones y franquezas al Consejo y hombres buenos de la ciudad de Calahorra, 1177: "Et moradores de Calaaforra non dent portaticum in toto meo regno..." - p. 225, ref. 368.

Chabas Llorens, Historia de la Ciudad de Denia, II, pp. 18-19, Jaime I declared residents of Denia "Francos e immunes in perpetuum de los derechos de Lleuda, Peaje, Medida y Peso." Ref. 1, on p. 19, contains an interesting confirmation of these rights - originally granted in 1245 - given upon the conferral of the status of "Vecino" to a resident of Denia as late as 1674.

García Sainz de Baranda, La Ciudad de Burgos, II, p. 327, Privilegio de Mercado Franco in Burgos, confirmed and extended several times, including confirmations by the Catholic Monarchs in 1475 and Carlos I in 1524; and Privilegio de Exencion de Portazgo in a wide area for the "Vecinos" of Burgos. Doc. num. 15, pp. 420-421, Privilegio of King Fernando III (1278) exempting "Vecinos" of Burgos of Portazgo in Torquemada and Muño. Doc. num 16, p. 421, Privilegio of King Fernando III, 1219, exempting "Vecinos" of Burgos of Portazgo in Torquemada, Palenzuela and Muño. Doc. num 53, pp. 475-476, Privilegio of King Juan I, granted in the Cortes of Burgos, 1410, "Otro si a lo que nos pediste por merced que los vecinos e moradores desta cibdad, que non paguen portazgo, nin ronda, nin pasaje, nin peaje, nin catelania (sic) nin otro tributo alguno por doquier que fuesen en todos nuestros reynos nin sus mercaderias, nin aquellos que las trujeren por ellos segun que lo avian en Toledo, en Sevilla, e en Murcia: a esto respondemos e lo tenemos por bien que non paguen ... agora nin de aqui en adelante..." - p. 476. Doc. num. 64, pp. 489-490, Privilegio del Rey Don
Juan II ordenando no se pongan guardas a las puertas de Burgos ni cobren cosa alguna de las mercaderías de sus vecinos de paños y otras cosas. Dado en Segovia a 15 de Abril de 1407. It seems designed to add emphasis to the tax exemptions enjoyed by Burgos for it ordered the tax renters that "non pongan guardas algunas en la dicha ciudad nin demanden nin apremien a los dichos mercaderes de la ciudad de Burgos que esivan sus paños e mercaderías nin los trayan a pleito nin emplazo sobre la dicha razón nin los demanden sobre las cosas que les son vedadas fuera de la dicha ciudad que mi merced es que se guarden sus buenos usos e costumbres según fasta aquí fueron guardados..." Thus, a number of interferences with the very ample tax exemptions and commercial privileges of Burgos were specifically forbidden. Doc. num. 65, pp. 490-491, Confirmation by Juan II, in 1422, of exemption of Portazgos for the merchants of Burgos.

García de Valdeavellano, El Mercado, p. 152; Fuero of Melgar de Suso, 950, "Et esta villa non den portazgo en las tierras, ni en los mercados de Castiell;" Fuero de Sepulveda, 1076, "et non den portazgo in nullo mercado;" Privilegio granted by Alfonso VIII in 1176 to the Monastery of San Salvador de Oña, "in nullo mercato mei regni donent portaticum nec aliud usaticum."


Guiard y Larrauri, Historia del Consulado, Tomo I, pp. LXII-LXXIV, aside from the exemptions granted in the Carta Puebla, Privilegio of Doña María, the Fuero del Señorio and a number of Privilegios, the Privilegio granted by Don Juan, in 1372 confirmed: "Otros que non dedes portazgo nin trentazgo nin oturas nin enmiendas nin peages nin entrada nin salida en ninguno de los mis lugares de mi señorío... Otros eando que sean quitos los mis vasallos de Bilbao en todo el mi señorío y en todos los mis lugares de portazgo y trentazgo e de oturas e de enmiendas e de peaje e de coeza e de rocaje e de todas las otras cosas que trogieren o llebaren tambien por mar como por tierra salvo el peaje de la vena que retengo para mi."
Labayru y Goicoechea, Historia General, Tomo II, Apéndice num. 30, Carta Puebla de Guernica, granted by Don Tello, Conde de Bicayva, in 1306, pp. 843-845, "Otroso mando que non dedes portazgo nin treintazgo et mando que en Portuando nin en la barra de Mundaca nin en toda la canal deis fasta esta mi villa de Guernica precio ninguno de nabe nin de Bagel nin de otra mercaduria que benga et baia de este Lugar de Guernica o que ban de ella pagando las costumbres et los derechos mios et que non sean detenidos nin embargados po razon de precio..." - p. 844. Apéndice num. 31, pp. 845-848, Privilegio de fundacion de la villa de Larrabezua, granted by the Infante Don Juan in 1415, "Otroso mando et tengo por bien que los vezinos e moradores de la dicha villa nueva de Berresonaga, que no paguen portazgo, ni Peage ni Pasage ni otro tributo alguno en adelante segun que las otras villas de mi Senorio de Vizcaya" - p. 847.

María Luisa Ledesma Rubio, La encomienda de Zaragoza de la Orden de San Juan de Jerusalem en los siglos XII y XIII, Casearavystana-these, Zaragoza, Universidad de Zaragoza, 1967, Privilege of King Alfonso II, in 1169, confirmed and extended to all the vassals of the Order the exemption of Lezda, Peaje, and Usaje duties in all the territory of the Crown of Aragon.

Mateo López, Memorias Históricas de Cuenca y su Obispado, Biblioteca Conquense, V.A. González Palencia, Edit., Cuenca, Instituto Jerónimo de Zurita del Consejo Superior de Investigaciones Científicas y Ayuntamiento de la Ciudad de Cuenca, 1949, p. 76, Fuerz of Cuenca, granted by Alfonso el Sabio in 1306 conferred to the "Vecinos" of Cuenca: "E mandamos que todo vecino de Cuenca que no de portazgos ni montadog de Tajo aca en ningun lugar, asi como fue en tiempo el rey Don Alfonso, nuestro bisabuelo, y del rey don Fernando nuestro padre, y en el nuestro hasta aqui, si no fuere en Toledo, en Sevilla y en Murcia." This privilege, obviously a confirmation of exemptions granted at least one hundred years earlier, was confirmed again in 1349 and 1409 - (pp.79-80).

Mut Remola, La vida económica, Doc. Anexo num. 9, pp. 230-231, Alfonso III, confirms in 1332 the exemptions of leuda, peaje, pasaje, portazgo, peso, usatje, and other tariffs granted to Lerida, "per omnia loca, terrae, et dominationis nostrae, et Regni nostri, tam eorum quae hodie habemus, et possidemus, quam illorum quae infuturus divina gratia, praevente poterimus adipsi per terram, mare stagnum, et quamlibet aquam dulcem." This extraordinary wide exemption was confirmed again in 1340, by Pedro III - Dec. Anexo num. 10, pp. 232-233. An older privilege granted by Jaime I in 1227, in similar terms to the others can be seen in Doc. Anexo
num. 26, pp. 265-266.

Perez - Embid, El puerto de Sevilla, p. 65.

Prieto Bances, El abasto de Oviedo, pp. 362-365, Fuero granted by Alfonso VII, in 1145, "que los hombres pobladores de Oviedo no den portazgo, ni ribaje, desde el mar hasta Leon," confirmed by Alfonso IX, Fernando III, and Alfonso X - p. 362, and extended by Sancho IV, in 1286, beyond Leon - p. 363. Fernando IV, in 1299, widened the exemption to include the entire Kingdom of Castille, except Toledo, Murcia and Seville - "non den portazgo en ningún lugar de nuestros Regnos de sus bestias nin de sus mercaderias, nin de ninguna otras cosas que troguieren o leuaren de un lugar a otro, nin de una Villa a otra. Saluo en Toledo et en Sevilla et en Murcia. Et por les ffazer mas bien et mas merced, quitamos les et ffranquamos les que non den Peaie las sus Naues nin los otros sus naius en ningún lugar de los puertos dela Mar de nuestros Regnos. Et estas mercedes les ffazemos para siempre jamas..." - p. 364.

Sainz Díaz, Notas Históricas, Pergamino num. 6, pp. 553-554, Privilege of King Alfonso of Castille confirming the old exemptions of San Vicente de la Barquera: "Sepades que viemos carta del Rey don Fernando, mio padre, fecha en esta guisa. Fernando por la gracia de Dios... a todos los hombres de su Reino que esta carta vieren Salud y gracia. Sepades que yo mando que esto omes vecinos de San Viceynete de la Barquera que agora son o seran de aqui adelante non den portazgo en ningún lugar de todo misos Reynos por cualesquier mercadura que lieven, que traigan ni por otra cosa alguna que lleve para si." - p. 553. This confirmation, granted in 1352, was reiterated by Alfonso XI, in 1372, in both cases at the request of the "omes buenos" - "Y agora el dicho consejo de Sant Vicente de la Barquera enviarono pedir merced con Pero Martinez de carranceia e con joan Gutierrez de Aguilar e con Martin Sanchez sus vecinos sus procuradores que les mandase confirmar la dicha carta y se la mandase guardar..." - p. 561, Pergamino num. 13, pp. 559-561. In 1417, Juan I granted another confirmation of the same privileges - Pergamino num. 17, pp. 566-567. In 1480, a general confirmation of privileges was issued by the Catholic Monarchs - Apéndice Num. Dos. 3, pp. 649-654, and in 1563, King Felipe II granted a Carta de Privilegio y Confirmación that reiterated the exemption of Portazgo duties for San Vicente de la Barquera, as originally given and confirmed by his predecessors - Pergamino num. 32, pp. 614-621.
256. Basas Fernández, El Consulado de Burgos, pp. 192-201.

Carande y Thovar, Sevilla, pp. 91-92.

Capmany, Memorias, Volúmen II, Primera Parte, Doc. num. 32, Real Sentencia (1282) a favor de la Ciudad de Barcelona para que en el puerto de Blanes no se pueda exigir de sus moradores el derecho de leudas y ribage por las mercaderías que descargasen - pp. 48-49. Doc. num. 67, Carta de los magistrados municipales de Barcelona (1302) al Conde de Ampurias, para levantar la exacción que en el puerto de Cadaqués se pretendía cobrar de las naves Barcelonesas que venían del viaje de Levante, o de Portfängos de Tortosa - p. 99. It would appear clear from the text that in this case an old custom preceded the formal exemption of duties in instrumental form: "unde cum sit certum et manifestum, tam per instrumenta antiqua quam per longissimum usum de quo hominum memoria in contrarium non existat, quod naves seu aliqua alia linea venientes de partibus ultramarisive de Levant, seu recedentes de Portfängoso et euntes ad quascumque partes, non tenetur in dicto castro lezdam solvere necque dare." Doc. num. 71, Real Sentencia sobre exacción del derecho de leudas en Tortosa, por la cual se declaran ser libres de aquel impuesto Real las embarcaciones Barcelonesas que hacían el comercio de Occidente (1302) - pp. 102-105. Doc. *num. 124, Carta del Rey de Aragon Alfonso IV (1328), en que declara a la Ciudad de Barcelona, que en la prohibicion de llevar sal a Sahona y demás puertos de la Ribera de Génova no se entendía quebrantar sus privilegios y libertades - "quinimmo in sua permaneat valoris et roboris firmitate sicut ante." - p. 124.

Carlé, Mercaderes, pp. 228-229, for litigations amongst cities and with Portazgueros - Portazgo tax collectors.

Luis Vicente Díaz Martín, Los Oficiales de Pedro I de Castilla, Valladolid, Universidad de Valladolid, Facultad de Filosofía y Letra, (Estudios y Documentos, num. 35), 1975, Doc. num. X, Carta plomada de Pedro I por la que confirma la sentencia dad por los justicias de Sevilla declarando a la Iglesia de Guadalupe, sus hombres y pertenencias exentos del pago de portazgo y demás tributos - pp. 124-128. The letter, written in 1403, confirms a sentence upholding the privilege exempting the Church of Santa María de Guadalupe "et todos sus ganados et todas sus cosas et que podiesen andar por todas las tierras de mis señorios et que comiesen las yeruas e veuiesen las aguas et que non pagasen portago nin montadgo nin trytanadgo nin rrода nin assadura nin castelleria nin baraje nin pesaje nin tercio nin quarto nin quinto nin otro derecho alguno, segunt que se contentia en el preuiliaggio que dicha eglesia tenia en esta raason..."
p. 125. A very ample exemption indeed.

Labayru y Goicoechea, Historia General, Tomo III, Suplemento num. 2, Real Provisión condenando a la restitución de lo secuestrado a varios bilbaínos por el bachiller Pedro Alfonso de Miranda (1464) - pp. 746-749. A year later in 1465, a Real Dédula of King Enrique ordered the sentence of the Consejo Real to be carried out - p. 749.

Mit Remola, La vida económica, pp. 111-113, for litigation of city of Lérida to defend its tax privileges.

Prieto Bances, El abasto de Oviedo, pp. 366-379, for litigation of city of Oviedo

257. Sainz Díaz, Notas Históricas, pp. 658-668, for an interesting sequence of events, starting with a confirmation of the old Privilegio de las Cuatro Leguas de Mar, granted in 1503, pp. 658-661; a recourse against that letter of confirmation initiated by the city councils of Reloba, Cobreses, Nobales, and Ruisenada - pp. 661-663; Sentence in favor of San Vicente de la Barquera, ordering that the Carta de Privilegio was to be obeyed under any circumstance - pp. 664-665; and, a Carta de Privilegio y Confirmacion, requested by San Vicente de la Barquera, and granted "porque mejor e mas cumplidamente vos valiese e fuese guardada agora e en todo tiempo la dicha Sentencia e Carta Executoria, e la dicha nuestra Carta de merced en ella contenida, que todo suso va encorporado..." - pp. 665-669. This confirmation, granted in 1504, was restated by Felipe III (1599), Felipe IV (1621) and Carlos II (1676), amidst general confirmations of all the Privilegios, Gracias and Mercedes enjoyed by the city - pp. 668-670. In 1726, a Real Carta de Felipe V, issued as a result of pending litigation, confirmed once more, making reference to numerous prior confirmation, the exemption of Diezmos and Aduana taxes "de todos los generos, mercadurias y bastimentos que necesitaren para consumo de sus casas y familias los vecinos de las dichas quatro Villas de la Costa de la Mar, Laredo, Santander, Castro Urdiales, San Vicente de la Barquera, Merindad de Trasmiera, Purto de Santoña, y demas Villas y Lugares de la dicha Costa de Mar..." - pp. 357-360.

258. Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Santa María de Nieva de 1473, Petición 5, pp. 843-845, requesting the cancellation of new taxes granted from 1464 onwards to "qualesquier concejos e universidades e fortalezas e perlados e caualleros e otras cuales quiern personas e a cada uno e qual quier dellos de qual quier ley estado o condicion que sean para pedir coger e lleuar portado nuevo ny acrecentado
o pasaje o pontaje nin roda nin castilleria nin otro tributo ny derecho alguno, por personas nin por cargas ny por bestias ny carretas nin mercaderias ny por ganados algunos ni por paso de madera por el agu ñi por otra alguna cosa dello, e les mande e defienda que de aqui adelante no lo pidan ny lleven, e mande e defienda alos arrendadores e cogedores dellas e a otras quales quier personas que no lo pidan ny cojan por qual quier color nin cabsa que sea... e sy lo contrario tentaren de fazer, que qual quier g elo pueda resystir alos vnos e alos otros poderosa mente e con mano armada syn pena alguna, e demas que yncurran enlas penas en que caen los salteadores de caminos..."


Prieto Bances, El abasto de Oviedo, pp. 370-372, for actual use of force with Royal backing.

259. *Mut Remola, La vida económica*, p. 112, purchase by the city of Lérida of the right to collect Leuda in the river Sagre from the noble Mateu de Moncada, in 1468.

260. *Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Madrid de 1433, Peticion 24, p. 175; Cortes de Santa Maria de Nieva de 1475, Peticion 6, pp. 843-845. Tomo Cuarto, Cortes de Toledo de 1480, Peticion 90, pp. 172-175, which restated the clear position of the Crown in this matter and added severe penalties for infringements. In the answer the Crown said: 'Ordenamos e mandamos que de aqui adelante no se pida ni coxa delos ganados que passaren a estremo a empajar e de los que salieren del dicho eruaje mas de un seruicio de montado, segun que se acostumbró pedir e coger en estos nuestros reynos en los tiempos antiguos, e que este dicho seruicio e montado se pida e coxa e recabde por los nuestros arrendadores e recabadores e receptores que nos para ello dieremos por nuestras cartas libradas e sobrescriptas por los nuestros contadores mayores, nin por uirtud de otra carta nin privilegio alguno lo pida, sopena que quialquier que de outra quisa lo pidiere o coxiere muera por ello; e el dicho seruicio e montado se pida e coxa en los puertos antiguos, donde en los tiempos passados se acostumbró coger, e no en otras partes... e que no se pidan ni coxan en otros puertos algunos, so pena que quialquiera que lo pidiere o lo coxiere, muera por ello; e eso mismo, no se pida ni coxa almoxorifado ni diezmo ni otros derechos, ni en puertos de la tierra ni dela mar, ni en barca, ni en rios, ni por otras personas ni en otros lugares, salvo por quien e como e donde se solian e acostunbrauan pedir e coger antes del dicho anno de setenta a quatro... p. 173 - e otrosi
mandamos e defendemos que de aqui adelante no se pidan ni
lleuen los dichos derechos e portadgos ni pasages ni
pontajes ni rodas ni castellerias, ni borras ni asaduras,
ni otras imposiciones por mar ni por tierra, ni se fagan
cargas ni descargas en otros puertos de la marn en otros
lugares, salvo en los que antes se fazian..." - p. 174.

261. This was clearly stated in the Privilegio granted by Alfonso
X, in 1281, to the "mercaderes de dentro y fuera del Reino" -
merchants from Castille and foreigners alike - and valid in
dil the realm of Castille: "Otro si les otorgamos, que los
mercaderes que vinieren a nuestra tierra, a pagar sus
derechos de entrada de todo aquello que truxieren segun
nuestro ordenamiento, que puedan sacar de la tierra tantas
empleas como montare aquello que y metieren de que dieren
el diezmo; é si mas quisieren sacar que nos den buenos
fiadores, por lo demas que nos trayan el diezmo en plata
según nuestro ordenamiento." Text in Carlé, Mercaderes,
p. 234, and García Sainz de Baranda, La ciudad de Burgos,
II, p. 432.

María Desamparados Cabanes Pecourt, Coses Vedades en 1381,
Valencia, Facsímil, 1971, (Colección Comercio Medieval),
passim. The two registers reproduced in this book, that of
the Maestre Racional and the one from de Baile, were a record
of all those goods exported by land and by sea from Valencia
whose tax payment was pending, and it was made for the purpose
of claiming it. The lists indicated whether the tax for
these goods, which required a special export permit, was
payable in full - Dret - or at half rate - Míg Dret -
according to the privilege enjoyed by some merchants, and
whether an extra surety was demanded from the exporter,
given back upon return, in those cases involving forbidden
trips, such as the ones of Moslems to the Barbary coast -
pp. 9-10.

Pedro López Elum, "Contribución al estudio de las relaciones
comerciales marítimas de Castellón de la Plana durante los
años 1412 a 1418 y 1422", Estudios de la Edad Media de la
Corona de Aragón, Vol. IX, Zaragoza, Consejo Superior de
Investigaciones Científicas, Escuela de Estudios Medievales,

-------, Coses vedades en Castellón desde 1412 a 1418 y 1422,
Valencia, Editorial Anúbar, reproducio por Facsímil, (Col-
ección Comercio Medieval Valenciano), 1973, passim.

262. Armando Saporli, Le Marchand Italien au Moyen Age, Paris,
Librairie Armand Colin, 1952, p. XXXVIII.

263. Basas Fernández, El Consulado, pp. 149-153.
264. Although fraud could be a partial explanation, assuming that the understandable zeal of the tax farmers could be eluded, we must take into account that the Merchant's Guild of Burgos controlled and organised a significant part of the wool trade in the area as well as the trade with Northern Europe and France. As such, it was in a position to control abuse, for it was neither in the interest of the organisation as a whole nor in that of their individual members, who, as residents of Burgos, ended up paying twice over for maintenance works, first as guild members and then as residents of Burgos (the city's share) as documentary evidence presented by Manuel Basas Fernández clearly shows - El Consulado, pp. 150-152.


Vide also: Reverendo Padre Luciano Serrano, O.S.B., Cartulario del Infantado de Covarrubias, Silos (Burgos), P. Procurador/Madrid, Gregorio del Amo, 1907, Apéndice I, Cuaderno de Condiciones para el cobro de la Alcaba sobre paños y otros efectos, compiled by order of Juan II in 1413 - pp. 381-388.

266. Moxo, La Alcaba, p. 39.

267. Ibid., 15-17, 45-49.

268. Ibid., 87; "Res fueron las vías o medios a través de los cuales llegaron los nobles castellanos a percibir las alcabalas de tan gran número de lugares: 1o., por compra; 2o., por donación real; 3o., por la simple posesión continuada,..." We can see then how the Marquis of Santillana was able in his own right to declare the famous
Benedictine Monastery of Sopetrán free and exempted of all Alcabalas; also in the XV century and in the same region of Alcarria, the Count of Medinacelli, Don Luis de la Cerda, exempted his town of Cogolludo from Alcabalas in 1461.

269. Vide reference num. 253 in this chapter.

270. Carande y Thovar, Sevilla, pp. 92-94. "Ruy díaz de rojas, mio alguazil mayor en Seuilla, a pero martínez, e juan martínez, mios alcaldes, sus mensageros (mostraron), en comno el rey Don Alfonso, mio visabuelo, e el rey Sancho mio abuelo, e el rey Don Fernando mio padre..., les fizieron merced en que les dieron franquezas e libertades, que non pagassen ningún derecho, de todas las cosas que comprasen, o vendieren, por todos los regnos... que les yo confirmé... porque, especialmente, non fazen mention en los privilegios de las alcabalas, que algunos en nuestros lugares embargan a los uezinos de seuilla, quando y acaecen, e les pedides alcabala, de las bestias que compran. E esta gracia de las alcabalas, que la an los de cordonua e de Xerez, e de los otros lugares de la frontera, e emibaron me pedir que en esto del alcabala que les feziesen merced... e yo, con consejo, e con otor- gamiento de la dicha reina donna Maria, mi abuela e mi tutora..., tengo por bien que los uezinos de Sevilla que non den alcaula de las bestias que compraren, en ningún lugar" - pp. 93-94. This confirmation of a very old privilege, with the added clarification that Alcabala was included in a general exemption of purchase and sales taxes, was granted in 1320, during the minority of the King, and again in 1360. It is a clear example of the consistency with which those exemptions were maintained, and also of the wide area covered by them - "por todos los regnos" - as well of the many cities endowed with them, in this case Cordoba, Xerez, Sevilla and the Southern frontier towns.

271. Sancho de Sopranis, La Repoblación, p. 529, Confirmation by the Catholic Monarchs "que sus vecinos fuesen quitos de diezmo e de portazo e de todos los otros derechos que pagan otros mercaderes" in the same sense and to the same extent, of the privilege granted by Alfonso X in the XIII century. In addition, this privilege of King Alfonso granted to Cadiz "...que todo mercadero extraño que hi viniese con mercaduria, que diese el tercio menos de los derechos que hoviese a dar segun dan en Sevilla." - p. 527.

272. Carande y Thovar, vide reference num. 270 in this chapter.

Moxo, La Alcabala, p. 47, "Los Reyes Católicos, en la Ley IX de su Cuaderno de Alcabalas de 10 de diciembre de 1491, recogen las villas, fortalezas y lugares fronterizos que debían considerarse exentos de alcabalas por privilegios
de franquicia. Las villas consignadas son: Tarifa, Teva, Olvera, Alcalá la Real, Alcalá de los Gazules, Chanhen, Antequera, Zahara, Priego, La Torre de Hailquin, Cañete, Pruna, Aznalmara, Xodar, Ximena, Gibraltar, Archidona, Alcaudete, Medina Sidonia, Alhama, Lucena, Arcos, Espeja, Vejer y Gelbes."

-----. Exenciones Tributarias, p. 175, ref. num. 49, "Los Reyes Católicos concedieron exención de la alcabala de pan y panizo que se vendiera en grano, harina, o bizcocho y la de todas las carnes, aves y caza a Málaga, Mijas, Fuengirola y otros lugares." Chinchilla received the same exemption - p. 175, ref. num. 50. Exemption to Medina Sidonia, Gibraltar, and Tarifa (1295), Osuna (1370) and Arcos de la Frontera (1396) - p. 274.

273. Juan Torres Fontes, "Las Ferias de Segovia", Hispania, Tomo III, num. X-XIII, 1943, pp. 133-139. "...e por les facer bien e merced, entendiendo ser asy complidero a mi servuicio e a proueche a bien de la dicha cibdad e do los vecinos e moradores della e de las otras cibdades e villas e lugares de los mis Reynos e Sennorios e de fuera dellos, e ordenado e mando que el anno benidero del anno de mill e quatrocientos e sesenta annos, e dende en adelante en cada un anno par syempre jamas se fagan en la dicha cibdad dos ferias... E que sean libres e francas e quitas de alcaulada de todas las mercadurias e ganados, e de todas otras qualesquier cosas que en ellas y cada una dellas se vendieren e compraren e trocaren por los vendedores e compradores dellas, salvo solamente de las heredades e de la carne muerta que se vendiere a peso y a ojo, e del pescado e sardina que se vendiere de gamella remojado, e del vino que se vendiere por menudo e por granado..." - p. 156. "...E por que es complidero a mi servuicio e a pro e a bien de los dichos mis Reynos e Sennorios, e de mis vassallos e subditos, e naturales dellos, que lo suso dicho les sea notificado e hecho saber, e por que los que quiscyeren venir a las dichas ferias e a cada una e qualquier dellas puedan venir e estar en ellas e tomar a sus casas seguramente, mandar esta mi carta en la dicha razon, por que vos mando a todos e a cada uno de uno de vos en vuestros lugares y jurisdicciones a quien fuera mostrada, o el dicho translado sygnado como dicho es, que luego fagades pregunar publicamente por voz de pregonom e por ante escruiano publico e testigos por las placas e mercados acostunbrados desas dichas cibdades e villas e lugares del dicho obispado de Cartagena e del dicho Reyno de Murcia..." - p. 137.

274. Moxó, La Alcâblâ, p. 49, continued in Modern times.
275. Moxó, Exenciones Tributarias, p. 175, Ref. num. 51,

'Cfr. Ley XIII, Tit. XVIII, Lib. IX de la Recopilación.
Se consignaba esta exención en la Ley 11 del Cuaderno de
1491. Estas Exenciones en favor de religiosos tendían a
centrarse, no obstante, sobre la propia institución y
sus dependencias. Tenemos como ejemplo la exención de
alcabalas otorgada por Juan I en 1386 al Monasterio de Santa
María del Rio Seco.'

276. Ibid., 175-176, included in Ley XVIII, Titulo XVIII,

Lib. IX de la Recopilación.

277. Ibid., 176.

278. Moxó, La Alcabala, p. 47.

-Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Toledo
de 1436, Petición 3, pp. 260-263, for some of the abuses and
attempted solutions to the problems generated by different
exemptions of Alcabalas.

279. García de Valdeavellano, El Mercado, p. 155, Ref. 456,

Fueros de San Sebastián, granted by Sancho el Sabio de Navarra
in 1180: "Similiter dono et concedo eisdem populatibus de
Sancto Sebastiano, que por mare ad Sanctum Sebastianum
arriverunt, vel per terram ad predictum villam cum sua
mercatura venerit quod non dent lezdam ibi, nec in tota mea
terra; hoc solum modo retinere, quod si aliqui de populato-
bibus ad Bayonam trosehos vel aliquam mercaturam comp-
traverint, et per Sanctum Sebastianum transferint, ut in alio
loco vendat predictam mercaturam, non dent lezdam."


LXXII-LXXV. Vide entry in Ref. num. 255 of this Chapter.

281. Carlé, Mercaderes, p. 163, "Vizcaya extenta de alcabalas."

282. Labayru y Goicoechea, Historia General, Tomo II, Apéndice

num. 8, Fuero antiguo de la Merindad de Durango, pp. 775-786;

Apénd. num. 19, Fundación de Plencia en Villa, pp. 804-805,

"... et que nin dedes portazgos nin peajes, nin treintazgo,
nin emmiendas en ningunos de mis lugares; et do bos mas que
haiades por mercado cada semana el sabado con los cotos que
se contienen en el buestro fuero, et feria de quince dias
franca et libre cada afo por Santa Maria de Candelaria,
et terminos para Ballenas matar del agua que corre medio de
Barquero fasta Portugalete: que podades poner guardas et
tener buestras galeas, do mas quisieredes."; Apénd. num. 20,

pp. 805-806, Carta Puebla de Bilbao, "Et que non dedes
portazgo, nin treintazgo, nin emmiendas en ninguno de mis
Logares: et otro si, bos otorgo que en el nuestro puerto
de Portugalete, nin en la Barra nin en toda la canal, que non haia precio ninguno de nabe, nin de Bagel que bengan o salgan del Logar cargados con sus mercaderias et mostrando recabdos que vienen a esa villa de Bilbao, o ban de ella, et pagando las costumbres, et los derechos del Señor, que non sean retenidos nin embargados por razon de precio."; Apénd. num. 28, Carta Puebla de Villaviciosa de Marquina por Don Tello, Señor (Lord) of Vizcaya, en 1355 - with Fuero of Bilbao, pp. 840-841; Apénd. num. 30, Carta Puebla de la Villa de Guernica por Don Tello en 1366 - with Fuero de Logroño, pp. 843-845, "Otroso mundo que non dedes portazo nin treintazo et mando que en Portuondo nin en la barra de Mundaca nin en toda la canal deis fasta esta mi villa de Guernica precio ninguno de nabe nin de Bagel nin de otra mercaduria que benga et baia de este Lugar de Guernica o que ban de ella..."; Apénd. num. 31, Privilegio de fundacion de la Villa de Larrabezua, año 1367, pp. 845-848, "Otroso mando e tengo por bien que los vecinos e moradores de la dicha villa nueva de Berresonaga, que no paguen portazo ni Peage ni Pasage ni otro tributo alguno en adelante segun que las otras villas de mis Señorio de Vizcaya - Otroso po hacer bien e merced a los vecinos e moradores de la dicha villa nueva de Berresonaga y es mi merzed que ayan to las franquezas y Libertades que han los de las nuestras Villas de mi Señorio de Vizcaya." - p. 847. Tomo III, p. 150, Fuero Viejo de Bazcay, "Otroso los dichos Vizcaínos asi de las Bilbas como de la tierra llana de Vizcaia durangueses y de las encartaciones: dixeran que eran franqueados y libertados por uso y costumbre de tanto tiempo aca que memoria de ombres no es en contrario de no aber almirante ni oficial suido alguno, ni yr a sus llamamientos ni obedecer sus mandatos por mar ni por Tierra, ni le pagar pecho ni tributo alguno que sea Por doquier que ellos tomen con sus nabios Por Mar ni por Tierra Por quanoot las dichas Bilbas y tierra llana siempre fueron y son del Rey asi como Señor de Vizcaya.

283. Ibid., Tomo III, p. 149, Fuero Viejo de Biczaya, Otroso dijeron que por quanto la Tierra de Vizcaia de la Encartacion y de Durango es Mayor Montanosa y no siembran ni cogen Pan ni ay las otras vituallas de que se pueden Mantener, salvo del Pan y de Zebada o carme, y sal y faba y otras legumbres que se suelen benir por mar e por Asturias.

284. Ibid., Tomo III, p. 149, Fuero Viejo de Biczaya, "... que los bretones e franceses que vitualla trajeren otros cualquiera que sean amigos del dicho Señor Rey llegaron a los puertos de las costas de Vizcaia o de las encartaciones o de Asturias... que les Manden que Vengan e descarguen libres e suelitamente las Vituallas que asi trajeren y los wenden, y que puedan vender fierro e otra Mercaderia cualquiera que quisiere llevar, contando que no sea Vitualla ni otras cosas
de las vedadas."

285. Farmers would be the nearest translation of the term.

286. García de Valdeavellano, Sobre los Burgos y los Burgueses de la España Medieval, Madrid, Real Academia de la Historia, 1960, p. 115, nobles or "fijosdalgos".

287. Guiard y Larrauri, Historia del Consulado, Vol. I, p. LXXIV, Ley 14, Juramento de los Reyes Católicos de 1493, Titulada: Que los vizcaínos sean francos de vender e comprar en sus casas guardando las costumbres privilegios a las villas, y la Ley 16, de la Libertad para vender en sus casas. Ley 10 del Fuero de 1526, "Otro si dijeron, que habian de Fuero, uso y costumbres y libertad que los dichos Vizcaínos fuesen é sean libres y exentos para comprar y vender é recibir en sus casas todas é cualesquier mercaderías, asi de paño como de hierro, como otras cualesquier cosas que se puedan comprar é vender, segun que hasta aqui siempre lo fueron." - p. LXXV.

Labayru y Goicoechea, Historia General, Tomo III, p. 151, Fuero Viejo de Bizcaya, "Otro si todo hijo dalgos que es libre é quito para comprar é bender en sus casas é recibir Paños e tierra e otras mercerias cualquier que sea. Que siendo Guardado a las Billas sus previlegios usos costumbres segun usaron fasta aqui salbo si algunos tubieron Previlegios del Señor de Vizcaia en contrario sean entonces que guarden sus previlexios." "Otro si dijeron que los hijos dalgos é labradores de las tierras llañas del Condado de Bizcia sean esentos é libres de vender Pan e bino é sidra é carne é otras viandas en sus casas en otras cualesquier comarcas a Prezio de los fieles de la tal anteyglesia."

288. García de Valdeavellano, El Mercado, p. 145, "El articulo XXXIV del Fuero de Leon establece que todo habitarde de la ciudad venda su cebada en su casa, por derecha medida, sin calumnia, y el XL consigna un precepto analogo, permitiendo tambien al viñatero que venda su vino en su casa."


290. Ibid., 145, Fuero de Sevilla, 1250, "Otro si damos, e otorgamos a los del barrio de Francos, por merced que les facemos, que vendan y compren francamente e libremente en sus casas sus panos, e sus mercadurias, en gros, o a dental, o a varas, que todas cosas que quieran comprar e vender en sus casas que lo puedan facer, e que hayan hi pellegeros e alfayates, asi como en Toledo, e que puedan tener camios.
en sus casas, e otrosi facemosles esta merced demas que no sean tenudos de guardar nuestro Alcazar, ni el Alcaycería de levate, nin de otra cosa, así como non son tenudos los del barrio de Francos de Toledo: Otrosi les otorgamos que non sean tenudos de darnos empréstimo, ni pedido por fuerza, e damosles que hayan honra de caballeros, segun fuero de Toledo; e ellos a Nos de facer hueste, como los caballeros de Toledo...

291. García de Valdeavellano, El Mercado, pp. 140-145.
Huvelin, Essai Historique, pp. 197 and 587.


294. Basas Fernández, El Consulado, pp. 36-39; "enviando memoriales, procuradores y diputados ante los Reyes y sus Consejos" - p. 37.


Labayru y Goicoechea, Historia General, Tomo III, Apénd. num. 9, Jura de los fueros de Bermeo y de todas las villas de Bizcaya por don Enrique, 1457, "Et luego dixo que juraua et juro a Dios e a Santa María e a las Palabras de los Santos Evangelios do quier que estan e a la Señal de la Cruz que con su mano derecha tanxo de guardar al dicho Consejo de la dicha villa de Bermeo e a todos los vesinos della e a las otra villas de Vizcaya e les confirmaba sus fueros e previlegios e buenos usos e buenas costumbres e franquicias e libertades e mercedes..." - pp. 628-629; Apénd. num. 10, Acta de aprobación de los cuadernos de la hermandad y fueros de Bizcaya, 1463, "... juro a Dios (Don Enrique)... de guardar a los dichosCaballeros Escuderos hijos dalgo y labradores Y otras Personas de cualquier Estado e condicion que sean del Señorío de Vizcaya sus fueros E Prebilegos..." - pp. 630-632; Apénd. num. 14, Carta Real privilegio de D. Enrique asegurando que no habia hecho merced del Señorío de Bizcaya a nadie ni villa o parte de él, y juramento de no
apartarle de la Corona de Castilla, 1470 - pp. 645-648; Apénd. num. 15, Carta privilegio de doña Isabel jurando a Bilbao sus privilegios y el no desprender a la villa de la Real Corona, 1473, pp. 649-650; Apénd. num. 24, Jura de los fueros y privilegios de las villas y ciudad del Señorío de Bizcaya por el Contador mayor Alonso de Quintanilla, en nombre de Doña Isabel, en Santa Eufemia de Bermeo, a 7 de Abril de 1481, "... Item que en las villas e Ciudad non importa ni demandara ni consentira que le sean puestas ni demandadas otras nuevas imposiciones ni Cargos ni servicios de maravedis, e allende de ellos que le son devidos segun el tenor e forma de los dichos sus Previllejos e libertades..." - pp. 675-677.

298. Guiard y Larrauri, Historia del Consulado, pp. LXX-LXXV.

299. Labayru y Goicoechea, Historia General, Tomo II, Apénd. num. 32, Treslado del privilegio que dio el rey Dn. Juan el segundo en balladolid veinte dias del mes de Junio de 1 nacimiento del nuestro Salvador Jesucristo de mill e quatrocientos e treinta e cinco años en confirmacion del privilegio que dio en Sepulbeda a diz enueve dias de octubre ano del Senor de mill y quatrocientos y once anos el rey sobredicho Dn. Juan sobre los labradores que esta villa tiene en galdacano e bedia y saratamo e arrigorriaga, pp. 848-853. Tomo III, Apénd. num. 5, Capitulado de Bilbao para la paz y sosiegos publicos perturbados por las banderias de la villa, 1435, pp. 594-610, which shows not only the confirmation of old privileges but also the support of the Crown for independently taken local decisions. Apénd. num. 8, Privilegio sobre las situaciones de Mercedes de Bizcaya, 1443, pp. 615-627, "Porq mj intencion final e voluntad deternjndada es que todo lo que enesta mj Carta contenido contienjo e los dihos. Previllejos e Carta e sobre Cartas que en esta Razon vjeredes e,1βraredes se Contobiere les vala e sa guardado afime entera e bien e Complidamente a los dihos. Mis basalloos o otras personas naturales del dho. Mj Señorio e Condado e en Cartaciones de la dicha Vizcaya e a Cada vno e qualquer dellos. Asi a los q agora son. Como a los que fueren e seran de aqui adelante e para siempre jamas" - p. 620.

Apénd. num. 11, Albala de Don Enrique confirmando la bizcainia de Orduna y todos sus privilegios, pp. 633-638, "... e que en todo gosen de los dichos previllejos e libertades e exenciones del dicho mi Condado y Senorio de Viscaya... e non de Alcabalas..." - p. 634. Apénd. num. 18, Prisiones de Don Fernando y Dona Isabel, 1475, pp. 656-659. Apénd. num. 20, Provisiones del Rey Catolico para que no se prenda a ningun bizcaino sobre deuda civil, 1475, pp. 662-663. Apénd. num 31, Carta Real Patente sobre el modo de entenderse
y guardarse algunos privilegios de las villas del Condado de Vizcaya facultando al licenciado Chinchilla para verlos y examinarlos, 1486, pp. 649-695.

300. Ibid., Tomo III, Apénd. num. 18, Mercedes vizcainas a vizcainos, 1475, pp. 658-659. Apénd. num. 21, Carta de Merced Bizcaina por juro de heredad a Martín Iñiguez de Zugasti, 1476, pp. 664-666.

J. Ignacio Tellechea Idigoras, "Ferrerias Guipuzcoana a Fines del Siglo XV. Un importante documento Inédito del Archivo de Simancas.", Boletín de la Real Sociedad Vascongada de los Amigos del País, Ano XXXI, Cuadernos 1ro. y 2do., San Sebastian, 1975, pp. 81-111, "Raras veces se otorgaban estas mercedes en Vizcaya o Guipúzcoa a extraños a la región" - p. 83, which is confirmed in the text.

301. Quiard y Larrauri, Historia del Consulado, p. LXXV, /El reconocimiento de la libertad mercantil fue repetido en otros testimonios, tratado de Madrid en 1665 (con Inglaterra, Cap. IV), id. de Utrecht en 1713, etc."


304. Sainz Díaz, Historia de San Vicente de la Barquera, passim.

305. Ibid., 471-492. The other members were the Basque \"Villas\" - vide reference num. 295 in this chapter - a generic name that is often, and incorrectly, applied to these cities as well.

306. Ibid., 479-480, "... el primero y principal acuerdo adoptado por los delegados reunidos en Castro Urdiales fue el de 'non dar los diezmos nin la saca del fierro, que son cosas contra fuero de que nos podría venir muchos danos a nos, e a todos los de la tierra, ni otra cosa ninguna que contra nuestros fueros sean.' Y para corroborar esta su decision y forzar al rey castellano a desistir de proposito, acuerdan igualmente prohibir todo comercio con el interior del reino de Castilla mientras fuese mantenida la exigencia de aquellos impuestos, y ello bajo pena de pérdida o decomiso por la Hermandad de todos los géneros que se intentara introducir." p. 479.

307. Ibid., quoted on page 480.
308. Raymond de Roover, Business, Banking, and Economic Thought in Late Medieval and Early Modern Europe, Selected Studies of Raymond de Roover. Edited by Julius Kirshner, Chicago/London, University of Chicago Press, 1974, pp. 273-284, for differences between current notion of the term, which implies tax free or moderately taxed trade, with that of the period we are considering, and in fact up to the XIX century, when it meant trade free of fraud, collusion or any other malpractice.


311. Vide Ref. 255 in this Chapter.


-------, Sobre los Burgos, p. 97, "En el año 1129 Alfonso 'el Batallador', siguiendo la política repobladora de su padre, Sancho Ramírez. otorgo el fuero de Jaca a los 'francos' que poblasen en el llano de San Saturnino de Irún o Pamplona, concediéndoles un mercado propio y eximien- doles del pago de los impuestos de trafico en todo su Reino."

López, Memorias Históricas, p. 81, "Idem. Que para que la dicha ciudad se pueda mejor poblar, de alli en adelante, para siempre jamas, que no paguen los vecinos y moradores de Cuenca y sus arrabalomes fonsadera ni moneda, salvo la moneda forera de siete en siete años."


Sainz Díaz, Notas Históricas, pp. 16-22.

313. García de Valdeavellano, El Mercado, p. 152, Fuero of Melgar de Suso, granted by Fermin Armentales and approved by Count Garci Fernandez in 950.

Labayru y Goicoechea, Historia General, Tomo II, Apénd. num 17,
Carta Puebla de Bermeo, confirmed in 1285 by D. Lope Díaz de Haro, grandson of Don Lope Díaz de Far, pp. 797-799.
Apénd. num. 31, Privilegio de fundación de la villa de Larrazábal, 1415, pp. 845-848, "Otro si por hacer bien e merced a los que vinieren a poblar la dicha villa, e porque ellos mas ayna se puedan poblar tengo por bien e mando... todos los homes que quisieren venir morar e poblar a la dicha villa quier sean hijos dalgo quier labradores que viniese fuera del mi Señorio a poblar e morar a la dicha villa que sean quitas e exentas de todo pecho e tributo e pedido que los otros mis vasallos de Vizcaya me huvieren a dar en qualquier maner e que esta franqueza e livertad que la ayan del primero del mes de marzo primero que viene fasta seis anos cumplidos primeros que vinieren... que los vecinos e moradores de la dicha villa nubea de Berresonaga, que no paguen portazgo ni Peage ni Pasage ni otro tributo alguno en adelante segund que las otras villa de mi Señorio de Vizcaya." - p. 847.

314. Antonio Collantes de Terán Sánchez, "Puente de Villamar Un empeño frustrado?", Archivo Hispalense, Tomo LV, num. 171-173, Sevilla, 1973, 2da. Época, pp. 120-121, "la qual sabe la merced que nos fiso - the Council of Seville - a todos los que poblásemos en la dicha puente, que fuesemos libres y esentos de todos pechos y servicios y derramas a que los otros de la tierra de Sevilla fuesen obligados segund que dello nos tiene dado su carta de merced o de preuillejo." - p. 120.

Jesús Fernández Viladrich, "La Comunidad de Sepulveda durante la Edad Media", Anuario de Estudios Medievales, VIII, Barcelona, 1972-1973, p. 207, "En el año 1305, el consejo de Sepulveda, de la villa y de las aldeas, excluyó del pago de pechos a todos cuantos vinieren a poblar Robregordo, Colladillo y Somosierra, salvo de los yantares del rey, reina e infantes, y de soldada de alcaldes y de alguacil."

Mut Remola, La vida económica; p. 35.


316. Ledesma Rubio, La encomienda de Zaragoza, p. 73.

317. Mut Remola, La vida económica, Doc. Anexo num. 5, pp. 225-226, Martín I establece la agregación de Borjas Blancas y parte real de Castellots. Remisión y absolución de crímenes
y delitos cometidos por los que irán a poblar estos lugares, excepto los autores de crímenes de lesa majestad, falsificadores de moneda o hayan dañado o injuriado vecinos de Lérida.

Fray Justo Pérez de Urbel, El Condado de Castilla. Los 300 Años en que se hizo Castilla, Madrid, Editorial Siglo Ilustrado S.A., 1969, III Vols., passim, and succinctly in Tomo I, pp. 139-146, provides many examples of the use a combination of incentives and a sound explanation of how they became an indispensable tool for the success of the repopulation policy during the first centuries of the Reconquista. "Hay que reunir hombres de cualquier manera y con ese fin se acude a cualquier motivo de orden social, económico o religioso" - Tomo I, p. 143.

318. Libro de las Bulas y Pragmáticas de los Reyes Católicos, Madrid, Instituto de España, 1973, Provisión que exime de portazgos y otros impuestos personales, por ganados y mercancías, en las ciudades, villas, lugares y fortalezas del reino de Granada a los que vayan a ellas, p. 151 and back.

319. Labayru y Goicoechea, Historia General, Tomo II, Apénd. num. 31, Privilegio de fundación de la villa de Larrabeza, 1367, "Otro por hacer bien e merced a los que vinieren a poblar la dicha villa, e porque ellos mas ayna se puedan poblar mando que todos los labradores que sean moradores dentro de los dichos terminos que yo do a la dicha villa que vinieren a poblar e morar la dicha vill que pechen del dia que vinieren a morar en la dicha villa en adelante los pechos que les fueron echados segun que pechan los otros labradores de Vizcaya e todos los hixos dalgo de los dichos terminos que quisieren venir a poblar e morar e ser vecinos de la dicha villa..." - p. 847. This was a fairly typical clause, excluding local residents from the temporary exemptions of Pechos and other land tributes and obligations granted to outsiders - Vide corresponding part in entry in ref. 313 of this Chapter - with the obvious purpose of avoiding depopulation. Exemptions of Portazgos, Alcabalas and other transit or consumption duties were common to all and of a permanent nature, but special deals were often offered to new settlers, their tools, and personal belongings. An idea of amounts paid as Pechos or canons is given in pp. 671-675.

320. Ibid., Tomo II, p. 603, Carta Puebla de La Fenestrosa granted in 1287 by Don Lope Díaz, Señor of Vizcaya and Count of Haro. For complete text, vide pp. 800-802.

Rafael de Urena y Smenjaud, Edits., Fuero de Cuenca (formas primitiva y sistemática: texto latino, texto castellano y adaptación del fuero de Iznatoraf), Madrid, Neal Academia de
la Historia, 1935, Cap. I, "Ley 8, p. 121, "... qualquier que a Cuenca viniere poblar, de cualquier condicion que sea, e si quier sea xristiano, si quier moro o judio, si quier franco, si quier siervo, vengan seguros e non responden por enemistad, nin por debda, nin por fiaadura, nin por erencia..."


322. Burriel, Memorias, Fueros de poblacion de Toledo dado a los muzarabes y catelanos, sus pobladores, segun se confirmaron en Madrid por el rey don Fernando el Santo, pp. 313-320.

323. García de Baranda, La Ciudad de Burgos, II, pp. 40-42.

324. García de Valdeavellano, Sobre los Burgos, pp. 92-116, 154-156. The Fuerro de Lograno, for instance, was granted to all those coming to reside there "tam Francigenis, quam etiam Ispanis" - p. 106.

325. Angel Canellas López, "El Reino de Aragón en el siglo XIV", Anuario de Estudios Medievales, VII, Barcelona, 1970-1971, p. 128, "en 1326 Jaime II redujo a 5 las 10 cabezas que pagaban por rebaño los ganaderos de Zaragoza que llevaban sus lanares a pastar en el verano a la comunidad de Albarracín."

326. Ibid., 128, "Las Cortes de Zaragoza de 1381 concedían a los nobles derechos de apacentar sus ganados en los montes de realengo."

Chabas Llorens, Historia de la Ciudad de Denia, Tomo II, p. 16, cattle and II sort of domestic animals, wheat, and legumes exempted of all duties in the district of Denia.

García de Valdeavellano, El Mercado, p. 153, ref. 449, "Alfonso X concede a los ganados de Arlanza y a sus pastores libre pasto en todo su reino, exencion de tributos y otras prerrogativas:... nin de los ganados que levaren a vender a los mercados,"; p. 156, ref. 459, "Exención de portazgo y concesión de pastos al Monasterio de Ibeas en 1199."

M. Ciriquiaín-Gaiztarro, Los Puertos Marítimos Vascongados, San Sebastian, Biblioteca Vascongada de los Amigos del País, 1951, pp. 188-189, timber floated down the Ondarroa canal was finally declared duty free in 1338 - after profuse litigation - when it was destined for shipbuilding or the building of houses.

Ledesma Rubio, La Encomienda, p. 55, "libre pasto de los rebaños del Hospital en Belchite."

Moxó, La Alcabala, pp. 48-49, livestock for agricultural work and reporduction were exempted from Alcabala.

327. Capmany, Memorias, Volúmen I, pp. 335-337


Francisco Torrella Niubó, "El impuesto textil de la Bolla en la Cataluña Medieval", Hispania, Tomo XIV, num. LVI, 1954, pp. 340-364, "Pero, a pesar de tales defectos, puede afirmarse que los derechos del General resultaron casi siempre favorable a la producción textil del Principiado, ya que cargando más siempre el volumen de sus impuestos sobre las importaciones que sobre las exportaciones, venían a cumplir fines protectionistas." - p. 356.

328. Carande y Thovar, Sevilla, pp. 168-173, "Diferencia del gravamen sobre la circulación y venta del vino, que, en primer término, se propuso favorecer el interés de los vecinos y moradores terratenientes y cosecheros, frente a la competencia de revendedores e importadores, como acusan sus exenciones y el tipo de su reglamentación..." - p. 173.

329. Collantes de Yerán Sánchez, Puente de Viar, p. 121.


331. Sancho de Sopranis, La Repoblación, pp. 521-529.

332. Siete Partidas, Tomo II, pp. 725-726.

Roughly thirty years after the Siete Partidas declared students' materials free from Portazgo duty, "Philippe, Roi des Français," ordered in 1297 that "les objets appartenant aux maîtres et aux étudiants de Paris circulent sans payer de Tonlieu" - Alphonse Guillaume Guislain Wauters, Table Chronologique de Chartes et Diplômes Imprimés concernant l'Histoire de la Belgique, Bruxelles,
333. Cortes de los Antiguos Reinos, Tomo Cuarto, Cortes de Toledo de 1480, Petición 98, p. 179, "Considerando los reyes de gloriosa memoria quanto era prouechoso e honroso a estos sus reynos se traxiesen libros de otras partes, para que con ellos se fiziesen los hombres letrados, quisieron e ordenaron que delos libros no se pagase alcauala, e porque de pocos dias a esta parte algunos mercaderes nuestros naturales e estranegros han traydo e de cada dia traen libros muchos buenos, lo qual paresce que redunda en prouecho universal de todos e ennoblecimiento de nuestros reynos; por ende ordenemos e mandemos que allende dela dicha franquez, que de aqui en adelante de todos los libros que se traxesen a estos nuestros reynos, asi por mar como por tierra, no se pida ni se pague ni lleue almoxorifadgo ni diemo ni portado ni otros derechos algunos..."

334. Ibid., Petición 90, pp. 172-175, "... e porque es notorio que de todo lo susodicho se ha seguido menguamento e perdidimiento de la cabanna de los ganados destos nuestros reynos e grand agraui lo de los pastores, recueros e labradores e mercaderes e mareantes e caminantes, e grand carestia en las carnes e ganados e calzado e otras cosas, que sobre esto los dichos procuradores de Cortes nos han suplicado mandasemos prouer e remediar..." - p. 172.

335. Capmany, Memorias, Volumen II, Primera Parte, pp. 735-738, Traslado de varios capítulos de Actos de Cortes, relativos al fomento del comercio, industria y navegacion de Cataluña, propuestos y otorgados en las Cortes de Barcelona de 1481, y en las de Monzón de 1547, de 1553; pp. 739-744, Traslado de varios Capítulos de Actos de Cortes, relativos al fomento del comercio y navegacion de Cataluña, propuestos y otorgados en las Cortes de Barcelona de año 1599, y 1702. A common denominator of these decisions is the tendency to assure - via the tax system - an adequate supply of raw materials and local processing to stages as close to final products as economically possible, as well as to avoid double taxation.


337. Guiraud y Larrauri, Historia del Consulado, pp. XVIII-XIX, echoes the views of reputable contemporary sources, such as Gonzalo Fernández de Oviedo, Fray Tomás de Mercado, and
Luis Valle de la Cerda.

338. Rafael Antúnez y Acevedo, Memorias Históricas sobre la legislación y gobierno de los españoles con sus colonias en las Indias Occidentales, Madrid, En la Imprenta de Sancha, Ano de MDCCXCVII, pp. 250-258, Del Derecho de toneladas; pp. 177-207, De la contribución de avería.

339. Basas Fernández, El Consulado de Burgos, pp. 187-188, 190. agreements between the "Condestable" of Castilla, D. Pedro Fernández de Velasco, holder of the "Diezmo de la Mar", and the "Universidad de Mercaderes" of Burgos, in 1480 and 1503, concerning the list of goods subject to the tax, the rates, and the mode of collection, generally on credit terms and payable at a given fair - p. 190.

Quiard y Larrauri, Historia del Consulado, Vol. I, p. 88, Concordia amongst the merchants of Burgos and Bilbao in Flanders regarding the distribution of proceeds from the Avería tax, 1465.

Robert Sidney Smith, The Spanish Guild Merchant, A History of the Consulado, 1250-1700, Durham, North Carolina, Duke University Press, 1940, pp. 49-50, agreements for the "marque duty" (Dret de las Marcas) imposed on the trade between Aragón and France were carried out by merchants.

Juan Torres Fontes, Relaciones comerciales entre los Reinos de Mallorca y Murcia en el Siglo XIV, Murcia, Sucesores de Nogués, 1971, pp. 8-10, commercial agreement and ad hoc taxes concluded by merchants; Doc. IV, pp. 14-15, and Doc. V, pp. 15-16, Royal Confirmation by the King of Castille and Regent of Majorca respectively.

340. Basas Fernández, El Consulado de Burgos, pp. 129-146, Averías de la Universidad de Mercaderes. "Las Ordenanzas de 1538 - similar to those of 1511 - se refieren a 'un memorial e arancel antiguo, conforme al qual se an cobrado e cobran las dichas averías' y para que todos los priores y consules sucesivos supiesen lo que debian mandar cobrar 'asi áca como en Flandes... y las otras estipulas de contratacion donde al presente residen o residen las personas d'esta Universidad lo insertaron en las ordenanzas por ser cosa aneja a ellas'." p. 132, suggest that this tax had been exacted for a long time before the Ordenanzas and that it was levied universally amongst all the "Mercaderes de la Universidad de Burgos."

Capmany, Memorias, Volúmen II, Primera Parte, pp. 543-545, Privileglo de D. Juan Rey de Navarra, y Regente de los Reynos de Aragon, en que confirma y amplía varias Reales
gracias al Gremio de los Pelayres de la Ciudad de Barcelona acerca de la facultad de imponer y exigir ciertas gabelas para el bien común de su Comunidad, Barcelona, Marzo 1457."

Carrère, Barcelone, I, pp. 52-69, Dret del Periatge."
Toujours pour la même "défense de la marchandise," les consuls et le Conseil... reçoivent le droit d'instituer un impôt indirect pesant sur les marchandises, les bateaux, les marchands ou patrons régnicoles. Le taux et les modalités d'application sont laissés entièrement à leur décision; ils pourront ensuite, selon les circonstances et après délibération, l'augmenter ou le diminuer, le supprimer ou le rétablir. Il y a plus: en cas de nécessité, consuls et Conseil peuvent frapper les marchands d'une taille ou contribution directe dont ils établiront l'assiette. Tant pour le Vectigal que pour la taille, payeurs et les fraudeurs, et d'opérer éventuellement des saisies..." - p. 53.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 59-112, aside from Averia there were other duties such as Pilotaje, Lemanaje, Molaje - in Bermeo, and Prebostaje, for specific payment of conventional port services.

Labayru y Goicoechea, Historia General, Tomo II, Apénd. num. 27, Ordenanzas de la Cofradía de pescadores del puerto de Bermeo dispuestas en 1353, Capítulo 17 and 18, p. 824, Capítulo 59, p. 833, Capítulo 70, p. 836, Capítulo 80, p. 838.

Sainz Díaz, Historia de San Vicente de la Barquera, pp. 523-527, special taxes and contributions of the Cofradía de Pescadores e Mareantes de San Vicente de la Barquera.

Robert Sidney Smith, The Spanish Guild, pp. 61-66, Dret del Periatge in Barcelona, Perpignan, Tortosa, and Valencia, Dret de la Mercaderia in Majorca, and other temporary duties, such as the 'Manifest duty', exacted uninterrupted by their Consulates from the XIV to the XVIII century; pp. 86-90, 97-100, Averias and other duties of the Consulates of Bilbao and Seville respectively.


Carrère, Barcelone, I, pp. 52-69.


Robert Sidney Smith, The Spanish Guild, pp. 105-111, pp. 139-141, Appendix VI, Revenues of the Barcelona (Periatge Duty) and Seville (Blanca al Millar, Escrivianas) Guilds.
342. Basas Fernández, El Consulado de Burgos, p. 188, "Que a todos los mercaderes que son de la Universidad de Burgos, conforme al asiento y concierto que sobre ello hay, se les carga la masía a 740 mrs. el millar que es a 74 mrs. por ciento y de allí abajo al respecto. A todos los otros mercaderes d'estos reinos y fuera d'ellos se les carga a 800 mrs. el millar y de allí abajo al respecto."

Guirard y Larrauri, Historia del Consulado, pp. 85-86, Condiciones de la renta del Mollaje de Bermeo a principios del siglo XVI:... yten cualquiera otra pinaza o baxel que entre en los puertos desta villa o posaderos del puerto de lamiaran pague medio real - entiendese de los forasteros no de los vezinos porque ellos son libres. ... yten que las pinacas foranas que van a yrlanda o terranoba en servicio de las naos que ban desta villa a la pesca sean libres de mollaje pagando una vez de yda aunque entren en este puerto mas veces durante el viaje de la dicha pesca... yten toda nabe que renobaren en el puerto chico desta villa puesto estenques que sea de cien toneles arriba pague dos ducados... Entiendese lo contenido en este capitulado para con los vezinos desta vida paguen la mitad de los derechos..."


Carrère, Barcelone, I, pp. 507-513

García Sainz de Baranda., La ciudad de Burgos, Tomo Segundo, pp. 62-151.

Gibert y Sánchez de la Vega, El Consejo de Madrid, Tomo I, pp. 52-54, 162-164.

Mut Remola, La vida económica, pp. 171-172.

344. Carlé, Mercaderes, p. 196, ref. 210, "Don Enrique... Al Consejo e a los Alcaldes e Alguaciles de la... de la ciudad de Cordoba. Sepades que los tegedores de hi de Cordoba e su termino nos mostraron un previlegio del Rey Don Alfonso, nuestro Padre... e pidiernos por merced que les mandasemos guardar el dicho previlegio; e Nos por les facer merced tovimosle por bien: Por que vos mandamos... que veades el dicho previlegio que tienen del dicho Rey Don Alfonso nuestro Padre, e complidgelo e guardadgelo..."

Carrère, Barcelone, I, p. 511, "Une vieille contestation existe entre la municipalité et les parayres, au sujet de laines anglaises livrées en 1441 et n'ayant pas la finesse
requise. Les parayres se sont tournés vers le roi, pourtant à Naples, et en ont obtenue une provision que les Conseillers jugent 'molt per judicial a les constitucions de Cathalunya e privilegis de la ciutat.' Les consuls des parayres ont présenté cette provision au Gouverneur, lequel a assigné devant lui les Conseillers et les administrateurs de la Taula."

Labayru y Goicoechea, Historia de Bizcaya, Tomo III, Apénd. num. 35, Provision Real sobre el pedido de los labradores de Bizcaya, 1489, pp. 701-702; Apénd. num. 36, Manadamiento y libranza del tesorero general contra los labradores censuariós, 1493, pp. 703-704; Apénd. num. 37, Recusacion de los labradores contra el tesorero general, 1493, pp. 705-708.

Prieto Bancos, El abasto de Oviedo, p. 360, "Los menestrales formaban gremios, que en el siglo XIV eran poderosos, al punto de tener en sus manos el gobierno de la ciudad, y contaban con abundantes medios para sufragar las fiestas religiosas y profanas. El de los zapateros costeaba las de Corpus, incluso la corrida de toros."

345. Ibid., 369, challenge and subsequent legal action of tax collector Velasco Perez, of Zamora, of the tax exemptions allegedly abused by merchants of Oviedo.

346. Mut Remola, La vida economica, Doc. Anexo num. 6, p. 227, Formula del juramento para los que se ayecindaran en la ciudad; Doc. Anexo num. 7, p. 228, Jaime II ordena al Bayle de Lérida que guarde a los aycindados en la Ciudad, las franquicias que tienen los vecinos y naturales de Lérida, 1294.

347. Prieto Bancos, El abasto de Oviedo, pp. 360-379, for some of the innumerable examples of these activities of the cities on behalf of the economic interests of their "vecinos" and "avecindados".

348. Particularly noticeable by the extra advantages offered by comparatively less attractive places, such as: Collantes de Terán Sánchez, Puente de Viar, pp. 117-118. Fernando Giménez de Gregorio, "Tres puentes sobre el Tajo en el Medioevo", Hispania, Tomo XIV, num. LIV-LVII, 1954, pp. 204-205.

Sancho de Sopranis, La Repoblación y el Repartimiento de Cádiz, pp. 483-539.

349. Gibert y Sánchez de la Vega, El Consejo de Madrid, p. 293, Madrid demanded heavy sureties from the "vecinos" who left town for whatever circumstances, a common practice to
discourage emigration.

350. Particularly in view of the fact that "voting with the feet" was by no means uncommon in Medieval and early Modern times. Often, a generous immigration policy had a crucial effect in the economic development of a place; such as Genoa, for instance, which owed so much to disgruntled Flemish and other immigrants - Doehaerd, Les Relations commerciales, I, Chapitre III, pp. 149-186.


352. Prieto Bances, El abasto de Oviedo, p. 375.


Prieto Bances, El abasto de Oviedo, p. 362.

354. Carlé, Mercaderes, p. 195, "Y Murcia, cuyos hombres, dieciseis años mas tarde, solicitaban a Alfonso XI que derogara la disposicion por la cual su bisabuelo, Alfonso X, les prohibiera emplear el tinte judío, grana, lacar y brasil, reservándose su monopolio. Podrian entonces en Murcia, como en muchos otros lugares - afirmaban los peticionantes - teñir y tejer paños. En las Cortes de 1313 el monarca accedía a su pedido, segun consta en privilegio expedido en Cuellar el 8 de Agosto, del mismo año y confirmado el 25 de Mayo de 1322."

Carrère, Barcelone, p. 432, "Le processus semble partout le même: à un monopole concédé pour quelques années succède une liberté d'entreprise partielle ou totale."

Cortes de los Antiguos Reinos, Tomo Cuarto, Cortes de Toledo de 1480, Petición 79, pp. 152-153, "Mucho se agrauian algunos pueblos de ciertas provinencias de nuestros reynos por una merced nueuamente intentada quel dicho sennor rey don Enrique nuestro Hermano, fizo a ciertos cavalleros para que todos los cueros delos ganados que en ciertos obispados e arzobispados se ouiesen de uender, fuesen traydos a lugar cierto, e alli se uendiesen en dias e lugares sennalados, e que a otra persona no se uendiesen, saluo al que tiene la dicha merced, passado cierto tiempo, e que otro alguno no los pudiesse comprar ni cargar, so cierta pena, la qual dizien que es neuia imposicion e gran detrimento e danno dela cosa publica de los dichos arzobispados e obispados e de los uezinos e moradores dellos... por ende, queriendo remediar e proveer sobre ello, con acuerdo delos de nuestro Consejo quitamos el dicho derecho e imposicion e renuocamos e anulamos
la merced e mercedes e cartas e sobrecartas e otras prouisiones que sobre ello tienen qualesquier personas de qualquier estado o condicion, preheminencia o dignidad que sean, e qualesquier nuestras cartas de mercedes e confirmaciones que sobre ello tengan, e qualquier vso e costumbre que ayan estado delo leuar..."

355. Sainz Díaz, Notas Históricas, pp. 194-208, 658-670, Con- firmacion por los Reyes Católicos del llamado Privilegio de las dos leguas a la villa de San Vicente de la Barquera, Alcalá de Henares, 1503, "Sepades que por quanto a nos es fecha relacion que la villa de San Vicente de la Barquera tenia privilegios de los Reyes nuestros progenitores para que en la mar que esta cerca de la dicha villa de San Vicente dos leguas por largo asi de la una parte de la dicha Villa hazia la Villa de Santander, como de la otra parte hazia la Villa de Llanes, ninguna persona ni Consejo, ni Universidad no pudiesen hacer puerto, ni carga, ni descarga de mercaduria alguna, ora fuese de pescado fresco, o salado, sino en la dicha villa de San Vicente, ni pudiesen hacer pesqueria dentro de los dichos limites, sino con licencia de la dicha villa, e no en otra manera... E assi mismo certificados que los vecinos e moradores de los dichos Consejos de Rilova, e Cobrices, e Novales, e Roseñada antiguamente tenian pocas barcas, e pesquerias, e por esto aunque algun vecino viniesse a hazer su carga a la dicha villa de san Vicente de los que pescaba en los dichos limites, porque era de poco perjuicio se mirava tanto en ello, e agora que han multiplicado tanto en barcas, y pinazas, y pesquerias, que hazen tanto cargo, e descargo fuera de la dicha villa de san Vicente; e lo hazen en otras partes, e que si no se remediasse podrian seguirse los dichos danos a la dicha villa, e a nuestros Reynos, de cuya causa si en los tiempos pasados el dicho privilegio tovo razon de ser concedido, aora mucho mas..." - pp. 194-195. With the same basic common sense the Crown confirmed the exclusive fishing rights of San Vicente de la Barquera over the rivers Deva and Nansa, very rich in salmon, which the Villa rented out every year to the highest bidder on the day of Saint John. This privilege was granted by Alfonso VIII in 1210, and confirmed periodically, as late as in 1760 - pp. 285-302, 309-316.

356. María Luisa Ledesma Rubio, "Proceso de las Cortes de Maella de 1404", Estudios de la Edad Media de la Corona de Aragon, Vol. IX, Zaragoza, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales, Estudios: XLIII, 1975, p. 604, "Como experiencia haya mostrado los grandes danos que por causa del bectigal de tres dineros por livra, impuesto en la cort que ultimamente celebramos en la ciudad de Caragoça, se han subseguidos et se espera mayores
a subseguir si no si providia, por tanto nos de voluntat de la cort tiramos e removemos del todo el dito bectigal de las entradas de tres díneros por livra et la exacció de aquell..."


360. Carrère, Barcelone, I, pp. 111-136, "La sauvegarde des intérêts marchands à l'étranger est assurée par plusieurs moyens dont la pluspart se trouvent aux mains des Conseillers barcelonais, et qui s'échelonnent de la diplomatie proprement dite (envois d'ambassadeurs et échange de correspondance officielle avec les pouvoirs publics) à l'action permanente d'un représentant in loco." - p. 111.


Luís Suárez Fernández, Navegación y Comercio en el Golfo de Vizcaya. Un estudio sobre la política marinera de la Casa de Trastamara, Madrid, Consejo Superior de Investigaciones Científicas, 1959, passim, and particularly the Apéndice Documental, pp. 127-239, for a good idea of that diplomatic activity; much of it in a sequential fashion.

Carmelo Viñas y Moy, "De la Edad Media a la Moderna. El Cantábrico y el Estrecho de Gibraltar en la historia política española", Hispania, Tomo I, 1940-41, particularly II, pp. 53-79.
361. Capmany, Memorias, Volumen I, pp. 365-383. De los Cónsules Ultramarinos que nombraba la Ciudad de Barcelona. Volumen II, Primera Parte, Doc. num. 119, p. 178, Carta de los Magistrados Municipales de Barcelona a Simon Dusay su Embajador Extraordinario cerca de la Republica de Genova...; Doc. num. 132 and 133, pp. 200-203, Traslado de algunos nombramientos de Cónsules ultramarinos, despachados por el Magistrado Municipal de Barcelona en tres diferentes siglos, según sus estilos y formularios, Para el Cónsul de Trapani en Sicilia - Doc. num. 132, Juramento del nuevo Cónsul - Doc. num. 134, both from 1332; Doc. num. 406, pp. 593-595, Para el Cónsul de Niza, in 1483; Doc. num. 448, pp. 654-657, Para el Cónsul de la Ciudad de Nápoles, in 1514; Doc. num. 466, pp. 679-681, Para el Cónsul de Algier en Cerdeña, in 1549; Doc. num. 231, pp. 337-339, Capitulación ajustada entre el Consulado del Mar y el Cuerpo de Comerciantes de Barcelona de una parte, y el Cónsul electo en Damasco de la otra, sobre ciertas reglas y condiciones con que debía regirse aquel Consulado de la Siria, 1386; Doc. num. 276, 277, 295, 337, 347, and 350, communications from Consuls abroad. Volumen II, Segunda Parte, Apéndice num. 25, pp. 850-860, Catálogo de varios, nombramientos de Cónsules Ultramarinos elegidos por la antigua Ciudad de Barcelona en diversos puertos y escalas del Mediterráneo para protección de sus mercaderías y navegantes en los siglos XIV; Apéndice 29, Noticia de las Prerrogativas, Preeminencias y Regalías que gozo por muchos siglos el antiguo Ayuntamiento de Barcelona, representado por sus Magistrados llamados Concelleres, VI, Los Diputados que embaivan los Concelleres a la Corte del Rey para tratar asuntos graves de gobierno, eran recibidos y tratados con el título y honores de Embajadores: en virtud de privilegio de Don Fernando el Católico del año 1496. Igual calificación merecieron los que embaían a Roma, Génova, Venecia, Flandes y otras partes... - p. 905.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. XLIV-LX.

362. Capmany, Memorias, Volumen I, p. 241, "Por los años 1250 la concurrencia de aquellos mercaderes a Egipto, con motivo del trato de la especería, era un objeto de tanta consideración que el Rey Don Jayme I ajusto un tratado de comercio con el Soldan, por medio de dos experimentados navegantes de Barcelona, Ramon Ricart y Bernardo Porter, que anteriormente habían corrido aquellos mares con dos galeras suyas. En 1272 era ya Alejandria otro de los puertos de Levante donde tenían los Catalanes su consul nacional." Volumen II, Primera Parte Doc. num. 62-63, pp. 96-97, Cartas de creencia que el Rey de Aragon Don Jayme II da al Embajador que envía al de Granada, Mahomad Aben Nacer, para ajustar paces, 1301; Doc. num. 89, pp. 129-132, Pratado de paz y amistad que ajusto por diez
años el Rey de Aragon, Jayme II con el de Tunez - through special Ambassador Honrat Guillem Oulomar - Abu Jahia Zaccaria, sobre varias franquicias y derechos del comercio y navegacion de los Catalanes en Berberia, 1314.

Labayru y Goicoechea, Historia General, Tomo III, Apéndice num. 25, pp. 678-680, Convenio original de un tratado de comercio entre la provincia de Guipuzcoa y el Reino de Inglaterra, 1481, "... ordenamos constituimos e establecemos por nuestros sufticientes e abundantes procuradores e de toda la dicha prouynicia e villas e logares e abytaantes della al bachiller Sebastian de Olaeua e a Juan de Azmíne e a Martin Perez de Arostigu e a Juan de Iñiguez a todos en uno e a cada uno de ellos in solidum, con tal que sea en ello el dicho bachiller Sebastian de Olaeua, para que por nos e en nuestro nombre puedan presentar e pregonar ciertos capitulos por nos..." - p. 679.

363. Sainz Díaz, Notas Históricas, p. 492. "Soberana en el Mar durante los siglos XIII, XIV, y XV, todavia pueden verse en el Indice del Archivo General de Guipuzcoa escrituras de tregua y concordia correspondientes al periodo 1536 a 1543, establecidas entre 'diputados de Guipuzcoa, Vizcaya, Encartaciones y Cuatro Villas de la Costa del mar' de una parte, y 'los de Bayona, tierras de Labart, San Juan de Luz, Cabetón y Biarritz de la otra, estipulando comercio libre y satisfaccion mutua de daños recibidos, con promesa y seguridad de no interrumpir estas buenas relaciones durante la guerra entre España y Francia, a pesar de que ya para estas fechas se había consolidado el poder centralizador de los reyes de España."

365. Torres Fontes, Relaciones Comerciales, pp. 8-10, Commercial agreement and ad hoc taxes between Murcia and Mallorca agreed upon by delegates of merchants from both Kingdoms; Doc. IV, pp. 14-15, ratification by the King of Castille; Doc. V, pp. 15-16, ratification by the Regent of Majorca.


367. Ibid., Volumen II, Primera Parte, Doc. num. 20, 48, 49, 50, 53, 54, 60, 61, 62, 63, 74, 76, 78, 79, 85, 90, 92, 98, 102, 109, 111, 112, 114, 182, 188, 297, 346, 381, 382, 386, 387,
410, 460, the latter from the Viceroy of Cataluña to the King of France, in 1521.

368. Ibid., Volumen II, Primera Parte, Doc. num. 80, 87, 179, Doc. num. 283, pp. 419-420, Carta del Soldan de Egipto a la Ciudad de Barcelona, exonerando el comercio de los Catalanes a representacion de su Consul, de ciertas gabelas que sufría contra el tenor de los tratados en el puerto de Alexandria, 1414; Doc. num. 316, p. 463, Carta del Soldan de Egipto al Ayuntamiento de Barcelona, en la cual declara, asegura y confirma a todos los Mercaderes Catalanes, la libre y pacifica contratación en sus dominios, sin lesión de sus privilegios y exenciones, conforme a los antiguos Tratados, 1437.

369. Ibid., Volumen II, Primera Parte, Doc. num. 100, 115, 137, 138, 145, 153, 168, 172, 273, 275, 291, 294, 310, 315, 328, 329, 332, 333, 340, 345, 352, 353, 355, 356, 375, 380, 393. Doc. num. 145, pp. 218-219, Salvo Conducto concedido por el Rey de Inglaterra Eduardo III, a petición de las Ciudades de Gante, Ipre, y Brujas, a favor de las naves y mercaderes Castellanos, Catalanes, y Mallorquinos, que hagan el viaje de Flandes, 1340, is of singular importance for it suggests that already at that time merchants and shipping from Castille, Majorca and Catalonia were sufficiently important for those Flemish towns as to warrant diplomatic efforts on their behalf before the King of England. Doc. num 379, p. 557, Carta de los Magistrados Municipales de Barcelona al Dux de Venecia, recomendandole los mercaderes que fuesen a traficar en los Dominios de dicha Señoría, Barcelona, 9 Mayo 1459; and Doc. num 380, p. 558, Respuesta del Dux de Venecia a los Magistrados de Barcelona, sobre el asunto de la carta precedente, Venecia, 28 de Junio 1459, show a fairly typical epistolary diplomatic exchange; an interesting detail is the prompt reply, thirty days from the original letter, which suggest a good mail service and an agile bureaucracy.

Finot, Relations Commerciales, pp. 317-320, Articles proposés aux échevins, jurés et communauté de la ville de Maubeuge, par les marchands d'Allemagne, de Castille, de Portugal, d'Aragon et de Plaisance pour la fabrication et le commerce de la draperie en la dite ville, vers 1355; pp. 320-322, Articles proposés et approuvés par la comtesse de Hainaut; pp. 322-324, Lettre des marchands d'Allemagne, de Castille, de Portugal, d'Aragon et de Plaisance en Lombardie, aux échevins et communauté de Maubeuge au sujet des privilèges qu'ils demandent à l'encontre des drapiers de la dite ville; pp. 324-327, Copie de la confirmation par Marguerite, comtesse de Hainaut, des privilèges accordés par les comtes, ses prédécesseurs, aux marchands d'Allemagne, de Castille, de Portugal, d'Aragon et de Plaisance en Lombardie.

Schaube, Handelsgeschichte der Romanischen Volker, passim.

Finot, Relations Commerciales, pp. 31-32.

Guiard y Larruari, Historia del Consulado, Tomo I, p. 278.

Wauters, Table Chronologique des Chartes, Tome VI, pp. 439 (1294), 561 (1297).

Capmany, Memorias, Volúmen II, Primera Parte, Doc. num. 145, pp. 218-219, already commented in Ref. num. 369 of this Chapter.

Capmany, Memorias, Volúmen II, Primera Parte, Doc. num 43, pp. 66-67, Provision del Rey Don Alonso III de Aragon para que los corsarios que quieran armar den sus correspondientes fianzas en poder de los Jueces Reales, 1288; Doc. num. 164, p. 244, Córdula del Rey de Aragon Don Pedro IV, en que se impone a los Armadores de Mallorca, que antes de salir a corso aseguren en poder del Gobernador del Rey de no molestar a las Naciones amigos o aliadas, y que de sus beneficios el Fisco Real cobre la décima, 1353; Doc. num. 171, pp. 254-257, Real Provision de Don Pedro IV, dirigida a los Gobernadores de todas sus Provincias marítimas, sobre las reglas y ordenanzas que deben guardar los Corsarios que debian armarse contra Genoveses y Moros, 1356; (III) Tomo, lo senyor rey los dona de bona guerra tots janoveses e tots sotsmeses del senyor de Milla, e tots moros, salvant los moros del rey de Granada, e encara tos aquell(e)s qui faran o vendran contra la inhibicio general del senyor rey, en la forma que.s conte en aquella inhibicio." - p.255; Doc. num. 184, pp. 273-277, Capítulos ajustados entre Mateo Mercier, el Consejo del Rey Don Pedro IV residente en Valencia, y dicha Ciudad, y los Armadores de dos Galeras que se equipaban para hacer la guerra con las cuatro galeras de Cataluña a los Genoveses y Castellanos, 1359; Doc. num. 239, pp. 351-358, Real Provision de Don Juan I de Aragon, a favor de los interesados en buque y cargamento de tres Naves Mallorquinas, que en el viaje de Flandes fueran apresadas y robadas en 1373 por una esquadra Inglesa en el Canal de la Mancha, para que usen de represalias contra el Rey de Inglaterra y sus vasallos, hasta el resarcimiento total de los daños e intereses, 1392; Doc. num. 245, 253, 261, 264, 286, 403, 413, stress same points. For instance, Doc. num. 286, pp. 425-426, Carta del Rey D. Alfonso V de Aragon al Bayle General de Cataluña acerca de la caucion que habian de dar ciertos Armadores antes que saliesen a Corso, so as:to "perveir e dar loch e manera que.l.s dits patrones o armades no fassen dan(y) sino a.n aquellas naus o personas, que sien...
ab nos en guerra" - p. 426, 1420.

375. Ibid., Volumen II, Primera Parte, Doc. num. 82, pp. 119-121; Doc. num. 88, pp. 126-128; Doc. num. 113, pp. 167-171, this one between Jayme of Aragon and Miralmonenin, King of Tunis and Bougie.

376. Ibid., Volumen I, pp. 241, 248, 252.

377. Ibid., Volumen II, Primera Parte, Doc. num. 179, pp. 266-268.

378. Ibid., Doc. Num. 55, pp. 82-85.

379. Ibid., Doc. num. 27, pp. 42-43; Doc. num. 81, pp. 115-119; Doc. num. 179, pp. 266-268.

380. Ibid., Doc. num. 38, pp. 56-60; Doc. num. 80, pp. 114-115; Doc. num. 89, pp. 129-132.


382. Guiard y Larrauri, Historia General, Tomo III, Apéndice num. I, pp. 583-584, letters from the Council of Bermeo, Don Alfonso, King of Castille, and the Council of Bayona, to the King of England, part of a diplomatic effort to re-establish normal commercial relations.

Cortes de los Antiguos Reinos, Tomo Segundo, Cortes de Valladolid de 1351, Peticion 6, "Alo que me pidieron en razon dela tregua que fue puesta entre el Rey de Inglaterra e los delas marismas de Castilla e de Quipiza e delas villas del Condado de Vizcaya, que me plugeise ende. A esto respondo que me plaze e quelo tengo por bien." - p. 7, thus giving the Royal Assent to a twenty year treaty between the cities of the Hermandad de las Marismas de Castilla, Vizcaya and Guipuzcoa, and England, which allowed merchants and ships from the signing parties to arrive with any merchandise and circulate freely in their jurisdictions. Details of treaty in Guiard y Larrauri, Historia del Consulado, Vol. I, p. XXIX.

383. Finot, Relations Commerciales, pp. 97-105, "Désirant le profit commun de nos sujets et bennes gens de notre pays de Flandre, considérant que par le fait de la marchandise qu'honorable hommes les guiaux, marchands, maîtres des nefs, marins et sujet du Royaume et de la seigneurie, de très puissant prince le roi de Castille, font de leurs biens et marchandises qu'ils mènent et font conduire en notre pays et font conduire et mener par terre et par mer en leur pays et ailleurs, grand profit et biens viennent à nos sujets
et à notre pays communalement; pour le bien, profit, multipliement de notre dit pays et avancement de nos sujets, nous avons, à la révérence et sur les prières dudit roi de Castille et à la requête et supplication desdits amiraux, marchands, etc. du royaume de Castille et de nos sujets de Flandre, afin qu'ils puissent plus facilement faire leur dite marchandise, aller, demeurer et converser paisiblement par tout notre dit pays, donné, consenti et octroyé, donnons, consentons et octroyons auxdits amiraux et marchands, etc., les points et articles suivants."

Agreed to in 1367, extending the concessions granted in 1348, in terms which clearly reveal the mutual profit derived from it by both parties.


385. Sainz Díaz, Notas Históricas, p. 492.

Suárez Fernández, Navegación y Comercio, pp. 115, 127.


Guiard y Larrauri, Historia del Consulado, Tomo I, pp. XXIV-XXVII.

387. Sainz Díaz, Notas Históricas, p. 479.

388. Labayru y Goicoechea, Historia General, Tomo III, Apéndice num. 25, Convenio original de un tratado de comercio entre la provincia de Guiúzcoa y el Reino de Inglaterra; 1481, pp. 678-680.


390. Cortes de los Antiguos Reinos, Tomo Cuarto, Cortes de Toledo de 1480, Petición III, pp. 185-186, "... por ende, a petición de los dichos procuradores, ordenamos e mandamos que todos los mantenimientos e bestias e ganados e otras mercaderias de cual quier calidad que sean, que fasta aquí eran uedadas por las leyes e ordenanzas de Castilla e de Leon, e no se puedan pasar a los dichos reynos de Aragon, que de aquí en adelante se puedan pasar e pasen libre e seguramente a los dichos reynos de Aragon, sin pena ni calumnia alguna e sin embargo de uedamiento deellas, hecho por las dichas leyes e ordenanzas, con tanto, que siempre las tales cosas sean e
finquen dezmeras para nos e nuestros successores, e se pague
dellas el diezmo e se escriua en las aduanas, segun se
acostumbro en los tiempos pasados fasta aqui delas cosas
uedadas..." - p. 185.

391. Torres Fontes, Relaciones Comerciales, pp. 8-10, 14-16.

392. Finot, Relations Commerciales; p. 288.

XLIV-LIX, LXI- LX, for greater details of the intense
competition and rivalry between those groups, formed along
the area of origin of the merchants.


396. Joseph de Veitia Linage, Norte de la Contratacion de las
Indias Occidentales, Sevilla, 1672, Film from the Holdings
and with the Permission of the University of London's
Goldsmiths' Library, Category General, Item Num. 1998,
Libro I, Capítulo 17, pp. 102-118, "Entre los otros privilegios
que las Republicas bien governadas conceden a los mercaderes,
refiere Don Juan de Solorzano, que es el mas considerable
darles Iuezes particulares que salgan por suertes o por
eleccion todos los años entre si mismos, los que llaman
Prior, y Consules, y su Tribunal Consulado, porque se
disputan para mirar, consultar, disponer, y componer todo
lo que a la Universidad del Comercio entenderen que es
conveniente, y siempre se ha juzgado que lo es, el que para
semejantes Colegios, y Universidades se conceda jurisdiccion;
no solo entre mercaderes, sino entre mareantes, con lo
que aconsiego Bobadilla a las justicias ordinarias que
escusen competencias quanto pudieren..." - p. 102.

397. Capmany, Memorias, Volúmen I, pp. 338-339, "... las causas
del comercio, como dice un gran Politico, admiten pocas
formalidades, porque son casos diarios a los cuales han de
suceder otros de igual naturaleza todos los dias; asi
pues, conviene que puedan ser decididos tambien todos los
dias. Son muy distintos de las acciones de la vida civil,
que aunque influyan mucho para lo venidero, acontecen raras
veces." - p. 338.

398. Huvelin, Essai Historique, p. 383, "La nécessité d'une
procedure rapide, d'égayée des lenteurs du droit commun,
et plus conforme aux exigences du commerce, a des l'antiquité
frappé les législateurs."
Robert Sidney Smith, The Spanish Guild Merchant, pp. 5-7, "Innumerable records furnish evidence that a fundamental motive of the Spanish Consulado was to secure the expeditious, economical, and equitable adjudication of disputes concerning maritime and mercantile contracts." - p. 6.


400. Pérez Embid, El Puerto de Sevilla, p. 92.


Capmany, Memorias, Volúmen I, pp. 350-353, 832-846. Volumen II, Primera Parte, Documentos Números 170, 185, 212, 213, 257, 263, 268 - Privilegio Perpetuo del Rey Don Martín de Aragón, por el cual confirma todos los concedidos hasta entonces al Consulado del Mar de Barcelona por sus Predecesores, y extiende la jurisdicción de este Tribunal sobre todas las causas civiles dimanadas de accion o contrato mercantil de qualsiera especie, así de mar como de tierra, 1401–280, 291 - Real Privilegio de Don Alonso V, en que concede a los Consules del mar de Barcelona el conocimiento y jurisdicción civil y criminal sobre las causas de quiebras, de deudas dolosas, y causiones de derecho de materias mercantiles, así marítimas como terrestres, de que antes conocía la Ciudad, 1432, clearly limiting the criminal jurisdiction to commercial matters - 339, 341 - Real Privilegio de Don Alfonso V de Aragon, en que concede a los Consules del Mar de Barcelona la potestad ejecutiva de las leyes penales que decretasen en sus estatutos, edictos y sentencias, 1444, of particular importance for it conferred upon the Consulate full authority to enforce and carry out its sentences - 370, 383, 439, 440, 471, 472.


403. This was a generalised concept, according to the summary of Beaumanoir, quoted by Huvelin - Essai Historique, p. 384. Huvelin added that "... les coutumes et chartes de moyen âge s'inspirant des mêmes principes quand elles ordonnent de juger les affaires de marchands summarie et de plano." - p. 384. In the Peninsula, we can see it clearly reflected in the Pragmatica of 1494 formalising the establishment of the Consulado of Burgos: "Para que lo libren y determinen (los consules) breve y sumariamente según estilo de mer-
caderes sin dar luengas dilaciones ni placos de abogados...

Basas Fernández, El Consulado de Burgos, p. 109. The concept was reiterated in the Privilegio of 1480, granted by Alonso V to the Consulado and Lonja of Barcelona, which confirmed a long standing practice: "Item, que en la dels alcaldes de Barchinona, los fets maritims e de cambis, companyies e fets e negocis mercantivos sien decidits per juy de mercaders e homens de mar; e no per juristes..." - Capmany, Memorias, Volumen II, Primera Parte, Doc. num. 383, p. 562. "We can see it once more in the Pragmáticas, ordenanzas, ley y facultad pasadas por carta real de Doña Juana a la universidad de mercaderes de Bilbao y fiel y diputados de ella, in 1511:

"... para que tengan jurisdiccion de poder conocer y conozcan de las diferencias y debates que ovieren entre mercader y mercader y sus compañeros y factores sobre el traer de las mercaderias assi sobre compras y ventas y cambios y seguros y cuentas y compañías que ayan tenido y tengan sobre afletamientos de naos y sobre las fatorias que los dichos mercaderes ovieren dado a sus factores assi en nuestros reynos como fuera dellos, assi para que puedan conocer y conozcan de las diferencias, y debates y pleitos pendientes entre los susodichos como de las otras cosas que acescieren de aqui en adelante para que lo libren y determinen breve y sumariamente segun estilo de mercaderes sin dar lugar a luengas, ni dilaciones de malicia, ni plazos de abogados...," and again, for the appeal court, the two merchants selected by the Corregidor had to swear to adjudicate "... por estilo de entre mercaderes, sin libello ni escritos de abogados, salvo solamente la verdad sabida, y la buena fe guardada como entre mercaderes sin dar lugar a luengas de malicias, ni a plazo, ni a dilaciones de abogados..." - Guiard y Larrauri, Historia del Consulado, Vol. I, p. 566. Along the same lines, "The consuls of Valencia were pledged to settle disputes 'according to the use and customs of the sea... briefly, summarily, and forthwith, without the noise or formality of a judgment, sola facti veritati attenta...'" according to the Manual de consells y establiments, 1327-1331 - Robert Sidney Smith, The Spanish Guild Merchant, pp. 21-22, and incidentally, as the author comments - ref. 24 - that was also the rule in the early English Admiralty Courts.


405. Ibid., this was further clarified in the note (6) of that law: "Sed an Clericus, qui est de aliqua arte, seu professione, conveniri possit coram judice saeculari illius artis, seu negotiationis, ut si est mercator coram Consule mercatorum..."
406. Ibid., with an additional clarification in note (8) of the same law: "Nam jurisdictio Ordinaria cohaeret territorio: & limites jurisdictionis sunt secundum limites territorii..."


408. Pérez-Embíd, El Puerto de Sevilla, p. 92


411. This has probably affected the historical assessment of the period, for the long life of the Consulado and its successor, the present day Camara de Comercio, meant the survival and better preservation of records which in the case of Castille suffered considerable dispersion. The comparative dearth of documentary evidence from Castille may have well led to a relative underestimation of its economy up to the end of the XV century.


The matter is by no means settled. For an apt summary of view points vide Basas Fernández, El Consulado de Burgos, pp. 27-28.


416. Ibid., 11. Incidentally, the author considers the Consulado of Malta, founded in 1697, "an offshoot of the Aragonese institution."


420. Ibid., 8, this pattern and its evolution were by no means uniform. The likeness is expressed here in very general terms.

421. Basas Fernández, El Consulado de Burgos, pp. 33-34.
422. Capmany, Memorias, Volúmen I, pp. 348-350. Volúmen II, Documento Número 339, Real Privilegio de Don Alfonso V de Aragón en que declara que el conocimiento de todas las causas marítimas civiles pertenece a los Consules del Mar de Barcelona, y no al Almirante ni Vice-Almirante, 1444, pp. 490-493, clearly separated the Consulado from the sphere of the Admiral or Vice-Admiral.


425. Ibid., 693.

426. Sainz Díaz, Notas Históricas, p. 537, "... 1593, en que se vuelve a hablar, intitulándolo traslado de una Ordenanza de las antiguas. Este trata sobre el gobierno peculiar del Gremio (Comunidad de pescadores de San Vicente de la Barquera), y jurisdicción privativa inmemorialmente del mayordomo en toda clase de pesquerías, y concluye extractando sustancialmente el Código marítimo mercantil de Oleron;" p. 537, "Este es un traslado verdaderamente sacado por Juan Sanchez de Cos, Mayordomo de 10s Mareantes y Común de Señor San Vicente en este presente año de mil quatrocientos noventa y tres, de una Ordenanza de las antiguas que esta Villa tiene, una ley al pie de ella, lo qual todo es de la manera que aquí se sigue. = Ordenanza Quinta = Por quanto en esta Villa, entre los vecinos mareantes de ella, que tratan la pesquería, ocurren pleitos, diferencias y contiendas sobre casos e cosas, e dudas de mar, e de sus pescas e navios, e si se hubiesen de ver y determinar por los Jueces por via ordinaria se recrcerian muchos gastos e danos; ordenamos e mandamos, pues de inmemorial tiempo aca el Mayordomo, que ha sido e es de la Cofradía de Señor San Vicente de esta Villa fue Juez de semejantes casos, como por la ley de la Partida le es mandado, e en ello no le impida el Juez Ordinario de la dicha Villa que así se haga e guarde la dicha ley, so pena que el Juez que en ello le impidiere sea obligado a pagar los dapos, e costas e gastos, que en no se determinar conforme a la dicha ley a las partes se recrcerien: e la dicha ley mandamos poner al pie de esta Ordenanza, e su tenor es el siguiente: quinta Partida, título noveno, ley final."

427. Registered "vecino" and "avecinado" merchants could more or less automatically sue and be sued at these courts, often regardless of where the events leading to such action had taken place. So could, in some instances, those working on their behalf. One of the reasons invoked by the merchants of Burgos in their petition to the King to grant them a
Consulado was their inability to force their factors to come to Burgos to render their accounts, often by marrying and acquiring a domicile outside the jurisdiction of Burgos. They were granted the necessary powers to solve that in the Real Cédula of 1494 - Capmany, Libro del Consulado, pp. 684-685. The same reasons and a similar solution were given in the case of the Consulado of Bilbao - Guiard y Larráuri, Historia del Consulado, Vol. I. pp. 563-571; and also in that of Seville, only, for obvious reasons, with the longer period for the rendition of accounts demanded by the American trade - Capmany, Libro del Consulado, p. 692.

428. An exception could be the Confrérie de la Contractacion - vide ref. 389 in this chapter - but we have not seen the original treaty.


431. Ibid., 27.

432. Ibid., 28.

433. Siete Partidas, Tomo II, Quinta Partida, Titulo VII, Ley V, pp. 725-726, particularly note (3) - p. 725, "... quia Clerici negotiatores, quantum pertinet ad eam negotiationem, jure laicorum communi uti debent..." Also Tercera Partida, Titulo IV, Ley I, pp. 40-41, vide reference num. 405 in this Chapter.


435. Finot, Relations Commerciales, passim, and Capmany, Memorias, Volúmen II, Segunda Parte, pp. 850-860, give a good idea of the extent and every day operation of this practice. Heyd, Histoire du Commerce, passim, and Schaube, Handelsgeschichte der Romanischchen, passim, illustrate its antiquity as well as the widespread use of it.


437. Carande y Thovar, Sevilla, pp. 72-79.

438. Pérez-Embids, El Puerto de Sevilla, p. 86

440. Viñas y Muy, De la Edad Media, II, p. 56, "Alfonso repuebla con gente cantábrica de Laredo, Santander, Bermeo, Castro Urdiales, San Vicente de la Barquera, a Cadiz, donde crea Colegio y Consulado y en igual forma a Rota, Sanlucar de Barrameda y funda el Puerto de Santa María."

441. Guiard y Larrauri, Historia del Consulado, Vol. I, p. XV' "El gremio de mareantes del Senhorio puesto en Cadiz para regir la navegacion por el poniente, con un consul, es mencionado ya en 1403. Los vascongados pusieron sus consules en los puertos de su trato a imitación de como lo practicaron otros pueblos mercantiles."

442. Basas Fernández, El Consulado de Burgos, pp. 32-33.


444. Ibid., Volumen I, pp. 843-845.

Basas Fernández, El Consulado de Burgos, pp. 113-117.


446. Ibid., 30.


448. Ibid., 36-46.


-------, Libro del Consulado del Mar, Real Cédula para la nueva fundación del Consulado de Sevilla, p. 691, "... Prior y Consules, y que estos pudiesen conocer y determinar todos los negocios y causas que se ofreciesen entre los dichos
mercaderes y sus factores, y sobre todas y cualesquier cosas tocantes, dependientes, y concernientes a su trato y comercio, y según y como lo hacían, y podían y debían hacer el Prior y Consules de la dicha ciudad de Burgos..."


450. Id est: exclusive.


Robert Sidney Smith, The Spanish Guild Merchant, p. 30, citing the authority of J. Hevia Bolaños, Juan de Solorzano y Pereyra, and José de Veitia Linage.

Ferran Valls i Taverner, Consolat de Mar, Barcelona, Editorial Bacino, Els Nostres Classics, Col.leccio A, 1930, Volum II, Orde Judiciari de la Cort dels Consols de Mar de Valencia, 1, p. 37; Orde Judiciari de la Cort dels Consols de Mar de Barcelona, 3, pp. 64-65.


-----, Libro del Consulado, Ordenanzas de la antigua forma judiciaria del Consulado del Mar, Cap. 31, Del Poder de los Consules, p. 469; Cap. 22, De las Causas que pertenecen a la jurisdicción de los Consules, p. 470.

Valls i Taverner, Consolat de Mar, Volum II, Orde Judiciari de la Cort dels Consols de Mar de Valencia, 1, p. 37.

452. Basas Fernández, El Consulado de Burgos, pp. 109-111, 126-128, "Así tenemos, en primer lugar, la poliza o contrato de seguro marítimo que cerraba con una clausula que decía: 'Dandonos vos los susodichos (cargadores) fianzas llanas e abonadas a vista de los señores Prior y Consules de la dicha Universidad de los mercaderes d'esta ciudad de Burgos a cuyo juicio y juzgado y a sus ordenanzas nos, los dichos aseguradores e cargadores, nos sometemos,' Modelo de Póliza antigua, Ordenanzas 1538," p. 127. "Los contratos de
compañía, entre los mercaderes de la Universidad de Burgos, solían también contener una cláusula final de sometimiento al Consulado..." - p. 127.


Robert Sidney Smith, The Spanish Guild Merchant, p. 27.

453. This view is expressed by Robert Sidney Smith - The Spanish Guild Merchant, p. 29, "Jurisdictional disputes arose persistently throughout the long life of the institution, and examination of nearly a hundred questions of jurisdiction supports the conclusion that the conflict of jurisdiction was one of the major deficiencies of exceptional commercial courts." However, unless an unattainable perfection is expected, a lack of jurisdictional disputes would have been entirely incompatible with the process of creation and enforcement of Law Merchant. Quite to the contrary, it would have meant a sterile institution, a dormant law-making process, and, indeed, a very languid economic activity. As Smith points out, "doubtless in more than one instance disputes over jurisdiction arose because the consular judges had 'an exaggerated notion of their prerogative'." We would contend that this was mere the symptom of a legal system intensely alive and in the process of formation than one paralyzed by the exaggerated self-importance of its courts.

454. Guiard y Larrauri, Historia del Consulado, Vol. I, p. 307, "Dichas y otras razones, consultadas a los juristas Barraicua, Ocariz, Zornoza, Mendiola, y Olaeta, fueron presentadas incontinentemente al monarca, y luego coadyuvaron a ellas las traficantes ingleses que en Bilbao residían...," a good example of legal argumentation by lawyers and merchants with regard to a jurisdictional matter. Incidentally, those merchants, who were English, were opposed to the naming of an English Consul, because the Consulado was competent "para todos los negocios mercantiles con plena potestad y jurisdicción para juzgar todas las causas de mercaderes y navegantes así naturales como extranjeros" - p. 307.

455. Carrère, Barcelone, Vol. I, pp. 47-49, "... c'est même celui qu'adoptent les consuls lorsqu'ils se trouvent eux-mêmes partie dans un litige. L'utilité de l'arbitrage privé était reconnue par tous." - p. 49. It is quite likely that private arbitrators played at the time a role more or less similar to that of the solicitors today. In all probability then, like nowadays, only a very small percentage of the disputes reached the courts. Generally, a settlement out of
court is deemed preferable in commercial law, but a condition sine qua non to get the parties to agree to a settlement is the presence of laws that can be enforced in court. This, combined with the possibility of delaying the outcome of a dispute for a long period of time, would have provided a powerful inducement to rest one's case in the hands of a private arbitrator.


457. Basas Fernández, El Consulado de Burgos, p. 115, "La provisión de Felipe II de 1558 disponía que, en los pleitos y causas mercantiles, 'no conozcan ni se traten en las nuestras audiencias ni ante otros jueces ni tribunales'."


Valls i Taverner, Consolat de Mar, Volum II, Capitols aprovats per Joan II, per privilegi de 7 de juliol de 1460, pp. 103-106; Capitols aprovats per Ferran II, per privilegi de 17 de Maig de 1510.

458. Basas Fernández, El Consulado de Burgos, p. 125, ref. 67, "Como jueces ordinarios a quien pertenece principalmente el conocimiento d'ellos, (procesos) por ser como son sobre seguros." "Porque conforme a las leyes d'estos reinos y ordenanzas del dicho Consulado, confirmadas por V.A. pertenece al conocimiento de las dichas causas de seguros y de todas las demás semejantes a ellas que son y se dizan causas mercantiles a los dichos prior y consules privativamente y le esta concedida la jurisdiccion para conocer d'ellas sin que ninguna Audiencia Real ni otro juez alguno se le pueda entremeter en su conocimiento..."

Capmany, Libro del Consulado del Mar, pp. 583-589, 593-705.

Guiard y Larrauri, Historia del Consulado, pp. 579-631.

Valls i Taverner, Consolat de Mar, Volum III, pp. 13-121.


460. José María Font Rims, in Prólogo to Capmany, Libro del Consulado del Mar, pp. XXV-XXVI.

------, *Libro del Consulado del Mar*, pp. 9-64.

José María Font Rius, Capmany, *Libro del Consulado del Mar*, pp. IX-LV.


The clause in question is the Capítulo 41. Com los consuls e lo jutge domen lurs sentencies per les "Costumes de la mar" o per consell, reproduced by Font Rius and also in Valls i Taverner, *Consolat de Mar*, Volum II, pp. 60-61.

466. Font Rius, Capmany, *Libro del Consulado del Mar*, p. XLI.


467. Ibid., 22, ref. num. 26.

468. Ibid., 22.


471. Ibid., 63-64. Amongst the titles of general use, though adapted to Bilbao, Capmany selected, out of the Ordenanzas Generales of 1511: X, De las sociedades de Comercio, de sus calidades y circunstancias; XI de los contratos de comercio entre mercaderes; XIII, de las letras de cambio, sus aceptaciones, endosos, protestos y terminos; XIV, de los vales y libranzas de comercio, y cartas ordenes, de los atrasos, fallidas y quiebras; XVII, de los fletamentos de navios, y conocimientos; XX, de los seguros y sus polizas; XXIII, de los contratos del dinero o mercaderias que se dan a la
gruesa ventura ó riesgo de nau; XXIV, de las obligaciones
de los capitanes, maestres o patrones, pilotos, contramaestres
y marineros.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 563-
571, 582-598, Ordenanzas Generales, 1531, which include the
text of the titles mentioned ut supra of the Ordenanzas
Generales of 1511; 598-621, Ordenanzas Generales, 1554, which
kept large sections of those of 1531; vide 621-629, for later
additions.

472. Capmany, Libro del Consulado del Mar, pp. 62-63, 690-694,
Real Cédula para la nueva fundación del Consulado de Sevilla,
1554, 695-705, Ordenanzas para el Prior y Consules de la
Universidad de Mercaderes de Sevilla, 1554.

473. Capmany, Libro del Consulado del Mar, pp. 603-604, Ordenanzas
de Seguros Marítimos, 1436; pp. 605-612, Ordenanzas de
Seguros Marítimos, 1458; pp. 613-614, Ordenanzas para Seguros
Marítimos, 1461; pp. 615-623, Ordenanzas para los Seguros
Marítimos, 1481.

Valls i Taverner, Consolat de Mar, Volum III, Ordinacions de
la Ciutat de Barcelons sobre assegurances marítimes, 1435,
pp. 33-45; 1436 - pp. 48-49, 1458 - pp. 51-71; 1461 -
pp. 73-76; 1484 - pp. 77-105. All are the complete texts.

Carrère, Barcelone, II, pp. 902-905.


474. Mario Del Treppo, I Mercanti Catalani e l'Espansione della
Corona d'Aragona nel Secolo XV, Napoli, L'Arte Tipografica
Napoli, MCVLXX, (Universität di Napoli, Seminario di Storia
Medioevale, IV), p. 458.

------. "Assicurazioni e commercio internazionale a Barcellona
nel 1428-1429", Rivista Storica Italiana, LXIX, 1957,
pp. 510-511.

475. Basas Fernández, El Consulado de Burgos, pp. 68, 97-98,
129-132, 135, 140-143, 151, 162, 168-173.

L.A. Boiteux, La Fortune de Mer. Le besoin de sécurité et
les débuts de l'assurance maritime, Paris, S.E.V.P.E.N.,
1968, (École Pratique des Hautes Études-VIe Section, Centre
de Recherches Historiques, Ports-Routes-Trafics, XXIV),
p. 113.

Capmany, Libro del Consulado del Mar, pp. 624-652, Ordenanzas
para los Seguros Marítimos que formaron el Prior y Consules
de la Universidad de Mercaderes de Burgos en el Ayuntamiento
General que para esto tuvieron en la casa del Consulado en el año de 1537. It makes reference to the prior Ordenanzas whose text has been lost - p. 61.

476. Boiteux, La Fortune de Mer, p. 113.


477. Boiteux, La Fortune de Mer, pp. 113-114.

Capmany, Libro del Consulado del Mar, pp. 653-659, Ordenanzas para los Seguros Marítimos que formaron el Prior y Consules de la Universidad de mercaderes de Sevilla, con respecto a la navegacion a las Indias Occidentales, en 1555; pp. 660-666, Pólizas de Seguros, 1556; p. 666, Adición sobre la materia de los seguros, sacada de una Ordenanza de Felipe II de 1553.

478. Boiteux, La Fortune de Mer, pp. 95-98, 113-119.

Capmany, Memorias, Volumen I, pp. 828-831, "Los Países Bajos, a pesar de ser provincias tan frecuente de estrangeros, y tan florecientes en fabricas y comercio, carecían de estatutos para regir este ramo de contratación. Las primeras ordenanzas de seguros para la Bolsa de Amberes, fueron promulgadas en Bruselas por cédula del Rey Catolico D. Felipe II en 21 de octubre de 1563. Las segundas son los estatutos de seguros y averías para Holanda y Zelanda, hechos en Amsterdam en 31 de Enero de 1598." - p. 831. This would confirm the views of Boiteux.

479. Capmany, Libro del Consulado del Mar, pp. 73-500.

Valls i Taverner, Consolat de Mar, Volum I, divides the code in three sections: I, Costumes de la mar - pp. 29-92, which is the oldest set of laws; II, Establiment de fets de la mar - pp. 93-105, fifty articles regulating the relations between the master of the vessel, the passengers, merchants, and sailors; III, Usatges de la mar - pp. 107-212, a later addition that according to Valls i Taverner - p. 25 - appear to be the result of the experience of applying the general principles of Part I, and the precise rules of Part II.

480. R. Wagner, cited by Font Rius, Capmany, Libro del Consulado del Mar, p. XLV, "El propio Wagner ha apuntado que esta composición del Llibre sería llevada a cabo, sin duda, por algún Secretario del Consulado del Mar de Barcelona, con la finalidad práctica de reunir cómodamente en un solo libro o manual los diferentes textos normativos de más corriente utilización en el Consulado barcelonés y en los demás consulados mediterráneos."
481. Font Rius, Capmany, Libro del Consulado del Mar, pp. III-LV.
482. Valls i Taverner, Consolat de Mar, Volum II, pp. 119-136.
483. Ibid., Volum III, pp. 127-160.
484. Ibid., Volum II, pp. 11-34.
485. Ibid., Volum III, pp. 123-124, concerning venture goods embarked on a ship on the private account of an individual.
486. Ibid., Volum III, Ordinacions de la ciutat de Barcelona sobre els Consolats de Sicilia i Alexandria, pp. 109-121, in the pertinent sections, are good examples. Others are the, Capitulos 38, 39, and 62 the Ordenanzas de la Cofradia de Pescadores del puerto de Bermeo dispuestas en 1353 - Labayru y Goicoechea, Historia General, Tomo II, Apéndice num. 27, pp. 829 and 834. Interesting in this case is that in spite of the distance, the concern with the sanctity of contracts, the security of employment, and the need to maintain the crew, was equally felt, and dealt in similar terms as those of the Libro del Consulado, though of course in greater detail here - Titulo III, pp. 116-173, in the Capmany version.
487. The fifth articles of the Establimentos de fet de mar, the definitions of "Pelegrin" (Passenger), "Mercader" (Merchant-shipper) and "Mariner" (Sailor) in the Costums de Tortosa, and the Capitol del "Libre del Consolat de Mar" sobre esportades d'Alexandria - Valls i Taverner, Consolat de Mar, Volum II, pp. 95-105, and Volum III, pp. 132, 123-124 respectively - are, we think, particularly good examples of legal clarity. Font Rius - Capmany, Libro del Consulado del Mar, pp. XLIX-LII, considers the Libre del Consolat del Mar a clear and equitable set of laws, and also a very thorough one, covering the entire spectrum of the then known mercantile maritime law as well as some related areas. We may add that it also allowed room for expansion ad infinitum through the incorporation of the procedural laws of Valencia, including the article XLI of that famour Orde Judiciari - vide ref. num. 463 in this Chapter.
488. If we are really serious about evaluating the performance of these, or any other courts of justice, we have to analyse not only the actual litigation in a significant number of cases, but also the circumstances and the position of the litigants in each of them. It is only then that we may begin to understand the rationale for the tactics employed by the litigants. The possibility of using delaying tactics, which in many instances may well be part of the soundest strategy for a litigant, has been, and remains, a feature of any
legal system conscious or unconsciously striving for fairness. A law that says: 'Mercader és aquel qui no dóna loger o nòbit de la sua persona, mas de les mercaderies que porta o fa portar' - Costums de Tortosa, p. 132, in Valls i Taverner, Consolat de Mar, Volum III - is certainly clear and precise; but cannot provide an automatic answer to a legal question. A number of circumstances, peculiar to the case, may blur that picture. The public behaviour of a shipper may cause the captain of the ship to reasonably assume that their relationship is other than that of the simple, straightforward captain-shipper, and lead him to act in accordance to that assumption. It is the circumstances, the behaviour, the motives, and the intention of the actors that confer to a case its individual hues, what makes it unique and unlike any other case. And no law will ever provide an instant answer to the legal question it presents. The individual position of the litigant, the importance of the case in relation to his business or his values, are significant factors in determining his strategy in the litigation. Delaying its outcome may be the best, or, indeed, the only viable strategy. But, it may also be the only way of ensuring a just and equitable solution. Clearly, there should be limits to it, but surely they were difficult to set at the time in which an entirely specialised new branch of law was in the process of creation. It is on account of that, which is certainly not an apology for the performance of the maritime and mercantile courts, that the "pronouncement" of Robert Sidney Smith - The Spanish Guild Merchant, p. 29, also 114-116 - based on the "examination of nearly a hundred questions of jurisdiction" seems rather precipitous to us. This is so even after ignoring the fact that they concern an institution with a life span of over six centuries, and the many records lost, including the entire collection of a key tribunal such as Burgos, lost in the French sacking of that city - Basas Fernández, El Consulado de Burgos, p. 94.

491. Ibid., 124-125.
493. Basas Fernández, El Consulado de Burgos, p. 116, ref. 26, "Porque hallará V.A. que los dichos Prior y Consules suelen y acostumbran juzgar contra sí mismos causas más graves y de más contidades como reportaron los años 71, 72, y 73 que montó en los desembolsos que mandaron pagar mas de 500.000 ducados y d'ellos toció a los dichos Prior y Consules.
mas de los 80.000 ducados."

494. Robert Sidney Smith, The Spanish Guild Merchant, pp. 117-118, ref. 11, "In 1598 Jaume Pou, a matriculated merchant, was convicted of fraudulent withdrawals from the Taula. The consuls interceded on his behalf, endeavouring to persuade the councilors to assent to the commutation of the death sentence 'Per levar la infamia gran que de la exequio de la dita sententia havia de redundar a ell mateix, a sos' parents y amichs y a tot lo estament mercantivol.' The councilors declined, and Pou was hanged."

495. Capmany, Libro del Consulado del Mar, pp. 16-17, 42-47.

496. Ibid., Prologo, pp. XXIV-LII.

497. Valls i Taverner, Consolat de Mar, Volum I, p. 16, vide pp. 9-16 as well.

498. The Consules of Valencia had to adjudicate according to the iuxta Consuetudinem maris in the custom of Barcelona since the foundation of the Consulado in 1283 - Font Rius, Capmany, Libro del Consulado del Mar, XLII. Referring to this Code, Font Rius says: "Según la versión de las mismas, serían unos savis homens que van per lo món, es decir mercaderes y navegantes consumados, buenos conocedores de los usos y prácticas de los distintos puertos, los que comunicaron o transmitieron als nostres antecessors - es decir, antecesores de los colectores del Consulado del Mar del siglo XIV, - que serian los prohombres del mar del puerto de Barcelona de mediados del siglo XIII, los cuales procederian a su redaccion en los libres de la savietat de les bones costums. - p. XXXVII. He adds: "Más adelante es aludida de nueva esta readacción primaria de las costumbres de mar, en el cap. 291 (290 en Capmany), cuando en ocasión de aclarar o desarrollar su prescripcion inicial se dice que 'així és e fo stablit e ordenat, e és sa costuma del començament que ls antichs comencarem anar per lo món e stabilen e ordenaren així com damunt és dit, així deu ésser seguit com antigament fo ordenat.:' - p. XXXVII.

499. Valls i Taverner, Consolat de Mar, Volum II, pp. 60-61, Com los consols e lo jutge donen lurs sentències per le "Costumes de la mar" o per consell.

500. Capmany, Libro del Consulado del Mar, pp. 16-17, expresses this view, based primarily on this article XLI, and also in the articles XLIX, L, LXI, LXI, CXXXI, CXLIII, CLVII, CLXVIII, CCXXXIV, and CCLXXI.


Gibert y Sánchez de la Vega, El Consejo de Madrid, p. 39.


Carló, Mercaderes, p. 312, "... derecho a extraer del reino, sin pago alguno, mercadería por un valor igual al de la que antes se hubiera introducido, derecho de que gozaban los mercaderes nacionales y extranjeros, a partir de 1281, fecha en que lo concediera Alfonso X."

Francisco Layna Serrano, Historia de Guadalajara y sus Mendoza en los siglos XV y XVI, Madrid, Consejo Superior de Investigaciones Científicas, Instituto Jerónimo Zurita, Aldus, S.A., 1942, Tomo I, pp. 264-265, Privilegio rodado de Alfonso X eximiendo del pago de ciertos pechó a los vecinos de Guadalajara que poseyeran caballo y armas de fusta, así como concediendo escusado a los dueños de ganado en determinada cuantía. Sevilla, 1262.

505. Basas Fernández, El Consulado de Burgos, pp. 167-171, credit was usual for payment of "Avería" as well as the freight.

Carrère, Barcelone, Vol. I, p. 67, "...Payés en Sicile au terme du voyage aller, et à Barcelone dans les quinze jours suivant le retour des nefs, ces nolis..."

Quiard y Larrauri, Historia del Consulado, Volumen Primero, pp. 68-73.


Basas Fernández, El Consulado de Burgos, p. 190, "Los mercaderes no solían pagar el diezmo de contado, sino que daban una obligación para pagar en feria."

508. Layna Serrano, Historia de Guadalajara, Tomo I, pp. 247, 310-314, Testamento de Doña Aldonza de Mendoza, duquesa de Arjona. Espinosa de Henares, 16 de Junio de 1435, "...Item, mando que todos los maestros e peones que han labrado en las mys casas de guadalfaira e en otras partes qualesquier en mys lavoires, que sean pagados e satisfechos... e mando
que sean pagados a costança de Roys cherino e a sus fijos e al bachiller de Roys los mrvs que se fallare por buena quenta que yo les deviere al tiempo de my finamyento... e mando que paguen a gonçalo garçia boticario vesino de guadalsaño lo que se fallare por buena quenta que le devo." - p. 312, "... e a la muger de mosé (Moisés) cidicaru mill e quinientos mrvs que disse que le so obligada de ciertas lavores que me fiso..." - p. 313; pp. 325-333, Codículo que otorgo don Íñigo Lopez de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon. "... Mando otrosi, que por cuanto este otro día en Guadalsaño me fué mostrado una albarla mia e conocimiento de ciertos mrs de que yo era a cargo a un mercader italiano por mrs que creo que pueden seer fasta dies o dose myll, e yo le Respondi que los quisiere tomar en Thomas de Cordova el qual los devía a la marquesa mi muger que perdone dios de cierto censal que ella le dio para faser algunas piezas de plata en Varcelona, que si por bentura no le an seydo pagados, que se le paguen." - p. 327.

509. As it may be expected there are wide fluctuations in the recorded rates of interest, reflecting time, place, circumstances and the solidity of the debtor amongst other risk factors. Carande y Thovar - Sevilla, pp. 183-185 - shows records of a 9% rate for some type of operations at a given time in Seville, whilst much higher rates are not unusual, such as the ones recorded by Mateo López - Memorias Históricas de Cuenca, p. 71, "... e el judío que diere a logro que non de mas de tres florines por cuatro al cabo del año, a si mas los diere que pche el logro doblado." - id est 33%; p. 82, "En dicho libro Becerro se halla una avenencia que la Aljama de los judíos de Cuenca hicieron con la ciudad para que puedan dar y tomar dineros a logro con los cristianos qué es lo que los dichos judíos han de ganar por lo que dieren, y establecen pueden llevar de interés un cuarenta por ciento al año, y no mas; y del plazo adelante, que ganen al coto del rey de tres por cuatro al año, y, recibiendo prenda, que lleven un maravedí por una meaja a la semana, y que las prendas, no desempeñandolas a los dos años, que las puedan vender." This "avenencia" clearly suggest the habitual nature of those operations.

510. Capmany, Memorias, Tomo II, Primera Parte, Doc. num 186, p. 279, Moratoria que el Rey de Aragon Don Pedro IV concede a la ciudad de Barcelona para satisfacer a un banquero 10.000 Libras que tenia a cambio de ayuda de la Armada del Rey que se habia aprestado contra Castilla, 1359.

Carande y Thovar, Sevilla, pp. 180-207.
Collantes de Terán Sánchez, Puente de Viar, p. 117 (between years 1473-1479).

Mut Remola, La vida económica, Doc. Anexo num. 53, pp. 316-319, Martín I autoriza a la ciudad la reducción de censos a razón de treinta mil por mil y dispone la forma de pagar las cargas de la ciudad, 1409.

511. Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 270, pp. 401-402, Real Provisión a favor de los Consulados de Barcelona, Valencia, Mallorca y Perpiñán, para que puedan tomar un empréstito a interés sobre las rentas del derecho de Imperiage, a fin de poder cumplir el servicio ofrecido para la guerra de Cerdeña; Doc. num. 302, pp. 574-576, Real Licencia concedida al Consulado y Lonja de Mar de Barcelona para tomar a censo sobre el Derecho de Imperiage la suma necesaria para la compra de un ballenero hasta allí corsario a fin de destinarlo para el comercio, 1473.

Carrère, Barcelone, I, pp. 67-69.

512. The Crown itself was, of course, a frequent borrower. This may be the reason for a clause frequently found in Fueros and other royal documents where the Crown promised not to levy any loan without local consent. An example of that can be found in García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, Doc. num. 19, p. 426, "E otrosí mando e otorgo que los de la Cibdad de Burgos que jamás en ningun tiempo que non den empréstido ninguno sin su grado a mí nin a los que reinaren despues de mi en Castilla e en Leon."


Francisco Sevillano Colom, "Las empresas nacionales de los Reyes Católicos y la aportación económica de la Ciudad de Valencia", Hispania, Tomo XIV, num. LIV-LVII, 1954, pp. 511-623, registers a total of twenty two loans from Valencia to the Crown between 1479 and 1515.

513. García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, Documento num. 54, p. 477, Carta del Obispo de Burgos, Don Gonzalo, sobre el convenio con el Consejo burgalés para la constucción de un reloj, 1384.

514. Mut Remola, La vida económica, Doc. Anexo num. 55, pp. 323-329, Concordia celebrada entre la ciudad de Lérida y sus acreedores, 1469. A similar agreement was signed in 1479 - p. 329.


517. What the Church opposed was usury or the charge of an "excessive" interest, a concept that was taken from Roman Law, and whose definition varied considerably over time, both in Rome itself and in the case of the Church. Examples of official views on usury at a given time are: Cortes de los Antiguos Reinos, Tomo II, pp. 544-554, XLV, Ordenamiento sobre judíos y usureros, otorgado en las Cortes de Valladolid del año de 1405.

Mut Remola, La vida económica, Doc. Anexo num. 44, p. 300, Privilegio de Jaime I - Faculta a los Paheres para perseguir la usura, 1255.

518. Ledesma Rubio, La Encomienda de Zaragoza, p. 112, "En estos años, paradójicamente, los frailes han vuelto las tornas a su antiguo oficio de prestamistas," and passim.


Carande y Thovar, Sevilla, pp. 183-185.

Cortes de los Antiguos Reinos, Tomo III, Cortes de Ocaña de 1469, Peticion 20, pp. 807-803.

Layna Serrano, Historia de Guadalajara, pp. 305-306, Codicil o otorgado por don Diego Hurtado de Mendoza, almirante de Castilla, ante el escribano Fernando Perez de Villarreal, en Guadalajara a 5 de Mayo del año 1404, "... E atento a lo que yo he en muebles, en moneda e en deudas... Et en deudas contra ciertas personas..." - p. 505, the list that follows suggests that a good portion were secured loans or documented debts in favour of the testator, "Ytem, mando que los seys myll mrs que yo he en cada año de merçet por juro de heredat en Pá martinega de Madrit... Ytem, nado que los dies myll mrs que yo he por Juro de heredat en las Rentas e pechos e derechos de Madrit... Ytem, mando que dén a Loys mendes mi mayordomo mayor doscientos florines de oro del cuño de Aragon, los ciênto que dio por mi mandato a Péro ferrandes de melgosa, platero de Burgos, et los otro ciênto que me dio a mi en la dha Burgos para dar a doña Leonor mi muger e ciertas personas." - p. 306; Testamento de doña Aldonza de Mendoza, duquesa de Arjona. Espinosa de Henares, 16 de junio de 1435, pp. 310-314, "... e mando que sea satisfeito bartolome sanches mi vasallo vesino de cogolladio de los que my mayordomo dixier o el jurare que le devo e el me presto... Item mando que sean pagados e satisfechos cietos vasallos myos
vesinos de cogolludo e su tierra, de ciertos mrvs que me
prestaron... Otrosi, por quando yo por mandado del señor
duque mi marido, cuya anyma dis aya me oblige a diego
lopes de astuñega por dos mill florines que ovo menester
para yr a la coronacion del Rey de aragon (Fernando el
de Antequera) e después ovo libraviento del dho. señor
duque fasta en quantia de cinuenta mill mrvs de los cuales
yo no se quants se cobraran por lo qual non so tenuda a
toda la obligacion mas a parte della..." - p. 312, "... e
que paguen a ferrando de avyla veynt mill mrvs que le devo
poco mas o menos los cuales me presto mas cinco mill mrvs
por el servicio que me ha fecho (which could be genuine
gratitude and affection or include an interest payment)... 
E item mando al dho pero manrique nuevecientas doblas e
cíent florines los cuales me deve por prestido que dellos
le fis..." p. 313; pp. 316-324," Testamento de don Íñigo
Lopez de Mendoza, primer marques de Santillana, Guadalajara,
8 de Mayo de 1455, ante el escribano Pedro Lopez de
Guadalajara, "... Otrosi, mando que ayan mas e Repartan
entre los dhos myos fijos do yñigo e don loreço e don juan
e don furtado los veynte myll mrs de Juro de heredad de
los que fueron de la dha my muger, por ygualas partes,
de los cuales a my me pertenesce la mytad de aquellos que
ella compro durante entre nosotros el matrimonyo... (this
and prior examples show that the Juro had become a perpetual
loan, and, incidentally, that the institution of "bienes
gananciales" (property acquired during the marriage) remained
unaltered from Roman Law, in fact until today) - p. 320;
pp. 325-333, Codicilo que otorgo don Íñigo Lopez de Mendoza,
primer marques de Santillana en Jaén, a 5 de junio de 1455,
ante el escribano Diego Fernandez de Leon, "... Otrosi,
mando que los veynte e un myll mrs que son la mytad de los
quarenta e dos myll mrs que la marquesa my muger que dios
aya tenia situados en la villa de Guadalfajara e do otra
manera del Rey nuestro señor, la qual mytad me pertenesce,
sean repartidos en esta guisa..." - p. 329.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num. 210,
p. 378.

Eloy Benito Ruano, "Deudas y pagos del Maestre de Santiago
Don Pelay Perez Correa", Hispania, Tomo XXII, num. LXXXV,1962,
Doc. num. 2, pp. 31-33, an extremely interesting collective
loan made to Don Pelay probably in Lérida, in which we can
see as creditors a number of merchants and artisans of the
city, such as a "draperius", and "carnifex", a "pelliparius",
a "menescallus", a "molinarius" and others; Doc. num. 3,
pp. 33-34, Doc. num. 5, pp. 35-36.

520. Capmany, Memorias, Tomo I, p. 259, Miguel Ros, Catalan
merchant, "Toaned" 12,000 to the Order to Rhodes, payable
in Barcelona, in 1444. Tomo II, Primera Parte, Doc. num 226, pp. 334-335, Carta de credencia de la Magistratura de Barcelona a la de Montpellier para que haga satisfacer a un banquero de Barcelona los 6,000 Francos que había prestado a dicha villa en sus urgentes necesidades.

Eloy Benito Ruano, Deudas y pagos, pp. 25-26, loans obtained by the Ordier in Lyon and Siena.

521. Capmany, Memorias, Tomo II, Primera Parte, Do. num. 404, pp. 591-592, Real Cédula del Gobernador General de Cataluña en que concede a la Lonja de Mar de Barcelona facultad de empeñar el Derecho de Periage para juntar la suma ofrecida en ayuda de la fabrica del muelle de dicha ciudad, 1483; Doc. num. 407, pp. 595-596, Real Cédula del Gobernador General de Cataluña en que concede a Barcelona la facultad de empeñar el Derecho del Periage, para juntar la suma necesaria para defender la casa de la Lonja de los embates del mar que amenazaba su ruina, 1484; Doc. num. 420, pp. 610-611, Real Cédula del Gobernador General de Cataluña en que concede a la Lonja de Mar de Barcelona facultad de empeñar el Derecho del Periage, para juntar la suma ofrecida en ayuda del armamento de una galera contra los piratas infieles, 1492.

Layna Serrano, Historia de Guadalajara, Tomo 4 Codicilo que otorgó don Inigo López de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon, pp. 325-333, "Ytem, mando que la casulla mya la cual yo dexé en Santa Clara de Guadalfajara por dies myll mrs..." - p. 330, "... y me los él presto sobre las trescientas e setenta e cuatro perlas que Sancho de Herbas su camarero dio a Ortega criado de la marquesa my muger que perdome dios e las tiene a bueltas a otras cosas myas."


Mateo López, Memorias Históricas, p. 82, "... y, recibiendo prenda, que lleven un maravedí por una mesa a la semana, y que las prendas, no desempeñándolas a los dos años, que las puedan vender," 1364.

Mut Remola, La vida económica, Doc. Anexo num. 43, pp. 298-299, La ciudad de Lérida puede conceder préstamos con garantía prendaria, 1217.

Eloy Benito Ruano, Deudas y pagos, Do. num. 4, pp. 34-35,
D. Pelay Pérez Correa pignora diversas joyas y paños a Da. María Fernández, por la cantidad de 3,200 maravedís que reintegrará por el primero Arias Pérez de Ulucena, 1274.


Layna Serrano, Historia de Guadalajara, Tomo I, pp. 325-333, Codicio que otorgó don Íñigo López de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernández de León, "Otro somando que por quanto demas del empeñamiento que my primo Íñigo López de Valdés me fizo de la villa de Veléz e su castillo e tierra por cierto precio de la bendida que despus de ella m e fizo mi primo Pedro Meléndez de Valdés segund paresciera por las escrituras que sobresta rrason pasaron las cuales se fallaran en mis arcas...") - p. 326. Tomo II, p. 487, El Segundo Duque del Infantado obligó sus Villas de Cantoria y Catalobo para responder a un juro de 80,000 mudvs. perteneciente a la duquesa y que esta cedió a aquel para la compra de las casas del Cardenal Mendoza, Guadalajara, 27 de Marzo de 1495.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num 153, pp. 326-327, Los Hospitalarios de Zaragoza prestan a Guillermo de Alacala 2,045 sueldos. En virtud de este empréstito recibe la Orden en tenencia el castillo y villa de Lucena, hasta que sea pagada la deuda, 1256. A fine example, together with those of Layna Serrano, illustrating how the mortgagee took possession of the mortgaged property enjoying its use and usufruct until the repayment of the debt, which for centuries was characteristic of this transaction.


Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 157, p. 235, Real Provision para que a ningún Banquero o cambista se conceda licencia para ejercer su oficio sin preceder informe y testimonio de su estado, condición, suficiencia y fianzas.

García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, p. 432, "e si mas quisieren sacar que nos den buenos fiadores..."

Layna Serrano, Historia de Guadalajara, p. 237, "... don Íñigo López de Mendoza le prestó la importante suma de 2,000 doblas, sirviendo como garantía de pago la villa de Beleña con su fortaleza..."; pp. 310-314, Testamento de
doña Aldonza de Mendoza, duquesa de Arjona, Espinosa de Henares, 16 de Junio de 1435, "... e otrosi por quanto el duque mi señor mi marido me ovo dado en arras quando con 61 me casé dose mill doblas de oro castellanas por las quales me obligo la villa de ponferrada e por non me las aver pagado a cierto plazo segun el contrato que entre nos paso yncurrio (en) ciertas penas por lo qual la dha villa se posee agora por mya..." - p. 311, presumably the legal form of this surety was a mortgage, as it was the prior case —vide ref. 522 ut supra.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num. 205, Don Domingo Miguel se reconoce fiador del cambio efectuado entre el Hospital y doña Felicia, obligándose a cumplir todo aquello a que estan obligados los fiadores, 1275, pp. 374-375.

524. Burriel, Memorias para la vida del Santo Rey Don Fernando III, pp. 436-437, Autoriza y sale fiador de la venta que hizo don Alvar Pérez a Doña Mencia Lopez, de la villa de Paredes, en el Reyno de Leon, 1237.

525. Layna Serrano, Historia de Guadalajara, pp. 276-281, Testamento de doña Elvira Martinez, viuda de Fernan Rodriguez Pecha, camarero de Alfonso XI, otorgado en Guadalajara a 9 de septiembre del año 1374, ante el escribano Martin Alfons, "... e mando a’iohan garcia tres myll mrs e cinco cahises de trigo e que vean su quenta e si algo debo paguengelo... E mando a todos los que fallaren por Recaudos ciertos o por testimonyo de buenos omes o por quenças o por libros de mys mayorodos que les debo algo, que ge lo paguen de lo myo." - p. 280; pp. 298-301, Testamento de don Diego Hurtado de Mendoza, almirante de Castilla, otorgado en El Espinar, aldea de Segovia, ante el escribano Gonzalo Martinez, el 2 de abril del año 1400, "... Otrosi, mando que todas las deudas que yo dejo escriptas en mi escripto e firmadas de mi nombre que devo, e todas las otras deudas que fueren parescidas que devo por Recaudos ciertos e a personas de buena fama que binieran jurando que les devo alguna cosa, mando que sean pagadas de mis bienes..." - p. 301; pp. 325-333, Codicilo que otorgo don Inigo Lopez de Mendoza, primer marqués des Dantillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon, "...Mando otrosi que de qualesquier que se fallaren que yo debo a qualesquier persona, agora de compras que yo aya hecho, agora de tierras, rrações, quitaciones e sueldo, sean pagadas a mas de aquellas de que yo en especial me Recuerdo e aqui seran específicadas, mostrandolo por escripturas o testigos que fagan fe." - p. 326, "... Ytem, mando que todos los mrs que fincaren e Restaren demas desto que yo mando, se rreparten e se dén a aquellas personas que en la villa de Guadalafajara
asy christianos como Judios o moros e en mis tierras se fallaren que especialmente me ayan prestado dineros... p. 333.

526. Ibid., 303-304, Contrato o carta de obligación por la que Alfon Fernandez Pedrero se compromete a hacer varias columnas para las casas principales que edificaba don Diego Hurtado de Mendoza, el almirante. - Guadalajara, 22 marzo de 1404, a good example of the degree of development reached by this type of legal instrument. According to Layna Serrano it contained the usual sureties to guarantee its fulfillment, but they are not shown here.

Ibid., Tomo II, pp. 489-490, Contrato de obligación otorgado por los entalladores de Toledo Miguel Sanchez y Bartolomé García comprometiéndose a labrar el friso del Salón de Linajes en el Palacio del Infantado, Guadalajara, 24 noviembre de 1495; pp. 491-492; Bartolomé Cherino vecino de Trijueque se compromete a decorar los muros y techos de una habitacion de la duquesa en el Palacio del Infantado, Guadalajara, 25 marzo de 1496; p. 493, Obligación subscripta por el entallador Jorge de Cordoba para labrar el friso del Salón de "salvajes" en el Palacio ducal, Guadalajara, 25 Mayo 1496; pp. 494-495, Maestro Ali Pularte contrata con el Segundo Duque del Infantado la conduccion de aguas desde la fuentes del Sotilla hasta palacio, Guadalajara, 7 junio año 1496; p. 496, Diego de Ribera y Pedro de Zamora se obligan con la duquesa a pintar la techumbre y friso de una sala del palacio, Guadalajara 9 de junio 1496; pp. 497-498, El alcaizier Durrumaer, Moro vecino de Alcala de Henares, contrata con el Segundo Duque del Infantado la fabricacion de 2.812 azulejos moriscos para el palacio, Guadalajara, 25 noviembre 1496; p. 486, Lorenzo de Trillo se obliga con el Segundo Duque del Infantado de mocarabé y alfanje en su dormitorio, Guadalajara, 30 marzo 1495; p. 488, Obligacion de Lorenzo de Trillo para tallar diversos motivos ornamentales con destino al Palacio del Infantado, Guadalajara, 6 de junio de 1495.


529. Layna Serrano, Historia de Guadalajara, Tomo II, p. 302, Testimonio de la entrega hecha por micer Ventura Venzon a don Diego Hurtado de Mendoza, almirante de Castilla, del Regimiento, alcaldía, y alguacilazgo de Guadalajara que aquel usufructuaba por merced del Rey, escribano, Juan Sánchez. - Segovia, 16 de noviembre del año 1401.


Eloy Benito Ruano, Deudas y Pagos, Doc. num. 6, El Maestre de Santiago D. Pedro Fernandez concede a los judíos de Sevilla D. Mose y D. Vidal el usufructo de las propiedades de la Orden en Carmona durante cinco años, en pago de 8.350 maravedis y dos rocinos que los Maestres antecesores D. Pelay Pérez Córrea y D. Gonzalo Ruiz debían al padre del primero D. Abraham, 1287.

530. Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 367, pp. 529-532, Real Confirmación del Estalecimiento enfitetónico que el Bayle General de Cataluña hizo a Pedro Félix Gallard del Consulado del Mar de la Villa de San Feliu de Guixols en el año 1443, en precio de 110 Sueldos y censo anual de 9 Sueldos de la misma moneda, 1450.

Labayru y Goicocecha, Historia General, Tomo II, pp. 672-675.

531. García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, pp. 369-370.


Mut Remola, La vida económica, p. 105

532. García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, pp. 369-370.

Melendreras Gimeno, Gastos e ingresos, pp. 151-155.

533. Carande y Thovar, Sevilla, pp. 147-150.

534. Capmany, Memorias, Tomo I, p. 258, Castillean vessel chartered by Pasqual Mercader and other Barcelona merchants to make a trip to Cyprus in 1393.


Suárez Fernández, Navegación y Comercio, Doc. num. VIII, pp. 149-150, 1387, junio 10, La Rochela. - Recibo por el flete de la nao "Santiago" de Bilbao, al servicio del Rey de Francia.

535. Carande y Thovar, Sevilla, pp. 147-150.


Mut Remola, La vida económica, Doc. Anexo num. 17, p. 245, Alfonso IV establece que las hierbas del termino de Lérida, las ha de arrendar la Ciudad, 1421.


536. Cortes de los Antiguos Reinos, Tomo II, Cortes de Toro de 1371, XV, Ordenamiento de Cancilleria, pp. 217-243, the receipts of the Cancilleria Real and of Public Notaries were rented out - p. 228.

Jose Goñi Gaztambide, "Los Obispos de Pamplona del Siglo XV y los Navarros en los Concilios de Constanza y Basilea. Alfonso Carrillo (1473-1491)", Estudios de la Edad Media de la Corona de Aragón, Vol. VIII, Zaragoza, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales,
Estudios: XXXIX, p. 272, Arriendo de todas las rentas del Arciprestazgo de Valdonsella por 8.000 Sueldos anuales.


Mercedes Gaihrois Riaño de Ballesteros, Historia del Reinado de Sancho IV de Castilla, Madrid, Tipografía de la "Revista de Archivos y Museos", 1922, Tomo I, Apéndice Documental, Arrendamiento de las Rentas Reales a Don Abraham el Barcino, Burgos, 1ro. de Junio de 1287, pp. CLXXXVI-CLXXXIX.


Paulino Irádiel Mirugarren, Evolución de la Industria Textil Castellana en los Siglos XIII-XVI. Factores de Desarrollo, Organización y Costes de la Producción Manufacturera en Cuenca, Salamanca, Acta Salmanticensia, Iyssu Senatus Universitatis Edita, 1974, (Filosofía y Letras, 84), Apendice Documental, Doc. I, Carta de Juan II a la ciudad de Cuenca sobre el arriendo de la alcabala de los panos, 1420 - pp. 251-253; Doc. II, Carta de Juan II a Cuenca sobre el mismo tema, 1420 - pp. 253-254; Doc. III, Ordenanzas o condiciones para el arriendo de la renta de "la correduria de lienzo, panos y ganados," Cuenca 1421 - pp. 263-266. These documents show clearly how institutionalised the rental of taxes really was, particularly Doc. I, where Juan II "manda a su contador mayor, Alonso González de Leon, para que arriende 'por menudo' (the alcabala sobre los panos) ya que en la subasta celebrada en la corte no se encontró quien diera por ellas un precio razonable."


Mut Remola, La vida económica, Doc. Anexo num. 16.


538. González y González, El Reino de Castilla, Tomo II, Doc. 712, Cambia a don Armengol las villas de Formesta, Herreruela, Rovecedo y otras heredades, por el castillo y villa de Frias, 1201 - p. 258; Doc. 713 Confirma el cambio de Mecina por Villar del Saz, hecho entre Rodrigo Perez y su hermano Gonzalo, 1202 - pp. 259-260; Doc. 725, Cambia con el monasterio de Gña la villa de Mesangos, situada en Castilla la Vieja, por
varias villas que el rey dio a la poblacion de Frias, 1202, - pp. 275-277; Doc. 1016, Da a la catedral de Segovia el alcazar a cambio de unas casas en la Almuzara, 1158 - pp. 749-750. It is interesting to compare this document with another one signed thirty years later, which describes a transaction of greater complexity - Tomo II, Doc. 505, Da al monasterio de Sahagún lo que tenía en Nogal y en Olmillos, a cambio de Villaesper y de 1.340 aureos, 1188 - pp. 868-870.

Layna Serrano, Historia de Guadalajara, Tomo I, pp. 235-236.


540. Basas Fernández, El Consulado de Burgos, pp. 146-152.


541. Capmany, Memorias, Tomo I, pp. 590-592, 655-664. Tomo II, Primera Parte, Doc. num 198, pp. 191-195, Convencion ajustada entre el Magistrado de Barcelona y trece ciudadanos sobre el armamento de una coca de tres puentes propiedad de la ciudad que se destinaba contra los genoveses con unos quinientos hombres cuya manutencion debia correr de cuenta de los trece armadores y la provision de los aparejos del buque y de los pertrechos de guerra de cuenta de la ciudad, 1331. Tomo II, Segunda Parte, pp. 997-1003.


Labayru y Goicoechea, Historia General, Tomo III, Suplemento num. 3, Cédula Real pidiendo a los consejos de Bilbao, Bermeo, Portugalete y Laredo artillería de las naos para la guerra con Portugal, 1475, p. 750.


542. Carande y Thovar, *Sevilla*, p. 188, "La capacidad de las ciudades para la contratación de tan variados prestamos no fue entonces compartida por ninguna otra entidad de la vida pública."

543. Mut Remola, *La vida económica*, p. 37, purchase of the Marquesado de Camaras in 1598, and subsequent sale to the King in 1423.

544. Bartolomé Bennassar, *Valladolid au siècle d'or. Une ville de Castille et sa campagne au XVIe siècle*, Paris: La Haye, MCMXVI, p. 30, an interesting detail is the method of arriving at a price used by the Crown for the sale of Santovenia and Herrera, which, as early as 1228 - 1229, was based on the average tax revenues of those towns in the five years prior to the purchase.

González y González, *El Reino de Castilla*, Tomo III, Doc. 573, Vende al consejo de Valladolid la villa de Santovenia, situada en el alfoz de Cabezon, 1191 - pp. 24-25. This is probably the original sale of Santovenia to the Consejo de Valladolid. Brief and to the point the document is an excellent example of a sale contract in the form later incorporated to the Siete Partidías. It also illustrates how early the cities were involved in these transactions.


García Sainz de Baranda, *La ciudad de Burgos*, Tomo Segundo, Doc. num. 43, Escritura de venta del lugar de Mazuela otorgada por Gonzalo Ramírez en nombre de su hermana Doña Elvira al Consejo de Burgos, 1333, pp. 454-455.

González y González, *El Reino de Castilla*, Tomo III, Doc. 706. Vende an consejo de Valladolid toda la heredad que tenía en la Guardo, junto a Castromonte, por 1.000 maravedis, 1201 - pp. 249-250. Doc. 714. Confirma al consejo de Cuenca la compra de Tragacete, hecha a la condesa doña Mafalda, viuda del conde don Pedro (Nuñez), por 4.000 maravedis, reservándose las salinas del mismo lugar, 1202 - pp. 260-261; Doc. 1028, Vende al consejo y canonigos de Palencia sus montes de Dueñas por 2.100 auroes, dejando a salvo el antiguo derecho del cabildo palentino (dos mestelas diarias de leña) y reservando también el derecho a los montaneros del consejo y cabildo (tres panes y tres cossolis de vino semanales, y tres cuartas de carnero y dos suelas al año), 1191 - pp. 765-766.


547. Ibid., Doc. Anexo num. 3, Pedro III incorpora la villa y término de Almacellas a la ciudad de Lérida. La villa de Almacellas, por dicha incorporación y unión paga al Rey 23.000 Suellos barcelonenses, 1347, pp. 221-223.

548. Carande, *Sevilla*, pp. 181-189. As an instrument of credit the "Barata" was basically a short term loan guaranteed by a personal surety. The first one found by Carande dates from 1371, and the guarantors were bankers and other private individuals, who, on that occasion, charged a 9% interest to the city. The ultimate guaranty was, of course, the city's revenue.


550. María de la Mercedes Borroto Fernández, "Un Consejo de la 'Tierra' de Sevilla: Fregenal de la Sierra (Siglos XIII-XV)", Archivo Hispanense, Tomo LX, num. 185, 1977, 2da. Época, p. 19, "El 3 de Junio de 1444, se firman dos cartas por parte de los comprometidos en el empeño - that of Fregenal de la sierra as a guaranty for a debt of one million maravedis. Una de ellas hace constar que Sevilla entrega al Maestre de Alcantara la villa de Fregenal con su castillo, fortaleza y terreno, por 'que mejor e mas seguro seades que los dichos maravedis vos seran pagados.' La entrega de la villa se hace por plazo de un año, quedando al cumplirse este los frutos y rentas de la villa en manos de la Orden, si durante el no se hubiesen pagado los maravedis que se debían. La otra carta es la 'obligacion y juramento' que el citado Maestre hace a Sevilla, de devolverle la villa cuando se le pague
el 'cuento' de maravedis."


Cabrillana, Salamanca en el Siglo XVI, p. 283, "El Rey - Juan II in 1450 - mandaba se amojonasen los lugares yermos para evitar apoderarse de tierra 'por paso del tiempo'," which suggest that the use of adverse possession by private individuals and the local public powers to enlarge their landholdings was rather widespread.


553. Ibid.

554. Suárez Fernández, Navegación y Comercio, pp. 16-17; Doc. num. I, Privilegios otorgados por Carlos V de Francia a los mercaderes castellanos en su reino, 1364, Doc. num. II, Ratificación por Carlos V de Francia de los privilegios otorgados a los mercaderes castellanos, 1371, pp. 127-141.

555. Finot, Relations Commerciales, pp. 97-105.

556. Ibid., 14-15, the length of the concession of free trade and fishing in English waters - twenty years - obtained from England in 1350 was very unusual at the time - p. 14.


558. Capmany, Antiguos Tratados de Paces y Alianzas entre algunos Reyes de Aragón y diferentes Príncipes Infieles de Asia y África, desde el Siglo XIII hasta el XV, Índices por José Hinojosa Montalvo, Madrid, En la Imprenta Real, M.DCC.LXXXVI, Reimpresión facsimilar en Valencia, 1974, pp. 39-52, Tratado de paz y treguas, ajustado y firmado por quince años entre el Rey de Aragón D. Pedro III, y el Rey de Túnez por medio de sus Plenipotenciarios, 1285 - its article XXXIX, p. 50, was specially favourable to the Catalans: "Item: Dicho Miralomominin concederá a los Catalanes, con preferencia a otra Nación, la gabelá de Túnez a un precio regular."; pp. 60-61, Carta del Rey de Túnez al Rey de Aragón, participándole haber aprobado y firmado la renovación de la Paz por diez años, 1308; pp. 62-70, Tratado de Paz y Treguas, Ajustado y firmado por diez años en la Ciudad de Túnez entre aquel Rye, y el de Aragón, Don Jayme III por medio de su Plenipotenciario, en el año del Señor 1313 - its article XVII, p. 68, also seems particularly favourable to the Catalans: "Quando a alguno de los mercaderes se les encontraren algunas mercancias sin denunciar, no se exigira
mas que el derecho acostumbrado del diezmo: ni seran ellos molestados ni registrados sus almacenes por ese motivo. También en la venta de sus mercaderías se quitará el peso del derecho del Rotulo acostumbrado en Minuar."

559. Ibid., 78-95, Tratado de Paz y Treguas, Ajustado por quatro años entre el Rey de Bugia y de Túnez por medio de sus Plenipotenciarios, de una parte, y D. Jaume II Rey de Aragon, de la otra. Firmado en Barcelona a primero de Mayo del año del Señor 1323; Articulo VI: "El Señor Rey de Aragon tendrá en Túnez y en Bugia Cónsules, y las Lonjas que sus subditos han acostumbrado tener; y también aquellas franquicias que gozaron antiguamente. Y si las hubiere mejores, como las de Genoveses, o de otra Nación, de aquellas podrán disfrutar..." - p. 83.

560. Viñas y Mey, De la Edad Media a la Moderna, II, p. 75.


562. Ibid., 168-170.


In fact, the argument of Capmany gains considerable strength when one sees the banking laws arrayed in their order of succession. Usher examines them in that fashion, pointing out to their comprehensiveness - The early history, pp. 238-242. The increased complexity of the banking laws and the increased sureties required for the bonding of bankers would suggest an expanding banking and economic activity.


566. We are, of course, referring here to a long term trend, which is what we have endeavored to establish in this chapter. Obviously, this attitude must have known many ups and downs over time, but the expressed motives of legal acts as far apart as the approval of the naming of Consules from Valencia, Barcelona, Lérida, Montpellier and Barcelona to the fairs of Champagne in 1254, to promote the export trade of cordovan from those cities, and the Pragmatica of 1494, which authorised the erection of the Consulado of Burgos, are remarkably similar in substance - Capmany, Memorias, Tomo I, pp. 798-799,
Tomo II, Primera Parte, Doc. num. 15, p. 31; and Capmany Libro del Consulado del Mar, pp. 683-689, respectively.
CHAPTER III

THE STATUS OF TRADE AND MERCHANTS
IN THE EYES OF THE CHURCH

Summary

Here we shall examine the decidedly favourable views of Bishop Francesc Eiximenis with regard to merchants and trade and project them against the mainstream of Scholastic thinking in order to test their validity. Our inquiry - carried, we believe, for the first time in this fashion - will extend to other Peninsular Doctors, whose ideas about some key factors for the existence of an active economy shall be reviewed as part of the Scholastic body of thought in those matters.

A measure of the importance attached to those ideas, ergo, of their value as a social mirror, is the fact that the Doctors were often requested to express them by individual merchants, "universitas", and authorities at all levels of the administration.

On the whole, it will be seen that the Scholastics, contrary to many widespread legends, fully shared with jurists and the civil authorities in the conviction that trade and merchants made an important contribution to the general welfare of society - and were most likely the inspirators of such ideas.
For the most part, they all shared as well a similar mistrust of the professional "universitas" because of their monopolistic tendencies - an attitude probably inspired by the Doctors. An examination of pertinent clauses in the statutes of several Peninsular and European "universitas", and a number of concrete cases, will show that that mistrust was by no means unfounded. They will reveal quite clearly that, contrary to many common generalisations, the Scholastics, the jurists and the civil authorities were far from considering the professional "universitas" as "ideal" organisations.

The direct participation of the Church in the economic life, and her contribution to the development of fields as diverse as agriculture, animal husbandry, mining, industry, banking will be briefly touched upon as well. So will be her contribution to management in general, and the actual support given to trade and merchants by individual members of the Church on a fairly consistent basis from a time perspective point of view.
THE STATUS OF TRADE AND MERCHANTS
IN THE EYES OF THE CHURCH

The generally favourable disposition towards trade and merchants evident in the Siete Partidas, the Fueros, and other documents studied in the preceding Chapter, as well as the attitude of the authorities as revealed by them, would appear to be, prima facie, incompatible with a society that regarded trade poorly or relegated merchants to an inferior position. Bearing in mind, however, that many of those laws evolved in relative isolation through commercial custom or, like many administrative decisions, were the product of petitions from the interested parties, it would seem proper to gather other opinions and to establish whether in general terms these tend to confirm the evidence offered in Chapter II.

Whilst the determination of the social climate that surrounds trade and merchants is of critical importance to assess them and the economy of any period, the selection of a social barometer is never an easy task. During the period under consideration, the Church would appear to be the obvious choice. The Church, the civil authorities, and the society at large shared an identical religious faith, and, with it, a similar belief in the
transcendental destiny of man, his basic needs for this life, and those that would ensure for him the rewards of the just in the Real Life, after death. The Church was, of course, not only the custodian of tradition and the arbiter of morality, but it was here to make sure that man fulfilled his divine destiny. The views of the Church, which she had the power to enforce, can thus provide us with a very valuable insight into the circumstances in which trade took place, and how merchants lived and carried out their profession. They can also contribute some relevant indication as to why certain ways of doing business developed in preference to others.

Obviously we cannot dream of summarising in toto the views of the Church. In this Chapter, our endeavours will be limited to examining Churchmen's and major Scholastics' ideas on merchants and some key aspects of trade, in the Peninsula and elsewhere. Following the development of those concepts and comparing them, we will attempt to draw some general conclusions about the status of trade and merchants in the eyes of the Church - thus about the social climate that surrounded them, and whether in this respect, there were significant differences between the Peninsula and other European areas.

For Juan Ruiz, the author of the inimitable Arcipreste de Hita, wealth was primarily urban and mercantile, derived from industry and commerce, according to Luis García de Valdeavellano
y Arcimis.\textsuperscript{1} This may be a contentious conclusion, but the picquant and ever delightful words of the Arcipreste are unequivocal when he compares the qualities of several prospective suitors for "your beloved daughters":

"Las vuestras fijas amadas 
veadelas bien casadas 
con maridos cavalleros 
e con onrados pecheros, 
con mercadores corteses, 
e con rricos burgeses."\textsuperscript{2}

Certainly, there can be little doubt that in the eyes of this rather earthy, yet pious priest, the desirability of those candidates was closely matched. Therefore, it is possible to infer from it that their social status was roughly comparable as well, though we say this tentatively, keeping in mind the caution with which social commentaries should be treated, even if they come from an acute observer of men and society, as the famous Arcipreste, who was, apparently, imbued with the popular philosophy of his time.

At a later date,\textsuperscript{3} and outside the restricted geographical area of Castille reflected in El Libro del Buen Amor, so well surveyed by Manuel Criado del Val,\textsuperscript{4} Bishop Francesc Eiximenis was much more explicit in his views. Born in Gerona, graduated in Theology in Toulouse, well acquainted with Cologne, Paris, Oxford, Avignon, and Rome, resident in Barcelona, Lérida, and Valencia, Bishop Eiximenis was not only a well educated man, but one with an impressive first hand knowledge of some of the
most important centres of the world of his time.\(^5\) This adds weight and interest to the views expressed in his *Regiment de la Cosa Publica*, written with a very practical purpose in mind,\(^6\) a solid cognisance of the economy of Valencia,\(^7\) and the support of learned sources, sometimes to the point of overabundance, as noted in the critical remarks of Father Daniel de Molins de Rei - but, nevertheless, an apt summary of them for our purpose.

He resolutely endorsed the notion that trade contributed to the general welfare:

"... que entre los altres oficis que posen la cosa pública en bon estament son los mercaders, car terra on mercaderia corre e ahunda, tostems és plena, e fèrtil e en bon estament."

Naturally, his opinions about merchants, reminiscent - like the prior one - of those expressed over one hundred years earlier in the *Siete Partidas*,\(^10\) was consonant with his idea of trade, and definitely encomiastic:

"Per al, los mercaders diu que deuen ésser favorits sobre tota gent seglar del món, car diu que los mercaders'son vida de la terra on son, e son tressor de la cosa pública, e son menjar dels pobres, e son braç de tot bon negoci, de tots afers compliment. Sens mercaders les comunitats caen, los princens tornen tirans, los jóvens se perden, los pobres se'n ploren.\(^11\)"

The risks run by merchants, the losses, and the many perils and uncertainties that they had to face in the course of their
activities, weighed heavily in the thinking of the Franciscan Father:

"E creu sens dubte que nostre Senyor Déu los fa misericordia especial, en mort e en vida, per lo gran profit que fan a la cosa publica, e per los grands treballos que sofren en mar e en terra, e per les grands perdues que sofren sovint, le quals passen mils que altra gent per tal com ho han ja veut; e per los grands ansies en què tostems viuen. E per raó de aço, diu aquest doctor que tota la cosa publica deuria fer oració tostems especial per los mercaders."12

It was on account of that, and by virtue of the very significant contribution made by merchants to the welfare of the community, that special privileges should be bestowed upon them, according to Bishop Eiximenis. The Prince should protect and defend the merchants, and avoid overtaxing them, whether they were subjects or aliens:

"Per raó de aço, en favor dels mercaders, consella aquest doctor als prínceps, que els defenen per mar e per terra e que sobiranament se quarden de agreujar-los per lleudes e per peatges o per qualsevols càrrecs; ans los deuen acullir en llur terra així com a fills, sens tota moléstia, mas ab molta amor, car de llur venguda tostems los prínceps n'han gran guany així mateixs, e llurs subdits. Consella encara aquest, que en favor de la mercaderia los sien fet privilegis e gràcies especials e honors majors que a les altres gents, e jamés no sien rebutjats ne empatxas d'on que vinguin, si es vol de terra de enemics, si es vol de amics."13

Having been born into a merchant family, it could be argued that filial love may have influenced somewhat Bishop Eiximenis's
prospect on this matter - even though he was quoting authoritative sources, but, on the other hand, it may have provided him with an intimate knowledge and an added perspective in the life of merchants, and so it may have enhanced his ability to consider their role in society. At any rate, his ideas about merchants and trade, by no means original, were congruent with an organic conception of society, along the lines of the Pauline idea of the Church, in which the different though equally important members formed a community, the "cosa publica cristiana." The interdependence of that organic whole, with an obvious influence from Saint Thomas Aquinas, was thus expressed:

"Item, per experiencia apar que havem mester moltes e diverses coses, així com menjar, beure, vestir e calçar, e així de les altres coses, le quals no pot, cascu fer per si mateix. E per tal, en la cosa publica la un ayuda a l'altre venent-li que menjar, e l'altre que vestir e l'altre que calçar. E així la u ajuda a l'altre, e en aquesta manera persevera la cosa publica bastada com la un ajuda a l'altre."

This interdependence amongst men, rooted in their different skills, and highly beneficial to them all, had led Saint Thomas Aquinas to explain "international" trade on the basis of the different endowments of the "Republicae" and to consider it equally beneficial, according to the interpretations of Victor Brants, Amintore Fanfani, and Raymond de Roover. Although no direct links to Saint Thomas Aquinas are acknowledged in this section, the logic of that conclusion is unlikely to have
escaped a well seasoned reasoner such as Bishop Eiximenis, and was probably a factor behind his enthusiastic endorsement of trade and merchants. Clearly, in a world so conceived, they fulfilled a pivotal role, providing a vital connection between producers and consumers, and the means to satisfy the different needs of men.

The views of Bishop Eiximenis regarding lawyers,²⁵ notaries,²⁶ and medical doctors,²⁷ three frequent targets of malign comments,²⁸ show "die allgemeine Bildung" of this writer and his equanimity. He neither ranks them nor compares them to other professions, but stresses the moral standards required from lawyers and especially from notaries,²⁹ and underlines the need for lawyers and notaries to be few in number and good in quality.³⁰ In all this, Bishop Eiximenis displays a clear understanding of the beauty and great precision with which legal acts can determine the results of human interactions; a vital point, since he, like all Scholastic thinkers, saw economic exchanges from the view point of the law of contracts.³¹ He appears aware of the basic fact that a contract arises from the gulf of needs, as a means of bridging the chasm of differences.³² Hence, his preoccupation with the men formalising and interpreting them. That they should be worthy of confidence was just as important as was the need that the parties entering into a contract did so freely and fully aware of its implications, another concern shared by the Doctors.³³
The centrality given by Bishop Eiximenis to merchants in the "res publicae" would appear to be a good indication of their relative importance in the life of the community. As a priest, the future Patriarch of Jerusalem and Bishop of Elna must have been rightly worried about the dangers for Salvation in the Real or Eternal Life to which merchants were particularly exposed by the nature of their work and their frequent absences from home, even though as individuals they were just as unlikely to be all evil as the non-merchants were of being all saints. San Bernardo de Siena and Sant'Antonino de Firenze were to show a very similar concern later in the XV Century. Their yardstick was the traditional one of the Sacra Doctrina of the Church, who, as Father Thomas Gilby states, always considered man as he lives and acts in this world rather than as a contrived hypothetical figure living in an imaginary world.

It is precisely that characteristic preoccupation with current events, with man as an individual and under the present circumstances - also underlined by Joseph A. Schumpeter, aside from the very practical purpose expressed by Bishop Eiximenis in the dedication of his book to the Jurats of Valencia that makes his work so suggestive of an active economic life in his contemporary Aragon. Glauco Tozzi detects a similar awareness of the economic reality of this time in the thinking of Saint Thomas Aquinas, resulting in an adaptation of economic theory to economic fact and a reciprocal influence of one over the
other. The outstanding contribution to economic thinking of San Bernardino and Sant'Antonino has been similarly linked to the better known economic conditions of Siena and Florence at their time. And, correspondingly, the brilliant enrichment of economics and international law carried out by Francisco de Vitoria and his followers of the School of Salamanca, as well as by the Jesuit School, is considered largely the result of the incorporation of America, and the increase in economic activity, the legal questions and problems brought about by that event.

Bishop Eiximenis makes no reference to the Guilds. This silence is hardly surprising for despite the sporadic exaltation of the Guilds as a model of Christian Life from the late XIX Century onwards, they were far from being regarded as an ideal by the Church Doctors, as Gino Barbieri, Amintore Fanfani, Joseph, Cardinal Höffner of Köln (Cologne), and Raymond de Roover have clearly shown. Basically, they were suspected of colluding to restrain free trade, which, at the time meant trade that was not restricted by deceit or fraudulent means. Monopoly, a word of very old origins according to Cardinal Höffner, alluded to in a number of ways and used in a wider, less specific sense than in modern economics, fell squarely into that, as the Cardinal, Wilhelm Endemann, and Raymond de Roover have demonstrated.
The potential for monopolistic practices becomes readily apparent upon the examination of any Guild charter, be that of the fishermen of Bermeo, the cloth-makers of Durango, the tailors of Milan, or those of Pisa. In fact, as Victor Brants and Amintore Fanfani affirm, the Guilds showed a consistent tendency toward them.

This monopolistic proneness of the Guilds, already evident during their probable Byzantine beginnings and not unexpectedly so, since Byzantium was apparently a "monopolistic paradise" has been demonstrated by Gunnar Mickwitz in an exhaustive comparative study. This Finnish author established that the victims of such practices were as varied as workshop landlords, buyers, entrepreneurs, sellers of raw materials, and workers. Not only did the Guilds fix minimal prices and limited supply, but they often attempted to do so by curtailing imports and an assorted number of restrictive measures.

These manoeuvres were often resisted by the local authorities, particularly in the patrician run cities or where the Guilds did not control the local government, according to Mickwitz. The perceived need of counteracting the monopolistic activities of the Guilds gave rise to the enactment of special laws, as shown by Amintore Fanfani, Joseph, Cardinal Höffner, Gunnar Mickwitz, Raymond de Roover, and Armando Saporiti, which, sometimes, appear to have effectively thwarted them.
Monopolistic practices were already condemned by the early Scholastics. In so doing, they followed older examples, such as Pope Julius I (337-352), Emperor Zeno (483), and Gratianus, Professor of Theology in Bologna (1139-1142), whose famous Decretum Magistri were often quoted by the Doctors. San Ramón de Peñafort (1180-1275) a Catalan born Dominican Friar, Father Confessor to King Jaime I of Aragon, and the first codifier of Canon Law, regarded "engrossers" as "abominable monsters." Whilst allowing agreements for a just cause, the renowned Heinrich von Segusia (+ 1271), Archbishop of Ostia, was strongly opposed to monopolies, and so were Monaldus von Capodistria, and Johannes von Freiburg.

Albert von Bollstaedt, better known as Albertus Magnus (1206-1280) considered monopoly to be contrary to the common good, and his most famous disciple, Saint Thomas Aquinas, (1225-1274), without mentioning it expressly, appears to have left the judgement on monopoly to be determined by the "circostanze particolari" of each case, according to the interpretation of Glauco Tozzi. The renowned jurist Baldus (1327-1400) defined monopoly as a conspiracy against the liberty of trade or work. For San Bernardino de Siena (1380-1444) it was a fraudulent pact by which it was agreed to sell at a price that would increase the benefits of the seller or decrease market prices, if the monopoly was formed to purchase rather than sell goods. Sant'Antonino da Firenze (1389-1459) limited himself to denounce
engrossers and forestallers for very similar reasons to those put forward by San Bernardino. Thomas de Vio, Cardinal Cajetanus (1468-1534) argued that monopoly forced prices above the level that they would have reached in a competitive market.

As Cardinal Höfner makes clear, the fact that the early Scholastics rejected monopolies does not mean that they were against commerce, a view that was shared on much more theoretical terms by later Scholastics. Commerce was considered necessary, but merchants had to be wary of committing fraud and deceit - which together with the asking of an unjust price were likened to monopoly, and they had to give their endeavours an honorable goal. The repudiation of monopoly by the Church Doctors was based primarily upon its conflict with the doctrine of just price. In this, they were by no means alone, for they enjoyed the support of jurists, both romanists and canonists.

The Doctors never reached a consensus on just price, which, together with the evolution of the concept, illustrates quite clearly that the thinking of the Church was neither monolithic nor static. In fact, the manifest diversity of opinions, and the constant honing and perfecting of the idea of just price show a dynamic process of adaptation to new needs and changing circumstances, as Ovidio Capitani affirms unhesitantly. This process can be seen in perspective in the works of Cardinal
Höfner, Raymond de Roover, and, as Glaucio Tozzi demonstrates, it is also perceptible within the thinking of one man: Saint Thomas Aquinas, the prince of the Scholastics.

This dynamic process and the multiplicity of individual opinions that Joseph Schumpeter considers characteristic of the Scholastic thinkers becomes readily apparent when we follow the development of the notion of just price and the closely related one of value. For Albertus Magnus and Saint Thomas Aquinas just price was the equivalent of the market price, which was consonant with an idea of value shared with Aristotle and Saint Augustine, based on the utility of the thing and its ability to satisfy a personal need.

Just price was the free market price, unadulterated by fraud or interferences. Neither static nor easy to determine, the "iustum pretium" consisted of a certain estimate - "in quadam aestimatione" - that tended to oscillate. As far as the seller was concerned, it was arrived at by adding the labour costs plus all other expenses, and it would seem to have been quite clear in the minds of Saint Thomas Aquinas and most Scholastics that unless they were met in the selling price the goods would quickly disappear from the market. Not only was the Angelical Doctor, as we have already seen, very insistent upon establishing the circumstances of each case prior to passing judgement on it, but, aside from recognising as normal seasonal and other price
fluctuations, he was exceedingly pragmatic in his estimation of just price, often more so than the authorities from whom he borrowed examples. 114

Father Pietro di Giovanni Olivi (1248-1298), 115 roughly a contemporary of Saint Thomas Aquinas, rescued from oblivion by Father Dionisio Pacetti, 116 had a more elaborate conception of value. He added to the notion of Utilitas (utility and ability to satisfy a given need) that of Raritas (rarity) - in itself of old Roman ancestry as noted by Paul Thomas 117 and that of Complacibilitas (to suit well or to be pleasing), a subjective element - apparently unknown to the Romans 118 - that as de Roover suggests, denotes the existence of desires of preferences of varying degrees amongst individuals. 119 San Bernardino de Siena adopted the definition of value of Father Olivi, his fellow Franciscan, without alterations. 120 Sant' Antonino da Firenze, a more practical, less abstract thinker than San Bernardino, and extremely well acquainted with the business world of contemporary Florence, 121 concurred with San Bernardino's concept of value, 122 and agreed with him that just price should be the market price, provided that it was not tampered with by fraud or collusion. 123

In general terms, it may be said that the identification of just price with the market price enjoyed a wide currency amongst the Scholastics, even though their definitions varied; and, in
some cases, notably that of John Duns Scotus (1274-1308) they incorporated subtly differentiating elements in them. Parallel to that, the Doctors recognised the power of the civil authorities to fix prices if the common good so demanded. That power was based on a law text from late antiquity often cited in the Decretum of Pope Gregory IX (1227-1241) incorporated into the Corpus Juris Canonici by San Ramón de Peñafort. Another source was the Corpus Juris Civilis. In this Roman text, the Bishop was mentioned together with the Prefect as having the authority to fix prices, but the Scholastics, Cardinal Höfner stresses, did not conclude from that that they were entrusted to care for fixing prices as the ultimate authority. Sant'Antonio, who mentioned the Church only as a second best alternative to the civil authority to fix prices, confirms that viewpoint.

The idea that the civil authorities had the power and the duty to fix prices so as to ensure the common good was carried to extremes by Heinrich Heinbuche von Langenstein (1325-1397). Whilst accepting that value was not in the thing itself, but in the need one may have of it, Heinrich von Langenstein considered the duty of the local government to fix the prices of foodstuffs and other necessities of life. He recognised the difficulty of doing this, but thought that with intelligence and diligence a proper price could be arrived at, and that to let supply and demand set the level of prices was the sign of a poor government, too lazy and corrupt to carry out its duties.
Cardinal Höffner and Raymond de Roover contend that the notions of Heinrich von Langenstein had been inordinately promoted to "represent" the views of the Church on the matter of just price. In fact, when the ideas of von Langenstein are compared to others of the Nominalist group, of which he was the chief exponent, the diversity and individuality of the Scholastics' thinking becomes readily discernible. Heinrich Totting von Oyta (+ 1397) completely ignored price regulation and sided with the conventional teachers on the subject of price and business ethics. Johannes Buridanus (+ 1358), a disciple of William of Ockam (+ around 1349) also passed over price regulation. Cardinal Höffner finds certain tones of Heinrich von Langenstein in Jean de Gerson (1363-1429). He mentioned the difficulty of arriving at a just price due to man's corruption, but his views on price regulation by the authorities are indeed very subdued. As far as Nikolaus von Oresme (1363-1429) is concerned, who Cardinal Höffner thinks could only with reservations be included amongst the Nominalists, given the originality of his thinking, never mentioned price regulation in his writings.

The Nominalists were, however, unanimously opposed to monopoly, in accordance with the teaching of just price, whether that was understood to be the free market price or fixed by the authorities. Heinrich von Langenstein was as emphatic in this pursuit as he was in his argument in favour of government intervention to assure a just price and to promote trade to keep the city well supplied
of goods and raw materials. He condemned the monopolistic practices of merchants and those in which "carpenters, masons, and grape harvesters" were in the habit of indulging when the demand for their services was at its peak. Nikolaus von Oresme was equally adamant in his antimonopolistic position, including those government monopolies created "under the guise of serving the common good," and the monopoly of money, whose devaluation should only be decided by the Prince and the assembly of the people. His sharp words against the government monopolies are to be understood and evaluated, Cardinal Höffner cautions, as an accusation against the bad monetary and fiscal policies of John II and Charles V of France - a good example of the influence of local conditions on the Scholastic's thinking.

In spite of their effect upon later Scholastics and the ethics of business and their success, particularly in the universities of Germany, Bohemia and Poland, the Nominalists remained a minority in the Scholastic world, and were by no means able to push aside the views of Saint Thomas Aquinas. Already in the XIV Century they were postulated amongst others by Herveus Natalis (+1323), Giovanni de Napoli (+ around 1336) and Petrus de Palude (+1342). Towards the end of that century the teachings of Saint Thomas Aquinas were accepted to a growing extent and in the XV Century they had three great exponents in the Dominicans Johannes Nider (1380-1438) and Sant'Antonino de Firenze, and in Konrad Summenhart, from Calw, Württemberg (born
between (1450-1460). These are to be found as well in the many Confessionary Guides repeating the teachings of the XIII and XIV Centuries. We shall consider in some detail the ideas of Konrad Summenhart for they illustrate how the followers of Saint Thomas Aquinas took up the heritage of the XIII and XIV Century and enlarged upon it, partly as a result of the Nominalist influence and partly as a consequence of the changes in the economic reality.

Summenhart - who was considered a great authority by all the XVI Century Doctors and was cited often as Conradus had a rather elaborate idea of price formation in the free market. Cost was, of course, a major constituent factor, and included the purchase price plus the cost of labour, transport and storage, compensation for work during transport, storage, and manufacture of the goods, and a clear differentiation of the inherent expenses of wholesaling and retailing. Supply and demand, which occupy a very prominent role in the formation of price, are mentioned in connection with the purchase price as a product of specific circumstances, such as horses during the harvest or in times of war, of the rarity of goods - the rarer a commodity the greater its value would be and, most noticeably, in the case of a special demand for a particular good. The selling price would be low when the demand was low and progressively higher as the demand increased.
Another important factor in the formation of price in the free market was a special compensation for the necessary care during transport, storage, and manufacture of the goods, for the diligent endeavours to find, to transport and to store goods, because the diligent merchant looks into the smallest details and where he can buy the best and the cheapest goods, and for the value added to a good, as for instance when somebody makes a knife out of iron. Risk was also the subject of a special compensation - as it had been for John Duns Scotus in the XIII Century and San Bernardino da Siena and Sant'Antonino da Firenze in the early XV Century. Summenhart thought that risk was worth a price since some people would pay a gross sum of money to be insured. He rejected, however, that the social position of the seller should be taken into consideration - as Scotus and the Nominalists, particularly Heinrich von Langenstein postulated, sustaining that a higher payment to a person of a higher rank was only justified when higher personal attributes had been shown. Thus, in this matter as in the question of considering a monetary compensation to the vendor for the loss of use of the article sold as a constituent element of the price, Summenhart followed the basic teaching of Saint Thomas Aquinas.

Although Summenhart placed by far a greater emphasis on factors pertaining to the free market price formation, he also contemplated price regulation by the authorities whenever it was
reasonable and justified, as it could be, for instance, in the case of bread, cloth, or rents in a university town or where a Concilio was held. Summenhart maintained that the regulatory responsibility of the government was greater in times of distress. However, he stressed that the characteristics of the goods had to be reckoned with by the regulator. Profits, according to Summenhart, should be higher for goods that are necessary than for luxury items or for such things that do harm to the community, such as gambling, since the seller of useful goods performs a greater service to the community than the others. He adds further that if the state were to pay a salary to merchants, the sellers of necessities should be paid a higher salary.

On the subject of price regulation, Summenhart was greatly influenced by Heinrich von Langenstein, whom he often quoted, probably, as Cardinal Höfner ventures, through the influence of his fellow professor at the University of Tübingen, the late Nominalist Gabriel Biel. Finally, Summenhart offered a third option when neither the free market nor the regulated prices rendered satisfactory results. He concluded that the advise of a wise man should be taken into consideration when all the other reasons cited were totally or partially inapplicable.

Starting from the basis of the traditional scholastic teaching on just price, which considered value as existing not in the thing itself but in its utility and in man's preference as
expressed in the free market evaluation, Summenhart considered
the general market trend a good point of reference for the
assessment of just price. According to him, the firm price of annuity bonds as a good sign that their price was
just, for if it were too high the rich would not buy them
because they were not under pressure to do so, and if it were
too low they would not sell them.

The old proverb that "a good is worth as much as one can
get from it" was accepted by Johannes Nider and also by
Summenhart, but he thought that its true sense was "that the
value of the good would be justly assessed through the general
evaluation and the strength of the demand." Two decades
later, Summenhart's interpretation was picked up by Sylvester
Prierias O.P. (1456-1523): In his Summa Sylvestrina he confirmed
that the adage was true as far as he could determine from the
writings of the Doctors, when three conditions were met: first,
there must not be any fraud in the lowering or increase of the
price; second, coercion or pressure upon vendor or purchaser
must be excluded, one should not be forced to buy from this one
or sell to that one; and thirdly, ignorance of those who are
contracting must be excluded, so that both know what they are
doing.

Summenhart pointed out that this general evaluation did not
signal a mathematically precise answer to the price of a good,
such as the needle of a scale would point to, but it was rather a "guesstimate" of it. This, as we have seen, went as far back as Saint Thomas Aquinas. He added, though, that the price of a commodity could be exactly assessed by the regulator, were it not for the fact that the human element involved conferred some uncertainty to it - a lament that was common to some Nominalists as well. Cardinal Höffner attributes Sant'Antonino the beginning of the hunt for the most just point of the price of a given commodity, which he sees reflected in the writings of Summenhart. Sant'Antonino was the first to divide the price range of a commodity into three categories from low to high: a lower or benevolent one, a medium or discreet one, and a high or sharp price. Even though Cardinal Höffner thinks that Sant'Antonino did not wish to produce that result, these categories were used by all Scholastics after him, thinking that somewhere there it was possible to find the precise just price.

For the merchants, Summenhart had warm words of praise. Since nobody could be self-sufficient, one has to do this and another something else, and because of the division of labour amongst people, there have to be merchants as middlemen, who will trade with other areas, store the goods, protect them from spoilage, and keep them ready for sale. As all these operations cause costs and worries and the merchants run risks in every one of them, it was necessary to grant them their profits. Otherwise, should one prohibit commercial profits, the merchant class would simply
disappear. Johannes Nider held a similar view in this matter, which, as we have seen, had already been foreseen by Albertus Magnus.

Summenhart added that one should not condemn the merchants and commerce because sins would be committed, for those were the sins of the individuals who do not practice their profession properly. He mentions such sins as an exaggerated greed for profits in order to amass great riches, and unfair competition. Monopoly was classified as a special kind of unfair competition.

To an obvious empirical knowledge about monopolistic practices, Summenhart incorporates the examples and opinions of other XV Century writers such as Johannes Nider, the Blessed Angelus Carletti da Chiavasso, the Vicar-General of the Franciscan Order (†1495), and Christoph Kuppener (1466-1511), a jurist from Leipzig and member of the pewter handlers company. They all censured the restriction of supply and other sharp monopolistic actions of merchants and storekeepers, who were guided by their own selfish interest detrimental to the common good.

Summenhart was a harsh critic of the agreements to sell at a price within a justifiable range, but on the upper limit and not cheaper. He also condemned the price agreements amongst barbers and practical surgeons, the common practice of tradesmen of reducing competition by limiting the number of apprentices.
accepted for training, often reserved only for the sons, nephews or nieces of the Guild's members,\textsuperscript{209} and those tradesmen who refused to continue the work started by others.\textsuperscript{210}

Monopoly, thus, continued to be mentioned mostly in connection with storekeepers, workers, and tradesmen, for as Cardinal Höflner stresses, the great days of the foreign trade monopolies were to start only late in the XVI Century.\textsuperscript{211} Also, as we have already mentioned, it continued to involve for the most part an element of conspiracy, and described not only what we know today as monopoly proper, but also oligopoly, monopsony, and restricted labour practices.\textsuperscript{212} For Summenhart, the illicitness of monopoly stemmed from the laws of the state and from "natural common sense."\textsuperscript{213} He, like Kuppener,\textsuperscript{214} mentioned the heavy penalties prescribed for monopolists in the Justinian Code,\textsuperscript{215} reflecting, perhaps, the considerable inroads that the romanists had made by that time in the Scholastic thinking.\textsuperscript{216} Summenhart stressed that the free market and competition were the best guarantors of just price. According to him, the one in competition has less possibilities and is unlikely to have the impudence of asking exaggerated prices for this goods. People would, quite simply, go to the one who sells them cheaper.\textsuperscript{217}

Summenhart - unlike Heinrich von Langenstein\textsuperscript{218} - divided the bulk purchases during the harvest and grape collection time into monopolistic and non-monopolistic ones. Amongst the latter,
considered beneficial for the common good, he enumerated the gathering of provision in times of need, those purchases that allowed the farmers to concentrate on the harvest by shortening their stay at the market place, the wholesale acquisitions of small merchants, and the buying and selling operations of middlemen.219

In comparison with Summenhart, Sant'Antonino da Firenza, a generation earlier, had a much milder opinion on certain private price agreements that for Cardinal Höfner had an obvious monopolistic character. Citing the authority of Ostiensis (Heinrich von Segusia, Archbishop of Ostia) he thought that it was permissible for merchants with the consent of the Bishop to set a common price that was of course a just price.220 However, the private monopolies agreed upon by merchants, even those resulting in a just price, were considered illicit by Sant'Antonino.221 At the same time, those merchants were supposed to obey the prices fixed by the Bishop and municipal authorities for necessities.222

Cardinal Höfner finds remarkable that Sant'Antonino detected a certain similarity between price regulation by the authorities and a private monopoly system, to which he attributes the tendency of Sant'Antonino to allow certain private monopolies.223 His position on this matter seems to have been an isolated one. In the Summa Roselle de casibus conscientiae it was stated that
whilst any private monopoly must be forbidden, price regulation could be sometimes necessary for the common good. Father Prierias in his *Summa Sylvestrina* agreed with that, adding that private monopolies were fraudulent increases or decreases of prices.

The works of Hans von Platea (+ 1460), the Confessionary Guide of his fellow Franciscan Bartholomaeus de Chaimis (+ 1496) and the usury treatises of the jurists Laurentius de Ridolfis and Antonius de Rosellis generally followed closely the ideas of Konrad Summenhart and the other mentioned XV Century theologians, and, according to Cardinal Höfner, they added nothing new to their views on just price, value, and monopoly. As far as the late Nominalists are concerned, the two most outstanding figures in that century were Gabriel Biel (1425-1495) and John Major or Mayr (1469-1550).

Gabriel Biel, a Southern German like Summenhart, who also taught with him at the University of Tübingen between 1484 and 1491, was influenced by William of Ockam, Heinrich von Langenstein, and Jean de Gerson, particularly the latter, whom he repeated verbatim in his assertion that nobody was wiser than the law maker in his estimation of just price. He tempered that view, though, by adding that the regulator has to consider the demand and supply or undersupply of the goods, the number of the needy, the utility and necessity of the goods, the difficulty of
procuring them, and the required labour - in other words, one has to have due regard for the market factors, and, "when the law maker wisely reflects on this, he can find and fix the just price of goods." 234

Biel supplemented that with the pertinent observation that when the market rather than the law giver sets the price of a commodity, the level of it depended on the strength of the demand, and therefore an increase in demand would mean an increase of the price. The demand will be more pressing when the stock of available goods that the people demand decreases, when the number of those demanding these goods increases, and when it is difficult to obtain the goods. 235 Whether Biel was influenced by the views of his colleague Summenhart, or whether his ideas of the influence of supply and demand upon the market price were the result of empirical observation - something the Nominalists tended to emphasise, 236 - we don't really know.

John Mayr, a Scotsman from Haddington, who studied at Oxford, Cambridge, and Paris, where he was a professor from 1505 until 1550, also supported price regulation by the authorities. He pointed out quite rightly, however, that it could only be easily carried out with similar goods, such as grain. This task, became considerably more difficult with commodities such as wine or beer, with which different qualities had to be taken into account, and it was thus impossible to fix a general, uniform price for them. 237
As far as the merchant's compensation was concerned, the late Nominalists seem to have followed the "Good Rule" of John Duns Scotus, that a merchant could take as much as a good and just law giver would pay to an employee of the state if trade was carried out through this employee. John Mayr also stressed the risks run by merchants for the common good. He and Biel considered the formation of monopolies as a stain and injurious to the merchants as a group. Monopoly contravened the doctrine of just price, whether it was the monopoly of one big merchant, a price agreement, or a Guild monopoly.

Throughout the XV Century, the Scholastics saw a clear connection between the doctrine of just price and monopoly. The latter destroyed the freedom of the market and adulterated some of the most important elements of price formation, namely the number of available goods, the number of buyers and sellers, and, in place of a just price, it produced an artificial one arrived at for purely selfish reasons. Cardinal Höfner stresses that Konrad Summenhart saw that connection with special clarity and underlined the price regulation function of competition.

Cardinal Höfner remarks that on the whole, it may be said that the Nominalists displayed a tendency to prefer authoritarian regulation of prices rather than letting them find their own level in the free market. "It would appear that in these matters they had more in common with John Duns Scotus than with Saint
Thomas Aquinas. Yet, as we have seen, Konrad Summenhart, the most prominent amongst the XV Century followers of the Doctor Angelicus, accepted price regulation under certain circumstances. So, Cardinal Höfner concludes, the Scholastics in the XV Century, like the present day economists, were divided "zwischen Freiheit und Bindung" - between freedom and control.

Between those two extremes, there were, as we hope to have made clear, a great variety of hues and fine distinctions, as well as very personal positions on specific issues. The case of the Blessed Angelus Carletti da Chiavasso, a follower of John Duns Scotus, who accepted the Thomistic "communem Aestimationem" of the market as the criteria of just price just as Johannes Nider, a leading Thomist did, illustrates that point and the difficulty of grouping the Doctors into generalised schools of thought.

Raymond de Roover and Cardinal Höfner affirm that Scholastic thinking reached its loftiest peak in the XVI Century. It flourished in the first two decades, according to Cardinal Höfner, who detects a period of ascent up to and through the Council of Trent (1545-1563) culminating in the decades that followed that event, in which Scholasticism achieved its highest intellectual level. This development - partly attributable to the easier spread of ideas brought about by the printing press had its major impetus in the Iberian Peninsula, where it was led by the Universities of Salamanca, Alcalá, and Coimbra.
The influence of the Spanish Theologians amongst the Scholastics and in the Catholic world at large was very significant during the entire period. This great influence of the Spanish Theologians was not only the product of their presence and input in the Council of Trent, where they had the opportunity of influencing directly the Bishops and fellow Theologians, but also from the fact that they were called to University chairs in places as far apart as Rome, Ingolstadt, Prag, and Paris. In the case of Father Martín de Azpilcueta, the famous Doctor Navarrus, author of a new and highly successful teaching method at the University of Salamanca, that call had a wider repercussion for he was asked to help reorganise the University of Coimbra.

By and large, the scientific basis of their teachings went back to Saint Thomas Aquinas. Francisco de Vitoria, the founder of the School of Salamanca, introduced the Summa Theologicae of Saint Thomas Aquinas as a textbook instead of Lombardus, and even though his own Comentarios to the Summa were only published in 1932, the Thomistic influence on his students was by no means lost. The most respected sources besides Saint Thomas were Sant'Antonino da Firenze, Konrad Summenhart, Gabriel Biel, and John Mayr.

Although Francisco de Vitoria had a great interest in Moral Theology, he focused upon areas other than business ethics, to which he added nothing new. The three most outstanding...
Scholastics dealing with business ethics in the earlier part of the XVI Century were the Dominican Domingo de Soto (1494-1560), one of the most gifted disciples of Vitoria, whom he succeeded in the chair of Theology at Salamanca, the Franciscan Juan de Medina (1490-1546) a professor in Alcala from 1526 until his death in 1546, and the Dominican Cardinal Tommaso de Vio, the famous Cardinal Cajetanus (1468-1534) who taught in Rome and whose wide travels enhanced his acquaintance with changing economic circumstances and gave him a first hand knowledge of commercial practices.

The formation of price and the question of just price remained amongst their main concerns. To arrive at the formation of price, Domingo de Soto classified the sixteen price factors of Konrad Summenhart into three groups. Firstly, one had to take into account the pressing needs, the existence and level of stocks, the degree of scarcity of the goods, the merchant's work, worries, diligence, and risks. Secondly, one had to consider whether value had been added to the goods; and thirdly, the number of buyers and sellers in the market. Cardinal Hoffner finds de Soto's grouping of cost and competition factors much better organised than the original of Summenhart, but lacking on any comments about their relationship in the formation of price. This, and particularly the regulatory function of competition, had been perceived with greater clarity by Summenhart.
With regard to the notion of just price during this period, Father James Brodrick affirms - quoting Juan, Cardinal de Lugo (1583-1660) 267 - that "is either the price fixed by law or else 'quod communem hominum asestimationem et judicium constitutum est, non ex unius vel alterius privato affectu'." 268 This division was, however, far from being a clear cut one.

To arrive at the just price, Juan de Medina, probably influenced by Gabriel Biel, considered firstly the government price regulation; secondly, the appraisal of the market; and thirdly, the price that resulted from adding the merchant's work, risks, and expenditures, as well as the scarcity and necessity of the goods. 269 Juan de Medina had some misgivings about all these methods of determining the just price.

As elements to be taken into account against the regulation of prices by the authorities, he considered the possibility of bribes, the likelihood that inexperience could make the government officials in charge of regulation arrive at unrealistic prices, and the fact that expenditures, risks, work, and the number of goods could change, "as it often happens, right under our eyes." 270 In spite of these apprehensions, Medina thought that one had to view the fixed price as the just price for as long as the price regulator was not bribed or made an error, or the necessity for change became apparent. 271
Domingo de Soto also voiced some concerns about price fixing by the authorities, which he estimated to be practically impossible. Yet, from a theological rather than a factual point of view, price fixing appeared safer to him than the market price when one considers the conscience of the merchant — and the dangers for his soul — and the common good. To the question of whether it would be better to have the government involved directly in trade and conducting it through government employees, the answer of de Soto was that in that case not all the goods would be available. In connection with this assertion, it is interesting to notice the considerable personal experience of de Soto, who on several occasions was in charge of buying grain in bulk to keep Salamanca supplied and the students fed, as well as negotiating other contracts for the University, sometimes together with Vitoria.

Martín de Azpilcueta was more explicit in his apprehensions about price regulation. He expressed them in the much quoted lines: "I believe that very rarely a price should be fixed. Firstly, it gives an opportunity for the spoilt and very nearly useless goods to be sold at the same price than the good ones. Furthermore, in times of great need nobody adheres to the fixed price and in good times it is hardly necessary. Also in times of oversupply of goods none of the rich merchants will give credit or will sell price regulated goods on credit except at the higher fixed prices calculated for times of need. In addition to that,
the regulation of prices causes countless serious contraventions since there are a thousand ways of circumventing it. So, for instance, some refuse to sell a price fixed good, such as grain, unless at the same time another unregulated good, say wine, will be bought at two or four times its actual value.274

The views of Azpilcueta were not only abundantly quoted throughout the XVI Century but also were applied to practical situations and elaborated further. The Dominican Luis López (1535-1600),275 attributed his sharp words to the fact that price regulation was such a difficult thing.276 Fernandus Rebellus underlined Azpilcueta's misgivings saying that "often it is better for the common good of a city when one does not order fixed prices, as it is in the case of Lisbon. This city will totally collapse if one would introduce fixed prices for grain. If all goods had fixed prices it would cause an unnecessary and great confusion in the state. Besides, the grain imports from foreign countries are exempted from price regulation and not only out of pure good will for the foreign merchants, but because otherwise imports would altogether cease."277

The Jesuit Luis de Molina (1535-1600),278 an original thinker with many important contributions to economics,279 was opposed to any price fixing, including the just price regulation by the authorities.280 He explains his position in detail by referring specifically to Portugal, where it would appear that the price
of locally produced grain was regulated whilst that of the imported grain, necessary to keep that Kingdom supplied, was not.

He thought that it was difficult to arrive at a just price through the authorities, because different circumstances had to be taken into consideration. Even in the same state, the same price factors, for instance goods and money, are not equal everywhere. This rendered very difficult to adjust the fixed price to the different conditions, but this had to be done if the fixed price is to be and remain a just price. Therefore, the authorities could not follow the principle that laws should be changed as little as possible.

According to Molina the price fixing of home grown grain in Portugal caused problems. Often, foreigners would purchase home grown grain and then sell it as imported grain, at the much higher price obtainable for that commodity. Local producers followed suit, and the Lisbon grain merchants assisted them by offering higher prices voluntarily.

Therefore, fixed prices led to countless transgressions of God's law, such as lying and perjury. Confessors and theologians, who were asked daily for advice, were well aware of it. A fortiori, since the sale contracts were not finalised publicly, but in private houses and without witnesses, the grain laws tempted people into trans-
gressions. Consequently, Molina vehemently confirmed his opposition to the regulation of prices by the authorities, stating that "a ruler who is aware of his responsibilities should not pass a law that he expects to be transgressed."\(^{287}\)

With regard to the second rule that the just price be derived from the market trend, Juan de Medina says that this rule seems to be more dependable than the price fixing by the authorities because every change of the cost and market conditions would show immediately their influence upon the market price. However, one has to ask oneself who caused this general market trend. If it were the "merchant", one would have to expect an exaggerated price, since the vendor, as shown by experience, would like to earn as much as possible. The non-merchants are in this without experience. Yet, Medina says, the general market trend does not depend entirely on willfulness since it happens that the merchant often has to sell at a loss.\(^{288}\) "This is the fate of the merchants, they have to count not only on gain but also on loss."\(^{289}\)

Cajetanus added pertinently to this notion of the market price that one should not regard it too generally as being the price in the land at large, but which is now and here, under particular purchase and selling conditions, and from which any fraud and duress are excluded.\(^{290}\) Luis Saravia de la Calle also stressed the place, time, and manner of the sale, as well as the abundance or scarcity of goods, merchants, and money.\(^{291}\)
Juan de Medina had also certain doubts about the third rule that the just price is arrived at through costs. Not all merchants had the same costs. One bought favourably, the other unfavourably. One acted wisely, the other unwisely. Should therefore, the same goods, in the same place, at the same time be sold more expensively than the others? That was absurd to him. Consequently, he concluded that this third rule was applicable only when there was neither an authorised or fixed price nor a usual market price. Therefore, that happened when unknown goods had been offered for the first time. In this case, the merchant could demand a price which assured him next to the recovery of his costs a reasonable trade profit.

Domingo de Soto shared the misgivings of Medina with regard to this rule. He specifically attacked the notion of John Duns Scotus that the just price was the equivalent of the manufacturing and other costs, including a compensation for risks and a reasonable profit, stating that that would tend to favour the merchants lacking foresight and incapable of reducing costs. He added that "the art of commerce is largely dependent upon chance, and merchants should learn to bow to misfortune and wait for better times to come..."

Rejecting altogether the idea that the natural price was determined by the judgement of the individual merchant, Domingo de Soto was also opposed to the opinion that merchants,
because of their position, should be allowed to sell at higher prices the same goods, in the same place, at the same time. He, like Konrad Summenhart, considered that the just price does not take into consideration the status of the persons involved in trade, but it is arrived at entirely on its own merit. He allowed a certain latitude within the range of just price for the uncontrolled goods, which, unlike those subjected to a legal price, could be sold at "rigid", "moderate" or "merciful" price, reminiscent of the old distinction of Sant'Antonio.

Luis Saravia de la Calle also argued against the determination of the just price purely on the basis of costs. For him, the just price arose from the abundance or scarcity of goods, merchants and money, and not from costs, labour, and risks. If we had to consider labour and risk in order to assess the just price, no merchant would ever suffer loss, nor would abundance or scarcity of goods and money enter into the question. Prices are not commonly fixed on the basis of costs. Why should a bale of linen brought overland from Brittany at great expense be worth more than one which is transported cheaply by sea?

When one adheres to these rules, Cardinal Hoffner reasons, one can justifiably say that "a good is worth as much as one can get for it," which is not to say that one can drive the price up at will against natural, divine, and human law. Domingo de Soto adopted the philosophy already known in the XV Century,
stating that the famous adage 'was correct when force, fraud, and deceit were excluded, for they would deny the purchaser the formation of a free opinion.' 304 He added that 'an extensive commerce shows that people have progressed from the incomplete to the complete - alluding to a stage closer to an ideal situation of satisfaction of all human needs - even though it can all be turned around by greed.' 305

For Saint Thomas Aquinas, trade was, in itself, as indifferent as eating. The drive for profit, strangely characteristic of trade, had a certain ugliness in it. 'I do not know - he said - where it comes from, that trade in contrast to all other occupations, causes an unquenchable thirst for profit.' 306 Whilst, farmers and tradesmen lived contented in their occupations, merchants, 'like gamblers, are driven by a greater greed for profit.' 307

After attempting to find where that unquenchable thirst or greed for profit lay, Juan de Medina expanded on the necessity for trade. 'Take trade away - he reasoned - and then people would have to rob foreigners in order to survive or they would have to die of hunger, nakedness, and other needs.' 308 The merchants, therefore, should be allowed to profit because one could justifiably strive for profits when one through endeavours, costs, and risks, provides for others, namely, for the needs of the community. 309
Medina made very clear, however, that one should not make the earning of money the ultimate goal in life. Even though one is allowed to earn the riches which were God given, one is not permitted to desire them as if they were in themselves desirable. In this, he is in full agreement with Saint Thomas Aquinas. 310 Cajetanus concurred with Medina, and also thought that the finance business should be allowed under certain circumstances and for a reasonable profit. 311

Next to greed, monopolistic practices were deemed to be most injurious to the soul. They violated commerce. Domingo de Soto cited the case of the merchant who buys all the goods in order to reduce supply and drive the price up. 312 He also placed in the same category those merchants who conspired to forestall their competitors and forced the public to deal with them, and those who agreed not to sell below a certain price. 313 Domingo de Soto's condemnation of monopoly was not reserved purely for sellers. It was proscribed for the buyers too. 314 The buyers were allowed only to resort to measures sufficient to counteract a seller's monopoly, thereby extending the principle of the legitimate use of force against force. 315

Juan de Medina was also against monopoly because the buyer was forced to pay the price demanded by the monopolists. In his opinion the monopolist was more noxious to the state than a bad harvest or the locust, regardless of whether the monopolists were
merchants, tradesmen, or surgeons, who agree that their special craft or medicine would be passed on only to their sons or nephews. 316

He saw the state-granted monopoly in a different light. It was allowed when it was demanded for the common good and when the just price was fixed by the authorities; for instance, when nobody would otherwise undertake a necessary trade such as printing or keeping a restaurant. However, Medina insisted that the government should not grant monopoly privileges for articles of first necessity, because their price would be higher than if there were many merchants around, even if the prices were fixed by the authorities. There was also the danger of the scarcity of the goods, since nobody but the monopolist is allowed to sell those goods. 317

Domingo de Soto considered shameful that a merchant could obtain, by purchasing a privilege from the prince, a monopoly for particular goods, "because due to the limited number of sellers the price would rise." 318 Cardinal Cajetanus, whose opposition to monopoly we have already mentioned, 319 called it a transgression of freedom, 320 and condemned to restitution those who granted the monopoly as well as those who profited from it. 321 The French jurist Charles Dumoulin (Carolus Molinaeus, 1500-1566), was strongly opposed to all monopolies, and even considered the argument of their necessity for the common good as
a pretense to put down the population into slavery and contravene a free and true state. The jurist Benvenutus Stracha, a professor of Law in Ancona was equally critical and very much against monopolies and the manipulation of prices.

Summarising the first half of the XVI Century, Cardinal Höfner underlines the efforts of the Doctors to systematise and critically examine the Scholastic legacy on the formation and rules of price, particularly those of Juan de Medina. The Scholastics of this period recognised that the merchants could decently acquire "the greatest fortunes," as Medina himself asserted, provided that the drive for profit was not their ultimate goal. Price regulation, which was not considered as intensely as in the XV Century, elicited some strong objections. So did monopolies, which were condemned for destroying price justice and were considered as shameful to the merchant profession. Attacks against the freedom of the market - into which all types of monopoly fell - were pointed out, and even official monopolies were not accepted without criticism.

Cardinal Höfner, therefore, concludes that the doctrines of Saint Thomas Aquinas had pretty well succeeded by the XVI Century. His conclusion is shared by Raymond de Roover, and the work of Marjorie Grice Hutchinson corroborates their views. The fact that Johannes Niders's De contractibus mercatorum was published as an appendix to the treatise of Benvenutus
Stracha is strongly suggestive of that Thomistic influence, an influence that is also discernible in the solutions put forward to some specific cases. This influence was strengthened by the fact that Pope Saint Pious V declared him a Doctor of the Church and had his complete works meticulously compiled and published. Nominalism, on the other hand, became forgotten, and Scotus was rarely mentioned outside the Franciscan Order.

In the Peninsula, the followers of Saint Ignatius Loyola became very active. The members of the Society of Jesus investigated the opinions bequeathed to them, extending and adjusting them to the conditions of the time - as can be seen - for instance, in the idea of value of Juan, Cardinal de Lugo, or in the final decision of the special commission of theologians dealing with the Contractus Germanicus. Cardinal Hoffner affirms that basically the Jesuits followed the handed-down Thomistic doctrine, though interpreting freely the ideas of Saint Thomas. Remarkable, he adds, is their strong accent on the freedom of the market - thus stressing once more the continuity of this principle throughout Scholastic thinking.

Returning now to Bishop Eiximenis, after this long though necessary detour, we find that his views about the freedom of the market were not at variance with those of the Doctors at large. They are clearly expressed in his interesting distinction between

the licit and illicit storage of goods:

"Deus ací saber que los regaters e revenedors, si es volen cobrir en los llurs mails dient que ells compren en gros, si fan los mercaders, qui compraren a vegades alguna fusta qui portarà virtuilles e si es descarregava e es venia per botiguer, la comunitat hauria millor mercat, e per tal com ells la compren en gros la virtuilla no baixa. Mars a aquest argument responen los doctors dient que en aitalls compres jutja hom per presumpcions. Car si lo gra és hui en València a covinent for per ajuda dels mercaders qui han ajudat a portarlo, e estant lo blat en covinent for ve una fusta carregada de gra, la qual si es descarregava, lo forment baixaria tant que los mercaders perdrien molt en lo gra que venen a covinents for, dien ací los doctors que la comunitat ab bona consciència pot consentir als mercaders de comprar la dita fusta e de estar lo gra, car més val a la cosa publica que lo gra cost quecom més e que aquells que el porten sien suportats e ajudats, que no si per algun poc de temps lo mercat era major e que los mercaders romanrien desfets; per què los mercaders, si 339 per eital intenció lo compren, no pequen."

In dealing with this problem, Bishop Eiximenis reflects - without acknowledgement - the pragmatic approach of Saint Thomas Aquinas, who, as we have seen, in advancing a solution to a closely related example, exhibited a much greater flexibility than the Roman jurist from whom the case had been taken. 340

Like the Angelical Doctor, Bishop Eiximenis places a great deal of emphasis upon the circumstances surrounding the specific case in question; and nowhere is this more evident than when he stresses the need to do away with presumptions. 341

Of further interest in this particular instance is, from a
purely theological and legal point of view, the importance attached to the intentions behind any given act, and the problem chosen by Bishop Eiximenis to make his commentaries. In an imperfect market with the characteristics of Medieval Valencia, it is obvious that a shipload of grain could have had a very significant impact of the sort described by Bishop Eiximenis: a temporary price bonanza for the buyers, a number of bankrupt businessmen, a reluctance to invest in future consignments, leading to a scarcity of grain once the present stocks were consumed. 342 This outcome would have certainly run counter to a rationally perceived public good. 343 Although it would probably amount to a considerable stretching of Bishop Eiximenis's thinking to say that he had anticipated what modern economists call the social value of speculation, his problem choice and his answer to it reveals a scholarly priest concerned about the Salvation and the welfare of his fellow man who at the same time had a good grasp of the complex economic realities that he had to face and for which there were no ready-made solutions. Sant'Antonino, at a later day, was to justify an "honest" speculation for similar reasons. 344

Bishop Eiximenis's enthusiastic support of merchants and trade turned into an equally energetic and unequivocal condemnation or "regaters" (regraters, engrossers, monopolists):

'Tot així com lo mercader deu ésser favorejat per lo gran bé que fa a la cosa pública, així lo regater deu ésser perseguit e foragitat de
Usury, along with deceit or fraud in commercial matters, aroused a similarly strong reprobation from Bishop Eiximenis:

"Ultra los damunt dits mals ofcis, consella Gorgias, gran filòsof, que de la comunitat sien foragitats tractadors de usures, de mogubells e de tota trafegueria, per tal que la gent no es carrec de deutes ne la comunitat per res. Car dix Filemon Romanus que les baratets se'n porten los diners, e els trafeguers son mort dels mercaders. Car bon mercader tostems va clar a tot hom." 346

Bishop Eiximenis does not elaborate any further on the concept of usury, but it might be safely inferred from his attitude towards "regaters" and the storage of goods that, having expressed the dangers posed by usury to the soul and to the common good, he felt that the determination of whether an act was usurious or not should be made after a careful examination of it. This would appear to have been something about which the Scholastics were in full agreement. They were all opposed to usury, 347 like the jurists, both Romanists and Canonists 348 and, as G. Le Bras affirms, the religious laws of the Jews 349 and the Moslems. 350 However, Doctors and jurists alike differed considerably in their definitions of usury, 351 as well as in their judgements when it
came to a particular case.\footnote{352}

Unfortunately we are barred from pursuing any further consideration of usury, or, for that matter, other important aspects of the economic thinking within the Church. Our objective was limited to examining the main ideas of the Doctors with regard to trade and merchants, in order to test the views of Bishop Eiximenis. In conclusion, his conception does not appear to have developed in isolation, nor was it very original, nor, indeed, was it in disagreement with what we may call the "general trend" of the mainstream of Scholastic thinking.\footnote{353}

We refer to a "general trend" in a very literal sense and with all due circumspection. It would be highly inaccurate to elevate the views of any of the Doctors to the level or representing "the idea" of the Church on any given subject, economic or otherwise. Such a thing never existed, aside, of course, from the Church's articles of faith and matters pertaining to its organisation and institutional life. The accent on things other than those was on individuality.

The reasons for this distinctive feature of the Scholastic thinking are varied. The Church was - and remains, of course - a living organism, and, as such, even though it influenced the life of its followers, it could hardly fail to be, in turn, influenced by their lives. The Church was a Universal Institution,
and, quite naturally, the needs of the flock varied considerably according to place, time, and circumstances; and with them varied the best ways of tendering to those needs. The Church was a vast organisation with a large number of highly specialised branches. The secular clergy and every one of the Orders were bound to see the world with a perceptual bias derived from the specific objectives pursued by them, and can, therefore, be expected to have emphasised certain issues at the expense of others. If we add to all that a certain amount of introspection and reassessment proper of any organisation, the vast process of examination, assimilation, and utilisation of the ideas of antiquity carried out by the Medieval Doctors with an extensive freedom of opinion, and that the division of those opinions was considered to be a normal fact - even within the Orders - then the dynamic changes that we have observed in fundamental concepts such as value and just price can hardly come as a surprise.

There were further factors that tended to enhance the individual tones of the Scholastics in economic matters. Economics was neither a separate branch of knowledge with general rules and an abstract objective of its own nor the narrow domain of specialists studying it in isolation. Although there were works dealing exclusively with economic topics, such as the treatises on money of Oresme and Copernicus, their number increased from the end of the XV Century they were
written by men with a universal field of interest and an all encompassing idea of knowledge and the world. Many of them made outstanding contributions to subjects as diverse as mathematics and astronomy - as in the well known cases of Oresme\textsuperscript{362} and Copernicus\textsuperscript{363} law,\textsuperscript{364} politics,\textsuperscript{365} and, of course, ethics, philosophy, and theology.\textsuperscript{366}

In fact, much of what we call the economic ideas of the Scholastics, have been extrapolated at a later day from larger general works, sermons, and Confessionary Guides. A notable example is Saint Thomas Aquinas,\textsuperscript{367} but it was also the case with Sant'Antonino da Firenze,\textsuperscript{368} San Bernardino da Siena,\textsuperscript{369} and most of the Doctors before the XVI Century.\textsuperscript{370} The empirical emphasis was noticeable in all of them,\textsuperscript{371} very much in keeping with the Aristotelean tradition;\textsuperscript{372} methodologically, therefore, their approach was radically different from that of the modern economist.\textsuperscript{373} It is precisely this preoccupation with practical problems that makes an upsurge of interest in economic phenomena so suggestive of an increase in the level of economic activity,\textsuperscript{374} and may account for the close association of economic fact and economic theory detected in some instances.\textsuperscript{375}

Economics was an integral part of a coherent philosophical system.\textsuperscript{376} Analysed from the point of view of the law of contracts,\textsuperscript{377} the stress was squarely on ethics: on what was just or unjust, licit or illicit.\textsuperscript{378} As Joseph Schumpeter notes, even though man's actions were judged by supra-individual canons
of justice, they were derived from a moral scheme at the centre of which was man as an individual and as an end in himself.\textsuperscript{379} The central idea of that scheme and the prime concern of the Church was the Salvation of his soul.\textsuperscript{380}

Man had to sanctify his daily life, using the circumstances and work of each day to draw closer to his God and Creator. However surprising it may seem to many to think of men working, eating, resting, and having fun - and at the same time trying to seek God in all these normal activities - that was a fundamental element of man's quest of Salvation.\textsuperscript{381} Hence the importance attached to the examination made of the individual's intention and the circumstances of the case - which included the consideration of the local laws and custom\textsuperscript{382} to determine whether it was permissible or not. Since reality is in the eye of the beholder and depends not on definition but on perception, it is obvious that the ideas of the Doctors could have neither been uniform nor immutable, and that the dividing line between licit and illicit acts varied in accordance to them.\textsuperscript{383}

Individual enquiries searching the Church's opinion on the legality of some transactions were an obvious corollary to that. Private consultation was the origin of a large number of pronouncements and of much casuistry. In spite of the derisive connotation of the term today, even R.H. Tawney admits that at the time it simply meant the application of general
principles to a particular case. The soundness of this interpretation has been documented by E. Dublanchy. Examples of it can be found in the "Comentario Resolutorio de Cambios" of Martín de Azpilcueta - indeed consultations were the basic reason for his writing of the manual - in remarks of Cardinal Cajetanus and Luis de Molina, who said that confessors and theologians "were asked daily for advise," and in documentary evidence presented by J.A. Goris. Answers and the interpretation of them varied considerably, as the controversy between Dominicans and Franciscans over the Monte di Pietà, the protracted disputation over Cambium and the fulminations of Fathers Domingo de Soto, Marco Palescandolo, and Francisco de Vitoria, three of the innumerable ones related to that question, clearly indicate.

However, neither internal disputation nor changes over time were an obstacle for the words of the Church to be taken seriously. The effect produced on the civil authorities of Genoa by a series of sermons preached by Diego Laynez would suffice to dispel any doubt about it. But the Church had means other than eloquence to ensure that the flock adhered to it pronouncements: it could do so in foro interno and in foro externo. It should also be stressed, as Raymond de Roover does, that business and religion were not divorced - even in the XVII Century - let alone before that - and that the distinction between theology and ethics on the one hand, and law and politics on the other, had not yet
slipped into a separation during the period under consideration, as can be gathered from the careful analysis of Father Thomas Gilby.\textsuperscript{398}

*In foro interno*, the Church had a powerful instrument of enforcement in the Sacrament of Confession - which, in turn, must have also been instrumental to a multitude of interpretations of its own ideas, given the discretionary powers enjoyed by the Father Confessor.\textsuperscript{399} At the confessionary and much of the economic thinking of the Scholastics appeared in Confessionary Guides written for the purpose of teaching the confessors - \textsuperscript{400} absolution could be withheld until proper restitution had taken place. There are, of course, no records left, due to the secrecy of the Sacrament,\textsuperscript{401} but an examination of some last wills will reveal the frequent appearance of restitution - \textsuperscript{402} the prescribed penance for usury,\textsuperscript{403} fraud and a host of reasons leading to the unjust possession of something or the need to compensate for tort or breach of contract - \textsuperscript{404} and thus confirm the assertions of Amintore Fanfani,\textsuperscript{406} Raymond de Roover,\textsuperscript{407} and Armando Saporì,\textsuperscript{408} regarding the effectiveness of the confessionary as a means of enforcement. The well documented study of Florence Edler de Roover\textsuperscript{409} further confirms those views. So does the fact that Simón Ruiz, a leading merchant of Medina del Campo at the time of Felipe II, flatly refused to enter into illicit contracts,\textsuperscript{410} evidence from other contracts,\textsuperscript{411} or, for that matter, the well known way in which other Church laws, such as
those on charity, were enforced.\textsuperscript{412}

In foro externo, enforcement could be carried out by the secular justice or, in a more circuitous way, through the enormous influence exerted by the Church in the law making process and in administrative matters. In the first case, it should be noted that offenses such as usury\textsuperscript{413} and monopoly,\textsuperscript{414} for example, were crimes as well as sins, which placed them automatically in the jurisdiction of the ordinary courts. The efficiency of the secular justice in dealing with these matters has not been fully assessed.\textsuperscript{415} Although in some other instances there is evidence of swift and Draconian action,\textsuperscript{416} the performance of the secular justice probably varied a great deal, in accordance with time and circumstances. In theory, however, the interest of the authorities to at least reduce those crimes to tolerable levels was probably just as intense as that of the Church, particularly at times when it was politically feasible.\textsuperscript{417}

In addition to that, the Church commanded a direct influence over the civil authorities. Partly it was effected through the regular contacts of the individual administrators with their Father Confessors, and partly via special consultations. Many of the famous Scholastics mentioned in this Chapter, such as San Ramón de Peñafort\textsuperscript{418} and Domingo de Soto\textsuperscript{419} were Confessors to the King, the ultimate judge and arbiter, whilst others, like Diego de Covarrubias y Leiva\textsuperscript{420} and Martín de Azpilcueta,\textsuperscript{421}
occupied high administrative office themselves or undertook special missions at the King's command. In any of those cases, it seems fairly obvious that their ability to affect certain decisions was rather considerable. Special consultations, on the other hand, were invariably made to the regular confessors, to a Church Doctor in his area of specialty,\textsuperscript{422} or to the Church authorities'\textsuperscript{423} opinions. The effectiveness of these avenues to influence legislative and administrative acts, very clear in some cases,\textsuperscript{424} is, on the whole, very difficult to measure. Yet, when we bear in mind that the Church, the civil authorities, and the society at large shared the same religion and similar moral standards, the existence of a basic desire to comply with the teachings of their custodian has, to some extent, to be taken for granted. Besides that, the Church had many ways of dealing with deviations from her teachings, whether it was a reprimand of Pope Innocent III to the King of Aragon - as we learn from Albertus Magnus,\textsuperscript{425} or any of a number of sanctions,\textsuperscript{426} the power of which cannot possibly be underestimated.

Special consultations were also common procedure within the Church itself. High Church officials\textsuperscript{427} and even future Saints\textsuperscript{428} made frequent use of them, and sometimes those consultations involved the formation of special commissions\textsuperscript{429} or requests to the Pope for his opinion, be it as a private theologian\textsuperscript{430} or in his official capacity.\textsuperscript{431} The frequency of these special consultations regarding economic matters, the names and place of
office of those consulted and the problems discussed reveal a number of facts: 1) the true universal nature of the Church; 2) the considerable interpretative latitude allowed to its individual members; 3) the common nature of many of those problems and an infinite variety of ever changing circumstances; 4) the thoroughness and extreme complexity of their analysis; and 5) the impossibility of finding a single answer to them in spite of an expressed and logical desire to do so.

This was in fact prescribed by the Church. As late as 1581, an ad hoc commission of theologians studying a special case of Contractus Germanicus submitted to the Pope by the Duke of Bavaria, was unanimous in its conclusion that a general knowledge of the methods employed in contracts was insufficient to approve or condemn them, reiterating the old Thomistic rule that demanded the examination of the particular circumstances of each case before any decision could be taken. It is thus obvious that even this basic tenet of the Church's philosophy, aside from all other factors, would have been sufficient to prevent the formation of a strictly normative "doctrine" of the Church with regard to trade and merchants. The famous dictum of Saint Augustine, which says that "to fornicate is always illicit, but to trade is sometimes licit and sometimes illicit," incorporated into Canon Law, summarises the views of the Church with considerable eloquence.

These views, particularly the central core of broad general
principles, always subject to scrutiny, and adapted to the circumstances, recognised that trade was a legitimate and rational pursuit, and that merchants made a very significant contribution to the welfare of the society. They indicate that the Doctors understood what trade was trying to accomplish, and respected it. On the whole, therefore, we may say that by and large the attitude of the Church was favourable to trade and merchants, provided that neither of them fell into her interdictions. 435

That attitude was reflected into the only thing that resembles or may be called an economic "policy" during the Middle Ages and early Modern times: the policy of abundance. 436 Nothing, perhaps, reflects that criterium with greater intensity than the characteristic name of Ufficio dell' Abbondanza given to the municipal office in charge of maintaining Florence well supplied with essential goods, 437 aside from being the declared intention of many professional 438 and municipal 439 statutes. The defense of the freedom of the market was inherent in the policy of abundance, but governments, as they have been at any one point in history, were not entirely consistent on this point. As Raymond de Roover affirms, they pursued the defense of the free market or not, in accordance with the circumstances and the political possibilities, 440 a fact that can be seen with striking clarity even in the case of Geneva, a city whose Prince was a Bishop. There, Antony Babel shows examples of factual monopolies being authorised, 441 presumably as the only viable alternative to keep
the city well supplied with goods and services. This, as we have seen, was acceptable to some Doctors.

This flexibility in the attitude of the Church compares favourably with the Mohammedan one. Much milder in its anti-usury laws as noted by Paul Finzig, it was also far less cumbersome, if the association laws discussed by S.M. Imamuddin constitute a fair sample of Moslem legislation. By contrast, the considerable room for manoeuvring allowed by the Church's economic views rather than bring a great deal of uncertainty to trade, as Wilhelm Endemann affirmed and Armando Saporì denied, may have rendered easier the exploitation of new business opportunities and the adaptation to new economic realities.

To be sure, the thinking of the Church may have made more than a fair contribution towards the shaping of some of those economic realities. The concept of work as a universal duty and its elevation to a position of great dignity would have alone bestowed a vital impulse upon the economic life. The association of profit with risks, and the subsequent encouragement of direct investment into business ventures, which given the risk involved allowed the earning of profits without contravening the usury laws - another point on which theologians and jurists were in full agreement - must have certainly been another important contributing factor to the increase in the volume of trade and the ensuing change of those economic realities; particularly,
when one takes into account that it affected a broad category of contracts, including the sea-loan and other forms of insurance.\textsuperscript{450} Similarly, the popularity of lending to the public authorities,\textsuperscript{451} which generated a great deal of economic activity,\textsuperscript{452} may be linked to its approval by the Church.\textsuperscript{453} The development of banking along a certain path is also attributed to the ideas of the Church by Paul Einzig,\textsuperscript{454} and Raymond de Roover\textsuperscript{455} — though in general terms this is denied by Ovidio Capitani.\textsuperscript{456}

The attitude of the Church towards the acquisition of wealth was, no doubt, very significant for the development of the economy. In general terms, the Church found no fault with it, provided that it took place by lawful means, that it did not constitute an end in itself, and that the duties of man to his fellow man were not forgotten.\textsuperscript{457} So was the defense of private property, on grounds of efficiency, and in accordance to natural law,\textsuperscript{458} although its regulation was left to the local laws and customs,\textsuperscript{459} in the traditional way of the Church, who always displayed a preference for leaving to the \textit{lex loci} all aspects of positive law.\textsuperscript{460} Money was sometimes compared to a seed for its ability to fructify. This was acknowledged by Saint Thomas Aquinas,\textsuperscript{461} and San Bernardino da Siena said that money acquired "a seminal quality by being invested in a business venture and becoming capital,\textsuperscript{462} a quality that was implicitly recognised on some occasions.\textsuperscript{463} On the whole, however, the thinking of the Church on this matter does not appear to have been a very
clear one. 464 This is rather unfortunate, given the possible repercussions that a generalised recognition of the productive powers of money could have had in the economic ideas of the Doctors. It certainly complicated their analysis, but, as it was the case with other issues, the Scholastics differed in their basic reasons for the prohibition of usury, 465 and their interdiction of it was neither immutable nor absolute. The concept changed over time, 466 and the number of recognised valid titles to interest - including various types of rents-467 increased in response to new economic circumstances. 468 In some instances, as stated in Pontifical letters of authorisation, they merely confirmed an already established practice. 469 Worthy of careful consideration is the effect that a change in those economic circumstances and new opportunities for investment produced upon the arguments used by the Scholastics called upon to study and judge them from a moral standpoint. 470 Of course, as Joseph Schumpeter observes, the "Doctors did not much more agree on the theory of interest than do we," 471 and there is also a great deal of disagreement as to the possible impact of their ideas. 472 However, it seems worth mentioning that whilst rightly insisting that money in itself was not productive, Sant'Antonino explained that money capital was so because command of it was a condition for embarking upon business. 473 A little over a century later, Luis de Molina coined the significant phrase that money was the merchant's tool. 474
The Church was not only a mere observer and arbiter of the economic world. It was also an actor and an innovator in it, and one of considerable importance at that. The Teutonic Order, who lived under the Augustinian rule,\textsuperscript{475} is said by Armando Sapor to have put as much zeal into their converting activities as in their business pursuits.\textsuperscript{476} The Templars and the Orden of the Hospital quickly discovered, says Paul Einzig, that it was cheaper, safer, and faster, to make remittances and settlements via simple paper transfers than in bullion or specie, and this, Einzig emphasises, made a significant contribution to the development of business paper.\textsuperscript{477} Victor Brants concurs with him,\textsuperscript{478} and although in this, as in other cases, theory followed practice and custom,\textsuperscript{479} it is interesting to know that already Guillaume Durand, Bishop of Mende (1230-1297), a disciple of Hostiensis, provided samples of promissory notes and other commercial paper in his \textit{Speculum Juris}.\textsuperscript{480}

In a society with a large number of currencies, money exchangers played a necessarily important social and economic role.\textsuperscript{481} Hence, the early acceptance by the Church that they should profit from their work and service,\textsuperscript{482} and the public regulation of that profession.\textsuperscript{483} The Templars and other Religious Orders fulfilled that function to some extent, and, more importantly, that of depositors: receiving money for safe-keeping, holding it in recorded accounts, and making payments on behalf of the owners;\textsuperscript{484} as well as giving credit
to princes and prelates. Thus, to a very considerable degree, they were instrumental to the developing of banking, which was further stimulated by the Church's increasing use of private bankers, some of whom were officially appointed by the Holy See. The effect of the "Monts-de-Piété" on the evolution of banking should also be taken into consideration, aside from the fact that they gave an opportunity for relatively safe investment to private individuals.

Other branches of the Church pioneered improvements in agriculture and animal husbandry, as well as in the production of iron and manufacturing industries. An often neglected aspect of the Church as an economic actor are the challenges that were brought upon management itself. Aside from the expertise required to manage the bureaucratic structure of the Church, by far the largest of its time and the only truly "international" in nature, the collection of Church duties and the payment of expenses and subsidies meant exceedingly complex economic transactions - many with a high multiplier effect on the economy that demanded strict methods of control and some form of market forecasting. These managerial duties seem to have been performed with imagination and seriousness, and, at least, without insoluble problems. But beyond that, an analysis of the economic activities of the Encomienda de Zaragoza of the Orden de San Juan de Jerusalén, reveals a very clear managerial policy, taken in awareness of its impact.
evident, much later in Rome's able commercialisation of its alum from Tolfa. Though unfortunately, as far as we know, there is no comprehensive study of the managerial practices of the Church, an area that certainly deserves a thorough search, there is no want of further examples of imaginative and resourceful management. Many, of course, concern the generation of revenues from assorted assets to maintain hospitals and a vast array of charitable undertakings, and to discharge military obligations. An interesting instance in this regard is the rental of books on a yearly basis by means of a public auction, an able way of increasing the cash flow by satisfying the demand for scarce books.

To what extent those activities were well known or were an inspirational source outside the Church circles is, of course, difficult to establish in a precise fashion, but it should be taken into account that they could not have been carried out entirely in a vacuum, and in many instances they could not have even existed without multiple contacts with the outside world - without men responding positively to economic incentives and producing at least partially for the market in order to buy from the market. Although in all probability the economic activities of the Church increased the overall volume of the economy, the degree of influence that they exerted upon the economic thinking of the Scholastics is also hard to assess, aside from very specific circumstances. It should be borne in mind, however, that whenever the Church
performed economic actions it must have done so according to the economic principle, regardless of the ultimate aim of those actions. "The head of a monastery may well have no notions of aiming at the maximum profit and act entirely in the service of humanity, but in cultivating his fields, using raw materials, buying goods, and spending charitable gifts, he will be planning and acting in accordance with the economic principle. That is, he will be trying to fulfil a particular purpose with the minimum possible expenditure, in order to maximise the welfare from his fields, raw materials," and other means used to that end. 502 This common characteristic to all human action based on reason, is unlikely to have escaped the notice of the Scholastics, close as they were by virtue of their method to economic reality and to man as he is. This perception, therefore, along with the practical experience of many Doctors in high government and Church offices - or business, as in the case of Fra Santi (Pandolfo) Rucellai (1437-1497) 504 is likely to have contributed to the Scholastic's understanding and characteristic grasp of the economic conditions of their time, and also to the perceived applicability of many of their ideas. 505

It is thus possible to conclude this Chapter by stating quite categorically that the Church, as much as the civil authorities, appear to have been far from being antagonistic to trade and merchants. The perceived role of both in the welfare of the community clearly precluded that; even though, on occasions,
their ideas and their actions may have restricted trade and merchants, particularly when we analyse them on purely economic grounds and by today's standards. On balance, however, these restrictions on trade and merchants should perhaps be weighed against the ones that were actively sought by groups of merchants and other professional "universitas", opposed in theory by the Church, and not infrequently challenged in praxis at her behest. The seemingly popular views with regard to merchants reflected by the Arcipreste de Hita, and the ideas of Bishop Eiximenis and the other Peninsular Doctors examined in this Chapter, do not appear to have been at variance with those of their contemporary Churchmen and Scholastics in other areas of Christendom; therefore, to the extent that they mirrored the social climate in which trade and merchants existed, it may be said that the status of trade and merchants in the Peninsula did not differ significantly from that of other areas of Europe. On the whole, it hardly seems to have been an inhibiting factor for the presence of merchants or a society actively involved in trade and other economic endeavours.

The generally favourable status of trade and merchants in the eyes of the Church can also be corroborated by evidence of the factual support they received from the Church, encompassing as wide a time span as the development of the main ideas examined here. As early as 1074, a Pope of the stature of Gregory VII had no compulsions about defending in public a group of merchants and menacing the King of France with excommunication unless he
returned the goods he had unjustly taken from those merchants. In the Peninsula, the meeting of the stern challenge created by the re-population, an endeavour at which the Church herself was highly successful, is hard to imagine without the endorsement of trade and merchants by the Church. This approval is clearly discernible in Sahagún, "ciudad abadesa," where towards the end of the XI Century "ayuntaronse de todas las partes Burgeses de muchos é diversos oficios. E otro si personas de diversas é estrañas provincias é reynos, Gasciones, Bretones, Alemanes, Ingleses, Borgoñeses, Provinciales, Lombardos, é otros muchos negociadores é estraños lenguaxes." In 1099, fourteen years after the foundation of this town the chronicler could write with pride that "por quanto los burgeses de Sant Fagum usavan pacificamente de sus mercadurias é negociaban en gran tranquilidad por esso venian é traian de todas las partes mercadurias assi de oro como de plata, é aun de muchas vestiduras de diversas faciones, en manera que los dichos burgeses e moradores eran mucho ricos é de muchos deleites abastados."

In the XIII - XIV Century, Don García Martínez, Bishop of Murcia between 1279 and 1301, a great administrator and organiser, did much to favour the economy of that city. In the XV Century we see that a Bishop of the ecclesiastical and political calibre of Don Lope Barrientos, Bishop of Cuenca from 1444 to 1469, was as enthusiastic and tireless in promoting the commercial interests of the "vesinos y naturales" of Cuenca in the fairs of Medina,
as the contemporary "Consejos" of many Castillean cities in defending their economic privileges or advertising their fairs. In his last will the Bishop Don Lope Barrientos stated that "gracias a sus buenos oficios, se le había concedido mercado franco a Cuenca, hecha franca de pedidos y monedas y dispuestos ciertos capitulos y ordenanzas para el buen gobierno de la ciudad." It is obvious from his words that he considered equally valuable the good government and the economic advantages that he had obtained for the city, and that he was proud of his achievements. His satisfaction with the economic accomplishments attained during his time of office echoes that expressed by Abbot Vitulo and Bishop Juan de Valpuesta seven centuries before him, in the early days of Castille.

Indeed, without a clear understanding of homo oeconomicus by the Church and her members, and their consistent and unambiguous support of merchants, trade and economic activities in general, it is difficult to visualise how that great Kingdom could have come into being. Of course this general attitude of the Church must have experienced differences of degree over time. Personalities and circumstances can be counted on having had that effect. By and large, however, we have found little in the basic position of the Church examined in this Chapter that can be regarded as a deliberate obstacle for the presence and manifestation of entrepreneurial spirit or the development of an active economy in the Peninsula.
CHAPTER III

THE STATUS OF TRADE AND MERCHANTS

IN THE EYES OF THE CHURCH

Notes and References

1. Luis García de Valdeavellano y Arcimis, Sobre los Burgos y los Burgueses de la España Medieval, Madrid, Real Academia de la Historia, 1960, p. 158.


3. Around 1384.


5. Padre Daniel de Molins de Rei, O.M.Cap., Introduction to Francesc Eiximenis, Regiment de la Cosa Publica, Barcelona, Els Nostres Classics, 1927, pp. 7-12.
   Jill Webster, edit.; Francesc Eiximenis, La Societat Catalana al Segle XIV, a cura de Jill Webster, Barcelona, Edicions 62, 1967, pp. 5-6.


7. Ibid., Les especials belleses de la Ciutat de València, pp. 22-35.

8. Ibid., Introducció (P. Daniel de Molins de Rei), p. 10.

9. Ibid., Capitol XXXIII, Com los mercaders son vida de la cosa pública, p. 168.

10. Las Siete Partidas del Sabio Rey Don Alonso El Nono, glosadas por el Licenciado Gregorio López, del Consejo Real de Indias de S.M., Madrid, En la Oficina de Benito Cano, Año de MDCCCLXXXIX, Tomo II, Quinta Partida, Título VII, Ley IV, pp. 723-724, "Las tierras e los lugares, en que vstan los mercadores a leuar sus mercadurias, son porende mas ricas,
e mas abondadas, e mejor pobladas: e por esta razon deue plazer a todos con ellos...


12. Ibid., 169.

13. Ibid., Capitol XXXIV, Com los mercaders deuen esser afavorits, pp. 169-170.

14. Ibid., in this case he mentions Filogolus - p. 168, 1.7, an author that the commentator of this edition, Father Molins de Rei, has not been able to identify - Notes, p. 201.

15. This is quite noticeable in his awareness of the labours and, above all, the risks and losses to which the merchants were exposed. They are, of course, inherent elements of any normal business activity, but, unfortunately, far too often overlooked by commentators, whether they happen to be old or contemporary ones.

16. Luciano Pereña, edit., Francisco de Vitoria, Escritos Políticos, Buenos Aires, Ediciones Depalma, 1967, (El Pensamiento Político Hispanoamericano, Directores: Guillermo A. Lousteau Hégu y Salvador M. Lozada, Vol. 2), p. 93 (379) "Se insiste: la republica cristiana, ayn en orden a lo espiritual, es un cuerpo, como dice San Pablo a los Romanos (Rom., 12,4,) y a los Corintios (1 Cor., 12,12); y en el cuerpo natural, lo que conviene a una parte tan principal y primeramente, conviene también al todo." This shows that this conception of society had common currency even amongst the XVI Century Scholastics, of whom Vitoria, the founder of the School of Salamanca, was an outstanding figure.

St. Thomas Aquinas, Summa Theologiae, Volume 28, Law and Political Theory (Taæae. 90-97), Latin text, English translation, Introduction, Notes, Appendices & Glossary, Thomas Gilby, O.P., Cambridge, Blackfriars, 1966, p. 172, "The Pauline comparison of the Church to a physical body made up of diverse members - I Corinthians 12, 12-26, Ephesians 4, 6-16 formed a favourite allegory to medieval social philosophers, yet in the Summa the State is never regarded as a real person or organism, and the Church is called a mystical body only by metaphor."

17. Eiximenis, Regiment, p. 41, "La quarta es que la cosa pública es composta sumariament de tres estaments de persones, co és, de menors, mijanes e majors. E aquesta composició aitall'és així com un cos humanal compost de diversos membres; e així ho diu sant Pau (Ad Romanos, XII): Sicut in uno corpore multa
membra habemus, omnia autem membra non eundem actum habent, ita multi unum corpur sumus in Christo; et vol dir que aici com diverses membres fan un cos qui han diversos oficis en l'hom, aixi diverses persones e oficis ajustats fan un cos e una communitat, la qual és apellada la cosa pública crestiana."


19. Eiximenis, Regiment, p. 40

20. Ibid., 40-41, "La terça és que tots los hòmens de la comunitat no poden ésser iguals. Apar aquesta proposicio per la segona, car puix la un ajuda a l'altre segons son estament, aixi com diu la segona, com les dites diverses necessitats dels hòmens requereix ajudes de oficis no iguals, apar que los hòmens no són iguals de oficis en llur estament."

Victor Brants, L'Economie politique au Moyen-Age, Esquisse des Theories Economique professées par les Ecrivains des XVIIe. et XIVe. siecles, New York, Burt Franklin, 1970, Originally published by Peeters, Louvain, 1895, pp. 76-77; "De meme que dans la societe des abeilles, les fonctions se trouvent reparties entre les membres de la tribu, de meme doit-il en etre dans les cités des hommes. Les besoins en effet sont multiples; un seul homme ne pourrait suffire a y satisfaire. Il faut de toute necessite que les membres de l'humanite se divisent entre les travaux divers... Cette distribution des hommes entre les carrières diverses se fait conformément a la vocation et aux aptitudes de chacun, sous l'action de la Providence divine." - p. 77.


21. "Republicae" is used here in the Medieval sense of jurisdicational units, regardless of their nature. "International" is, therefore, used with a wider connotation than the current usage.

22. Brants, L'Economie Politique, p. 210 "Mais il est difficile de trouver un pays qui ait tout en lui meme, et qui n'ait pas besoin d'importation. Toute societe bien constitutee a donc
besoin d'un certain commerce. Ses propres productions
d'ailleurs, finiraient par lui être nuisibles par leur
surabondance s'il n'y avait des marchands pour les transporter
sur d'autres marchés."
"On remarquera cependant qu'il en
apprecie exactement la raison d'utilite et l'avantage d'une
importation comme d'une exportation des produits pour le

23. Ambtore Fanfani, Storia delle Dottrine Economiche. Il
Volontarismo, Milano Messina, Casa Editrice Giuseppe
Principato, Terza Edizione, 1942, p. 112, "Infatti si nota
che difficilmente si può trovare un luogo così abbondante
di tutto che non abbia bisogno di nulla dal di fuori '(S.
Thom., De reg. princ., I,II,c. III)'."

24. Raymond de Roover, San Bernardino of Siena and Sant'Antonino
of Florence. The Two Great Economic Thinkers of the Middle
Ages, Publication Number 19 of The Press Library of Business
and Economics, Editor: James P. Baughman, Cambridge, Mass-
achusets, Harvard University Printing Office, 1967, p. 10,
"Saint Thomas Aquinas had already shown the way by stating
that merchants perform a useful function in providing the
commonwealth with indispensable commodities from abroad
provided they do not seek gain for the sake of gain but as
a just reward for their exertion." (Thomas Aquinas, Summa
Theologica, II- II, qu. 77, art. 4, resp. (Parma ed., III,
279)).

25. Eiximenis, Regiment, Capitol XXVIII, pp. 152-156.

26. Ibid., Capitol XXIX, pp. 156-158.

27. Webster, Francesc Eiximenis, Els metges, pp. 52-53.

28. Jose-Luis Martin, "La Sociedad Media e Inferior de los
Reinos Hispánicos", Anuario de Estudios Medievales, 7,

29. Eiximenis, Regiment, Capitol XXIX, pp. 156-158.

30. Ibid., Capitol XXX, pp. 158-161.

31. Raymond de Roover, La Pensée Economique des Scholastiques.
Doctrines et Méthodes, Conférence Albert-Le-Grand 1970,
Montreal, Institut d'Etudes Médiévales/Paris, Librairie
J. Vrin, 1971, pp. 16-17.

St. Thomas Aquinas, Commentary on the Nicomachean Ethics,

32. Ibid., Lecture IX, V.L. IX, "that human demand connects
everything as by a kind of measure is evident because when men are so mutually situated that both or at least one is not in need, they do not exchange their goods. But they engage in exchange when one needs what the other has, e.g., wine, and they give grain for it. An equation then must be made of these goods" -(985), p. 424; also V.L. IX: C 978-991, pp. 425-428.


34. Webster, Fransc Eiximenis, p. 6.

35. De Roover, San Bernardino, p. 13

36. Ibid., --. 14-16.


38. Joseph A. Schumpeter, History of Economic Analysis, Edited from manuscript by Elizabeth Boody Schumpeter, New York, Oxford University Press, 1961, First Printing 1954, pp. 84-87, "Scholastic sociology and economics, in particular, are strictly individualist, if we understand this to mean that the doctors, so far as they aimed at description and explanation of economic facts, started invariably from the individual's tastes and behavior." - pp. 86-87.


de Roover, San Bernardino, pp. 10-16.


43. Grice-Hutchinson, The School of Salamanca, passim.

Hoffner, Wirtschaftsethik, pp. 102-110.

44. Ibid., 111-146.

45. de Roover, La Pensée Economique, pp. 63-65.

The Encyclical Letter Rerum Novarum, of Pope Leo XIII (May 15, 1891), has been considered by many as a forerunner of that current of thought, perhaps, we think, with insufficient regard for the very careful wording of this justly famous document and the particular historical circumstances at the time of its writing. Vide text in: Rev. John J. Wynne, S.J., ed., The Great Encyclical Letters of Pope Leo XIII, New York/Cincinnati/Chicago, Benziger Brothers, 1903, pp. 208-248, particularly pp. 238-239.


47. Fanfani, Le origine, passim, and especially p. 62.


48. Hoffner, Wirtschaftsethik und Monopole, Passim, particularly pp. 82, 92-94.


--------, La Pensée Economique, pp. 24-25, 72, 74-75.

--------, San Bernardino, p. 42


52. de Roover, La Doctrine Scolastique, p. 161, 165.


54. Ibid., Tomo III, Apéndice Numero 39 (segundo), Hordenanzas de los pañoseros de Durango (1496), pp. 724-730. Vide for instance "Capitulo de los que hacen vetas e Ruetas de la lana besinos desta villa no seyendo oficiales de esta cofradia," p. 728.


kunstgewerblichen Technik. Ich persönlich halte sogar eine solche Beeinflussung für wahrscheinlich; mehr lässt sich leider nicht sagen."—p. 234. The very careful wording and tentative nature of this statement should be taken into account.

60. Höffner, Wirtschaftsethik und Monopole, p. 76, ref. 2, "Ostrom war bekanntlich ein 'Paradies der Monopole und Privilegien'."


62. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen Vermieter: Ferrara 1112 (S.38), Bologna c. 1250 (S.46), Verona um 1260 (S.23), Siena 1262 (S60), Basel 1271 (S.133)."

63. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Käufer: Pistoia 1177(S.22), Verona 1209-28 (S.20), Parma vor 1233 (S.47), Padua 1236 (S.24), Bologna 1248 (S.45), Genoa 1280 (S.59), Pisa 1286 (S.61), Ferrara 1287 (S.40), Florenz 1290 (S.59), Montpellier 1204 (S.71), Avignon 1243 (S.69), Poitiers 1247 (S.75), Chartres 1249 (S.79), Douai 1250 (S.97), Marseille 1255 (S.69), Tulin (S.79), Köln 1258 (S.130), St. Poitens 1260 (151), London 1262 (?), 1321 (S.149ff.)."

64. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Unternehmer: Piacenza v. 1250 (S.52), Bologna 1288 (S.44), Paris 1268 (?), (S.88), Saint-Omer v. 1281 (S.101), London 1201 (?) (S.139), Leicester 1265 (S.143ff.), London c. 1290 (S.144ff.)."

65. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Rohstoffverkäufer: Bologna 1259 (S.46), Genoa 1280 (S.46), Pisa 1286 (S.61), Ferrara 1287 (S.40), Marseille 1255 (S.69)."

66. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Arbeiter: Ferrara 1112 (S.98), Bologna c. 1250 (S.46), Verona um 1260 (S.22), Basel 1276 (S.133), London 1261 (S.151)."

67. Ibid., 20.

Höffner, Wirtschaftsethik und Monopole, pp. 81, 92-94.


Ibid., 21.

Höffner, Wirtschaftsethik und Monopole, pp. 81, 92-94.
Mickwitz, Die Kartellfunktionen, p. 21.

71. Ibid., p. 21, ref. 1, "Bei jedem einzelnen Monopol waren die Leidenden den Gewinnenden gegenüber in der Mehrzahl. So kann man es verstehen, dass die Stadt gegen Massnahmen eingriff, die jeder Bürger in seinem eigenen Gewerbe sicherlich billigte. Die Patrizier waren wohl immer Gegner der Monopole."

73. Höffner, Wirtschaftsethik und Monopole, pp. 76, 82.
75. de Roover, La Doctrine Scolastique, pp. 167-179.

Mut Remola, La vida económica, pp. 251-252, Documento Anexo num. 20, Jaime II revokes - 1315 - privilege of shoemakers of Lérida to prohibit the sale of shoes made outside, at the request of the City Council.
78. Höffner, Wirtschaftsethik und Monopole, pp. 75-76.
79. Ibid., 76.
80. Ibid., 76.

Höffner, Wirtschaftsethik und Monopole, p. 76.
A. Teetaert, "Raymond de Penyafort (Saint), Dictionnaire de Théologie Catholique, Tome Treizième, Deuxième Partie, pp. 1806-1823.
82. Brants, L'Economie Politique, p. 205.

   de Roover, La Doctrine Scolastique, p. 162

83. Hence, known and much quoted under the name Hostiensis.

84. Höffner, Wirtschaftsethik und Monopole, p. 76

85. Ibid., 77.

86. Ibid., 77.


88. de Roover, La Doctrine Scolastique, p. 161.


90. Tozzi, I fondamenti, pp. 189-190.

91. de Roover, La Doctrine Scolastique, p. 161.

92. de Roover, San Bernardino, passim.

   F. Vernet, "Bernardin de Sienne (Saint)", Dictionnaire de Théologie Catholique, Tome Deuxième, pp. 787-791

93. de Roover, La Doctrine Scolastique, pp. 161-162.

94. de Roover, San Bernardino, passim.

   P. Mandonnet, "Antonin (Saint)", Dictionnaire de Théologie Catholique, Tome Premier, Deuxième Partie, pp. 1450-1454.

95. de Roover, La Doctrine Scolastique, p. 162.


98. Höffner, Wirtschaftsethik und Monopole, p. 77, "Kennzeichnen wir noch einmal kurz die wesentlichen Lehren der Hochscholastik. Bei der Ablehnung der Monopole beruft man sich nicht auf die "Idee der Nahrung"; man lehnt sie auch nicht deshalb ab, weil
man etwa dem Handel als solchem feindlich gesinnt wäre; man stellt vielmehr die Monopole dem Betrug, der Forderung ungerechter Preise gleich, wobei die Preisgerechtigkeit nicht aus der „Nahrung“, sondern, letztlich und praktisch, aus der „allgemeinen Marktschätzung“ abgeleitet wird (Albert und Thomas)."

99. Ibid., 77-78, "Freilich ist die Ablehnung des Monopole noch nicht ausdrücklich als Folgerung aus der Preislehre gezogen worden, wie es die späteren Scholastiker tun. Überhaupt werden die Monopole fast nur in den für die Praxis bestimmten „Beichtvorschriften“ erwähnt, während die Theoretiker sie entweder gar nicht nennen (Duns Scotus) oder nur nebenbei darauf hinweisen (Albert und Thomas)."

100. Ibid., 78, "Dem Handel, den die Hochscholastik trotz aller Bedenken für nützlich und notwendig hält, werden zwei Schranken gesetzt. Der Kaufmann muss sich vor Lug und Betrug, wozu auch die Monopolbildungen gehören, hüten; er muss ferner seiner Tätigkeit ein ehrenhaftes Ziel geben: Unterhalt der Familie, Unterstützung der Armen, Dienst an der Gesamtheit."

101. Ibid., 92-94.

de Roover, La Doctrine Scolastique, p. 151.


103. Höfner, Wirtschaftsethik und Monopole, passim.

104. de Roover, La Doctrine Scolastique, pp. 149-166.

-------, La Pensée Economique, passim.

-------, San Bernardino, passim.


106. Schumpeter, History of Economic Analysis, p. 86, "Therefore, the reader should not be shocked to learn that the individualist streak in medieval thought also was much stronger than is commonly supposed. This is true, both in the sense that opinion was much more differentiated individually and in the sense that the individual phenomenon and (in speculations about society) the individual man was much more carefully attended to than we are apt to think."

de Roover, La Doctrine Scolastique, p. 153.

-----, La Pensée Economique, p. 57.

108. Hoffner, Wirtschaftsethik und Monopole, pp. 72-75.

de Roover, La Doctrine Scolastique, p. 153.

-----, La Pensée Economique, pp. 57-59.

Sapori, Il giusto prezzo, pp. 265-303, and particularly 280-281, 286.


Barbieri, Le dottrine economiche, p. 47.

109. de Roover, La Doctrine Scolastique, p. 152.

Schumpeter, History of Economic Analysis, pp. 60-62, 93.


de Roover, La Doctrine Scolastique, p. 152.

111. Ibid.,

112. Ibid., 153.

Brants, L'Economie Politique, pp. 198-199.

Fanfani, Le Origini, p. 11, "Per Aegidius Lessinus - a disciple and commentator of Saint Thomas - tantum res a estimatur juste, quantum ad utilitatem possidentis refertur, et tantum juste valet, quantum sine fraude vendi potest."

de Roover, La Pensée Economique, pp. 58-59; "C'est aussi l'opinion du Cardinal Cajetan, le commentateur le plus autorisé de la Somme de théologie, que définit le juste prix 'celui couramment obtenable des acheteurs en présupposant qu'ils soient bien informés et en l'absence de tout dol et de toute contrainte'." - p. 59.

Sapori, Il giusto prezzo, pp. 280, 284-286.

Tozzi, I fondamenti, pp. 184-197, particularly pp. 184 and 197.


Höffner, Wirtschaftsethik und Monopole, p. 74, "Der Kaufmann darf seine Kosten im Preise veranschlagen, z.B. die Arbeit an den Waren und die Transportauslagen."

de Roover, La Pensée Economique, pp. 59-61.

Sapori, Il Giusto Prezzo, p. 277, "...perché lo stesso Aquinate esclude la possibilità di una determinazione assunta del giusto prezzo quando dice che l' 'iustum pretium', da stabilirsi in base a stima, non è esattamente precisabile, e che è lecita la vendita il cui prezzo oscilla non troppo al di sopra o al di sotto di quel giusto: 'quod ideo dico, quod iustum pretium rerum non est punctualiter determinatum, sed magis in quadam aestimatione consistit; ita quod modica additio, vel minutio non videtur tollere aequalitatem iustitiae'."

Tozzi, Il fondamenti, p. 188.


de Roover, La Pensée Economique, pp. 57-59.

Sapori, Il Giusto Prezzo, pp. 278-287.

Tozzi, Il fondamenti, pp. 189-190, 200-219, particularly pp. 206 and 214.

115. Father Dominic and the Father Superior of the St. Joseph Franciscan Convent of Montreal were exceedingly helpful in obtaining data and explaining to us the life and work of Father Oliv.


117. Paul Thomas, Essai sur quelques théories économiques dans le Corpus Juris Civilis. (De la Richesse - De la Valeur - De la Circulation des Biens - Du Crédit). New York, Burt
Franklin, Reprinted in 1970, Originally Published in 1899, pp. 40-41.

118. Ibid., 40-43.

119. de Roover, San Bernardino, pp. 18-20.

120. Ibid., 19-20.

de Roover, La Doctrine Scolastique, pp. 156-157.


de Roover, San Bernardino, pp. 14-16.

-------, La Doctrine Scolastique, p. 158.

122. Brants, L'Economie Politique, pp. 72-73, "Cette valeur usuelle dépend de trois facteurs essentiels: Virtuositas, c'est l'utilité directe, c'est ainsi qu'un bon pain de froment vaut plus qu'un pain de seigle. Raritas, qui est la difficulté de se procurer la chose et c'est ainsi que le blé devient plus cher en temps de disette et que les quatre éléments, l'air, l'eau, etc., sont partout estimés moins que l'or bien qu'ils soient plus utiles à la vie. Placibilitas, l'idée qu'on a de l'avantage d'une chose, c'est ainsi qu'un ornement est plus estimé qu'un autre..." - (Summ. theol. vol. 2, tit. 1, cap. 16).

Hoffner, Wirtschaftsethik und Monopole, p. 86, "... Antonin von Florenz drei Preisbestimmungsgrunde aufgezählt: Zunächst die Nützlichkeit einer Ware; nicht alle Güter erfüllen ja in gleicher Weise unsere Bedürfnisse. Sodann die Seltenheit, die in der Knappheit des Vorkommens und in der Schwierigkeit der Beschaffung einer Ware besteht. Dazu gehören auch die „Arbeiten, Mühlen und Auslagen." An dritter Stelle hatte Antonin noch das besondere Wohlgefallen an gewissen Waren, z.B. an Pferden und Schmuckstücken, genannt, woraus sich „ein nicht geringer Teil des Wertes" ergebe." (Secunda pars totius summe majoris, Tit. I, cap 16, § 2-3.)

123. de Roover, San Bernardino, pp. 22-23.


de Roover, La Pensée Économique, pp. 61-62, "Partant du principe que le marchand remplit une fonction utile à la société, Jean Duns Scot exprime l'avis qu'il peut vendre sa marchandise à un prix suffisant pour lui permettre de subvenir à ses propres besoins et à ceux de sa famille."
(Quaestiones in Librum IV Sententiarum. dist. XV. qu. 2, 
num. 22; Opera Omnia, XVIII, pp. 317-318).

125. de Roover, La Pensée Economique, pp. 61-62.

126. Höfner, Wirtschaftsethik und Monopole, p. 77, "Auch dieser 
Hinweis auf die behördliche Preisregelung ist wohl nicht bloss 
durch die damaligen städtischen Preisaxen, sondern in dieser 
Form wiederum durch einige Gesetzestexte der Spätantike 
veranlasst worden."

de Roover, La Doctrine Scolaistique, p. 176, ref. 125, "Un 
des premiers juristes a justifier la fixation des prix par 
les pouvoirs publics est Alberto Gandino dont la vie active 
s'est étend de 1281 à 1305." This shows, once more, how the 
thinking of the Doctors and that of the Jurists tended to 
concur in these matters.


128. Loc. Cit., "Wenn in diesen spätromanischen Texten neben den 
Stadtprefekten auch die Bischofe mit der Preisregelung 
beautraut werden, so ist das geschichtlich zu verstehen. Die 
Scholastik hat keineswegs, wie wir noch sehen werden, daraus 
den Schluss gezogen, dass die Kirche, wie WILHELM ENSERMANN 
behauptet, "in allwaltender Fürsorge" die Preise festzusetzen 
habe."

129. de Roover, San Bernardino, p. 23.

130. Höfner, Wirtschaftsethik und Monopole, pp. 79-82.

131. Ibid., 79.

132. Ibid., 80.

133. Höfner, Statik und Dynamik in der scholastischen 
Wirtschaftsethik, Arbeitsgemeinschaft für Forschung des 

134. de Roover, La Doctrine Scolaistique, p. 151.

------, Le Pensée Economique, pp. 63-65.

135. P. Vignaux, "Nominalisme", Dictionnaire de Théologie Catholique, 
Jome Onzième, Première Partie, pp. 717-784. In fact, as the 
author points out, the differences of opinion amongst the 
"Nominalists" were not confined to their economic ideas: 
"Qu'il y ait un ou plusieurs nominalismes dédiéaux il 
s'agit toujours de la constitution d'especes philosophiques 
et théologiques distinctes: problème qui paraît d'une extrême 
difficulté a l'histoire doctrinale, de plus an plus défiante 
des generalisations et préoccupée de sauver la singularité des
doctrines." - p. 717.


137. Brants, *L'Economie politique*, pp. 69-71; and de Roover, *La Pensée Économique*, pp. 46-48, consider Buridanus one of the most lucid exponents of the doctrine of value. Raymond de Roover sustains that his analysis of value was unsurpassed by any of the predecessors of Adam Smith, and that it was considerably superior to that of Adam Smith himself - p. 48.


139. Ibid.

140. Ibid., 82, "Gewisse Anklänge an HEINRICH VON LAGENSTEIN finden wir in den Schriften des Kanzlers der Pariser Universität JOHANNES GERSON (geboren 1363, gestorben 1429); er studierte seit 1377 zu Paris, also noch zur Zeit, da LANGENSTEIN dort lehrte."

L. Salembier, "Gerson (Jean le Châlier de)", *Dictionnaire de Théologie Catholique*, Tome Sixième, Deuxième Partie, pp. 1313-1330.

141. Ibid., 82-83, "Wegen der verschiedenartigen und verderbten Strebungen der Menschen", so schreibt er, lasse sich der gerechte Preis nur schwer finden. Der "Weise" solle ihn festsetzen: "Keiner aber darf für weiser gehalten werden als der Gesetzgeber; deshalb ist es vor allem seine Aufgabe, den gerechten Preis, soweit nur möglich, zu bestimmen."

"Macht doch die Preise," so fährt er fort, "wie wir es bei Brot und Wein sehen, für alle Waren behördlich bestimmt werden; dann würde das nicht bloss nutzlose, sondern verlogene und gottlose Feilschen aufhören, das wir täglich zwischen Käufern und Verkäufern beobachten.... Es ist schwer, das geben wir zu, aber es liesse sich bei Menschen guten Willens in heilsamer Weise durchführen: ihnen zum Frieden und Gott zur Ehre"." (Tractatus et libri Johannis gerson, Colonie 1484, Bd. IV., Tractatus de contractibus, Consid. 19, fol. 258 b.)

After the careful analysis of Cardinal Höffner, the interpretation of Raymond de Roover appears to be a little too strong - *La Doctrine Scolastique*, p. 155, particularly ref. num. 17.

Brants, L'Economie Politique, pp. 186-193, "Le traité de
Nicole Oresme... c'est un des premiers qui soit consacrée
ex professo à un sujet économique... (L'invention des monnoies)"-
p. 190.

143. Hoffner, Wirtschaftsethik und Monopole, p. 83.

144. Ibid., 84, "Auch die Nominalisten lehnten die Monopole
auf Grund der Lehre vom gerechten Preis ab, mag dieser nun
der freie Marktpreis oder der behörlich festgesetzte Preis
sein."

145. Ibid., 80.

146. Ibid., 81.

147. Ibid., 84.

148. Ibid., 83.

149. Ibid., 84.

In this, as well as in other aspects regarding the views of
Oresme, the analysis of Cardinal Hoffner concurs with that

150. Amman, Oresme, pp. 1405-1406, Oresme was the Bishop of
Lisieux and a King's Councillor, and before that he was
the "Grand-Maître" of the famous Collège de Navarre, at
the University of Paris.

Brants, L'Economie Politique, pp. 186-187, attributes to the
writings of Buridanus, Oresme, Philippe de Maizières,
Jacques Coeur, and many others, which were inspired by those
calamitous economic policies, a very salutary influence
upon the French public finances.

151. Hoffner, Wirtschaftsethik und Monopole; pp. 84-101; "Bemerkenswert
ist vor allem der empiristische Zug dieser Richtung. Er wurde
auch von der späteren Scholastik übernommen und hat sich dort
bei der Behandlung wirtschaftsethischer Fragen entsprechend
ausgewirkt." p. 84. (Here, he refers specifically to XIV C.
Nominalists.

152. de Roover, La Doctrine Scolastique, pp. 155-156.

153. Hoffner, Wirtschaftsethik und Monopole, p. 84, "Es gelang dem
Nominalismus nicht, die thomistische Scholastik zu verdrängen."

154. Ibid.


157. Ibid.

158. Ibid.

159. Ibid., 86.

160. Ibid., 86-87, (1). With characteristic perspicuity Summenhart excluded the excess portion paid for idiocy, error, or too much largesse of the merchant, when the market price sunk below the purchase price.

161. Ibid., 87, (2).

162. Ibid., (3).

163. Ibid., (7), "Die Verkaufstaf; denn, wera eine Ware im Kleinhandel verkauft, darf einen höheren Preis fordern als der Grosshändler; hat er doch mehr Arbeit, längere Lagerhaltung usw."

164. Ibid., 86-87, (1).

165. Ibid., 87-88, (11), "Die Grösse des Bedarfs is also der Masstab, mit dem man die Grosse das Gebrauchswertes einer Ware misst". "A greater demand, thus, measures the utility value of a good.

166. Ibid., 88, (14), "Die Seltenheit einer Ware"; denn durch die Seltenheit steige die Wertschätzung.

167. Ibid., 88-89, (15), "Das allgemeine besondere Gefallen"; an bestimmten Waren. Wie man nämlich bei geringer Nachfrage billiger verkaufen müsse, so dürfe man auch eine Ware „desto teurer verkauften, je mehr sie von den Leuten nachgefragt werde".

168. Ibid., 87, (4), "Die vernünftige Sorgfalt und Achtsamkeit" beim Transport, bei der Lagerung und Herstellung der Waren; "denn diese Sorge ist bitter und schwer".

169. Ibid., (5), "Die fleissigen Überlegungen beim Auseindigmachen, beim Transport und, bei der Lagerung" der Waren; "denn ein eiferger Kaufmann überlegt bis ins kleinste, wo man die Waren billig einkaufen könne".
170. Ibid., (10).

171. de Roover, La Doctrine Scolastique, p. 154.

172. Ibid., 157.


174. Höfner, Wirtschaftsethik und Monopole, p. 87, (6), "Das Risiko; denn das Risiko ist eines Preises wert; mancher wurde oft eine grosse Summe Geldes zahlen, um versichert zu sein...".

175. de Roover, La Doctrine Scolastique, p. 156.

-----, La Pensée Economique, p. 65.


177. de Roover, La Pensée Economique, pp. 56, 66, "...sed in justitia non variatur medium secundum diversas personae conditiones sed attenditur solum ad quantitatem rei. Qui enim emit rem aliquam, debet tantum solvere quantum valet, sive a divite emat." - (Quodlibet 6, art. 10) - p. 56, ref. 89. Amongst the early Scholastics, Albertus Magnus was even more explicit than his disciple on this point - vide p. 66, text in ref. 118.

178. Brants, L'Economie Politique, p. 197, "Des circonstances particulières peuvent également, dit le saint docteur, justifier un curcroît de prix. Tel serait le cas du dommage causé au vendeur par la privation de la chose, qu'il consentirait à céder pour satisfaire au désir de l'acheteur."

Höfner, Wirtschaftsethik und Monopole, p. 88, (12), "Der entgangene Gewinn", wer nämlich eine Ware, die er selbst nutzbringend verwenden kann, auf dringende Bitten hin verkauft, darf den entgangenen Gewinn im Preise veranschlagen, jedoch nicht den besonderen überdurchschnittlichen Nutzen, den der Käufer aus der Ware zieht."

179. Ibid., (13)

de Roover, La Pensée Economique, p. 71.


181. Ibid., 87, (8); 88, (13).
182. Ibid., 88-89, Cardinal Höfner thinks that due to the fact that Summenhart always cites Heinrich von Langenstein on the subject of price regulation by the authorities, because he was the one who wrote more about it, one feels that that was an area of special influence of the Nominalists over the followers of Saint Thomas Aquinas - p. 89.

183. Ibid., 101.

184. Ibid., 89, (16), "Der Rat eines zuverlässigen und weisen Mannes", an den man sich halten solle, wenn die fünfzehn anderen Bestimmungsgründe ganz oder zum Teil unanwendbar seien.

185. Ibid., 86.

186. Ibid., ref. 3.

187. Ibid., 89.

188. Ibid., 89-90.

189. Ibid., 90.

190. Ibid.

191. Ibid.

This interpretation appears to be in agreement with the much earlier ones of Saint Thomas Aquinas and Henri de Cant, according to Victor Brants, - L'Economie Politique, pp. 198-199, "Le principe: Res tanti valet quanti vendi potest, peut être exact en fait, ce n'est pas un droit et on ne peut abuser de la situation de la acheteur ni du vendeur." - p. 199.


193. Vide Ref. num. 113 in this Chapter.


195. Vide Ref. num. 141 in this Chapter.


The notion of a Justum pretium summum, medium et infimum, current amongst the canonists, is linked by Victor Brants to the difficulty of defining - already admitted by Saint Thomas Aquinas - with any degree of precision what "in quadam aestionem" really meant with regard to the price of a product, since it did not provide an absolute, exact, final answer.
L'Economie Politique, p. 74.

197. Höfner, Wirtschaftsethik und Monopole, p. 91. Summenhart's support, however, was not unqualified. An analysis of his thoughts about merchants and commerce reveals that he considered trade to be a profit and loss system, and that it was very much up to the individuals taking part in it, to their personal qualifications and diligence, to make, on the average, a success of it. - Vide Ref. num. 160, 168, and 169 in this Chapter.

198. Ibid.
199. Vide Ref. 113 - de Roover - in this Chapter.

200. Höfner, Wirtschaftsethik und Monopole, p. 91, "...den Stand oder Beruf der Kaufleute und die Handelsgeschäfte nicht deshalb verleiten, weil dabei Sünden geschehen; denn das sind keine Laster des Berufes oder Geschäftes, sondern der Menschen, die diesen Beruf nicht richtig ausüben."

201. Ibid.
202. Ibid.
203. Ibid., 92, Tractatus de contractibus Mercatorum, fol. 7a.
204. Ibid., 92-93, Summa Angelica de casibus conscientiae, Venetiis, 1504. Verbo: restitutio, fol. 443.
205. Ibid., 93.
206. Ibid., 92-93, (1); (2), Summenhart and Kuppener denounced price agreements amongst merchants for their exclusive benefit.
207. Ibid., 93, (3).
208. Ibid., (5).
209. Ibid., (4).


211. Ibid., 84.
212. Vide Ref. num. 50, 51, and 52, in this Chapter.

213. Höfner, Wirtschaftsethik und Monopole, p. 94, "Die Unverlaubtheit der Monopole, so fährt Sommerhart fort, ergibt sich aus der staatlichen Gesetzgebung und aus der natürlichen Vernunft."

214. Ibid., 93, (2).

215. Ibid., 94.


217. Höfner, Wirtschaftsethik und Monopole, p. 94.

218. Ibid., 81, he considered the profits arising from such bulk purchases a damnable gain - "einen schändlichen Gewinn zu machen."

219. Ibid., 94-95.

220. Ibid., 95.

221. Ibid.

222. Ibid.

223. Ibid., "Es ist bemerkenswert, dass Antonin eine gewisse Ähnlichkeit zwischen behördlicher Preisregelung und privater Monopolbildung erkannst hat. Bedenklich ist es freilich, dass er auf Grund dieser Ähnlichkeit auch private Preismonopole zulässt."

224. Ibid., Summa Roselle de casibus conscientiae, verbo: emptio et venditio, num. 23, fol. 76.

225. Ibid., 95-96, Summa Sylvestrina, verbo: emptio, num. 7 and 19.

226. Ibid., 96, Tractatus restitutio, usurarum et excommunicationum, s. t. 1489. Verbo: Usuro.

227. Ibid., Interrogatorium sive Confessionale, s. l. (probably abridged around 1485), De statibus, cap. XI.

228. Ibid., De Usuris. Piscie 1490. Quaero XLIII.

229. Ibid., De usuris, s. l. Cap. : Quibus sit prohibitum mercari.

230. Ibid.
231. Ibid.


233. Höffner, Wirtschaftsethik und Monopole, p. 97; Vide ref. num. 141 in this chapter.

234. Ibid., "Wenn der Gesetzgeber das alles klug überlegt, kann er den gerechten Preis der Waren abschätzen und festlegen".

235. Ibid., "die Nachfrage wird aber dringender, wenn die Menge der Waren, nach denen die Leute verlangen, sich verringert, wenn die Zahl der Nachfragenden wächst und es schwer ist, die Waren zu beschaffen".

236. Ibid., 86.

237. Ibid., 97, "bei Wein und Bier ist es nicht so wegen der verschiedenen Güte des Weines; hier kann keine allgemeine Vorschrift erlassern werden".

238. Ibid., 98.

239. Ibid.

240. Ibid., 99.

241. Ibid., 100.

242. Ibid., "Besonders KONRAD SUMMENHART hat diese Zusammenhänge klar durchschaut und die preisregelnde Funktion des Wettbewerbs unterstrichen."

243. Ibid., 100-101.

244. Ibid., 101.


246. Ibid., 57. De contractibus mercatorum, ch. 2, num. 1, "Ad hoc respondent quidam quod secundum communem aestionem vel cursum debet vendere rem suam."

247. Ibid., 31-37.

249. Ibid., 101-102.

250. Ibid., 101.

251. Ibid. Cardinal Höffner links this leading rôle to the final demise of the Moorish foreign regime in 1492 - fall of Granada - which produced a re-inforcement of the Catholic self-awareness of the Peninsulars and made them look with great interest to the religious events taking place in Germany, and to what Cardinal Höffner calls the "Nominalist legacy" of emphasising practical problems, which made them reflect upon the new questions on business ethics brought about by the incorporation of America and the consequent great increase in the level of economic activity in the Peninsula, as well as the legal, political and social questions that also arose with that event. (Raymond de Roover, La Pensée Economique, pp. 32-34; and Marjorie Grice-Hutchinson, The School of Salamanca, passim, and particularly pp. IX-4, 46-47; are in agreement with Cardinal Höffner on the stimulus of events and changes brought about by the incorporation of America). We may add those emanated from the fact that the German Empire and other possessions of the House of Hapsburg were then united with the Crown of Castille - Aragon, thus creating a wider economic theatre, politically under the same ultimate rulers.


Grice-Hutchinson, The School of Salamanca, pp. 40-47.

de Roover, La Pensée Economique, pp. 32-34.

253. Martín de Azpilcueta, Comentario Resolutorio de Cambios, Introducción y texto crítico por Alberto Ullastres, José María Pérez Prendes y Luciano Pereña, Madrid, Consejo Superior de Investigaciones Científicas, 1965, p. XVI, "Martín de Azpilcueta introdujo un nuevo método de enseñanza, simultaneando el Derecho Civil con la ley eclesiástica informada por la teología moral."

254. Ibid., 102.


Grice-Hutchinson, The School of Salamanca, pp. 40-42.


257. Ibid., 102.

258. Ibid.
Grice-Hutchinson, The School of Salamanca, p. 43.

Perema, Francisco de Vitoria, Escritos Políticos, pp. IX-XXIII.


Höffner, Wirtschaftsethik und Monopole, pp. 103, 110.

260. Ibid., 103.

261. Vide ref. num. 96 in this Chapter.

262. Höffner, Wirtschaftsethik und Monopole, p. 103.

263. Monopoly was, of course, also of great concern. Aside from the theory of value, they developed a quantity theory of money and the purchasing-power parity of exchange. Outside these main contributions to economics, they excelled in Natural Law and in the development of the Law of Nations.

264. Vide ref. num. 166 to 179 in this Chapter. It should be noted that these 16 points were the result of a laborious gathering effort by Cardinal Höffner, rather than a systematic classification by Konrad Summenhart himself.

265. Höffner, Wirtschaftsethik und Monopole, pp. 103-104.

266. Vide ref. num. 242 in this Chapter.


The Spanish Jesuit, however, agreed with Summenhart, Soto, Juan de Medina, Luis de Molina, and Diego de Covarrubias y Leiva, that price fluctuates "not because of the intrinsic and substantial perfection of the articles - since mice are more perfect than corn, and yet worth less - but on account
of their utility in respect of human need, and then only on account of estimation..." - Grice-Hutchinson, *The School of Salamanca*, p. 72.


270. Ibid.

271. Ibid.

272. Ibid.


274. Urdanoz, *Obras de Francisco de Vitoria*, pp. 36-37. In (bis) 1528, 1539-1540, and again in 1544, locust and bad weather ruined the wheat crop of Salamanca and Castille in general, and De Soto was appointed not only to organise the purchase of wheat wherever it was available but also the supply of flour to the bakeries and the distribution of bread to the students, certainly a good opportunity to analyse the behaviour of the market, and the effect of supply and demand on market prices. Francisco de Vitoria collaborated with him, and together they also negotiated the installation of a printer and a printing press in Salamanca.

275. Ibid., 110.

276. Ibid., 132, "... die Taxierung sei "eine so schwierige Sache", dass Navarrus diese scharfen Worte "gewagt" habe." (Literally, it translates "dared to speak...").

277. Ibid.


280. Ibid., 131, (1).
282. Grice-Hutchinson, The School of Salamanca, pp. 112-113. "There are two ways in which a given money may be more valuable in one place than in another. Firstly, by virtue of public law or accepted custom, the value of a money in terms of other moneys may vary from place to place." "But there is another way in which money may be worth more in one place than in another: namely, because it is scarcer there than elsewhere. Other things being equal, wherever money is most abundant, there will it be least valuable for the purpose of buying goods and comparing things other than money. Just as an abundance of goods causes prices to fall (the quantity of money and number of merchants being equal), so does an abundance of money cause them to rise (the quantity of goods and number of merchants being equal)." - p. 113. Also on page 113 there are practical examples of the different values of money, even within the Crown of Castille-Aragon, which contribute to make this point clear.


284. Ibid., (3).

285. Ibid., (4).

286. Ibid., (5).

287. Ibid., (6), "... Ein verantwortungsbewusster Fürst soll überhaupt kein Gesetz erlassen, von dem er voraussicht, dass es fast allgemein übertreten wird."

288. Ibid., 104-105.

289. Ibid., 105, "Das ist nämlich das Los der Kaufleute, dass sie nicht bloss mit dem Gewinn, sondern auch mit dem Verlust rechnen müssen."

290. Ibid., "... der "jetzt und hier und bei einer ganz bestimmten Verkaufs und Einkaufsart gemeinim" sich finde, wobei "jeder Betrug und Zwang" ausgeschlossen sein müsse."

291. Grice-Hutchinson, The School of Salamanca, pp. 79-81, Instrucción de Mercaderes, Medina del Campo, 1544, Chapter 2, pp. xxvii-xxviii, "Excluding all deceit and malice, the just price of a thing is the price which it commonly fetches at the time and place of the deal, in cash, and bearing in mind the particular circumstances and manner of the sale, the abundance of goods and money, the number of buyers and sellers, the difficulty of procuring the goods, and the benefit to be enjoyed by their use, according to the judgement of an honest man."

293. de Roover, La Pensée Economique, pp. 61-62.

---------, La Doctrine Scolastique, p. 154.

294. Ibid., 159.

295. Grice-Hutchinson, The School of Salamanca, p. 86.

296. Ibid., "The natural price is not determined by the judgement of the individual merchant, but by the opinion of prudent and fair-minded men. It would be a most fallacious rule if, whenever a merchant bought an article, he added on to its price the value of his labour and risk, and then expected to sell it at this increased value. In fact, if a merchant ignorantly buys some article at more than the proper price, or if he suffers ill fortune (for instance, if the goods he has bought unexpectedly become abundant) he cannot justly extort the costs which he has incurred."

297. Vide ref. num. 176 in this Chapter.

298. Hößner, Wirtschaftsethik und Monopole, p. 107, "... der gerechte Preis „Keine Rücksicht auf die Personen nimmt, sondern in sich absolut bestimmt wird"."


300. Vide ref. num. 196 in this Chapter.

301. Grice-Hutchinson, The School of Salamanca, p. 82.


303. Vide ref. num. 188, 189, and particularly 191 in this Chapter.


Grice-Hutchinson, The School of Salamanca, pp. 87-88.


Domingo de Soto appears to have been fascinated by the expansion of trade. According to Marjorie Grice-Hutchinson - The School of Salamanca, p. 44 - "the moral problems created by the contemporary expansion of commerce, a subject which (as he tells us) was so peculiarly interesting to him that it alone had led him to take up the burden of writing his
great treatise." The work alluded was *De justitia et jure*, based on a series of lectures that de Soto gave in Salamanca in 1540-1541, first published in 1553, and reprinted no less than twenty-seven times before 1600.


307. Ibid.

308. Ibid.

309. Ibid., "Die Kaufleute dürfen also Gewinne machen; denn man darf berechtigterweise nach Gewinn streben, wenn man durch seine Mühen und Auslagen und durch sein Risiko für die Gesamtheit, also für andere, tätig ist".

310. Ibid.

For the position of Saint Thomas Aquinas on this matter, vide Fanfani, *Storia delle Dottrine Economiche*, p. 126.


This was accepted to a large extent with regard to the public debt in the XIV and XV Century, according to de Roover - San Bernardino, pp. 38-40. He affirms that it was due to the fact that "the theologians themselves were eventually forced to open their eyes and to recognise the fact that the public debt would never be redeemed and was not really a loan, of which the principal was repayable sooner or later." - p. 40. "Even the rigorous Angelo da Chiavasso (d. 1495) O.F.M., takes this position and assimilates the claims of the Florentine Monte Comune to a census, or perpetual rent." - p. 40, ref. num. 211


314. Ibid., "And a monopoly of buyers who combine to reduce prices is equally unjust..."


315. Ibid., "Nur zur Abwehr eines Verkäufermonopols können sie,
"gleichsam Gewalt mit Gewalt zurückweisend," sich derselben Waffe bedienen."

316. Ibid.
317. Ibid.
318. Ibid., 108.

Grice-Hutchinson, The School of Salamanca, p. 87. This was based on the assumption that "prices rise when buyers are numerous and fall when they are scarce. Likewise, prices fall when sellers are numerous and rise when they are scarce." -pp. 86-87.

319. Vide ref. num. 97 in this Chapter.
320. Höffner, Wirtschaftsethik und Monopole, p. 107
321. Ibid., 108, "... er verpflichtet die Herren die das Monopol verliehen haben, und die übrigen, die bei dieser ungerechten Bereicherung mitgewirkt haben", zum Schadenersatz."
322. Thus reminiscent of the position of Nikolaus von Oresme - vide ref. num. 147 in this Chapter.
324. Ibid., ref. num. 5.
325. Ibid., 109.
326. Ibid.

de Roover, La Doctrine Scolastique, p. 163, is in full agreement with regard to monopoly. The indictment of Jean Bodin (1520-1596), from which he quotes a section condemning the Guilds, appears to be as emphatic in his opposition to monopoly and price manipulations as those of Milinaeus or Stracha.

328. de Roover, La Pensée Economique, pp. 68-69.
329. Grice-Hutchinson, The School of Salamanca, passim.
330. de Roover, La Pensée Economique, p. 30, ref. 34.
331. Given that he was one of the main XV Century followers of Saint Thomas Aquinas. Vide ref. num. 155, 188, 203, 246 in this Chapter.
332. Azpilcueta, Comentario, XIII, Dinero presente y dinero ausente, 62-67, pp. 87-92. To Azpilcueta, one of the factors affecting the relative value of money is its presence or absence - from a spatial point of view, not in terms of time - so that absent money is worth less than present money. He explains this difference in the value of money in the same fashion that any ordinary merchandise that purchased far away from the point of the transaction or consumption requires expenses and work, measurables in terms of money, before it can be put at the disposal of the buyer. This would appear to have been based on the Thomistic notion of "improvement" of the good, which justified an increase of its value - Tozzi, I fondamenti, p. 216, for the basic idea of Saint Thomas Aquinas. Similarly, an implicit expansion of the basic idea of Saint Thomas that the one who receives something on loan and benefits from it owes a similar compensation "come debito di giustizia" - Tozzi, I fondamenti, pp. 266-267, together with a subtle interpretation of Saint Thomas's dictum that a reason other than time was required for money to increase or decrease in value - Azpilcueta, Comentario, XI, Cambio por compra, trueco o contrato innominado, 47, ref. 219, p. 68, moved Azpilcueta to accept, against most prior opinions, that if somebody lent money, and its value increased by Royal Decree or custom before the receiver of the loan could use it, the latter was forced to return the original amount plus the increase, unless otherwise stipulated - Azpilcueta, Comentario, XI, 48-50, pp. 69-71.

333. R. Hedde et E. Amann, "Pie V (Saint)", Dictionnaire de Théologie Catholique, Tome Douzième, Deuxième Partie, pp. 1647-1653.

334. Ibid., 1650.


335. Ibid.


Grice-Hutchinson, The School of Salamanca, p. 72.

337. Brodrick, The Economic Morals, pp. 148-149. Here, the whole Thomistic idea of the need to share the risks in order to justify a share of the profits - Tozzi, S. Tommaso: Sul Commercio e sul Credito, pp. 639-710, is very much alive. So is the insistence of Saint Thomas Aquinas on the examination of the particular circumstances of each case - Vide ref. num. 90 in this Chapter.


340. Vide Reference num. 112 in this Chapter.


This was probably true everywhere at the time, in varying degrees, in accordance to the nature of the goods involved. For descriptions of market conditions vide: de Roover, *La Doctrine Scolastique*, p. 149.


344. Fanfani, *Le Origini*, p. 129, "Antonino tratta, da par suo, del nuovo argomento della speculazione e giunge, concessione questa notevolissima, a giustificarla qualora ne sia movente un fine onesto, chè se movente è la cunidigia non poteva mancare, e non è mancata, la condanna."


346. Ibid., 173-174.


Giovanni Cassandro, *Un Trattato Inedito e la Dottrina dei Cambi ne Cinquecento*, Napoli, Edizioni Scientifiche Italiane, 1962, passim, for the actual text of the XVI Century treatise
of Father Marco Palescandolo, summarising many views, and partly written as a polemic answer to Father Domingo de Soto, vide pp. 113-167.


Fanfani, Storia dell' Dottrine, pp. 104-107.

Benjamin N. Nelson, "L'universalismo medievale e il duplice comandamento deuteronomico", In Ovidio Capitani, L'Etica Economica, pp. 47-68. It is a translation of Chapter I of Nelson's The Idea of Usury. From Tribal Brotherhood to Universal Otherhood, Princeton, Princeton University Press, 1949, pp. 3-28, which is not a historical analysis, but includes a very good bibliography.

de Roover, La Pensée Economique, pp. 76-90.

-------, San Bernardino, pp. 27-40, especially pp. 27-33.


-------, "L'Interesse del Denaro a Firenze nel Trecento. (Dal Testamento di un Usuraio), Studi, Primo Volume, pp. 223-243.

Tozzi, S. Tommaso: Sul Commercio e sul Credito, passim.

348. Brants, L'Economie Politique, p. 139.

Bernard-Le Bras, Usure, passim.

Fanfani, Le Origini, p. 16.


de Roover, La Pensée Economique, p. 83, ref. 159.

Sapori, L'Interesse del Denaro, pp. 228-229.

350. Ibid.

S.M. Imannuddin, The Economic History of Spain (Under the Umayyads, 711-1031 A.C.), Dacca, Asiatic Society of Pakistan, Publication Number 11, 1963, p. 293, "Ahmad says: The Muslims should associate himself in trade with persons of religion and integrity, but not with one who practices RIBA (usury)"

351. Barbieri, Le Dottrine Economiche, pp. 50-51, "... il fiorentino Lorenzo de Ridolfis (a jurist), che nel Tractatus de usuris tentò spesso di giustificare varie usanze in materia societaria e assicurativa, difendendo con vivace spirito mercantesco la libertà contrattuale"

G. Le Bras, Usure, passim, for a typical example vide: Ratio incertitudines, pp. 2364-2365.

de Roover, La Pensée, pp. 76-78.

-----, San Bernardino, pp. 30-31.

352. Azpilcueta, Comentario, pp. 4-156.

Cassandro, Un Trattato, pp. 113-167, especially Capitolo 29, Non è sicura l'opinione d'alcuni dottori, i quali vogliono, che il cambio sia contratto di permutazione, pp. 140-142; Capitolo 31, Si rifiuta l'opinione di Domenico di Soto e di Martin Navarro la qual è contra e quel ch'è detto, pp. 143-145.

Le Bras, Usure, passim.

de Roover, La Pensée Economique, pp. 76-90.

-----, San Bernardino, pp. 27-40.

353. The absence of Nominalist influence in the writings of Bishop Eiximenis, who was after all a Franciscan, would tend to confirm the restricted appeal of this movement. (Vide ref. 132-134, 151-153 in this Chapter).

354. Schumpeter, History of Economic Analysis, p. 84, ref. 3, perhaps overstates the rivalry amongst the Orders, which was, nevertheless, very real, and no doubt derived from their different goals and outlook. For the purpose of comparison vide: J. Besse, "Cisterciens", Dictionnaire de Théologie Catholique, Tome Deuxième, Deuxième Partie, pp. 2532-2550.
B. Heurtebize, "Bénédictins (Travaux des)", Ibid., pp. 602-628.


Schumpeter, History of Economic Analysis, pp. 87-92; "The reader will observe that I do not assign to the recovery of Aristotle's writings the role of chief cause of thirteenth century developments. Such developments are never induced solely by an influence from outside. Aristotle came in, as a powerful ally, to help and to provide implements. But perception of the task and the will to rush forward were, of course, there independently of him." - p. 88, an element in that movement which is far too often altogether ignored.

Ibid., 74-78, "I am far from wishing to belittle the importance of Christian ideals and precepts per se. But we need not invoke them in order to realise that monastic subordination to authority in matters of faith and discipline was compatible with extensive freedom of opinion in all other matters. We must go even further. Not only did the monk's sociological location - outside, as it were, of the class structure - make for an attitude of detached criticism of many things; there also was a power behind them that was in a position to protect that freedom. So far as treatment of political and economic problems is concerned, the clerical intellectual of that age was not more but less exposed to interference from political authority and from 'pressure groups' than was the latical intellectual of later ages." - pp. 76-77.

The freedom of opinion and independence of the Scholastics so categorically asserted by Schumpeter can be supported by other sources. The mere title of the "Reelección" (solemn conference that the holder of a chair was obliged
to give once a year to the University body -Urdanoz, Obras de Francisco de Vitoria, pp. 78-79) pronounced in 1528 by Martin de Azpilcueta in the presence of the Emperor Carlos V and a large part of the Spanish high nobility, would certainly corroborate Schumpeter's views: "El reino no es del rey, sino de la comunidad, y la misma potestad, por derecho natural, es de la comunidad y no del rey; por esta causa no puede la comunidad abdicar totalmente de su poder." - Azpilcueta, Comentario Resolutorio, p. XVI. (A similar philosophical viewpoint was presented on Christmas of the same year and also in Salamanca in the "Relación" of Francisco de Vitoria: "Sobre la potestad civil" (De Potestate civili) -Urdanoz, Obras de Francisco de Vitoria, pp. 108-195. The same idea of the foundation of the State was shared by other Scholastics such as Soto, Menchaca, Covarrubias, San Belarmino, Molina, Suarez, and many others. Vitoria expanded directly the views of the Nominalist I. Almain, making also reference to the very old Scholastic tradition on this matter, above all to Saint Thomas Aquinas - pp. 120-121, which certainly is not in agreement with an omnipotent royal power.)

Brodrick, The Economic Morals, pp. 6-8, presents documentary evidence that would also support Schumpeter's argument, the actors in this case being Diego Laynez, the General of the Jesuits, and another well known Jesuit, Saint Peter Canisius, both of them concerning the whole question of interest.

Grice-Hutchinson, The School of Salamanca, p. 40, "The work of the theologians and jurists who brought fame to the Spanish universities is thoroughly scholastic in form. The full panoply of Questions, Articles, Objections, Distinctions, Solutions and Conclusions is unsparingly displayed. Every utterance is checked against Aristotle and Saint Thomas, and every page encrusted with quotations from their works. Too rigid a straightjacket, it might be supposed, to contain the great expanding world of the sixteenth century. Yet the writings of the Spanish theologians convey no sense of restraint. For all their stiff, unbending style, our writers were flexible of mind, attentive to new facts and doctrines, and respectful of the honestly held opinions of the ordinary man."

358. de Roover, La Pensée Economique, pp. 10-21.
359. Schumpeter, History of Economic Analysis, pp. 82-83.
360. "De Origine, natura, jure et mutationibus monetarum", vide ref. num. 142 and 148 in this Chapter. E. Amman - "Oresme,
Nicole" - comments these works, its many translations, and its actual success in obtaining a change of monetary policy in France on pp. 1408-1409.


361. Grice-Hutchinson, The School of Salamanca, passim.

362. Amann, Oresme, passim.

363. Schumpeter, History of Economic Analysis, pp. 81, 101 - ref. 27.

364. Bishop Diego de Covarrubias y Leyva, the author of De Mutatione Monetarum is a good example. A full professor of Canon Law at Salamanca at age 21, he was a brilliant jurist, a great expert on Roman Law, known as the "Spanish Bartolus", a historian and linguist, a distinguished theologian as well as a diplomat and administrator. Vide: Grice-Hutchinson, The School of Salamanca, p. 45; T. Otolan, "Covarrubias y Leyva (Diégue) ou Covarruvis", Dictionnaire de Théologie Catholique, Tome Troisième, Deuxième Partie, pp. 2066-2007.

365. Azpilcueta, Comentario Resolutorio, pp. IX-X, XV-LV, for commentaries on political and other works.

366. Domingo de Soto, author of "Deliberatio in causa pauperum", in fact included his most important economic contribution in a theological work, "De Justitia et jure". He was amongst other things an outstanding theologian and philosopher. Vide: V. Beltrán de Heredia, "Soto (Dominique de)", Dictionnaire de Théologie Catholique, Tome Quatorzième, Deuxième Partie, pp. 2422-2431; Vicente Beltrán de Heredia, Tratados Espirituales, Madrid, La Editorial Católica, MCMXII, (Biblioteca de Autores Cristianos), pp. 75-186, Domingo de Soto, Tratado del Amor de Dios; Grice-Hutchinson, The School of Salamanca, pp. 83-88.

Luis de Molina, who wrote the well known "Disputationes de Contractibus", was one of the great Jesuit theologians and philosophers, a theoretician of law, and also excelled in logic and metaphysics. Grice-Hutchinson, The School of Salamanca, pp. 112-115; E. Vansteenberghue, "Molina, Louis", and "Molinisme", Dictionnaire de Théologie Catholique, Tome Dixième, Deuxième Partie, pp. 2090-2092, and 2094-2187, respectively.

Urdanoz, Obras de Francisco de Vitoria, pp. 74-84, Obras de Vitoria, Illustrates the vast field of interest of this famous Scholastic.

368. Höfner, *Wirtschaftsethik und Monopole*, p. 92, ref. 1, Sant'Antonino dealt with fraud, for instance, not together with the doctrine of price but in the Chapter on Treason.


369. Ibid., 3-4.


371. Ibid., 85, 91-96, 101; "Diese Geschichten von den "Gewürzbrieften" werden von den späteren Scholastikern häufig wiederholt. Erfunden sind sie nicht." - p. 92. Ergo, even some of the examples used were originally true facts.

Fanfani, *Storia delle Dottrine*, p. 94.

de Roover, *La Pensée Economique*, p. 15.

372. Schumpeter, *History of Economic Analysis*, p. 90, ". . . Francis Bacon, in spousing the cause of "inductive" science, contrasted it with both scholastic and Aristotelean speculation. All this was unfair to the scholastic doctors. But it was still more unfair to the old sage. For if there is any general message at all that speaks to us from his pages, it is surely the message of empirical research." Vide also pp. 57-60, 82-107.


375. Tozzi, S. Tommaso: *Sul commercio e sul credito*, p. 710 - vide ref. 40 in this chapter for quotation.

------, San Bernardino, p. 2, "Moral Theology", of which (economics) was an integral part.

377. de Roover, San Bernardino, pp. 1, 8.

378. Ibid., 8. "According to the Scholastics, economics belonged within the sphere of justice of which there were two kinds: distributive justice, which comprised the distribution of wealth or income, and commutative justice, which dealt with commutations or the exchange of goods and services by means of voluntary contracts. While the criteria of distributive justice was not rigidly predetermined and varied from one society to another according to customs and institutions, commutative justice rested on the principle of equality between what was given and what was received and did not permit any violation of this rule. Commutative justice, therefore, was based on an absolute principle - there are degrees of inequality but none of equality - which is the same in all times and in all places. It follows that the rules which governed commutations are of universal validity and do not suffer any deviation from the norm."

Fanfani, Storia delle Dottrine, p. 84.


Fanfani, Le Dottrine Economiche, p. 117, "Le varie istituzioni sociali hanno una funzione necessaria, anche se di natura integrativa. Vivono per il bene dell'individuo, senza con questo divenire ciechi strumenti nelle sue mani.... L'amore d'una inumana razionalità non stringe l'individuo in una morsa inesorabile, perché il fine di tutto l'ordine sociale è l'esaltazione della persona."

380. Fanfani, Storia dell'Dottrine, pp. 81, 91

Schumpeter, History of Economic Analysis, p. 87.

Urdanoz, Obras de Francisco de Vitoria, pp. 114-115. "En consecuencia, el orden jurídico, y con él todas las estructuras sociales y políticas, forma parte integrante del orden moral y teológico como conjunto de medios que conducen a los hombres hacia su fin o apartan de él." - p. 114; "Sólo el hombre en la naturaleza se comporta moviéndose por sí mismo, de una manera consciente y libre, por un fin. Por eso el finalismo penetra y dirige de una manera especial y formal toda la esfera de la vida moral, jurídica, y social del hombre." - p. 115.

381. And of course, it remains so in the Catholic faith.

382. Saint Thomas Aquinas, Summa Theologiae, Ia 2ae. Q.95, 2,
p. 107, (3) "Owing to the great variety of human affairs the common principles of natural law do not apply stiffly to every case. One outcome is the diversity of positive laws among different people."; Ia 2ae. 0.95, 3, p. 111, "The other conditions he (Isidore on the qualities of positive law) afterwards enumerates all come back to these three. For when he speaks of law being 'honourable' he refers to its 'accord with religion', and when he goes on to add that it is 'fair, possible, according to nature and the custom of the country, and befitting place and time' he is implying its 'accord with good discipline'."; Ia 2ae. 097, 3, p. 149, "All law proceeds from the reason and will of the lawgiver; divine and natural law from the intelligent will of God, human law from the will of man regulated by reason. Man's reason and will in matters of practice are manifested by what he says, and by what he does as well; each carries into execution what he has chosen because to him it seems good." These excerpts clearly indicate the independent and local character of human law. At Saint Thomas's time most laws were mainly the declaration of custom. "The Church, which was the guarantor of customary liberties, would on occasion act against a government which attacked them." - pp. 146-147, ref. a. So it would do in the case of statutes that did likewise, but in general the attitude was one of respect and non-interference. Laws could be altered, but, following the dictum of the jurist Ulpian "In establishing new laws the benefit to be gained by departing from what for ages has been looked upon as equitable should be evident." - Ia 2ae. 0.97, 2, p. 147. The commentaries of Father Gilby - pp. 157-185 - add a valuable insight to this question.

Brants, L'Economie Politique, pp. 52-59, shows that although private property was considered a right given to humanity by natural law, the details of its organisation and distribution were left to the local law and custom. Therefore, they should be taken into consideration when analysing a man's behaviour.

Urdanoz, Obras de Francisco de Vitoria, De la Potestad Civil, p. 194, 'Tal de advertirse que, como la familia forma parte de la sociedad, las leyes de ésta pueden determinar en qué casos los hijos están obligados a obedecer a los padres y en que casos no conviene eso, así como determinaron hasta qué edad obligaba dicha obediencia." This clearly indicates how much alive was the traditional respect for the independence of the local law and custom in the XVI Century.

383. Azpilcueta, Comentario Resolutorie, p. XXI, "Este contacto continuo con la realidad me obliga a cambiar algunos aspectos de su teoría 'transformando su criterio restrictivo inicial en otro de mayor comprensión que procura ensanchar el campo
lícito de operaciones." Como un siglo antes San Antonino de Florencia, representa el espíritu conciliador de las exigencias morales y la vida real." In fact even Azpilcueta's Manual de Confesores, in whose chapter 17 was treated the doctrine of "Cambios", was constantly revised to accommodate it to the new economic circumstances, so that the confessors could give adequate advice in matters of conscience - p. 193. This clearly indicates that at least on some occasions those changes were rather rapid indeed.


386. Azpilcueta, Comentario Resolutorio, Consilia Circa Cambia, pp. 135-150.

387. Ibid., XX-XXI.


389. Ibid., 131, (6), "Die Festpreise führen zu unzähligen Gesetzesübertretungen Lügen, Meineiden usw. Darüber wissen die Beichtväter und Theologieprofessore, die täglich in diesen Angelegenheiten um Rat gefragt werden" Bescheid."


Endemann, Studien, Erster Band, pp. 460-471, particularly pp. 465-469. Nikolaus Barianus, of the Order of the Augustinian Hermits was the one who coined the name of Montes Profani, used by those opposed to the Montes Pietatis - p. 465.

Sapori, "Medioevo e Rinascimento: Proposta di una nuova Periodizzazione", Studi Di Stori, Terzo Volume, pp. 436-437. An interesting detail in this controversy is that Fra Girolamo Savonarola, unlike his fellow Dominicans, favoured the Monte di Pietà as an instrument to combat usury - Fanfani, Le Origine, p. 123, which underlines the independence
of mind of the members of the Orders - Vide ref. num. 357 in this Chapter. Of further interest is to know that the Dominican Cardinal Cajetanus, who as we have seen accepted the finance business under certain circumstances - Vide ref. num. 311 in this Chapter - was opposed to the Monte di Pietà because he considered the payment of charges designed to cover the administrative costs as a form of interest - Fanfani, Le Origine, p. 123. This illustrates once more the difficulty of grouping the Doctors into generalised schools of thought - for some other instances vide ref. 243-246 in this Chapter.


de Roover, San Bernardino, pp. 33-38.

-----, La Pensée Economique, pp. 82-85.

393. de Roover, San Bernardino, p. 34 "This matter of exchange although it is already sufficiently abstruse by itself, becomes even more intricate because of the subterfuges invented by the merchants and more obscure because of the contradictory opinions of the Doctors."

394. Cassandro, Un Trattato Inedito, Capitolo 29, Non è sicura l'opinione d'aluni dottori, i quali vogliono che il cambio sia contratto di permutazione - pp. 140-141; Capitolo 31, Si rifiuta l'opinione di Domenico di Soto e di Martin Navarro la qual è contra a quel ch'è detto, pp. 143-145; Capitolo 38, I doi predetti modi di cambiò non sono somigliant a frutti, che prendono l'usurarii dalla cosa, che non è come stima Domenico di Soto, ma non bene, pp. 159-160.

395. Pereña, Francisco de Vitoria, Escritos Políticos, Mayores disensiones del Reverendo Padre Maestro Fray Francisco de Vitoria sobre ciertos tratos de mercaderes, 1580-1600, pp. 331-337, vide especially 1586, p. 333.

396. Brodrick, The Economic Morals, p. 6, "When in 1553-4, Laynez found himself in Genoa, the great Mecca of traders and company promoters, he felt it was his duty to preach a course of sermons on the very lively topics of contracts and financial dealings. Such an impression did he make that the civil authorities published an edict ordering all merchants to submit their books and contracts for theological revision."

At the time Laynez was preaching in Genoa, the Archbishop of the city, Gerolamo Saulo, had commissioned a group of theologians and canonists to study a specific type of Cambium, known as the Lyon or Bescaçon exchange. One of its
outcomes was a Tractatus de Cambiis, written by one of those consulted, frate Fabiano, of the Order of Agustinean Hermits - Cassandro, in Trattato Inedito, pp. 31-35. This illustrates the enormous preoccupation of the Church, as well as of individual theologians and jurists, with these matters. The commercial activity of Genoa must have contributed to that - "Genuensis ergo mercator! E si potrebbe dire ergo campisor," says Cassandro - op. cit., p. 30 - to underline that. Father Palescandolo was, incidentally, very well acquainted with Genoa and its business world - Cassandro, op. cit., p. 31, and the central focus of his treatise was also on the "cambi detti di Lione o di Bisenzione."


398. Saint Thomas Aquinas, Summa Theologiae, Vol. 28, Appendix 6, Human Law and the Art of Politics (Ia 2ae. 95, 2), pp. 177-179, especially 179.


400. Azpilcueta, Comentario Resolutorio, p. XX. His Manual de Confesores was written for that specific purpose.

Hoffner, Wirtschaftsethik und Monopole, pp. 76, 78, 96.

de Roover, San Bernardino, p. 5. Sant'Antonino da Firenze's Summa moralis ou Summa theologicae, and all such treatises on moral theology had that purpose.

It should be noted that the confessor is under the strict obligation of improving his knowledge of moral theology until the end of his life, according to the Church rules. "L'expérience ne suplée pas à la science, mais seulement la complète, quand elle existe." - Bernard, Dolhagaray, Mangenot, Ortolan, Vacandard, Confession, pp. 945-946.


402. Francisco Layna Serrano, Historia de Guadalajara y sus Mendozas en los Siglos XV y XVI, Madrid, Aldus, S.A., 1942, Tomo I, pp. 310-314, Testamento de doña Aldonza de Mendoza, duquesa de Arjona, Espinosa de Henares, 16 de junio de 1435, "...e mando que sean pagadas a diego de mendoza my primo fasta quatrocientas fanegas de trigo e çevada poco
mas o menos... las cuales yo mande tomar del pan quel tenya en alperpe (?) quando yo estava en coveña..." - p. 312, "... e mando que d'en al maestro fray pedro gonçales my confesor cinco mill mrs para dar en los lugares onde él sabe que so obligada..." - p. 313; pp. 325-333, Codicilo que otorgo don Íñigo López de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon, "-Mando al monasterio de sant Francisco de Alcalá de Menares cinquenta myll mrs para la obra dél por algunos cargos que yo tenia al señor arçobispo de Toledo mi primo don Alonso Carrillo por lo que yo tomé de los bienes de don Joan de Cerezuela su antecesor, no obstante que por me faser gracia me fizo Remisión de todo ello sin ningún precio porque pertenescian a él e yo los Reçebi en presencia de fray Rodrigo de Oña e del doctor Pero Díaz de Toledo." - p. 331, "-iando que sean dados a Joan Camargo que perdone dios o a sus herederos, quatro myll mrs por un cavallo que yo compré estando en esta cibdad de Jahan por Capitan despus quél murió, lo save fray Alonso de Portillo my confesor e Gonçalo Fernandes de Sebilla, alcayde de la my villa de Veleña." - p. 332. Other payments in both wills strongly suggest restitution since no debts or recognition of services are mentioned, but none appear to be as clearly so as the above mentioned.

403. Azpilcueta, Comentario Resolutorio, pp. 122-123, "Et consequenter, qui cambiens dat pecuniam minoris valoris pro pecunia maioris valoris solvenda alio loco ei, qui nec realiter, nec credito eam ibi habet, peccat mortaliter, et tenetur ad restitutionem, quia virtualiter usuram committit."

Le Bras, Ussure, pp. 2365-2372. It should be noted that restitution was just one of the prescribed penalties for usury, which was both a crime and a sin, and that all those connected with it were held responsible in solidum, including, to a large extent, the borrower.

Fanfani, Le Origine, pp. 18-19.

404. Pacetti, Un trattato sulle usure e le restituzioni, Fol 299 d 300 b - Rubr. questio 7. Inc. Septimo Queritur: An rebus suis venalibus falsas mixturas aut commixtiones occulte addentes sicut plerumque venditores vini qui aquam vino vendendo commisinct... peccent mortaliter et teneantur ad restitutionem preci defraudati."

405. N. Jung, "Restitution", Dictionnaire de Théologie Catholique, Tome Treizième, Deuxième Partie, pp. 2466-2501. The responsibility was extended to all those connected by commission or omission in accordance to their degree of co-operation in the damnable action - pp. 2480-2489. The
confessors were, and remain, of course, obliged to compensate the penitent for any error or malice in his judgement and administration of the Sacrament of Penitence - Bernard, Dolhagaray, Mangenot, Ortolan, Vacandard, Confession, pp. 951-953.


--------, Le Dottrine Economiche, pp. 131-132.

407. de Roover, La Doctrine Scolastique, p. 177.


411. de Roover, The Rise and Decline of the Medici Bank, 1397-1494, Cambridge, Massachusetts, Harvard University Press, 1963. (Harvard Studies in Business History, XXI), p. 203, "The contract, however, clarifies one point by stating that the purpose of the partnership is 'to traffic and deal in exchange at the Court of Rome as it may please God and as is customary in this kind of banking business, above all staying within the bounds of fair and licit contracts.' The emphasis is consequently on banking and exchange with the understanding that heed be paid to the usury doctrine of the Church by making only permissible contracts and no patently usurious loans."; "This is further evidence that the usury doctrine had practical consequences." - ref. 44 (to the prior paragraph), p. 449. Vide also pp. 11-14, 102, 104-105.


de Roover, *The Rise and Decline*, p. 260, "After deducting 3 percent for charities (per l'amor di Dio), profits were to be divided..."


------, "La Beneficenze delle Compagnie Mercantile del Trecento", *Studi di Storia*, Secondo Volume, XXXI, pp. 839-858.


------, *Le Marchand Italien*, pp. XVII-XIX, "Appelé en France 'denier a Dieu', en Allemagne Gottespfennig, en Italie Denaro di Dio, cet argent était toujours une aumône, qui jouait le rôle des arrêts, mais était destine aux ouvres pieuses et non au vendeur." - p. XIX. In fact, "Messer Domineddio" ceased being a partner in case of failure and became a privileged creditor. Any rescued monies were sent to the Archbishop or directly to charities - pp. XVIII-XIX which underlines the importance attached to this concept.


de Roover, *La Doctrine Scolastique*, pp. 173, 177.


de Roover, *La Doctrine Scolastique*, p. 177.


------, "Notas sobre la Familia Llobera, Mercaderes Barceloneses"
This is the way we would interpret the alleged "licensing" of pawnbrokers in Florence - de Roover, The Rise and Decline, p. 14, given the realistic attitude of Sant'Antonino da Firenze, who aptly compared licensed pawnbrokers to houses of prostitution (prostitula), which were also tolerated as the lesser of two evils - de Roover, San Bernardino, p. 32. San Bernardino de Siena, on the contrary, constantly objected to the practice of tolerating pawnbrokers - loc. cit., a prohibition that should have been fully granted, it would have probably only succeeded in driving them underground and out of control. For some of the political aspects of this problem vide Gunnar Mickwitz - ref. 71 in this Chapter, as well as ref. 71-77 in this Chapter for further examples. In fact, a degree of tolerance was contemplated in the general principles or could be inferred from them, and, as Victor Brants has proven - L'Economie Politique, pp. 157-164, it was accepted even amongst orthodox Scholastics. The very concept of the nature of man, his imperfection and inability to control circumstances demanded that tolerance. "La loi civile, dit S. Thomas d'Aquin, ne peut interdire tous les péchés, à cause de l'imperfection des hommes, car bien des utilités seraient entravées par une trop grande rigueur. C'est par ce principe que la loi humaine a toléré l'usure, non pas qu'elle approuve en justice, mais pour ne pas nuire aux intérêts d'un grand nombre." - Brants, L'Economie Politique, p. 157. "On distinguait donc la question de conscience et de législation canonique, de la question pratique et de législation civile. L'opportunité de la tolérance était toute la question. Or, celles-ci dépendait des circonstances. Il ne faut pas, dit Buridan, formuler une interdiction d'où un grand mal pourrait résulter. En est-il ainsi de la prohibition de l'usure? Cela dépend des circonstances de temps, de lieux et de personnes. Il faut donc qu'en cette matière la loi soit l'ouvre d'hommes sages et prêvoyants, ayant l'intuition des choses pratiques." - Ibid., p. 158. As the author stresses in his analysis of the excerpt from Buridanos - Quaest. super Libr. polit. 1, q. XIII - "C'est le point de vue politique, de législation civile que domine ici." - loc. cit., ref. 3.

Vide ref. num. 81 in this Chapter. It should be noted that San Ramón de Peñafort was one of the most rigorous Scholastics condemning usury. "L'analyse subtile avec laquelle il
démèle toutes les ruses des usuriers, dans sa Somme pastorale (Libellus pastoralis de cura et officio archidiaconi) est restée célèbre dans l'histoire économique." - Brants, L'Economie Politique, p. 149. We have not seen the text, but it would suggest a great deal of practical knowledge of the economic life of his time.

419. Grice-Hutchinson, The School of Salamanca, p. 44.

Höffner, Wirtschaftsethik und Monopole, p. 106.

420. Grice-Hutchinson, The School of Salamanca, p. 45, was the President of the Consejo de Castilla.

421. Azpilcueta, Comentario Resolutorio, pp. XLVI-LV.

422. Ibid., XVIII-XXV, LII-LIII. In fact, the revision and translation of his Manual was carried by the author at the request of the Consejo de Castilla - p. XX.

Pereña, Francisco de Vitoria, Escritos Políticos, III, "Informes y Cartas", pp. 325-341.


Cassandro, Un Trattato Inedito, pp. 161-162, Consultation of the Kingdom of Sicily to the Archbishop of Palermo, and in turn, to His Holiness, Pope Gregory XIII and the College of Cardinals.

424. One such cases is the monetary reform and the policy of monetary stability carried out by King Saint Louis IX (1226-1270) and followed by his son, King Philip the Bold (1270-1285) according to Victor Brants - L'Economie Politique, pp. 183-184. Unfortunately, those policies were not continued by their successors Louis the Fair and Charles IV, whose disastrous policies, as we have seen, were the cause of much criticism from many Scholastics, particularly from Nicholás von Oresme, which eventually led to new reforms and the policy of sound currency of Charles V (1364-1380) - advised by Oresme himself - and Charles VII - Vide ref. num. 148-150 in this Chapter.


Paul Einzig, The History of Foreign Exchange, London, MacMillan & Co. Ltd., 1962, confirms those views and also emphasises the influence of the advice from Oresme in the monetary policy of Charles V.

de Roover, La Doctrine Scolastique, pp. 173-174, points out
that anti-monopolistic clauses were inserted in many Guild Charters, sometimes as a condition sine qua non for their final approval by the authorities - p. 174.

Further examples of similar provisions can be seen in: Labayru y Goicoechea, Historia General, Tomo III, Apéndice Numero 39 (Segundo), Hordenanzas de los pañeros de la Villa de Durango, pp. 724-730; and Valentín Sainz Díaz, Notas Históricas sobre la Villa de San Vicente de la Barquera, Santander, Consejo Superior de Investigaciones Científicas, 1973, Ordenanzas de la Cofradía de Mareantes y Pescadores de San Vicente de la Barquera, pp. 509-539. Vide for instance p. 533: "Otroso: Pusieron e ordenaron, que por quanto algunos Cofrades, con codicia y cargo de conciencia, e caso de usura..."


Aside from the total exclusion from the Church, excommunication, the severest of all ecclesiastical censures, meant a complete ostracism from society and even the family. All communication with an excommunicated person, including epistolary and simple greetings were forbidden, and so were cohabitation, contracts, and any form of association or co-operation.

427. Azpilcueta, Comentario Resolutorio, p. XX, was consulted by Cardinal "Infante" (Royal Prince) Don Enrique, "Inquisitor Mayor, de los Reynos del Rey nuestro Señor, su hermano..."


429. Ibid., 144-150, especially 148-150.

Brants, L'Economie Politique, p. 132. Usury, for instance, was the reason to convene a number of special Councils.

Cassandro, Un Trattato Inedito, pp. 31-32.

Urdanoz, Obras de Francisco de Vitoria, p. 33.


431. Ibid., 133, In 1569 Pope Saint Pious V issued the Bull Cum Onus on the subject of rent-charges, a rigorous piece of legislation forbidding certain developments in the theory of rents which
assimilated them to the Triple Contract.

du Passage, Usure, p. 2375, "En 1515, Léon X avait, on le sait, terminé la controverse à leur sujet (Monts-de-Pitié), et déclare que la somme modique, demandée aux emprunteurs, ne constituant pas un intérêt, mais correspondait seulement aux frais de l'administration."

Endemann, Studien, Erster Band, p. 466, a prior concession for the Monts-de-Pitié had been granted in 1486 by Pope Innocenz VIII.


433. Ibid. 149.

This should be seen in conjunction with another basic tenet: 'The confessor cannot follow the opinion of two or three doctors... when the common opinion is against it. The probability of an opinion, it should be said, does not depend on a counting of heads, for or against it. It is to be deduced primarily from internal reasons and by speculative argument. The intrinsic soundness of those reasons and the cogency of the argument are what constitute a doctor's authority in the matter.' - Brodrick, The Economic Morals, p. 136. Furthermore, as Vitoria put it in 1539: '"if an educated man considers two opinions to be probable, then, no matter which of the two he follows, he does not sin'." - Ibid., p. 137; and, more extremely by Bartolomé de Medina, who "taught explicitly that 'if an opinion is probable, it is lawful to follow it, even though the opposite opinion be more probable'.' - loc. cit.

Father Diego de Laynez, the General of the Society of Jesus, replying to a request for advice on usury from Father Elderen, the companion of Saint Peter Canisius in Augsburg, illustrated further the attitude that the confessor should follow when confronting different opinions. He ended his advice saying: '"' Finally, by whatever means it can be done, let no the penitents be reduced to despair nor alienated from Confession. In this matter one should not use the severest opinions, but those commonly held by theologians'." - Brodrick, The Economic Morals, pp. 128-129.

434. de Roover, San Bernardino, p. 10. "Corpus Juris Canonici, Decretum: canon Fornicarii, Dist. LXXXVIII, c.10. As used here the verb fornicarii has a strictly theological meaning and refers to any sexual intercourse outside the bonds of marriage. - ref. 34, pp. 10-11.

Tozzi, I fondamenti, pp. 206-207, stresses the Augustinian distinction between the vices of trade and trade itself.
435. Brodick, *The Economic Morals*, pp. 130-132. The ceaseless attacks of Saint Peter Canisius and Father William Elderen were against every form of commercial malpractice, not against commerce. Incidentally, it seems worth commenting that Ursula and Georg Fugger, of the great merchant and banking family, were amongst the closest friends of Saint Peter Canisius, and that his sermons raised the most serious scruples in their minds - pp. 7-8.

Urdanoz, *Obras de Francisco de Vitoria*, pp. 602-603. "Bajo cualquier aspecto, Vitoria proclama una amplia y generosa libertad de comercio internacional, como un derecho de gentes natural. Las condiciones que debe reunir son tres: a) es reciproco y en bien de las dos partes; 'los españoles llevarán a los indios las mercancías de que carecen y exportarán oro, plata y otras riquezas que allí abundan'; b) Siendo un derecho natural, está por encima de la voluntad de los Estados: ni los príncipes indios pueden impedir a sus súbditos comerciar con los españoles ni los soberanos de España impedir a los suyos aquel tráfico; c) la única limitación es que se ejerza sin perjuicio de los naturales y en régimen de común utilidad. No será lícito a los príncipes impedir este comercio, de igual modo que no se puede impedir entre naciones cristianas cuando no redunda en daño de alguna parte." At a later date Luis de Molina was to grant to the authorities the power to restrict the freedom of trade with foreigners - p. 603 - and jurists such as Zouch, Wolf, and Emeric de Vattel were to follow his thesis. The position of Vitoria was maintained by his disciples and such jurists as Hugo Grotius and Alberico Gentilis.


Tozzi, *I fondamenti*, pp. 40-41. Amongst the Thomistic precepts of good government it was clearly stated the following obligations: "Provvedere i beni materiali necessari alla società stessa" "Mantener la buona vita dei sudditi, così ottenuta, difendendola contro la limitatezza delle vita umana," and "Far progredire tale buona vita." - p. 40.

438. Saporl, Il Giusto Prezzo, p. 294, Statuto degli oliandoli fiorentini, rubr. 56 e 93, expressed thus that intention: "ad hoc ut maior copia victualium in civitate habeatur."

439. de Roover, La Doctrine Scolastique, p. 167, ref. 75, Municipal Statutes of Forli.


This declared intention was, as we have seen in detail, in the preceding Chapter, often seen in Fueros and other privileges, laws, and many legislative and administrative acts. The "raison d'être" for the protection of trade and merchants was also directly linked with the policy of abundance.

440. de Roover, La Doctrine Scolastique, pp. 166-167.

441. Antony Babel, Histoire Economique de Genève. Des Origines au début du XVIe. Siècle, Genève, Alexandre Jullien, Editeur, 1963, Tome Premier, pp. 663-665. Notable were those of the butchers - p. 664, who were apparently a troublesome group everywhere, according to de Roover - La Doctrine Scolastique, p. 169, ref. 84.

de Roover, Money, Banking and Credit in Medieval Bruges. Italian Merchant-Bankers and Money-Changers. A Study in the Origins of Banking, Cambridge, Massachusetts, The Medieval Academy of America, 1948, Publication Number 51, p. 182, sees the compensatory obligations of the Money-Changers Guild of Bruges for the granting of a monopoly as a way in which the authorities of the city sought to discharge their duty to protect the public.

442. Vide ref. num. 220, 223, and 317 in this Chapter.

443. Einzig, The History of Foreign Exchange, pp. 69-70. "Under Mohammedan law coins of the same metal were not allowed to be exchanged except on the basis of strict equivalence. Any discrepancy between value given and received was condemned as usury." - pp. 69-70; the relevant text quote added: "... nor sell anything present for that which is absent." - p. 70.

444. Imamuddin, The Economic History of Spain, pp. 293-294. "According to the theologians trade - in a partnership - was permitted if one invested one-third and another two-thirds or one-quarter and another three-quarters, provided each of the two partners worked in proportion to his share." -p. 294.
Brants, *L'Economie Politique*, pp. 75-80. "Le travail est un devoir de l'humanité. La loi a été bien des fois formulée: In sudore vultus tuus vesceris pane – Genèse III, 19. Laboris manuum tuarum manducabis – Psaume 127,2. Enfin la parole de l'apôtre: Si quis non vult operari, nec manducet – Saint Paul, 2e. ep. ad Thessalon. III, 10. Le travail est donc précepte de la loi divine imposé à l'humanité." – p. 75. All men had the obligation to work, manually, intellectually, or spiritually, in accordance to their capacity and status in life.

Eiximenis, *Regiment*, Capitol XXII, En lo qual llargament se tracta com casco en la communitat deu esser ocupat, grand o poc, dret o contret, hom o fembra, pp. 128-132.

Fanfani, *Le Origine*, pp. 7-9, 121.


Tozzi, *S. Tommaso*, p. 710.

-----, *I fondamenti*, pp. 267-270.

Brants, *L'Economie Politique*, p. 167, ref. 2, "... Au témoignage d'Hostiensis et de Baldus. 'Ubi non est periculi communicatio, ibi non est societas.'..."


Usher, *The Early History*, pp. 64-65.

Vide ref. num. 542-551 in our Chapter II.

Sometimes it was compulsory – de Roover, *The Rise and Decline*, pp. 22-23.

This, as we have seen in the prior Chapter, was chiefly in the way of public works and defense expenditures.

de Roover, *San Bernardino*, pp. 38-40

455. de Roover, San Bernardino, pp. 33-38.

-----, The Rise and Fall, pp. 10-14.

456. Capitani, Sulla Questione dell'Usura, pp. 44-46. He is also specifically opposed to the Church's ideas of usury encouraged direct investment into business ventures with responsibility of the investor - p. 44.


Barbieri, Le Dottrine, p. 50.


Eiximenis, Regiment, Capitol XXI, Com los inútiles deuen ésser gitats, e hi deuen ésser sostenguts los pobres mendicantes qui són vers indigents, pp. 124-127. He expressed with poignant wit the importance of charity for Salvation: "Pensar poden los ricos hòmens que si salvarse volen, que queucom han a fer algun notable per amor de nostre Senyor Déu. Pus doncen dien que no poden fer penitència ne afflicció, ne grans oracions, resta que han a retornar e a recórrer a l'almoina." p. 126.

Fanfani, Storia delle Dottrine, pp. 118-139.

-----, Le Origine, pp. 1-10, 20-25, 42-45, 105-150.

Tozzi, I fondamenti, pp. 79-124, 151-162.


Fanfani, Storia delle Dottrine, pp. 118-120.

-----, Le Origine, p. 4. Vide especially ref. 2, argument of Saint Thomas Aquinas in favour of private property, Summa Theol. 2,2,q.66, art. 2.

Pereña, Francisco de Vitoria, Escritos Políticos, Concepto: 807, 845, 847, 852; Derecho de Propiedad: 804, 806, 814, 841, 844, 857-859, 863, 980, 981, 990; Origen de la Propiedad: 809, 816, 1487; Fundamento de la Propiedad: 845-856; Títulos de Propiedad: 808, 811, 812, 822-830, 844, 915, 1004; Confiscación de Propiedades: 830-839.

Schumpeter, History of Economic Analysis, p. 92.

Tozzi, I fondamenti, pp. 125-150.

de Roover, San Bernardino, pp. 8-9.

de Roover, San Bernardino, p. 9.

Tozzi, I fondamenti, pp. 137-141.

460. St. Thomas Aquinas, Summa Theologiae, Volume 28, Ia2ae. 95, 1 to Ia2ae. 97, 4, pp. 98-155; also appendix by Father Thomas Gilby, pp. 157-185. Vide ref. 382 and 398 in this Chapter.

461. de Roover, La Pensée Economique, pp. 80-81

462. Ibid., 81.

According to Ovidio Capitani, it appears that San Bernardino was the first prominent Scholastic to use the word capitale - of common usage before him - in the precise sense of money accumulated for a business enterprise - Sulla Questione dell'Usura, p. 38, ref. 10.

This is shown quite clearly by Brants, L'Economie Politique, pp. 134-135, "Bernardin de Sienne... est beaucoup plus explicite, il perçoit une sorte de capitel virtuel et énonce comme suit la nature du capital: 'Pecunia... non solum habet rationem simplicis pecuniae vel rei, sed etiam ultra hoc quandam seminalem rationem lucrosi, quam communiter capitale vocamus'." - he cites here F.X. Funk, Zinsgesetzgebung im Mittelalter, in Tubinger Universitäts Schriften, 1876, pp. 146-149. Brants affirms that the productivity of money, through work, was well understood by the Doctors. Gilles de Rome, for instance, "admettait que l'usus de l'argent pût produire une pensio, bien que l'état naturel de l'argent dans sa substance fût évidement improductif." - pp. 135-136. Saint Thomas Aquinas, having affirmed that it was possible de pecunia lucrari (Summ. theol. 2a. 2ae. q. 78, art. 2 ad 5) and that mercatores de pecunia sua lucrari soliti, togethether with other sources, also admitted the productivity of the merchant capital, according to Brants, p. 136.

463. Brodrick, The Economic Morals, p. 149, "... their author, (Father Haywood) was mistaken in thinking that every contract of 5% with insurance of the capital and the income is unlawful; for it is not unlawful unless it is in the form of a pure loan, which need not be the case if the contract is made with a merchant or other person of notable industry." - final decision of the special Commission of theologians studying the Contractus Germanicus.

464. In fact, both Saint Thomas Aquinas and San Bernardino contradicted themselves by affirming elsewhere that money was barren - aside from conferring to it a seminal character,
vide ref. 461 and 462 ut supra, according to Raymond de Roover, 
La Pensée Economique, p. 80, and San Bernardino, p. 29.

contro l'usura trovano la loro formale giustificazione nel 
versetto 'mutuum date, nihil inde sperantes' (Vangelo secc. 
S.Luca, IV, 35) - p. 15; "Secondo il Cairoli gli scholastici 
non capirono la proibizione fatta da Cristo dell'usura. 
Direi piuttosto che essi vollero trovarne una ragione 
scientifica e la spigarono con il principio aristotelico 
della sterilità della moneta..." - p. 15, ref. 3; "Un 
discepolo di Scoto, Franciscus de Mayronis, peraltro non 
giustificava la proibizione dell'usura che per motivi 
religiosi..." - p. 16, ref. 3.

466. Capitani, Sulla questione dell'usura, pp. 33-44.

Fanfani, Le Origine, pp. 15-16.

Le Bras - Du Passage, Usure, pp. 2353-2365, 2372-2377.


Le Bras - Du Passage, Usure, pp. 2362-2364, which included 
the rents on land (5), accepted at least since the XIII 
Century; the public rents (6); and the interest paid 
to the investors by the Monts-de-Piété, fixed at 10% in 
1484 and approved by the Pope in 1486 (7) and in 1515 
(p. 2375). An old exception was made in favour of orphans, 
who were entitled to perceive an interest for their 
administered properties, and also the administrator for his 
work - pp. 2355-2356 (5) and 2360 (5); and also in the case 
of a dowry, when a father short of cash was authorised to 
mortgage a fruitful property, and the son-in-law to collect 
the proceeds - p. 2360 (4).

de Roover, La Pensée Economique, pp. 82-84.

--------, San Bernardino, pp. 38-40.

468. Azpilcueta, Comentarrio Resolutorio, pp. 5-156.

Cassandro, Un Trattato Inedito, pp. 113-167.

Le Bras - Du Passage, Usure, pp. 2359-2365, 2372-2377.

de Roover, La Pensée Economique, pp. 88-90

--------, San Bernardino, pp. 27-40.
469. Le Bras, Usure, p. 2362 (5).

470. Schumpeter, History of Economic Analysis, pp. 102-106, "... if the opportunity of gain contingent on the possession of money is quite general or, in other words, if there is a money market, then everyone, even if not in business himself, may accept the interest determined by the market mechanism. This proposition had to be handled with care, for it evidently opened the door to all sort of evasions. But it is no more than a special case of the principle that everyone may, in justice, pay and ask the current price for everything, and it was not invented ad hoc: if it is not in evidence in the thirteenth century and much in evidence in the sixteenth, this is merely due to the fact that money markets had been uncommon in the former century and became quite common in the latter. Observe that whenever alternative opportunities of gain are normally available to everyone, the argument for gain foregone will coincide with the argument from 'privation': foregoing gain is in this case precisely what the privation consists in. Observe further that in all the cases mentioned justification rests on circumstances that, however frequently or even generally they may prevail in a given environment, are logically accidental to the pure loan contract (mutuum) which in itself was never held to justify interest. And, observe finally, that justification was never, or hardly ever, based upon the advantages that the borrower might reap from the loan; it was exclusively based on the disadvantages that lending brought to the lender." - p. 104. (This was of course based in the old Thomistic argument of the loss of utility for the vendor, Tozzi, I fondamenti, p. 189.


Schumpeter, History of Economic Analysis, p. 105.

474. Ibid.

475. E. Amann, "Militaires (Ordres)", Dictionnaire de Théologie Catholique, Tome Dixième, Deuxième Partie, pp. 1758-1760.

J. Besse, "Augustin (Règle de Saint)", Dictionnaire de Théologie Catholique, Tome Premier, Deuxième Partie, pp. 2472-2483.

de Roover, San Bernardino, p. 11, ref. 35, "St. Augustine was more favourable to the merchant than the other Church Fathers."


479. Ibid., 215.

The slowness of that process is underlined by Endemann, Studien, Erster Band, pp. 76-94, particularly pp. 85-86.


Einzig, The History of Foreign Exchange, p. 66.


This was still very much the case at Azpilcueta's time - Comentario Resolutorio, Chapters IV to VI, pp. 25-38.

482. Ibid., Chapter V, pp. 29-34, VI, pp. 35-38, and VII, pp. 39-47.

Brants, L'Economie Politique, p. 216.


486. Brants, L'Economie Politique, pp. 226-227. In France, the Templars fulfilled the function of an accounting office and bank for the Royal Treasury and for important private individuals.

487. Ibid., 227-228.


de Roover, The Rise and Decline of the Medici, pp. 194-224. Incidentally, it appears that ecclesiastics were considered to be more reliable debtors than laymen - p. 213, probably for fear of excommunication, which could be inflicted for defaulting; or, in the case of annates or common services, when a papal banker complained of being unable to collect - p. 201.


Endemann, Studien, Erster Band, pp. 460-471.

489. Le Bras, Usure, p. 2363.

490. Ramón Carande y Thovar, Carlos V y sus Banqueros, La Vida Económica en Castilla (1516-1555), Madrid, Sociedad de Estudios y Publicaciones, MCLXV, Segunda Edición corregida y aumentada, Tomo II, p. 35.


493. Einzig, The History of Foreign Exchange, pp. 68-69, "Part of the funds received by the Papal Chamber in Avignon or in Rome were used for international purposes, such as covering the expenses of Papal Nuncios, subsidising crusades, supporting Christian colonies in the Near East, or financing princes engaged in wars approved by the Pope. Such transactions, too, were carried out by Italian bankers, so that the international movements of funds in connection with the Papal financial transactions and the operations in bills of exchange resulting from them were by no means unilateral."

de Roover, The Rise and Decline of de Medici, pp. 194-203.

Subsidies were often paid to foreign princes who had difficulties with the Turks or with heretics. Papal subsidies to Mathias Corvinus, King of Hungary (1458-1490) whose dominions were menaced by the Turks, were paid through the Medici - pp. 201-202. The supply of wheat to the Armenians by Pope Benedict XII, in 1336, involved also a very complex series of operations - Saporid, Le Marchand, p. XXXIX.


Greenland, for instance, sent remittances in whale bones - ref. 3, p. 447 - and Poland in furs and other commodities - ref. 5, p. 447, which were sold in Bruges for the benefit of the Apostolic Chamber. The economic activity generated by such transactions is obvious.

495. Ibid., 199-201, "All precautions were consequently taken to prevent any misuse of papal funds, and the procedure followed, if somewhat cumbersome, insured maximum safety from the point of view of the Apostolic Chamber." - p. 200. (The Apostolic Chamber administered the Pope's temporalities, and amongst other functions it was responsible for the government of papal states and it managed the Pope's finances both as a spiritual and as a temporal ruler. - p. 197)

496. Einzig, The History of Foreign Exchange, pp. 68-69, "In some contracts with these and other bankers the exchange rates were fixed in advance for a whole year. By this arrangement the Papal Chamber safeguarded itself against losses through exchange depreciation - an interesting early instance of Forward Exchange transactions, even though the amounts to be transferred and the dates of the transfers could not be fixed in advance." - p. 68.

A very good idea of the volatility and speculative character of exchange dealings can be gathered from Raymond de Roover,
Gresham on Foreign Exchange. An essay on early English mercantilism with the text of Sir Thomas Gresham's Memorandum for the Understanding of the Exchange, Cambridge, Mass./London, Harvard University Press/Geoffrey Cumberlege, Oxford University Press, 1949, Appendix, pp. 313-317. One of the best in the selection is the succinct explanation of Father Luca Paciolo, O.F.M. - "De cambiis seu ambitionibus", Summa de arithmetica, (Venice, 1494), distictio nona, tractatus quartus, fol 168r.: "Perché havendo io bisogno qui in Vinegia de ducati 100, io li prendo da te, banchieri, in questo di per pregio e costo che di qua a mesi 6 o altro termine che per Londra o Brugis corrisse; del qual corso ne tu ne io non ha certezza alcuna, e po cosi dannificare el datore como el preditore et è converso."

The technical and mechanical aspects of exchange transactions can be seen in de Roover, The Medici Bank. Its Organisation, Management, Operations, and Decline, New York/London, New York University Press, 1948, pp. 31-40; for a practical example vide pp. 35-36. The common saying amongst bankers operating in the money market - "Changes et vents changen souvent" - illustrates the uncertainty that characterised it - p. 37. Clearly, accurate forecasting was impossible - and still is, if we think in terms of an exact outcome - but those in charge of handling long term forward exchange transactions for the Papal Chamber required a sound knowledge of the "world" market and somewhat assess its likely conditions in the future if they were to minimise the average losses.

Further details about the vicissitudes of international finance can be seen in de Roover, Money, Banking, and Credit in Medieval Bruges, pp. 76-91.

497. María Luisa Ledesma Rubio, La Encomienda de Zaragoza de la Orden de San Juan de Jerusalem en los siglos XII y XIII, Caesaravystant-Theses, Zaragoza, Universidad de Zaragoza, 1967, passim. The overwhelming majority of the contracts giving land in emphyteusis - 68 contracts - rather than in "ad plantandum" contracts - 4 contracts - and the concentration of the holdings worked directly by the Order would seem to indicate a clear policy of simplifying the control aspect of management, reducing costs - for instance those of supervision, movement and transportation between the different units, and, above all, cheating, and thus making the whole enterprise more profitable. An arguable point, of course, is the possible effect of monetary depreciation on fixed canons, but is should be noted that the rates were often stipulated in kind rather than in a monetary figure - vide for instance Doc. num. 286 - and that should have taken care of that problem to some extent - providing that prices were not fixed by the authorities with the old value of the currency in mind, in which case there was still the alternative of consuming the
product - themselves or their patients - or bartering it. (The list of documents for "ad plantandum" contracts can be seen in ref. num. 528 in our Chapter II and those of emphyteusis in ref. num. 530 of the same Chapter).


501. Azpilcueta, Comentario Resolutorio, Cap. V, Cambio por Oficio, pp. 29-34, shows very clearly the influence of the Montes de Piedad in the thinking of the author and Domingo de Soto, when they consider the "Cambiador por oficio y trabajo de prestar." This is clearly apparent in (17) pp. 32-33, and explicitly acknowledged in: "Lo otro, que las razones y autoridad de la Sede Apostolica, con que en otro comentario concluyemos ser licitos, sanctos, y dignos de loor los montes de piedad, concluyen tambien ser lictito esto. Lo otro, (segun se dira luego) licitamente se puede ordenar que aya quien tenga cargo del, y lleve salario por el o de la republica, o de los que de aquel cargo se aprovecharen, conforme al provecho que dello sacaren, como se haze, por la mesma razon sera lictito lo susdicho."


504. de Roover, The Rise and Decline of the Medici, p. 12.

------, "Il trattato di fra Santi Rucellai sul cambio, il monte commune e il monti delle doti", Archivio Storico Italiano, 111, 1953, pp. 3-41. He was the son of a banker and a businessman himself before entering the Dominican Order.


Fanfani, Storia delle Dottrine, pp. 139-141.

------, Le Origine, p. 19.

de Roover, San Bernardino, p. 7.

Saporri, Il Giusto Prezzo, p. 302.


507. Carande y Thovar, Carlos V, Tomo II, p. 35.

José María Ramos Loscertales, "La formación del dominio y los privilegios del monasterio de San Juan de la Peña entre 1035 y 1094", Anuario de Historia del Derecho Español, VI, 1929, pp. 5-107.


Ramón Prieto Bances, La explotación rural del dominio de San Vicente de Oviedo en los siglos X al XIII. Notas para su estudio, Coimbra, Separata del Boletino da Facultade de Direito de Coimbra, 1940, passim.
The endorsement of economic activities, trade and merchants by the Church is also clearly discernible in cities like Valladolid - vide Federico Wattenberg, Valladolid. Desarrollo del núcleo urbano de la ciudad desde su fundación hasta el fallecimiento de Felipe II, Valladolid, Ayuntamiento de Valladolid, 1975, pp. 35, 47 - and in the promotion of the economy by laymen well known for their strong religious feelings, such as the members of the House of Haro, Señores of Vizcaya. For the latter vide Antonio de Capmany y de Montpalau, Museo Histórico que comprende los principales sucesos de España y el extranjero como asimismo toda la parte artística y monumental de los principales países, Madrid, Imprenta de Cristóbal González, 1862, (Segunda Edición), Tomo I, pp. 531-534. For the religious attitude of the House of Haro vide Presbítero Dr. Estanislao Jaime de Labairu y Goicoechea, Historia General del Señorío de Bizcaya, Bilbao, Biblioteca de la Gran Encyclopaedia Vasca, 1968, Segunda Edición facsímil de la primera, Bilbao/Madrid, 1897, Tomo III, p. 263. Throughout Tomos II and III there are many references to both the religious attitude and the promotion of the economy by the Señores de Haro, many specifically mentioned in our Chapters II and IV.

508. Julio Puyol y Alonso, El Abadengo de Sahagún, Madrid, Real Academia de la Historia, 1915, p. 25. The settlement with foreign immigrants was common at the time, and not to disturb them was even a condition of some donations, including one of the Infantas Doña Urraca y Doña Elvira to the Church of Oca. - pp. 25-26, ref. 1.

509. Ibid., 28-29.


512. Ibid., 244.

513. Ibid., 239.


515. Pérez de Urbel, El Condado de Castilla, pp. 95-98.

516. Ibid., 98-102.
AFTERWORD

We have examined the position of the Peninsular entrepreneur in the political and legal system and revealed his ability to influence major administrative decisions at all levels of government, including those concerning commercial relations with foreign powers. The participation of entrepreneurs in the development of substantive and procedural law was seen to be significant, which together with the leadership enjoyed by Castille-Aragon in the fields of banking, maritime, and insurance law cannot be explained in the absence of a continuous business experience and a wide entrepreneurial endowment.

The good disposition of the civil authorities and the Church towards merchants, trade, and economic activities, both in theory and in practice, has been documented ex abundantia. We concluded that to the extent that they reflected society at large, their disposition suggests a generally favourable climate of business in Castille-Aragon during the period under consideration.

Clearly, this merely provides us with a conceptual framework to proceed with the analysis and evaluation of the Peninsular entrepreneurial spirit. As expressed in the introduction a number of constraints determined that we should
limit ourselves to this objective for the purpose of this thesis, even though we have made significant progress in a more ambitious endeavour, which will be the subject of a Doctoral dissertation already in an advanced stage of completion.

Before testing the manifestations of entrepreneurial spirit and the actual performance of the Peninsular entrepreneurs we shall look there at the views of society on trade, merchants, and economic activities in general from yet another angle. The opinions and the actual practices of Scholastics and other Church members, political and military leaders, "caballeros", and literary figures will be examined. A major concern of this examination will be to establish whether trade and economic activities were confined to a specific sector of the social body or were, in re, widespread throughout the population.

The focus of our enquiry will then turn to the manifestations of entrepreneurial spirit. We shall concentrate on these manifestations in a number of specific sectors, including the infrastructure and the ancillary industries indispensable for their existence. We will afterwards examine, analyse and compare Peninsular and European entrepreneurship on the stage of "le grand commerce international".

The latter was the outward expression of the high level
of economic interdependence, and, consequently, the significant
degree of specialisation and division of labour attained
by the European economy towards the end of the Middle Ages
and early Modern Times. This, contrary to many common
assumptions and grand generalisations was to some extent,
and could only have been, the result of the wide currency
and acceptance of the idea that trade and merchants made an
important contribution to the common good and the general
welfare of society.