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## FRONTIER THEORY AND THE RECONQUISTA: THE ROLE OF LAWS IN DEFINING THE FRONTIERS OF MEDIEVAL SPAIN

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**FRONTIER THEORY AND THE *RECONQUISTA*:  
THE ROLE OF LAWS IN DEFINING THE  
FRONTIERS OF MEDIEVAL SPAIN**

**BY**

**ALAN NICHOLAS WITT**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE DEGREE OF**

**MASTER OF ARTS**

**IN**

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**2014**

MASTER OF ARTS THESIS  
OF  
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## ABSTRACT

### Statement of the Problem:

Recent historians have argued that the term “frontier” and the related concepts of frontier societies or zones (as used by scholars of medieval Spain in particular and the Middle Ages in general) are all amorphous and ill-defined concepts, lacking predictive value because of their conflicting usages by different historians. Is it possible to create a solid foundation for the term “frontier” so that it can be utilized in historical discourse? Do any of the elements of the frontier hypothesis as it was originally conceived hold up when applied to contemporary medieval notions of the frontier?

### Methodology or Procedures:

This thesis utilizes three law codes from medieval Spain: the *Code of Cuenca*, which is the municipal charter granted to the town of Cuenca after it was conquered from the Muslims in the 12<sup>th</sup> century by the King of Castile; the combined *Fueros* (the Spanish term for municipal charters) of the towns of Borja and Zaragoza in the Kingdom of Aragon, produced around 1150; and *Las Siete Partidas* (The Seven Laws) which were codified around the mid-13<sup>th</sup> century to apply to the entirety of Castile. This study analyzes the Code of Cuenca and the *Fueros de Borja y Zaragoza* for their descriptions of the boundaries of their respective communities in order to find a contemporary vision of the frontier, and then compares them to each other to establish the fundamental similarity of the frontier experience between kingdoms. Finally, it compares both Charters to *Las Siete Partidas* in order to establish their influence on

that code and to track the changes in the concept of the frontier over the course of the *Reconquista*.

Findings:

The pre-existing concept of the frontier in medieval Spain, *la frontera*, provides a stable theoretical basis for the use of the term “frontier” in analyzing medieval Spain because it is grounded in the local perceptions of the term rather than outside theoretical constructs that were originally intended to describe the American frontier. The characteristics of the Spanish frontier are visible within the law codes and town charters of the various kingdoms of Spain, and these sources are representative of the broader mindset because they were based on both the views of the powerful kings and the deeply rooted Visigothic customs kept by the peasants and local lords. The original conception of the frontier held (in part) that it shaped culture away from European norms, and this particular proviso of the original theory applies to Castile in that those previous Visigothic customs were reified by the granting of town charters and were thus made resistant to later pressure to conform to European norms. Specifically, the concept of partible inheritance, inherited from the Visigoths, remained the norm in Spanish law in direct contrast to the prevailing notions of primogeniture and/or male-only inheritance in most of the rest of Europe.

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# CHAPTER 1

## INTRODUCTION

The word “frontier” invokes a sense of possibility, of adventure, of danger and excitement, and to American ears it evokes the sound of gunfire, herds of horses, and journeys into the unknown. Its use as a historical term, on the other hand, has lost any sense of a consistent meaning, as the original theoretical concept of the frontier has been expanded to the point where it is poised to pop like a soap bubble. There is a way, however, to regain firm grounds for the use of the frontier concept as a paradigm for understanding certain border regions throughout history. By grounding the definition of “frontier” in the definitions and concepts used by the people of the time periods in question, scholars can then have a solid basis for both using the term and performing cross-cultural comparisons. In particular, medievalists who use the term are best served by following this paradigm because contemporary definitions did exist, particularly in medieval Spain. This is not a new concept, certainly. Many recent historians have argued that frontiers, frontier zones, and frontier societies are all amorphous and ill-defined concepts, proposing that historical research should focus on the way people who lived during the Middle Ages defined the frontier.<sup>1</sup> This has the advantage of stepping away from the active attempt by historians to impose meaning

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<sup>1</sup> David Abulafia, “Introduction: Seven Types of Ambiguity, c. 1100-c.1500,” in *Medieval Frontiers*, ed. David Abulafia and Nora Berend (Burlington, V.T.: Ashgate Publishing Company, 2002), 6. See also Nora Berend, “Frontiers,” in *The Crusades*, ed. Helen Nicholson (Westport, Conn.: Greenwood Press, 2004), 148.

on the situation and moving towards analysis of mindsets in order to reach a more meaningful conclusion.

Law codes are an ideal source for this particular form of analysis, for several reasons. They are usually created by persons with agency and the power to influence the way borders are conceived of or expanded; such codes often deal with transgressions of boundaries and property, both concepts that can have bearing on border disputes, and they represent statements of an ideal, representing the way their creators defined the boundaries (legal, political, and religious) of their realms. Accordingly, this work will seek to support the contention that while definitions of frontiers are blurry in the current scholarship, clearer definitions can be synthesized by analyzing historical works and evaluating contemporary notions of the frontier. That definition can then be applied to similar situations in the same era as a descriptive model.

This thesis will primarily be an analysis of three law codes from medieval Spain: the *Code of Cuenca*, which is the municipal charter (set of laws) granted to the town of Cuenca after it was conquered from the Muslims in the 12<sup>th</sup> century by the King of Castile; *Las Siete Partidas* (The Seven Laws) which were codified around the mid-13<sup>th</sup> century to apply to the entirety of Castile; and the combined *Fueros* (the Spanish term for municipal charters) of the towns of Borja and Zaragoza in the Kingdom of Aragon, produced around 1150. There are two working assumptions for this thesis: The first is that the role of law in defining the frontier is in describing an existing contemporary understanding of the concept rather than in forging new ground. This is based on the historical circumstances of the time period, in particular the removal of Alfonso X

from power specifically for legislative overreach in removing existing customs. The second assumption, based on existing research from other scholars on the various town charters, is that the law codes on the frontier were influential in shaping the more universal law codes for the emerging nation of Spain. The goals of the thesis are first, to provide a working definition of what the concept of the frontier meant in medieval Castile and Aragon; second, to prove the hypothesis that the frontier shaped Spanish culture away from European norms; and third, to examine the mechanisms by which the frontier affected Spanish culture.

This is a productive area of study due to the fluid nature of borders in Spain during the *Reconquista* and the existence of several contemporary law codes. Medieval Spain represents an ideal country for examining theories about the frontier due to the clash of cultures and ideologies, not to mention the contemporary existence of the term *frontera*. The existence of numerous municipal charters allows for comparative analysis, and there is a body of scholarship studying other aspects of medieval Spain that can be drawn from and expanded. While many scholars have studied aspects of the *Reconquista* and the concept of the frontier, the intense focus on the legal angle presents a more concentrated approach to the subject.

This study will be significant for several reasons. First, it will add to the body of scholarship calling for a more coherent definition of the frontier based on contemporary definitions. Second, it will examine the connection between municipal codes and the frontiers in Spain, an approach which has not been extensively explored. Third, it will reexamine the concept of the influence of the frontier on Spanish society

by comparing different kingdoms with similar frontiers (where most studies focus on individual kingdoms and their individual frontier).

To start, the following chapter will examine the use of the term “frontier” in historical scholarship, both in Spain and in the United States, and will demonstrate the connection between this thesis and the larger scholarly conversation. Chapter 3 will cover the methodology used in this analysis in greater detail, including a discussion of the limits of the primary sources for this type of research. Chapters 4 and 5 comprise the body of the thesis, examining the early municipal charters of Cuenca, Borja, and Zaragoza and then the great *Siete Partidas*. Chapter 4 compares the early charters to each other in order to establish that they reveal a similar conception of the frontier. Chapter 5 examines the laws in similar areas in the later law code in order to both track changes in the frontier concept and to also establish the influences of the earlier codes. Finally, Chapter 6 concludes the argument and offers up potential further areas of scholarly exploration.

## CHAPTER 2

### REVIEW OF LITERATURE/HISTORIOGRAPHY

For American scholars, the field of frontier studies originated from the work of Frederick Jackson Turner. His frontier thesis, articulated in 1892, had a large influence on many of the modern American historians of medieval Spain. Turner argued that during the 19<sup>th</sup> century, the existence of an area of free land in the American West, continuous westward expansion of the border of the United States, and westward pattern of settlement created the core elements of American culture.<sup>2</sup> Specifically, he argued that the perils of the frontier lifestyle required the adoption of new customs for survival, which in turn changed the cultural traits and innate character of Americans. Finally, Turner posited that the geographic expansion of the frontier westward led to a separation between European cultural traits and the growing character of the U.S.<sup>3</sup> This theory about the American West wasn't applicable to Spain without substantial revision, as it contained several references to uniquely American factors such as the growth of strong national cohesiveness as a response to the frontier (a situation that manifestly did not exist in early medieval Spain). Turner himself saw his theory as a byproduct of American exceptionalism, and distinguished it from what he defined as a

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<sup>2</sup> Frederick Jackson Turner, "The Significance of the Frontier in American History," in *The Early Writings of Frederick Jackson Turner: With a List of all His Works*, ed. Everett Eugene Edwards (Madison: The University of Wisconsin Press, 1938), 187.

<sup>3</sup> *Ibid.*, 189-196.

“European frontier---a fortified boundary line running through dense populations.”<sup>4</sup> Turner’s frontier was marked by economic permeability via trading with the Native Americans, and was also marked by constant danger from those same Native American powers, leading to laws being created to regulate these contacts and normalize relationships between the growing United States and the native populations.<sup>5</sup> The other major characteristic of Turner’s frontier was that it held opportunities: the notion of free land for those who could hold it and the sense of Manifest Destiny are the hallmarks of the Turnerian frontier.<sup>6</sup> Despite the fact that the theory was later abandoned by scholars as a framework for studying American history, the terminology of the frontier has thrived and the concept (in many altered forms) influences the scholarship of the Middle Ages to this day.<sup>7</sup>

Turner’s theory was first repurposed for use in analyzing other countries in 1952, when Walter Prescott Webb showed the applicability of the theory to Europe by comparing the American frontier to the spread of European colonial possessions. His analysis, which expanded on Turner's, argued that the frontier in both the American and the colonial senses strengthened the central government.<sup>8</sup> One of his central

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<sup>4</sup> Turner, “The Significance of the Frontier in American History,” 187.

<sup>5</sup> Ibid., 203.

<sup>6</sup> Ibid., 221.

<sup>7</sup> Berend, “Frontiers,” 151. For a more detailed discussion of the evolution of the frontier theory in the American context, refer to Gene M. Gressley, “The Turner Thesis: A Problem in Historiography” *Agricultural History* vol. 32, no 4. (Oct. 1958): 227-249, <http://www.jstor.org/stable/3740060> (accessed May 13, 2012).

<sup>8</sup> Walter Prescott Webb, *The Great Frontier* (Austin: University of Texas Press, 1964), 149.

conclusions underlying the entire frontier model of thinking was that the existence of a frontier leaves its mark on the institutions created while it was open: governmental structures, religious foundations like monasteries, and traditions and customs. Webb cited the frontier as the primary influence on an expanding culture because of its reinforcement of centralized government, but his biggest contribution to the discussion of the frontier was that he opened the idea up for European application by removing the parts that were distinct to the American experience.

Meanwhile, Spanish historians were examining the effect of the *frontera* on the development of medieval Spain long before Turner's theory reached their shores. The historiography of the *Reconquista*, the long military conflict which eventually drove the Muslims out of Spain, focused on two interrelated areas: the idea of *re población* (the repopulation or colonization of areas conquered from the Saracens); the origins of the Spanish national character; and *convivencia* (living togetherness), the degree to which Christians, Muslims, and Jews lived together and transferred culture across borders and within Christian society.

One of the earlier influential writers of the 20<sup>th</sup> century in studying the frontier was Ramón Menendez Pidal, who devoted much of his career to studying *El Cid*, a popular historical figure of the *Reconquista* who fought for both Muslim and Christian rulers. His 1929 work *La España del Cid* investigated the reality and the myth of *El Cid*, which led to an examination of frontier life during the *Reconquista* as well as determinations on the genesis of the Spanish national character. Menendez Pidal argued that the fundamental character of Spain was not created on the Castilian or Aragonese frontiers but rather was inherited from the Visigothic kings of Spain who

ruled the entire peninsula before the Muslim invasion of 711.<sup>9</sup> He supported an evolutionary concept of feudalism which viewed that political system as being an inevitable stage in the development of a westernized culture. From this point of view, he wrote that the frontier initially held back the development of Spain (especially in comparison to France) because the demands of *re población* kept feudal relationships from taking over the social hierarchy and thus advancing the culture down the proper evolutionary path.<sup>10</sup>

Menendez Pidal dated the reconquest period in Spain from between 711-1250 (the Arab invasion through the conquest of all of the peninsula but Granada), implicitly linking the idea of the frontier to the idea of expansion.<sup>11</sup> This focus was consistent with his views on *re población*, for when the border stopped expanding and the areas of depopulated “free” land disappeared, the demographic pressures that slowed the advance of feudalism were removed. His periodization was not universally accepted, opposed by another popular construction exemplified by José María Font Rius, who placed the *Reconquista* and the Spanish Middle Ages between the destruction of the Visigoths in 711 and the conquest of Granada in 1492.<sup>12</sup> The importance of these periodizations is that by defining when the conquest period ended, they determined whether the frontier could be defined as inherently expansionist (as

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<sup>9</sup> Ramón Menéndez Pidal, *The Cid and His Spain*, trans. Harold Sunderland (London: Frank Cass and Co., 1934), 23-24.

<sup>10</sup> *Ibid.*, 467.

<sup>11</sup> *Ibid.*, 462.

<sup>12</sup> José María Font Rius, *Instituciones medievales españolas; la organización política, económica y social de los reinos cristianos de la reconquista* (Madrid: Consejo Superior de Investigaciones Científicas Instituto "San José de Calasanz" de Pedagogía, 1949), 11.

per Turner's theory), or whether the concept included more static borders such as the Castile-Granada border zone.

While Menendez Pidal focused primarily on the legends of El Cid, other scholars were analyzing the *Reconquista* with a broader scope. The primary arguments of the 1940s onward are exemplified by a drawn out scholarly duel between two eminent Spanish historians: Américo Castro and Claudio Sánchez-Albornoz. Their main issue of contention revolved around the construction of the Spanish national character: Castro noted that the Christian chroniclers from several different kingdoms used the term *cristianos* when referring to the Christian Spanish kingdoms as a whole, and used this as part of an argument that the self-identity of the Spanish people was developed by and hinged on their place in three religious "castes" of Christians, Muslims, and Jews on the peninsula.<sup>13</sup> By contrast, Sánchez-Albornoz, following Menendez Pidal's lead, believed instead that the genesis of the Spanish national character lay with the Visigoths who controlled the entire peninsula before the invasion of 711. He argued that the traits of the Spanish character were passed from those Visigoths to their descendants under Muslim control ultimately to the conquerors themselves.<sup>14</sup> His 1958 work, *España un Enigma Histórico*, focused on refuting Castro's contentions and on supporting the idea that Spanish culture was a unified construct throughout the Middle Ages.<sup>15</sup> Sánchez-Albornoz wrote that the distinctly Visigothic sensibility of the people

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<sup>13</sup> Américo Castro, *The Spaniards*, trans. Willard F. King and Selma Margaretten (Berkeley: University of California Press, 1971), 50, 58.

<sup>14</sup> Claudio Sánchez-Albornoz, *España, un enigma histórico*, vol. 2 (Buenos Aires: Editorial Sudamericana, 1962), 236-237.

<sup>15</sup> *Ibid.*, 12.

as a whole was not dramatically changed by the invasion of 711, as cultural transmissions to and from the different cultures were sporadic and difficult. Specifically, the conquerors did not pass on their culture to the conquered due to language barriers, and cross-cultural contact across the borders was low for the same reason.<sup>16</sup> Castro specifically refuted the notion of inherited cultural traits in a later work entitled *La realidad histórica de España*, pointing out that emigrants from Spain in the modern era did not automatically transmit their culture to the next generation.<sup>17</sup> His essential point was that the *Reconquista* did not actually “re”conquer anything, as the actual Visigothic cultural structures and cities were lost in the 711 invasion.<sup>18</sup>

Both of these arguments had implications for the frontier. Castro argued that the frontier was not national, citing tribes and regions as stronger building blocks for culture and stating that the “awareness of the collective”, the feeling of peninsular unity, was not the main source of cultural development.<sup>19</sup> In his 1971 study of the formation of the Castilian identity, *The Spaniards*, he noted that the Castilians were more than willing to define themselves in opposition to their Christian neighbors, using the border towns as military strongholds against them. However, he acknowledged that the divisions of caste did serve to focus more attention across the border at the Muslim powers.<sup>20</sup> By contrast, Sánchez-Albornoz (like Menendez Pidal

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<sup>16</sup> Sánchez-Albornoz, *España, un enigma histórico*, 189.

<sup>17</sup> Américo Castro, *La realidad histórica de España* (Mexico: Porrúa, 1971), 6-7.

<sup>18</sup> Américo Castro, *España en su historia: Cristianos, moros, y judíos* (Buenos Aires: Editorial Losada, 1948), 354.

<sup>19</sup> Castro, *La realidad histórica de España*, 7.

<sup>20</sup> Castro, *The Spaniards*, 48-49.

before him) saw the process of *reoblación* (and thus the frontier) as an essential factor in preventing Spain from adopting the feudal system, which in turn led to Spain developing a different focus and culture from the rest of Europe.<sup>21</sup> Thus Sánchez-Albornoz privileged the frontier as the primary element in changing Spanish culture for the worse by retarding its natural evolutionary development, again following the arguments laid out by Menendez Pidal.

Other scholars took different paths in examining the effect of repopulation and the frontier on Spain. José Maria Font Rius studied how the process of the *reoblación* affected the formation of a municipal identity, but he also argued that the Spanish feudal political structure was strongly affected by French influences, while Spanish town customs had many roots in German practices.<sup>22</sup> His argument rejected both Sánchez-Albornoz's denial of feudal influence on Spanish culture, and Castro's argument that the Spanish identity developed primarily within the conflict between the three peninsular religious groups. He focused instead on Spain as part of the broader European community of ideas, a concept that would be increasingly important to future scholars. Another approach is exemplified by José Antonio Maravall Casesnoves, whose 1954 work *El concepto de España en la edad media* argued that the initial concept of *España* was not strongly tied to the geography of the Iberian Peninsula: instead, the term was linked to the Roman provincial system, while "Iberia"

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<sup>21</sup> Sánchez-Albornoz, *España, un enigma histórico*, vol. 2, 7-9.

<sup>22</sup> José M. Font Ruis, *Instituciones medievales españolas* (Madrid: Colección CAUCE, 1949), 20.

or “Celtiberia” were used to refer to the peninsula in the earlier writings.<sup>23</sup> Casesnoves mirrored Castro’s argument that the Visigothic culture did not survive, but pointed out that the idea of cultural continuity from the Visigothic rulers was an important political point for Spanish rulers to use to establish their legitimacy.<sup>24</sup>

While he did not explicitly use the term “frontier,” Casesnoves examined the development of the *marcas*, which he defined as regions “at the extremes of the state, borders between the country proper and the land of aggression, the part furthest toward the permanent hostility of the Saracens.” His focus was on the 8<sup>th</sup> and 9<sup>th</sup> centuries, and his conception of the *marcas* explained these regions as depopulated by the conflict and inherently fluid, defined not by geographic boundaries but in relation to the political and religious differences between Cataluña and the Muslim powers to the South. This approach was compatible with Castro’s in that Casenoves did not tie the notion of the *marca* to the idea of Spain, but rather to regional and religious differences.<sup>25</sup> He did tie in the concept of *España* as a unified whole to the contemporary ideas of the *Reconquista*, but he pointed out that the hostility between the Christians and the Moors had been fundamental to the region before any organized concept of *Reconquista* developed.<sup>26</sup> Casesnoves’ work was useful in that it was one

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<sup>23</sup> José Antonio Maravall Casesnoves, *El concepto de España en la edad media* (Madrid: Instituto de Estudios Politicos, 1954), 55.

<sup>24</sup> *Ibid.*, 268.

<sup>25</sup> *Ibid.*, 160. Original is “*regiones extremas, intermedias entre el propio país y la tierra de la aggression, el más allá de donde parte la permanente hostilidad de los sarracenos.*”

<sup>26</sup> Casesnoves, *El concepto de España en la edad media*, 283.

of the first in the Spanish historiography to examine contemporary definitions of the frontier rather than imposing meaning from the modern perspective.

Much ink was also shed over the concept of *convivencia*, the use of which was popularized by Castro in *España en su historia*. Essentially, Castro argued that the three major religious cultures shared in the construction of the Spanish culture, both in terms of the cultural contacts across the border and in terms of enclaves under the other groups' control.<sup>27</sup> This went hand in hand with his argument about the caste system, which neatly explained the ability of Christian rulers to tolerate Muslim and Jewish enclaves within their borders as well as their ability to forge alliances with the Muslim powers for their own ends; as long as the Christian caste was not subordinated to another, *convivencia* was possible.<sup>28</sup> Sánchez-Albornoz firmly rejected the caste system and the notion that the other groups were major contributors to Christian Spanish culture. Noting that the Jewish members of society participated in the same professions as the Christians, he argued that they acted as agents of the king and thus represented a social class rather than a caste.<sup>29</sup> While acknowledging that physical co-existence was a fact of medieval Spain, Sánchez-Albornoz castigated Castro for conflating modern standards of tolerance with the medieval versions and arguing that “the tolerance, in Al-Ándalus as in Christian lands, flourished between the minority that ruled the state and not between the masses that they governed.”<sup>30</sup> Casenoves'

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<sup>27</sup> Castro, *España en su historia*, 207.

<sup>28</sup> Castro, *The Spaniards*, 584.

<sup>29</sup> Sánchez-Albornoz, *España, un enigma histórico*, v.2, 44-45.

<sup>30</sup> Sánchez-Albornoz, *España, un enigma histórico* v.1, 288, 295.

vision of a fundamental religious hostility as the dividing line also supports Sánchez-Albornoz's version of coexistence, though that may have been influenced by the focus of his work on the early period after the conquest of Spain. These two visions, of a fluid interconnected web between three religious caste groups versus a more rigid dividing line between hostile civilizations represent fundamentally different visions of the frontier.

#### DEVELOPMENT OF THE AMERICAN HISTORIOGRAPHY

While the scholarly fistcuffs were progressing in Spain, scholars overseas were increasingly applying the new formulations of Turner's initial concept to the study of medieval Spain and to the Middle Ages in general. These new formulations included the idea of the "frontier society", the "Society organized for war", and "frontier zones", terms describing the frontier as an interface between cultures.<sup>31</sup> Foreign scholars' analyses of Spanish cultural development grappled with many of the same issues as their Spanish counterparts, and the influence of Sánchez-Albornoz and Castro was constantly evident. However, the American scholars' exposure to Frontier Theory shaped their analyses in different directions.

The description of the frontier as a society organized for war was particularly popular amongst historians of medieval Spain in the 1960s and 70s. In 1966 Elena Lourie duplicated the conclusions of Sánchez-Albornoz and Menendez Pidal, arguing that the prolonged frontier experience of militarized townships and social mobility for

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<sup>31</sup> Nora Berend, "Preface", in *Medieval Frontiers: Concepts and Practices* eds. David Abulafia and Nora Berend (Burlington: Ashgate Publishing Company, 2002), xi.

the masses retarded the growth of feudalism in Spain.<sup>32</sup> Likewise, she unambiguously attributed the national character of Spain to the frontier, writing that “it was this prolonged and complex conditioning which made it almost inevitable that, once America had been discovered, it should be a handful of Castilians who would undertake the conquest of the New World.”<sup>33</sup> This formulation of the frontier concept, however, did not explicitly define the location or direction of the frontier. Other scholars did take up that challenge; James F. Powers’ 1988 book *A Society Organized For War* argued that the development of the frontier military forces and town militias had as much or more to do with the constant conflict between Christian kings than with hostility towards the Muslim enemy.<sup>34</sup> Despite their different ideas of *where* the actual frontiers lay, both of the aforementioned scholars defined the frontier by its military focus and constant conflict. This approach departed from the man vs. the environment focus of Turner, as his theory focused on colonization of “free” land while the frontier society concept used by Lourie and Powers posited hostile conquest and depopulation as a prelude to colonization. The focus on *despoblación* (depopulation due to the constant warfare) connected the concept to the earlier Spanish historiography on *repoblación*.

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<sup>32</sup> Elena Lourie, “A Society Organised for War: Medieval Spain Past and Present” in *Crusade and Colonisation: Muslims, Christians, and Jews in Medieval Aragon* (Vermont: Variorum, 1990), 62.

<sup>33</sup> Lourie, “A Society Organised for War,” 76.

<sup>34</sup> James F. Powers, *A Society Organized for War: The Iberian Municipal Militias in the Central Middle Ages, 1000-1284* (Berkeley: University of California Press, 1988), 19.

One influential attempt to reconcile Turner's concepts with *despoblación* was produced by Angus MacKay in 1977, who proposed the direct application of Turner's frontier thesis to Spain while still characterizing the frontier as a "society organized for frontier warfare."<sup>35</sup> In *Spain in the Middle Ages*, he argued that the characteristics of the Spanish frontier mirrored most of those of the American frontier, noting that both were characterized by large amounts of unclaimed land and a lack of manpower and pointing to the fact that the constant warfare in the border zones coupled with possible mass-migrations by Muslims after conquests led to severe and constant depopulation.<sup>36</sup> This concentration on depopulation mirrored work done by Sánchez-Albornoz on the *despoblación* of the Duero River valley. MacKay also credited Sánchez-Albornoz with emphasizing the importance of the frontier to Spanish development, and reiterated his view that the frontier slowed the growth of feudalism and strengthened the power of the king.<sup>37</sup> By focusing more on the unclaimed land (and less on how it was claimed), MacKay explicitly connected the American and Spanish frontier experiences. Mackay's claims were supported by Derek Lomax, whose monograph *The Reconquest of Spain* also accepted the argument that the Duero was a no-man's land devoid of settlement.<sup>38</sup> Lomax also repeated the notion that the Muslim conquest interrupted Spain's development as a European country, but like

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<sup>35</sup> Angus MacKay, *Spain in the Middle Ages: From Frontier to Empire, 1000-1500* (London: Macmillan, 1977), 46-47.

<sup>36</sup> *Ibid.*, 3.

<sup>37</sup> *Ibid.*, 1, 96-97.

<sup>38</sup> Derek Lomax, *The Reconquest of Spain* (New York: Longman Inc., 1978), 33-35.

Sánchez-Albornoz he argued that Castile in particular became a society organized for war and this led to the colonial aspirations in post-medieval Spain.<sup>39</sup>

*Convivencia*, national identity, and *reoblación* continued to be important themes in the Spanish historiography on the frontier during this time, but specialized works focusing on smaller aspects of the issue were becoming the norm. A good example is Salvador de Moxó's work in 1979, which focused primarily on *reoblación* and made the point that the granting of *fueros* was a tactic utilized by Spanish monarchs to incentivize repopulation. He noted that local *fueros* were remarkably similar throughout the various frontier kingdoms in Spain, and cited this as evidence of a unified national frontier society.<sup>40</sup> De Moxó bolstered this notion by using the term *hispanocristiana* to describe Spanish society, reinforcing the idea of a national Christian self-identity that Castro made using the contemporary use of the word *cristianos*.<sup>41</sup> De Moxó portrayed the expansion of borders as the result of a synthesis of three elements: political aspirations, economic goals and religious ideals, and he attributed the repopulation effort as being the central mechanism for expanding Christian Spain, reinforcing the importance of the frontier to the Spanish identity.<sup>42</sup>

De Moxó's formulation of the frontier as the boundary of the clash of civilizations was tied into the previous debates over whether the frontier was a national or more local endeavor. From Castro onward, historians had critiqued the idea

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<sup>39</sup> Lomax, *The Reconquest of Spain*, 176-177.

<sup>40</sup> Salvador de Moxó, *Reoblación y sociedad en la España cristiana medieval*, (Madrid: Ediciones Rialp, 1979), 386.

<sup>41</sup> *Ibid.*, 479-481.

<sup>42</sup> *Ibid.*, 482.

of the Spanish frontier as ground zero for the clash of civilizations. Ron Barkai, writing in 1984, argued that before the introduction of crusading themes it was difficult to find evidence of any pan-Hispanic ideology of re-conquest.<sup>43</sup> Combing through the propaganda about Muslims written during the *Reconquista*, Barkai found that the imagery used to describe the Muslim enemy was also used to describe invaders from neighboring Christian kingdoms.<sup>44</sup> He also pointed out that the term *sarracenos*, which was commonly used to denote the Muslim enemies to the south, was not usually used in an inherently negative fashion.<sup>45</sup> Barkai's work, while not directly focusing on the frontier, is significant in that it refutes the clash-of-civilizations theory and instead argues that *ethnicity* was the main source of conflict on the Iberian Peninsula. This approach also has the virtue of explaining why the greatest surges of conflict came when new invasion forces crossed over from Africa.<sup>46</sup>

In the late 80's and early 90's the definitions of the Spanish frontier multiplied, leading to a greater ambiguity as to the actual meaning of the word. This increasing ambiguity was noted by several authors, and Turner's concept was increasingly attacked and/or altered by scholars attempting to come up with a useful definition. One such scholar was Eduardo Manzano Moreno, who argued that the number of definitions of the frontier concept had expanded to be too ambiguous for practical

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<sup>43</sup> Ron Barkai, *Cristianos y Musulmanes en la España Medieval*, trans. M. Bar-Kochba and A. Komay, (Madrid: Ediciones RIALP, 1984), 49, 97-98.

<sup>44</sup> *Ibid.*, 122.

<sup>45</sup> *Ibid.*, 138.

<sup>46</sup> *Ibid.*, 293.

use.<sup>47</sup> Moreno also addressed Sánchez-Albornoz's arguments on feudalism; while he joined Barkai in rejecting the picture of Iberia as the site of clashing civilizations, Moreno argued that Spain did have a feudal power structure that prevented the possibility of a unified civilization.<sup>48</sup> Another excellent example of the trend towards questioning the frontier concept is the work of Robert I. Burns, who focused primarily on "crusader" Valencia and applied the frontier theory to that kingdom. Burns noted that the use of Turner's theories could be a double edged sword, viewing Turners thesis as a blank slate torn apart by historiographical controversy.<sup>49</sup> Since Turnerism could be "what any of us wishes to redefine it to be, to suit his own needs," it risked descending into irrelevancy due to a lack of definition.<sup>50</sup> Burns' put forward his own definition of the concept, which favored the frontier as the meeting place for cultures rather than as a clash of cultures.

Despite the emerging criticisms, other scholars continued to add to the ambiguity of the frontier theory by expanding its definition. C.J. Bishko wrote several articles on aspects of the frontier between 1948 and 1975, and used the term to both describe military and political borders between kingdoms and the boundaries between Islam and Christendom. The problem of definition is evident in his work: In his article on "The Castilian as Plainsman", he defines the Spanish frontier as a "frontier movement

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<sup>47</sup> Eduardo Manzano Moreno, *La frontera de Al-Andalus en época de los Omeyas* (Madrid: Consejo Superior de Investigaciones Científicas, 1991), 27.

<sup>48</sup> *Ibid.*, 26.

<sup>49</sup> Robert I. Burns, "The Significance of the Frontier in the Middle Ages," in *Medieval Frontier Societies*, eds. Robert Bartlett and Angus MacKay (Oxford: Oxford University Press, 1989), 311.

<sup>50</sup> *Ibid.*, 315.

in the *authentic American sense*--- the occupation and development of relatively empty territories on the margin of an expanding society.”[emphasis mine]<sup>51</sup> By making this distinction Bishko contributed to the broadening of the idea of “frontier”, implying that the old Turnerian definition was specific to America and that the concept of the frontier could be used in “inauthentic” manners to describe other border regions.

Another area in which the concept of the frontier was broadened was in where it was applied. Thomas Glick’s 1995 book *From Muslim Fortress to Christian Castle* pointed out a disturbing tendency amongst many Hispanists to equate Castile with the whole of Spain, using the characteristics of the Castilian frontier to describe the entire Spanish frontier.<sup>52</sup> Additionally, he argued that the effect of the frontier on Spanish culture was overstated; Glick analyzed farming and landownership patterns across the various Spanish kingdoms to show that the frontier reflected common practices rather than creating them.<sup>53</sup> His approach to the history of Spain focused on archaeology and the physical evidence, and this approach broadened the frontier concept by adding the idea of an ecological frontier. Glick’s 1979 work *Islamic and Christian Spain in the Early Middle Ages* differentiated natural ecological frontiers from the political and cultural, arguing that in order to advance conquest those ecological barriers had to have been breached and the conquerors would have had to adjust to farming

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<sup>51</sup> C. J. Bishko, “IV: The Castilian as Plainsman,” in *Studies in Medieval Spanish Frontier History*, ed. C. J. Bishko (London: Variorum Reprints, 1980), 47.

<sup>52</sup> Thomas F. Glick, *From Muslim Fortress to Christian Castle* (Manchester: Manchester University Press, 1995), xiv.

<sup>53</sup> *Ibid.*, 101-102.

conditions in the wake of the conquest.<sup>54</sup> Glick de-emphasized the importance of the frontier in Spanish development, referring more to the other elements such as French influences from the northeast and the development of kingdoms behind the frontier line. A perfect example of this is his treatment of feudalism. Glick rejected the characterization of feudalism as a natural stage in the evolution of the state (contradicting Sánchez-Albornoz and company), arguing instead that elements of feudal practice were incorporated as they became useful.<sup>55</sup> Like Font Rius, Glick cited the introduction of French feudal norms as influencing the terminology and practice of government, though he did note that they had the effect of “giving normative meaning to preexisting relations without affecting their structure.”<sup>56</sup>

Bernard F. Reilly’s work, *The Medieval Spains*, also examined the effects of European influences on Spanish governmental structures, noting that Alfonso VIII’s 1177 marriage to Eleanor (daughter of Henry II and Eleanor of Aquitaine) “illustrates the increasing interpenetration of west European and Iberian politics.”<sup>57</sup> Reilly’s main difference from those before him was that he situated Iberian institutions such as feudal relationships, towns and cities, and the Catholic Church as *exaggerated* versions of their European counterparts. This presented a fundamental break from the arguments of Sánchez-Albornoz and his cohorts that the frontier degraded Spanish

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<sup>54</sup> Thomas F. Glick, *Islamic and Christian Spain in the Early Middle Ages* (New Jersey: Princeton University Press, 1979), 51-58

<sup>55</sup> *Ibid.*, 212-213.

<sup>56</sup> *Ibid.*, 214.

<sup>57</sup> Bernard F. Reilly, *The Medieval Spains* (Cambridge, England; New York, NY, USA: Cambridge University Press, 1993), 132.

development.<sup>58</sup> This theoretical approach suggested the ultimate predominance of European influences in building Spanish character. Reilly also attributed the expansion of the *Reconquista* to demographic population pressures and new agricultural techniques rather than ideological concerns, following the Spanish historiographical concern for *re población* and Glick's preoccupation with the ecological concept of the frontier.<sup>59</sup>

As more and more scholars moved away from the idea that the frontier was the sole birthplace of the Spanish character, it became necessary for each new work to examine the degree of French influence on the progress of the Reconquista and the general development of Spanish culture. Joseph O'Callaghan argued in his 2003 *Reconquest and Crusade in Medieval Spain* that the *Reconquista* and the crusading spirit were interwoven, and examined the effect of French crusaders on influencing the process. Still, while noting the importance of the Catholic Church (the French and Italian iterations) in influencing Spanish culture, O'Callaghan placed proportionally more weight on the frontier as the driving force behind Castile's expansion, especially in terms of the motivations for conquest. He traces the origin of the *Reconquista* concept to the 8<sup>th</sup> or 9<sup>th</sup> century and argued that the adoption of the concept by Spanish rulers led to greater cooperation and treaties due to a sense of the "inevitability of conquest," in effect, a Spanish Manifest Destiny.<sup>60</sup> While not privileging them over local influences, O'Callaghan's work does examine the contributions of French

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<sup>58</sup> Reilly, *The Medieval Spains*, 160-161.

<sup>59</sup> *Ibid.*, 91.

<sup>60</sup> Joseph F. O'Callaghan, *Reconquest and Crusade in Medieval Spain* (Philadelphia: University of Pennsylvania Press, 2003), 3-6.

settlers and soldiers to the expansion of Spain, where more nationalist scholars were more apt to ignore or belittle those contributions.

O'Callaghan's concern for the local perceptions of the *Reconquista* is part of another growing trend in the field, the focus on contemporary definitions of the frontier as an effort to restore some focus to the concept. This had been an element of the scholarly discussion stretching all the way back to Menendez Pidal, but Hispanists of the 20<sup>th</sup> and 21<sup>st</sup> centuries were increasingly inclined to focus on that element to guide their definitions of the frontier. For example, in his discussion of the argument over whether the frontier regions were fully depopulated by war, Glick pointed out that the medieval *perception* of the frontier region was that of a deserted and dangerous area.<sup>61</sup> Thus the actual reality of the region was somewhat irrelevant in terms of how the local elites went about their decision making. Similarly, Peter Linehan's *History and the Historians of Medieval Spain* addressed the contemporary understanding of the frontier, noting that the specific word "is said not to have been verbalized in the twelfth century...the word certainly occurs in documents which emanated from the Castilian chancery when [Juan, abbot of Valladolid] was in charge of it in the early 1220s."<sup>62</sup> Still, he did see the frontier region as having existed before it was verbalized. Linehan also took aim at the concept of the *Reconquista*: He punctured the myth of the Visigothic ancestry of the Spanish monarchs rather bluntly, saying that "The Asturian kings hijacked a corpse, acquired its papers, and assumed its

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<sup>61</sup> O'Callaghan, *Reconquest and Crusade in Medieval Spain*, 63.

<sup>62</sup> Peter Linehan, *History and Historians of Medieval Spain* (Oxford: Clarendon Press, 1993), 263.

historical identity.”<sup>63</sup> Like Castro and Barkai, Linehan’s argument was that the concept was a myth thought up by contemporary rulers to justify territorial aggrandizement. Still, he focused on their usages of the fictional ancestry to manipulate their subjects understanding of their place on the peninsula, privileging perceptions over reality.

O’Callaghan also focused on the frontier as a mental concept created by people during the time period.<sup>64</sup> He argued that that frontier did not disappear with the slowing of the *Reconquista* and noted that Spanish rulers argued for invading Africa by alluding to the conquest of the northern areas by the Visigoths in the 8<sup>th</sup> century.<sup>65</sup> This idea of the continuation of the frontier spirit past the conquest of the Peninsula hearkened back to Menendez Pidal, Sánchez-Albornoz, and Lourie, but O’Callaghan’s approach emphasized how the Spanish rulers used the perceptions and contemporary definitions of the frontier to justify their plans. This approach was also exemplified by Jonathan Ray, who wrote *The Sephardic Frontier* in 2006 to contextualize the frontier by analyzing how the Jewish community shaped it. His approach to the frontier hinged on contemporary definitions of the word: He quoted Luís Adão da Fonseca, a scholar of medieval Portuguese history, saying “the frontier, as a border, (in the medieval sense), [was] an undefined and imprecise space where people are separated by beliefs.”<sup>66</sup> This interpretation of the word followed the conceptualization of the

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<sup>63</sup> Linehan, *History and Historians of Medieval Spain*, 82.

<sup>64</sup> O’Callaghan, *Reconquest and Crusade in Medieval Spain*, 4-5.

<sup>65</sup> *Ibid.*, 214-215.

<sup>66</sup> Jonathan Ray, *The Sephardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia* (Ithaca: Cornell University Press, 2006), 74.

frontier as a mental space rather than a physically defined space, and has the advantage of explaining the shifts in law codes and the attitudes surrounding Jews during this time period. Ray argues that the frontier provided a unique place for Jews to flourish and to avoid the increasingly restricted status of Jews in other contexts.<sup>67</sup> Following this to its logical conclusion, one can connect the eventual expulsion of the Jews from Spain with the disappearance of the frontier as defined by Ray. Without the need for the Jews as cultural intermediaries to Muslims on the peninsula and without that imprecise space separated by belief, the Jews did not have a culturally useful space to the Christian rulers.

Even with the tighter focus on the perceptions of the medieval Spaniards, the ways in which individual historians use the concept of the frontier continue to increase. The proliferation of collected essays and conference proceedings on the subject is certainly evidence of the increasingly fractured nature of the frontier theory.<sup>68</sup> Like Burns, several recent scholars are openly questioning the utility of the frontier concept, and perhaps the best example of this is the work of Nora Berend. Berend focuses on the Crusades, and a substantial part of her chapter “Frontiers” in the book *The Crusades* covers the historiography of frontiers in Spain. She critiques the application of frontier theory to Crusades and to the Middle Ages as a whole on the grounds that the definitions of “frontier,” “frontier society,” and “frontier zone,” vary

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<sup>67</sup> Ray, *The Sephardic Frontier*, 73.

<sup>68</sup> Daniel Power and Naomi Standen, eds., *Frontiers in Question: Eurasian Borderlands 700-1700* (Macmillan; Basingstoke, 1999); Florin Curta, ed., *Borders, Barriers, and Ethnogenesis : Frontiers in Late Antiquity and the Middle Ages* (Turnhout : Brepols, 2005); David Abulafia and Nora Berend, eds., *Medieval Frontiers: Concepts and Practices* (Burlington: Ashgate Publishing Company, 2002)

greatly depending on the scholar using them, and therefore have little intrinsic meaning.<sup>69</sup> Even more directly, her preface to *Medieval Frontiers: Concepts and Practices* in 2002 levels two specific charges against the use of “frontier”: first that the lack of modern state boundaries in the Middle Ages opens up the field to charges of ambiguity because the same word means very different things when used in modern and medieval contexts, and second that “the concept of ‘frontier societies’ lacks clear definition, and is used for a wide variety of historical phenomena and processes.”<sup>70</sup>

Her colleague David Abulafia offers a similar critique of the concept, charging that the definition of the frontier in the Middle Ages has been fragmented and thus must be defined by each scholar before its use, which removes its utility as a universal concept. He organizes scholars of medieval Europe into groups by the way they approach the frontier concept; these groups (political frontiers, economic frontiers, religious frontiers, mental frontiers, and cultural frontiers) have utility because they share an internal focus and definition.<sup>71</sup> Both Abulafia and Berend use the frontier concept in their work, but they recognize that there is a severe problem within the field of frontier studies due to the lack of any widely accepted definition of the frontier.

While the overall shape of the field of frontier studies can be safely described as chaotic and undefined, the specific application of the concept to Spain is a bit more precise. The majority of the historians past and present focus on the concept of *reoblación* as an integral part of the frontier experience. Similarly, most of the

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<sup>69</sup> Nora Berend, “Frontiers,” 151.

<sup>70</sup> Nora Berend, “Preface,” xiv.

<sup>71</sup> Abulafia, “Introduction,” xiv. 1-35.

historians engage with the concept of *convivencia* and examine the interplay between the three major cultural groups of Spain on and off of the frontier. Added to this is the intuitive connection between many aspects of Spain's medieval borders and the American West that was the genesis of the frontier concept; medieval Spain had its cattle ranchers and rustlers, frontier towns with extra freedoms from regal control, and (depending on the area) similar challenges from the environment. Despite the chaos within the field, the concept of the frontier fits the Spanish condition very effectively. Accordingly, the challenge is to find a definition or area of inquiry that will allow the concept to be used effectively. The recent trend in the historiography in focusing on the frontier as a mental construct provides that area of inquiry, and analyzing the contemporary definitions and conceptualizations of the frontier allows for more concrete conclusions and is backed up by a thread of scholarship reaching back a Menendez Pidal.

## CHAPTER 3

### METHODOLOGY

This thesis is an effort to provide a degree of clarity to the chaos surrounding the idea of the frontier in the historiography. To do this, it will approach the frontier concept from scratch by using the definitions produced in medieval Spain during the *Reconquista*. This will be referred to in this thesis as the “emic” approach, an anthropological term meaning to use definitions of words and concepts that are specific to a culture and time (opposed by etic, using outside definitions and classifications.) The advantage of the etic approach is that it allows the researcher to take the big picture and to see comparisons across cultures; the emic approach allows for more accuracy, and removes a portion of the bias brought into any study by the researcher. Since this analysis will focus on legal codes, which codify and define terms and concepts, the emic approach is more appropriate. The larger argument of the thesis is that by starting from local definitions of borders, a researcher can compare those definitions and use them as a solid base of evidence for making broader theoretical arguments.

There are several limits on the use of legal codes as historical sources that need to be kept in mind. First, law is often prescriptive, and thus represents a statement of what the culture should be. As we see every day with traffic laws, this does not actual *describe* the culture to which it applies. Thus the first pitfall to avoid is in thinking (without outside corroboration) that any particular law is actually enforced (or

enforced exactly the way it is written). This thesis avoids this trap by focusing on the prescription rather than the execution, asking what the idea of the frontier is within the codes. This leads to the second pitfall; the vision of a society within a legal code depends on how the code was produced. Medieval town charters, for instance, represent a merging of visions from the king who produced them and the town that received them. How much of each vision influenced the code in turn depends on the balance of power between king and town and the reasons why the charter was granted in the first place. This thesis examines the origins of the codes, both within the Visigothic customs that preceded them and in the reasons the charters were granted, in order to establish whose viewpoints they represent.

With these provisos in mind, we turn to how the thesis will accomplish the goals mentioned in the introduction. The first task, establishing a basis for an emic definition of the frontier, will be accomplished through direct analysis of the legal codes and through references to the work of other scholars who have studied the *Reconquista* and the process of repopulation of the captured territories (known as *reoblación*.) Analysis will focus on how the law codes defined the position of their respective towns/kingdoms in regards to Muslims and Jews (the latter being included as a control group to gauge Christian attitudes towards other infidels). It will also focus on how the laws were intended to accelerate the process of *reoblación* and attract settlers to the towns. Finally, it will focus on how the laws defined space, particularly in terms of the borders of the kingdoms and how the laws distinguished between areas within the kingdoms. The second hypothesis, that the frontier influenced movement away from European cultural norms, will be shown by a comparative analysis of both the Code of

Cuenca (*Forum Conche*) and the Code of Borja and Zaragoza (*Fueros de Borja y Zaragoza*) to *Las Siete Partidas*. By tracking the changes between the law codes, and analyzing the reasons for those changes based on the historical context, progress away from or towards the European norms can be seen. The third goal, to reveal the mechanisms by which the frontier shaped culture, will be shown through comparing the historical context of the codes and seeing which changes in the codes match changes in the state of the frontier. This section will rely on outside scholarship in the area to provide the background information, and will then compare the results to the codes themselves. By accomplishing these three things, this thesis will also show the advantages of the emic approach to the concept of the frontier. As mentioned in the previous chapter, several other scholars have taken to using local definitions for their examinations of the frontier, and this work borrows from their methodological successes.

## CHAPTER 4

### THE FRONTIER IN THE *FORUM CONCHE* OF CUENCA AND THE *FUEROS DE BORJA Y ZARAGOZA*

The *Forum Conche* of Cuenca and the *Fueros de Borja y Zaragoza* were law codes granted to frontier towns in late 12<sup>th</sup> century Spain. These municipal charters provide a window into how the people of Castile and Aragón saw the frontier, reflecting both the views of the elites who wrote them and the views of the citizens of Cuenca, Borja, and Zaragoza (because the codes were based on existing local customs).<sup>72</sup> While the exact term “*frontera*” was likely not used until the next century, a zone matching that concept is visible within the charters: an area of expansion, repopulation, and opportunity, marked by religious conflict.<sup>73</sup> In reading the descriptions of the boundaries of those communities, a region mapping on to the concept of the frontier becomes visible.

Spanish municipal law codes began as customary exemptions to the rules enforced by the King of a given domain (a Germanic custom called the *bannum*).<sup>74</sup> They were part of a larger legal framework; as Harold Berman notes, “law in the West is formed into integrated legal systems, in which each of the various constituent

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<sup>72</sup> James F. Powers, “Introduction,” in *The Code of Cuenca: Municipal Law on the Twelfth-Century Castilian Frontier*, trans. James F. Powers (Philadelphia: University of Pennsylvania Press, 2000), 2. See also Marie R. Madden, *Political Theory and Law in Medieval Spain* (New York: Fordham University Press, 1930), 66.

<sup>73</sup> Linehan, *History and the Historians of Medieval Spain*, 263.

<sup>74</sup> Powers, “Introduction,” 1.

elements take their meaning partly from the system as a whole.”<sup>75</sup> In the case of these charters, the system as a whole included royal law, canon law, and unwritten custom.

Those customs used as the basis for the laws were a mixture of local Visigothic customs, general rights that cut across cultural lines, and customs influenced by Frankish immigrants and crusaders.<sup>76</sup> These customs could find their origins in Roman law, which initially was a set of customary laws. By 212 A.D. (the time of the edict of Caracalla, a provision granting Roman citizenship to all free men within Rome’s borders), Roman law had evolved into territorial law that applied to every person within its boundaries.<sup>77</sup> The Roman legal tradition of codifying customs into written law was adopted by the Visigothic tribes, and spread with them, but those Germanic tribes removed the territorial focus of the laws, preferring the customary model.<sup>78</sup>

Germanic law was essentially communitarian, tribal, and local, aimed at regulating blood feuds to reduce the toll to the community at large. Thus it was designed to focus on injury to the individual (rather than injury to the community). This was in line with the popular notion of law through the early Middle Ages; Laws were immutable, unchangeable, and affixed to an individual person. An Italian “rediscovery” of Roman law in the 12th century sparked a general shift back towards the Roman model, focusing on statutory law as an evolving social creation that fit the

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<sup>75</sup> Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), 11.

<sup>76</sup> Santos M. Coronas Gonzalez, *Manual de historia del derecho español* (Valencia: Tirant lo blanch, 1996) 97.

<sup>77</sup> Katherine Fischer Drew, “Introduction,” in *Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991), 12-13.

<sup>78</sup> Berman, *Law and Revolution*, 53.

needs of the time.<sup>79</sup> This Romanization of medieval law did not directly affect the municipal codes, but there were strong parallels between the two because the Visigothic law codes that the local customs were derived from were the most Romanized of the various Germanic law codes.<sup>80</sup> The frontier Charters, then, were a conscious creation of the kings to fit their needs and the necessities of the frontier life, and were granted as part of the effort to repopulate the frontier region with urban military centers that could serve as engines of further expansion.<sup>81</sup>

The *Forum Conche* is important as the most influential town law code granted during this period, and also the longest.<sup>82</sup> The *Fueros de Borja y Zaragoza* are useful for comparison because they were created in Aragón (thus representing a different frontier than Castile), because they were not influenced by the *Forum Conche* (and thus have meaningful differences for comparison), and because they are also fairly long for the genre, and thus have a good sample size to work from. There are fundamental similarities in the way both Charters define the world around them; both had the same legal heritage from the Visigoths and faced the same threat in the form of the Almohads to the south, factors that shaped their laws regarding their borders.

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<sup>79</sup> Clifford R. Backman, *The Worlds of Medieval Europe*, 2<sup>nd</sup> edition (New York: Oxford University Press, 2009) 298-302.

<sup>80</sup> Drew, "Introduction," 27.

<sup>81</sup> Linehan, *History and the Historians of Medieval Spain*, 229.

<sup>82</sup> Powers, "Introduction," 2.

The *Fueros de Borja y Zaragoza* was produced during the reign of Ramon Berenguer IV in Aragón, likely in 1153.<sup>83</sup> Borja and Zaragoza had already been in the control of Aragón for around 2 decades, Zaragoza having been conquered by Alfonso I the Battler in December of 1118 and Borja, two years later.<sup>84</sup> Berenguer's rule was also marked by conquest, ideologically supported by a wave of Crusade enthusiasm brought on by Pope Eugenius III's declaration of the second Crusade. Nominally a vassal of Alfonso VII, Ramon Berenguer was in fact a powerful ruler, having united his land of Cataluña with Aragón through his marriage to Petronila, then Queen of Aragón, in 1137.<sup>85</sup> The granting of codes cemented town loyalty to him, and allowed for easier expansion against all enemies.

The *Forum Conche* was produced by Alfonso VIII in Castile, between 1189 and 1191.<sup>86</sup> Alfonso's reign was marked by cooperation between various Spanish kingdoms and by a concerted effort to push forward in the process of the *Reconquista*; In particular, he allied with Fernando II and Alfonso II of Aragón (the successor to Ramon Berenguer) on several military ventures against the Almohads. In 1172 the three monarchs reaffirmed their support for mutual reinforcement in conquest, which led to similar cooperation against Cuenca between Aragón and Castile and ultimately to its conquest in 1177. Cuenca was a strategically desirable location for the Muslims

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<sup>83</sup> Carmelo Rodríguez Abad, "El problema de los fueros de Borja: Un modelo para su reconstrucción," *Revista de historia Jerónimo Zurita* (1987), 68.

<sup>84</sup> O'Callaghan, *Reconquest and Crusade in Medieval Spain*, 37.

<sup>85</sup> *Ibid.*, 42.

<sup>86</sup> James F. Powers, trans. *The Code of Cuenca: Municipal Law on the Twelfth-Century Castilian Frontier* (Philadelphia: University of Pennsylvania Press, 2000), 22.

because it served as an excellent base for resupply and raiding into Christian territory.<sup>87</sup> It held the same advantages for the Castilians when they captured it; situated at the nexus of the rivers Júcar and Huécar, it could serve as a defensible forward base for further expansion into the Southeast of the peninsula, as well as an easy location for transporting supplies or men via the river.<sup>88</sup> The final conquest of Cuenca occurred as part of a large, concerted effort to push back the advances of the Almohad caliphate, and was granted the imprimatur of Crusading by a visiting papal legate (Cardinal Hyacinth), who offered a remission of sins similar to that given to Crusaders in the holy land. While the conflict in Spain had held a similar status to the Crusades in the mind of the Papacy (which at times actively discouraged would-be Spanish Crusaders from heading towards Jerusalem), the explicit indulgences were not usually granted; thus, this offer constituted a highly tempting prospect for Spanish rulers who had been gleefully stabbing each other in the back for territorial gains for decades. The success led Pope Alexander III issuing a bull in 1175 proclaiming a full crusade against the Muslims in Spain. Thus the actual conquest of Cuenca was accomplished under the aegis of the Crusading indulgences in an overtly religious conflict.<sup>89</sup>

Both Charters were given under similar circumstances, granted to their respective cities around 2 decades after their conquest; both areas remained under threat from the Almohads to the south, and both faced similar challenges, including a multicultural population and the need to expand to inhabit the surrounding wilderness. This

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<sup>87</sup> Powers, "Introduction," 2.

<sup>88</sup> O'Callaghan, *Reconquest and Crusade in Medieval Spain*, 56.

<sup>89</sup> *Ibid.*, 55.

similarity led in turn to similarities in the way both Charters dealt with community boundaries and borders.

A brief note on notation: when referring to a specific code within the *Fueros de Borja y Zaragoza* this chapter will use the number of the code (e.g. “code 1”). When referring to codes from the *Forum Conche*, this paper will refer to them by first the chapter then the number within the chapter (e.g. 1:1); this reflects the notational style of the translator for the *Forum Conche*. The *Fueros de Borja y Zaragoza* will also sometimes be shortened to *Fueros* for convenience. Finally, the analysis will use the term “Charters” to describe the *Forum Conche* and the *Fueros* collectively. This is necessary, because the terms *fueros*, “law codes”, and “town charters” are mostly interchangeable when discussing the medieval Spanish frontier; the distinctions listed above will provide consistency for the purposes of this paper.

## BORDERS, BOUNDARIES, AND ZONES

The peoples of Cuenca, Borja, and Zaragoza did not view their borders in the sense of modern political demarcations, strict lines that represented the division between countries or kingdoms. Their sense of the world (as seen in their law codes) is of areas of control: zones characterized by varying levels of military power, risk, and opportunity. This view manifests in how the codes describe their physical boundaries, primarily through two distinctions: Populated areas versus the wilderness, and areas controlled by the city versus areas outside of their direct military control.

In both Charters the town proper is held to tighter regulations and requirements, while the wilderness outside that town and smaller villages were held to a lower standard; both also showed that greater freedom led to greater opportunities. The

*Fueros de Borja y Zaragoza* have three codes that specifically deal with the wilderness vs. populated areas: code 115 deals with the legal witnesses for a will, code 116 with proving a case of murder or assault, and code 137 with the rights of hunters. Codes 115 and 116 both mandate lower standards of evidence in the form of less official witnesses or simply fewer overall witnesses; in 115, this is tied specifically to population levels, where a “small town of 10 houses or less” has lesser requirements than a standard “populated area”. Code 137 mandates that the hunter who hunted near a populated area risked having to share his kill with any townsfolk who came out to help him finish it.

In the *Forum Conche*, the wilderness is not specifically mentioned except in regards to hunting; Code 35:8 is almost exactly the same as code 137 in the *Fueros*, with a slightly different division of parts of the slain beast, and code 35:9 covers a scenario where the dogs chase the game into town. Like in the *Fueros*, the area nearer to town goes by different rules than the wilderness, and the individual hunter has the potential for lessened rewards for his work because he might have to share his kill. The *Forum Conche* also distinguishes between inside and outside the town; Code 40:1 mandates different time frames for returning a lost objects depending on whether they were found within the city, (in which case it had to be given to the owner immediately), or outside the city (in which case they would have 3 days to return the item before being considered a thief).

These distinctions are pragmatic decisions that acknowledge the difficulties of finding professional witnesses or clergy in areas of low population, and repaying the inconvenience to a town of dealing with a hunt. However, they also reveal a sense of

the world that situated greater regulation and lesser opportunity with the centers of power, while the wilderness carried both greater risks and greater rewards.

The codes in the *Forum Conche* also refer to the “district of Cuenca”, which was implied to be the area controlled by the city. Codes 1:1 and 1:4 allowed citizens to capture and ransom foreign trespassers who tried to hunt, graze or gather within the district: this effectively defines the district as both an area of military control and of economic monopoly by the town's citizenry. In three other codes, there is another zone demarcated by the boundary stones that lined the territory on both sides of the Tajo River, one that is primarily concerned with cattle raiding. Code 31:16 rewards the recapture of cattle outside the boundary stones at 1/10th the value of the cattle, while those recaptured within the stones are only rewarded at 1/30th. Codes 37:6 and 37:8 prohibit herders from passing said boundary stones, which given Code 31:16 was likely designed to prevent the cattle from getting captured in the first place. At first glance, this would seem to correspond to the notion of a static border. However, 31:16 mentions specific Muslim towns within the boundary zones as places to recover cattle during a raid, marking them as either enemy towns or (if they were under Christian control), areas of possible sedition. In context, then, the stones mark the boundary between two zones; an area of lesser risk closer to Cuencan military might, and an area of greater risk and reward closer to the zones where the Almohads held sway. This is the closest the *Forum Conche* comes to explicitly marking an actual frontier.

The *Fueros de Borja y Zaragoza* are much vaguer on the subject of physical territory. The closest they come to defining it is in Code 74, which grants lower compensation to victims who are either *ultraportus* (beyond the gate) or

*ultramontanus* (beyond the mountain) because they “may not be from the land of Aragón.”<sup>90</sup> The distinction between inside and outside the gate is similar to that in Code 103, which punishes the drawing of weapons within the confines of the town walls: by using the town walls as the boundaries, both 74 and 103 show that those walls were an important conceptual dividing line between the center of the community and the outskirts and between citizens and strangers. The use of *ultramontanus*, on the other hand, connects with a common phrase in the *Fueros*, that of the “land of Aragón”. This particular phrase is usually used in a legal context, e.g. “this is the law of the land of Aragón” or “according to the law of the land of Aragón.” Other “lands” are also mentioned: 105, for example, governs the purchasing of inheritances in “the lands of Huesca and Jacca.” These terms are vague; without using other primary sources from the period, it is difficult to determine whether the term was used as the area under the law of the King or town, or whether it meant a defined physical space.

Thomas Glick argues in his “Muslim Castle to Christian Fort” that the medieval view of the frontier focused on the level of population.<sup>91</sup> The bipolar wilderness versus populated area constructions in both Charters are in concurrence with this argument, especially code 115’s specific population details. While both Charters cite specific barriers (boundary stones, rivers, and walls), they mostly deal with the differences in conditions on each side of those barriers rather than with the barriers themselves. Those barriers are not constructed as absolute barriers or areas of sovereign control, but rather the boundary lines are always constructed as permeable, with the

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<sup>90</sup> “Set si est ultramontanus, vel de ultraportus, quod non sit de terra Aragonis...”

<sup>91</sup> Glick, *From Muslim Fortress to Christian Castle*, 63.

expectation that they would be crossed with enough frequency that they needed to be regulated. This is consistent with a worldview that focused on levels of opportunity and risk within different bounded zones.

### MILITARIZED SOCIETY

One constant in both Charters is the importance of horsemen; the focus on mounted forces reveals an entire region of conflict where raiding was the standard form of warfare (as opposed to direct conquest), and where the risk of one's life was balanced out by the opportunities to capture cattle, Muslim slaves, and booty. This risk was both to the individual and to the kingdoms as a whole; These Charters were written at a time when the Christian kingdoms of Spain faced a serious threat in the form of the Almohads. Berber Muslims from Africa looking to expand their empire, the Almohads took advantage of the weak and decaying Almoravid caliphate in Spain and landed on the peninsula in 1146, steadily conquering their way northward.<sup>92</sup> By the 1150's they posed a severe threat to Christian dominions, launching raids and besieging Christian towns. The threat was significant enough that it spurred both the extension of the Knights Hospitaller and the Templars into Spain and the development of homegrown military orders such as the Order of Calatrava and the Order of Santiago; chapters of these orders were deployed across the frontiers of Castile, León, Aragón, and Portugal in an effort to stem the Muslim advances.<sup>93</sup>

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<sup>92</sup> O'Callaghan, *Reconquest and Crusade in Medieval Spain*, 47.

<sup>93</sup> *Ibid.*, 52-55.

Accordingly, both Charters provide for the protection of the city through the maintenance and building of town walls. In the *Fueros*, code 25 mandated that citizens who kept military hardware such as a chariot (which would also require a horse to operate) within the walls also had an obligation to repair and maintain the town wall; essentially, those that used the fortifications as a base for raiding had a collective duty to maintain those fortifications. The *Forum Conche* instead spread the cost of maintaining the walls to the entire town, mandating the payment of fortification taxes for all who owned a house within the city that was occupied by their family. The difference in responsibilities for defenses may lie in the relative strategic position of Cuenca vs. Borja and Zaragoza: Cuenca was a major strategic hub, and thus a more likely target for raiding.

The taxation structure in the *Forum Conche* allowed for financial support of the walls without personal labor, but not everyone was required to pay the taxes. Code 1:6 stated that, "a mounted knight owning a horse worth fifty *menkales* [copper/silver coin worth  $\frac{1}{4}$  of an *aureus*, a gold coin] or more [was] exempt from fortification taxes and he passe[d] that right to his heirs."<sup>94</sup> This reflects the relative importance of cavalry in the military arsenal of the town. The exemption for armed *caballeros* acted as a compensating factor for the upkeep cost of a warhorse and gear, and reflected the ability of the *caballero* to generate revenue for the town in the form of booty and ransoms. The importance of warhorses and the maintenance of gear is also supported by code 16:3 in the *Forum Conche*. Citizens able to maintain a horse for the purposes of military ventures were granted special status within the town, including a greater

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<sup>94</sup> *The Code of Cuenca*, 30.

consideration for their person and the ability to hold town offices such as the *iudex*. This was also a source of social mobility: by purchasing a horse and arms, a citizen could attain the ranks of the *caballeros villanos*, and during this era the rights and privileges of these non-noble knights were nearly identical to those of the nobles.<sup>95</sup>

The *Forum Conche* also provides laws protecting the well-being of the animals; Chapter 12 (which regulates the penalties for assault) specifically mandates fine of 300 or 500 *solidos* (a silver coin about 1/20<sup>th</sup> of a pound of silver) for grabbing the reigns of a miles (lower class knight) or stopping them violently. These fines (the same as for committing arson of an entire grain field or killing a Jew, respectively) showed a powerful concern for both the well-being of a military asset (the horse) and the importance of those who could maintain said asset. The *Fueros de Borja y Zaragoza* show a similar concern for the well-being of the horse and rider in code 38, which effectively gives horsemen the right of way in the town and absolves them from damages to any property or persons who do not get out of their way as long as the horseman cried out “aiech” as they moved. The relative status of horsemen is also acknowledged in the *Fueros de Borja y Zaragoza*, though less directly than in the *Forum Conche*: specifically, code 73 mandates that men who were “*de mobile*” and could prove themselves as such by showing 100 *solidos* would be allowed to fight in a trial by combat. Those who could not produce such proof would instead have to endure trial by burning iron and risk permanent damage to their hands; judicial combat is manifestly preferable, and the fact that it is reserved to mobile warriors shows a distinct preference for that class.

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<sup>95</sup> Teofilo F. Ruiz, *Crisis and Continuity: Land and Town in Late Medieval Castile* (Philadelphia: University of Pennsylvania Press, 1994), 242.

The focus on horsemen over other units reflects the fact that conflicts within this region were expected to be mobile; this is affirmed by the extensive regulations in the *Forum Conche* regarding raiding and joining the King's host as part of a larger conquest. Chapter 30 of the code regulates the entire process of a military expedition from start to finish, detailing who must serve, scouting, how booty is divided, how prisoners are exchanged in case of capture, how to divide food, medical treatment, and who owns captured Muslims. In total, it contains 55 laws on military conduct, making it the second largest chapter of the *Forum Conche* (after the provisions for the elections of municipal officials). Several of these codes reveal the importance placed on horsemen: code 30:3 fines horsemen 2 *aurei* (gold coins) for skipping an expedition instead of the 1 *aurei* owed by footmen for the same penalty; 30:5 mandates that horsemen who forget their arms and armor still receive booty, while a footman received nothing after committing the same offense; code 30:33 requires that horsemen who are captured be exchanged only for Moorish horsemen (rather than footmen); and several provisions compensate for the loss of animals on a raid (codes 30:15, 30:18, 30:22, 30:23).

These codes paint a picture of a society organized for war, though this is far more readily apparent in the *Forum Conche* than in the *Fueros*. The focus on raiding also fits with the notion of increased opportunity and risk seen in the regulations on the wilderness and the towns. The militarization in these codes supports scholars like

Peter Linehan who argues that a major purpose of municipal charters was to create free (to the king) engines of expansion and threat against the enemies of the king.<sup>96</sup>

#### STRANGERS AND FOREIGNERS: WHO WAS THE ENEMY?

The identity of those enemies, however, was not necessarily determined by religious affiliation; the regulations in both laws regarding strangers or foreigners show that non-citizens were considered inferior under the law to citizens, without referencing faith as a determining factor. The influential Spanish historian Américo Castro wrote, "A people is constituted when it separates from others and affirms itself with respect to them," and the regulations on strangers and foreigners in the medieval codes separated the world into citizens and non-citizens and affirmed the rights of citizens over the others.<sup>97</sup> Indeed, over the course of the re-conquest of Spain, the various Christian kings regularly allied with Muslim kings in attacking their co-religionists, and by pushing the citizen/non-citizen divide the Charters allowed their creators to use the towns as weapons against both Muslim and Christian enemies.<sup>98</sup>

In the *Fueros de Borja y Zaragoza*, mistrust of foreigners manifests in two ways: the regulation of financial transactions and the regulation of payments to those strangers in the case of injury or assault. Code 49 requires additional oaths from a foreigner who wants to support the existence of a debt, and code 127 requires a

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<sup>96</sup> Linehan, *History and the Historians of Medieval Spain*, 229. See also Coronas González, *Manual de historia del derecho español*, 55.

<sup>97</sup> Castro, *The Spaniards*, 48.

<sup>98</sup> Powers, "Introduction," 3-9. See also Linehan, *History and the Historians of Medieval Spain*, 208.

foreigner who holds a surety (goods or money given to the court as security against losing their case) in a town to show where he got the surety from before he had it removed. Both laws represent an encoded mistrust of the intentions of strangers. The *Fueros* also put a monetary value on the worth of strangers, with codes 74 and 80 stipulating that a foreigner who was attacked in the town was owed 5 *solidos* in recompense, while a *villain* of the town similarly attacked would be owed 60, essentially defining the worth of a citizen's person as 12 times that of a non-citizen.

The *Forum Conche* defines the relative worth of strangers using slightly different metrics; the two primary manifestations are through economic protectionism and proscribing harsher penalties on strangers who commit crimes. As mentioned before, citizens within Cuenca were empowered to imprison non-citizen hunters and artisans within the district of Cuenca “without penalty” in codes 1:1 and 13:12 respectively, and to confiscate livestock and expel non-citizens who graze their flocks in Cuenca, again “without penalty,” in code (1:4). Apart from the territorial implications, these codes set up a conception of strangers as targets for profit or violence and as opportunities for the citizens of Cuenca. The council of Cuenca had the right to refuse settlement privileges to anyone (code 1:5), so while there were no allowances for reprisal against unauthorized settlers, the moment they made some firewood or attempted to hunt or fish or graze they were fair game for capture and ransom: effectively, this meant that strangers could only settle safely with the approval of the council.

The *Forum Conche* also explicitly defines the relative value of citizens and strangers; code 1:2 mandates that “a stranger who injures or kills a citizen in self-

defense should pay the penalty for the offense he has committed...But a citizen who injures or kills a stranger in self-defense should pay no penalty.”<sup>99</sup> This approach is mirrored in codes 1:11 and 1:13, both of which mandate death or heavy fines for strangers who commit violence while absolving citizens of the same penalty if they revenge themselves upon those strangers. Like the *Fueros de Borja y Zaragoza*, the *Forum Conche* mandates a higher standard of proof from strangers in legal disputes; in Cuenca, this applied to strangers claiming to be related to a murder victim in order to receive part of the fines levied against the murderer. (per code 14:3).

While the sets of laws take different approaches, they both affirm the worth of the lives and persons of citizens as superior to people on the outside. Tellingly, the codes covering foreigners and strangers do not specify the faith status as having any bearing on the penalties described therein. This supports Power’s argument that the *Fueros* were also designed to guard against or attack other Christians.<sup>100</sup> The prologue of the *Forum Conche*, lauds the writer, Alfonso VII, by saying that "he crushed the armies of the Muslims, he subjected their kings, annihilated their kingdoms, their powers, their dwellings, their gods; he overwhelmed Christian kings by acts of war, imposing laws on the places beneath his rule. Thus he vanquished the Navarrese, thus the Leonese, thus he subdued the Aragóñese, thus also the Portuguese."<sup>101</sup> This description does not fully comport with his actual deeds, given that he did not have domination over the Aragóñese or the Leonese, but it does baldly state that

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<sup>99</sup> *The Code of Cuenca*, 30.

<sup>100</sup> Powers, "Introduction," 19.

<sup>101</sup> *The Code of Cuenca*, 27.

conflict between Christian Kings was not only a possibility but something to be celebrated.

This raises a crucial question: if those outside the borders could be enemies and targets of conquest regardless of faith, what made the borders between Aragón and Castile different than the frontier between those kingdoms and the Almohad territories? Jonathan Ray, in his work on Jewish communities in medieval Spain, argues that the medieval definition of frontier was “an undefined and imprecise space where people are separated by beliefs.”<sup>102</sup> This argument is supported by the extensive regulations within the Charters that outline the religious boundaries within the communities, as well as painting the broader division between the Christian kingdoms and the Muslim enemies to the south, for next to the status of “citizen” faith is the most visible identifier in both Charters.

#### RELATIONS BETWEEN THE FAITHS

The *Forum Conche* and the *Fueros de Borja y Zaragoza* implicitly outline a caste system in their respective kingdoms, with Christians on top, Jews in the middle, and Muslims at the bottom. The division between the communities was both physical and conceptual: each group was historically segregated, living amongst co-religionists, though this restriction was routinely ignored as the population grew.<sup>103</sup> The regulations regarding Muslims in both Charters reflect the hostile presence of an organized kingdom of Muslims to the south, a mistrust which may have been

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<sup>102</sup> Ray, *The Sephardic Frontier*, 74.

<sup>103</sup> *Ibid.*, 150.

exacerbated by the fact that many of the Muslim citizens were former Almohad subjects who chose to stay and work the land after its conquest by Christians.<sup>104</sup> The codes on Jews, on the other hand, reflect the status of their communities as wards or serfs of the king, and their ability to charge usury. Despite the hierarchy, there are also clear measures of what many scholars of medieval Spain call *convivencia*, peaceful coexistence and commerce between faiths; both Charters contain several laws that treat Muslim, Jewish, and Christian citizens equally.

### INTERFAITH RELATIONS IN CASTILE

The status of the Jews in the *Forum Conche* is covered in depth in Chapter 29; the chapter codifies the status of that group, saying “in fact, the Jews are serfs of the king and they are entrusted to his treasury,” (per code 29:33).<sup>105</sup> This status as serfs did not detract from their ability to also be official citizens; code 29:27 mentions “Jewish citizens” as being required as witnesses in conflicts between Christians and Jews. The status as serfs of the King was fairly standard for Jewish citizens across Iberia; one of the advantages to the King in having Jewish communities was that they were a direct source of tax income that was not tapped by the Church or by local powers. Indeed, this was the source of a long running dispute between the Church officials of Spain and the various sovereigns; Jews did not pay the *diezmo* (religious tithe that Christians paid to the Church), and the Church wanted that source of income

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<sup>104</sup> Mackay, *Spain in the Middle Ages*, 61.

<sup>105</sup> *The Code of Cuenca*, 165.

from lands sold by Christians to Jews.<sup>106</sup> Alfonso VIII himself was chastised by Pope Innocent III in 1205 for not enforcing the tithe on both Jews and Saracens under his control.<sup>107</sup> This special status for the Jews contributed to their placement above Muslims in the caste hierarchy in Castile.

The chapter as a whole regulates the interactions between the Jewish and Christian citizens of Cuenca, particularly in regards to legal and economic arrangements. There are fairly strong protections against abuse, such as a prohibition against judicial conflict between the faiths, and a consistent requirement that both Christian and Jewish witnesses must be involved in legal arguments between members of those faiths; as Powers argues, measures such as these could ameliorate existing religious tensions to prevent conflict.<sup>108</sup> Such laws served to emphasize the separations between the Jewish community and the larger Cuencan Christian population, yet they are also scrupulously fair in that the punishments for offenses against members of either faith were often identical. Codes 29:2, 5, 17, 25, 27, 28, and 30 all describe regulations applying equally to both Christians and Jews; code 29:5 is representative, declaring that Christian or Jewish witnesses would forfeit sureties if they did not pick them up soon enough after they won their case. Another set of laws in the *Forum Conche* take a different tack on equality: 29:3 and 4, 6 and 7, 10 and 11, 12 and 13, and 14 and 15 are pairs of regulations describing penalties for identical crimes given to miscreants of each faith respectively. However, there are consistent variations in who received the penalties, owing to the Jews' status as wards of the King. Codes 29:6

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<sup>106</sup> Ray, *The Sephardic Frontier*, 45-47.

<sup>107</sup> *Ibid.*, 46.

<sup>108</sup> Powers, "Introduction," 13.

and 29:7 are good examples: 29:6 mandates that an *albedí*, “a chancery official who handled legal cases for Jews; Jewish equivalent of the *Iudex*,” who refused justice should pay a fine to the *iudex* and the plaintiff; 29:7 mandates an identical fine of 10 *aurei* for a *iudex* who committed the same crime, but the fine was not split with the Jewish plaintiff.

Outside of chapter 29, there are only 3 other regulations in the *Forum Conche* that refer solely to Jews without using the “Christian, Jew, or Muslim” construction. The first (1:17) states that “No *telonearius* or *merino* should be a citizen of Cuenca or a Jew.”<sup>109</sup> *Telonearius* referred to the royal officers that collected taxes for the king and *merino* was “a Royal territorial administrator who received the king’s rents from the city council.”<sup>110</sup> This would seem to point to a distinction between the status of full citizenship within the town and being a Jew, but since code 29:27 clearly refers to the existence of Jewish citizens it is more likely a reference to their status as serfs of the king. Code 2:32 regulates the bathing practices in the town and legalizes the homicide of members of either religion who enter on the wrong day, which shows a certain evenhandedness. In a similar manner, 4:11 imposes equal fines for selling unripe grapes for members of each faith; both regulations reinforce the presumption of equal legal treatment that is also consistent throughout chapter 29.

It should be noted Jewish citizens did not necessarily use ‘their’ court. Jews had the status of citizens, so the general laws that did not mention religious affiliation also

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<sup>109</sup> *The Code of Cuenca*, 32.

<sup>110</sup> James F. Powers, "Glossary," in *The Code of Cuenca: Municipal Law on the Twelfth-Century Castilian Frontier*, trans. James F. Powers (Philadelphia: University of Pennsylvania Press, 2000) 231-232.

applied to them and were thus implicitly evenhanded. As Jonathan Ray, notes, this meant that Jews (or other citizens for that matter) could and did switch between court systems to take advantage of specific vagaries of Christian, Jewish, or Muslim law, venue shopping for the best deal.<sup>111</sup> This practice is the economic version of a common practice in other parts of Europe: getting into ecclesiastical courts to avoid the death penalty from secular courts. An example from the England of Thomas Beckett was the “neck verse” where the legal status of clergy could be bestowed on anyone who could recite a specific bible passage.<sup>112</sup> This shows the difficulty in using law codes as an indicator of actual practice, but interpreting them as statements of an ideal allows for analysis of the mindset of the code’s writers.

These laws are significant in that they treated the Jews as potential allies in the war against Islam, mandating fair treatment and protecting them against possible abuses of power from the majority Christian population. The evenhandedness of chapter 29 provides a direct contrast to the ways in which Muslims are portrayed in the *Forum Conche*; Jews are shown as co-equal, while Muslims are mostly portrayed as servants or enemies. The ability of the Jews to interact as equals with their Christian neighbors can be explained in part by the existence of the Muslim servant class; as Jonathan Ray points out, Jews were unable to own Christian slaves, thus normally excluding them from large scale agriculture due to a lack of labor. Since the frontier

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<sup>111</sup> Ray, *The Sephardic Frontier*, 141.

<sup>112</sup> Janet S. Loengard, "Common Law for Margery: Separate But Not Equal," in *Women in Medieval Western European Culture*, ed. Linda E. Mitchell (New York: Garland Publishing, 1999), 128.

provided a convenient source for Muslim labor, enslaved or hired, Jewish landowners could attain economic parity with their neighbors.<sup>113</sup>

### MUSLIMS IN THE *FORUM CONCHE*

James Power's translation of the *Forum Conche* uses two terms to refer to Muslims; Moor and Muslim. The vast majority of the laws use the term Moor (31 laws versus 6 using Muslim), but it is difficult to pin down whether there was a distinct meaning in the variance of usage or whether it was the result of different writers using colloquial usages to compile the *Forum Conche*. This difficulty is compounded by Powers failure to explain the terms in his notes on the translation; but a crosschecking of the original Latin shows that the *Forum Conche* uses the terms *Maurus*, and *Sarracenus*, the latter of which Powers translates as both "Saracen" or "Muslim."<sup>114</sup>

The term *Mauri*, in classical Latin, referred to "*The Moors, inhabitants of Mauritania*", with *Maurus* working as an adjective meaning "*Moorish*".<sup>115</sup> Medieval usages were a bit vaguer: the OED, in its discussion of the etymology of "Moor" points to the use of *moro* in Spain in 1091 as meaning "inhabitant of Africa, Muslim," and given the context, it is virtually certain that that was the meaning the scribes put

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<sup>113</sup> Ray, *The Sephardic Frontier*, 41.

<sup>114</sup> George H. Allen, ed. *Forum Conche : Fuero de Cuenca : The Latin Text of the Municipal Charter and Laws of the City of Cuenca, Spain* (Cincinnati: Ohio University Press, 1909), 51, 111. Accessed via <http://hdl.handle.net/2027/mdp.35112105442083>.

<sup>115</sup> *Cassell's Latin-English Dictionary* (New York: Macmillan, 1968), s.v. "Mauri – orum."

onto *Maurus*.<sup>116</sup> Of course, since said African Muslims had been conquering their way through Spain, it also effectively referred to the Muslims in Spain at that present time. The term *Sarracenus* does not appear in either the DuCange *Glossarium* of medieval and lowest Latin or Niermeyer's lexicon of medieval Latin; it is likely instead a Latinization of the Spanish term "*Saraceno*." The usage of the term generally was in the context of the crusades or in referring to Syrian Arabs (at least in the Greek and Roman usage).<sup>117</sup> So it is possible that the use of the term *Sarracenus* would be evocative of the Crusades, while *Maurus* reminded the reader of the current threat from the southern Muslims.

The fact that the laws themselves use variable language to describe the same Muslim population within the community speaks to interchangeable usage in the contemporary parlance. For instance, there are 6 codes referring to "Christians, Jews, and Muslims"; 5 of them use the term *Maurus*, and one uses *Sarracenus*, but all treat the three groups as co-equal in terms of the text of the law. Likewise, many references to *Maurus* refer to Muslim slaves, servants, prisoners of war, but also in a few cases to "free Moors" in Power's translation (11:20 and 21).<sup>118</sup> There are references to the "land of the Saracens", but code 40:14 reveals what that means: the code mandates that if a citizen of Cuenca claimed to have bought something "in the land of the

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<sup>116</sup> *Oxford English Dictionary Online*, s.v. "Moor," <http://0-www.oed.com.lib.rivier.edu/view/Entry/121965?rskey=Ab7cqF&result=2&isAdvanced=false> (accessed November 21, 2013).

<sup>117</sup> *Oxford English Dictionary Online*, s.v. "Saracen," <http://0-www.oed.com.lib.rivier.edu/view/Entry/170917?redirectedFrom=saracen> (accessed November 21, 2013).

<sup>118</sup> *The Code of Cuenca*, 81.

Muslims, he should prove it with the *exea* or with two citizens of the *requa*.”<sup>119</sup> A *requa* is defined by Powers as “an expedition into Muslim lands for commercial purposes” and an *exea* as the “leader of the *requa*.”<sup>120</sup> Given the impracticability of the town of Cuenca launching a commercial expedition into the heart of the holy land (as opposed to their Muslim neighbors to the south), the *terra Sarracenorum* certainly meant the lands of the Almohads next door. Thus, the terms *maurus* and *sarracenus* in the codes will be used interchangeably in this analysis to mean “Muslim in Spain.”

Overall, there are 7 laws in the text that govern the treatment of free Muslim residents of Cuenca, while the remaining 28 cover the sale of Muslim captives and the treatment of Muslim servants. The possibility of new free Muslim residents is enshrined in code 1:10, which grants the right for settlers of any faith to come to Cuenca in safety. As noted before, the town council had the right to refuse citizenship to any settler without penalty, so they had the capability to refuse Muslim immigrants full participation in the civic life of the town until said immigrants became more trusted. The religious divide is also emphasized by law 2:12, which awarded the possessions of childless Moor converts to their *Señor* (master) upon their deaths and thus encouraged proselytizing to said captives. The overall implication of these laws is that the majority of the Muslims one would expect to encounter within the town would be captives.

The *Forum Conche* anticipated peaceful contact between the Christian and Muslim sides of the frontier. Code 1:25 guarantees the safety of all faiths at fairs in the

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<sup>119</sup> *The Code of Cuenca*, 203.

<sup>120</sup> Powers, "Glossary," 230.

town with a punitive fine of 1000 *aurei* for impeding or harming attendees; the sheer magnitude of this penalty speaks to the need to deter hostilities between enemies who might be gathered to exchange captives. There are also several references to a venture called the *requa*, “an expedition or caravan into Muslim lands for commercial purposes, involved in prisoner trading.”<sup>121</sup> While prisoner exchanges are an expected form of contact, the code also implicitly assumes that other goods are likely to be exchanged during such expeditions. For instance, 40:14, in a chapter regulating disputes over found objects, validates possession of an item for the claimant if he claims to have bought it while on a *requa* and can provide witnesses. This was part of a larger trend across the frontier, as towns hired the merchants who already maintained trading ties across the borders to add prisoner exchanges to their ventures.<sup>122</sup> On a more pragmatic note, law 13:4 mandates death by hurling off the cliffs for anyone who sells food or weapons to the Muslims, so it is clear that trade with the enemies of the king was regulated (in theory if not in practice) to goods that would not help the other side’s long-term survival.<sup>123</sup> This regulation is also covered by 29:29 which prohibits the removal of weapons from town for sale by members of any faith. This is a crucial point on how the *Forum Conche* constructs the idea of the frontier; whatever *convivencia* may have been occurring along the frontier within the citizenry of Cuenca, the codes describe the border as permeable on a strictly limited basis due to the inherent potential for armed conflict with the Muslim enemies.

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<sup>121</sup> Powers, "Glossary," 230.

<sup>122</sup> James William Brodman, *Ransoming Captives in Crusader Spain* (Philadelphia: University of Pennsylvania Press, 1986), 7-8.

<sup>123</sup> *The Code of Cuenca*, 92.

## INTERFAITH RELATIONS IN ARAGÓN

In Borja and Zaragoza the laws regarding interactions between Christians, Muslims, and Jews also presumed a certain level of equality. This approach is evident in the inclusiveness of the statutes: a typical example is code 132, which reads:

Concerning the dispute of a Christian and Moor. If a Christian has a claim of a Moor, they have to go to the judgment of the *alphaquin*. And if a Moor has a claim of a Christian, they have to go to the judgment of the justice. Likewise if of a Christian and of a Jew in opposition, to another Justice and the reverse to the Rabbi.<sup>124</sup>

The pattern of outlining every possible interaction shows up in several other laws: For example, for a limited monetary amount Christians could witness for Jews and Muslims and vice versa (per codes 82 and 83), and a Muslim's oath would be seen as valid if performed in a Mosque, a Jews in a Synagogue, and a Christian if sworn over the cross and book (per code 97). However, these measures of equality are tempered by several points arguing the superiority of the Christian faith. Disputes between Christians, Moors or Jews (in any combination) that led to legal complaints against one another were mandated by code 131 to be taken up by a Christian Judge because "a Christian better discerns and knows more how to investigate the cases."<sup>125</sup>

Likewise, code 82, while allowing for some equality, also allows Christians greater financial latitude in making oaths than the other two faiths listed in code 83. The top

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<sup>124</sup> "De pleito Christiani et mauri. Si Christianus habet clamum de Mauro, habent ire ad iudicium del *alphaquin*. Et si habet clamum maurus de Christiano, habent ire ad iudicium iusticie. Similiter est de Christiano et de iudeo contra ad aliam iusticiam et contra ad illo rabbi."

<sup>125</sup> "quia Christianus melius discernit et causas novit potius perscrutari."

tier of the caste system is visible through the greater trust and privileges vested in the Christian portions of the community.

The *Fueros* often treat both Jews and Muslims with similar levels of mistrust. Code 123 describes the process for a Christian to bear witness for a Jew or Muslim, and starts out by describing the Jews as perfidious and deceitful. The code also notes that both Moors and Jews are “enemies of the crucified Christ...that then because they are traitors and day and night...think to *laqueare* manifold frauds against Christian.”<sup>126</sup> This too is an example of the fact that Christians were considered the norm and were at the top of the Caste system. Crucially, however, nowhere in the codes are Jews addressed in the context of military enmity or as potential slaves. Where they do address Jewish citizens specifically, the codes do so in the context of finance. Two codes in particular (125 and 130), taking the form of moral tales rather than prescriptions, fit this model. They tell stories, respectively, of a Jew who cheated a Christian and a Christian who cheated a Jew, and how each victim enacted appropriate financial revenge. These laws show an expectation that the relations between the Christian and Jewish communities would often take the form of adversarial financial transactions. The position of financiers within the community worked well because Jews (as mentioned before) were not subject to the *diezmo* and therefore had the capacity for more financial liquidity; the ability to charge interest on loans also helped them achieve financial success.<sup>127</sup>

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<sup>126</sup> “tum quia sunt inimici cruces Christi per quam totus mundus salvatur et vite salus reparatur, que tum quia sum proditores et die et nocte cogitam Christianis fraudes multimodas laqueare...”

<sup>127</sup> Ray, *The Sephardic Frontier*, 46.

The two laws within the *Fueros de Borja y Zaragoza* that deal with Muslims specifically (as opposed to addressing all faiths at once), do so in the context of them being slaves, captives of war, or captors of Christians. Code 69 covers the temporary transfer of a Moor into another's custody, mandating repayment in case he or she might flee, and code 155 covers the ability of a Moor to make financial transactions on behalf of a captive in order to ransom them. These codes show that the role of individual Muslims within the community could just as easily be as slaves instead of as citizens, and show an assumption of military conflict between town forces and the Muslims with the possibility of defeat for the townsfolk. Interestingly enough, the faith of the captives is not specified in that code, which may indicate that Muslim and Jewish citizens could participate in operations against the Almohads. The regulations on financial transactions on behalf of captives assume that the frontier was not a concrete barrier to passage or commerce: lines of communication had to be kept open in order for prisoner exchanges and ransoms to be paid.

The state of interfaith relations within both Charters is very similar; greater trust is given to the Christians in both cases, the Jews are granted a different status based in large part on financial issues, and Muslims are treated alternately as fellow citizens and as property or the enemy as the situation warrants. There is a certain degree of *convivencia*: the way both Charters are written supports Castro in his argument that mentions of "Moors & Christians & Jews" in texts of the period were the longhand equivalent of the statement "every citizen" or "everyone".<sup>128</sup> Similarly, the continuing demographic drain of the expanding frontier militated against the towns

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<sup>128</sup> Castro, *The Spaniards*, 88.

being too picky in who settled the land, and the Jews and Muslims provided a ready source of artisanal labor.<sup>129</sup> However, the marked difference in the treatment of the Muslims is testament to the fact that they were the expected target of the vast majority of military actions. What made the frontier a frontier and not a mere border was the ideological religious divide: because of the inherent religious tensions, the border was unstable, and the sense of manifest destiny implicit in the drive to conquer, settle and repopulate meant that that border would inevitably be crossed.

### *REPOBLACIÓN, INHERITANCE, AND WOMEN IN THE CHARTERS*

One of the driving issues of the Reconquista was the necessity for *Re población*, the systematic repopulation of both the territories taken in the *Reconquista* and the frontier regions depopulated by constant raiding.<sup>130</sup> As Powers (and others) have noted, this dictated that large numbers of women be enticed to leave the relatively secure areas of Old Castile and move to the dangerous frontier in order to marry and replace the expected casualties.<sup>131</sup> The Charters had social mobility and opportunity built into their underlying premises, and since the freedoms in previously conquered areas eroded over time, this made them an effective recruitment tool.<sup>132</sup> This is borne out by code 1:10 of the *Forum Conche*, which states that

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<sup>129</sup> Castro, *The Spaniards*, 9.

<sup>130</sup> Linehan, *History and the Historians of Medieval Spain* 251-252.; For depopulation, see also Casesnoves, *El Concepto de España en la Edad Media*, 160.; and MacKay, *Spain in the Middle Ages*, 40.

<sup>131</sup> Powers, "Introduction", 12.

<sup>132</sup> MacKay, *Spain in the Middle Ages*, 40-43; de Moxó, *Re población y Sociedad en la España Cristiana Medieval*, 381-385.

whoever may come to live in Cuenca, whatever condition he may be, whether Christian, Moor, or Jew, free or servile, should come in safety. He need not answer to anyone by reason of enmity, debt, bond, inheritance, *mayordomia*, *merindadico*, or any other thing he may have done before the conquest of Cuenca...<sup>133</sup>

The freedom from previous obligations allowed for a second start for people who had fallen through the cracks in society (and also for criminals, prostitutes, and other marginal peoples). That particular code is the most obvious enticement for *Repoblación*, but the process is tangentially supported within the Charters in two other ways: through partible inheritance and through regulations concerning women.

#### PARTIBLE INHERITANCE AND *REPOBLACIÓN*

Partible inheritance is the practice of dividing one's worldly possessions or land equally to all children upon one's death (with variations on whether "all children" meant sons alone).<sup>134</sup> During the 11<sup>th</sup> and 12<sup>th</sup> century, it was not common in Europe; the system of primogeniture, the practice of the eldest son inheriting all the properties and/or titles of the parents, was gaining prominence during this time period.<sup>135</sup> Partible inheritance in Spain was itself an inheritance from Visigothic tradition, and was practiced in areas previously touched by the Visigothic influence including the

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<sup>133</sup> *The Code of Cuenca*, 31.

<sup>134</sup> *Oxford English Dictionary Online*, s.v. "Partibility," <http://0-www.oed.com.lib.rivier.edu/view/Entry/138237?isAdvanced=false&result=5&rskey=0xmlgX> (accessed November 18, 2013).

<sup>135</sup> Frances Gies and Joseph Gies, eds., *Marriage and the Family in the Middle Ages* (New York: Harper and Rowe, 1987), 125.

Germanic frontiers and southern France.<sup>136</sup> Crucially, partible inheritance in the Germanic codes generally included the female heirs (although certain privileges were still reserved for the males in certain codes). Both the Salic laws of the Franks and the Visigothic *Forum Iudicorum* also had provisions allowing for women to not only own property but to manage that property even when they were married.<sup>137</sup> This was a crucial factor in allowing women to maintain a degree of autonomy and power, not to mention providing a buffer against an improvident marriage to a spendthrift spouse.<sup>138</sup> The divide between partible inheritance and primogeniture was significant in that the latter led to the creation of large estates, as property remained intact across generations, while the former led to such properties being broken up amongst the heirs.<sup>139</sup> In an expanding society, land was readily available, and small plots could easily be grown into larger ones, so the main disadvantage of partible inheritance (fragmentation of large estates) was easy to overcome. It also provided more surface area for expansion, as each family unit had the opportunity to use their inherited wealth or land as a springboard to get more. Finally, the prospect of inheriting and owning land in their own right would have been a draw for respectable women as well as those on the peripheries. Thus, laws supporting partible inheritance also had the effect of supporting the expansion of the frontier.

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<sup>136</sup> Barbara A. Hannawalt, *The Wealth of Wives: Women, Law, and Economy in Late Medieval London* (New York: Oxford University Press, 1993), 66.

<sup>137</sup> *Pactus Legis Salicae*, trans. Katherine Fischer Drew ((Philadelphia: University of Pennsylvania Press, 1991), 122.

<sup>138</sup> Drew, "Introduction," 43-44.

<sup>139</sup> Gies, *Marriage and the Family in the Middle Ages*, 134.

In the *Fueros de Borja y Zaragoza*, code 55 explicitly prohibits primogeniture, mandating that “if he has sons and daughters and the father wishes to give all to one and disinherit the others he is not able.”<sup>140</sup> Such disinheritance was only allowed by code 55 in the case of assault or harm to the parent, or in the case where the goods in question were not mandated by law to be part of the official inheritance. Likewise, code 100 bans parents from gifting more than one set of movable goods as an inheritance to a particular son or daughter, and code 102 mandates that widowers cannot give a gift to one sibling alone unless they apportion the gift fairly. Partible inheritance is also visible through the regulations on the selling of inheritances: the general pattern is that undivided or partitioned inheritances could only be acted on financially with the consent of all heirs (thus implying multiple heirs as the norm). Specifically, codes 53, 54, 104, and 126 all invalidate financial transactions without the consent of all the parties involved.

The *Forum Conche*, on the other hand, does not explicitly include daughters in the inheritances; the word used to indicate child or children is *filius* or *filiorum*, meaning son(s). The complication here is that in both Latin and Spanish, groups including both men and women were referred to using the male form. Given that there was no prohibition in the codes against women inheriting property, the Visigothic precedents, and the fact that several codes governed the inheritance of property from a husband to wife, interpreting these words to mean “child” instead of “son” seems warranted; James Powers writes in his translation notes that he gave up on gender neutral pronouns and used “he” with the understanding that “the male singular [was]

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<sup>140</sup> "Et si habet filios et filias et vult pater dare totum uni et desfillare alios non potest."

often intended to apply to women as well.”<sup>141</sup> With this in mind, partible inheritance is supported within the *Forum Conche* in code 10:1, which says that “Any child should inherit the goods of his father and mother...”<sup>142</sup> Code 10:27 makes the same point as code 100 in the *Fueros*, requiring equal gifts of inheritances to the children.

Partible inheritance differentiates Spain from the overall trends across the rest of Europe. Joseph Gies writes in *Marriage and the family in the Middle Ages* that “alone in Western Europe, Spanish women enjoyed significant property and inheritance rights long after the general shift to impartible inheritance and primogeniture.”<sup>143</sup> This phenomenon cannot be said to be caused by the frontier, as the custom pre-dated the Muslim conquest of the Iberian Peninsula and was tied to Visigothic law; however, the custom flourished on the frontier because it was an effective means of supporting expansion.

#### THE REGULATION OF WOMEN AND *REPOBLACIÓN*

Heath Dillard, in his extensive analysis of the role of women in the Castilian reconquest, argues that while men conquered the towns, women were indispensable resources for rebuilding and repopulating the community.<sup>144</sup> There are many disagreements as to the role of the frontier law codes in attracting said women. For instance, Teofilo F.Ruiz, a scholar of the development of Castilian society, argues that the *Forum Conche* equates women to property due to the similarities of penalties for

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<sup>141</sup> Powers, "Introduction," 24.

<sup>142</sup> *The Code of Cuenca*, 66, 72.

<sup>143</sup> Gies, *Marriage and the Family in the Middle Ages*, 156.

<sup>144</sup> Heath Dillard, *Daughters of the Reconquest: Women in Castilian Town Society, 1100-1300* (Cambridge: Cambridge University Press, 1984), 12.

property violations and penalties for moral lapses, and thus did not serve as an attractant.<sup>145</sup> Heath Dillard points out that the laws were more effective in attracting women on the margins of society as free women had little incentive to migrate.<sup>146</sup> The frontier towns were freer and had more opportunity, and such women had little to lose as social conditions tightened in Old Castile.<sup>147</sup> Jean A. Stuntz, who traces Spanish frontier laws through 19<sup>th</sup> century Mexico and Texas, argues that the municipal charters represented an expansion in the rights of women, and thus could serve as an enticement to singles.<sup>148</sup>

However, there is another way in which these Charters reflect the importance of *Repoblación*: the regulations concerning woman are a value statement of the importance of women in the life of the town and to the frontier region. As with the codes on inheritance, the detailed regulations regarding women's honor and punishing women who make themselves unmarriageable reflect a concern with procreation that is consistent with the concern over *Repoblación*. This value statement also reflected simple scarcity: Clifford Backman argues that "a crude formula of supply and demand" affected the values of dowries and the rights of women in early Germanic law codes, and that same argument applies to the frontier region where both

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<sup>145</sup> Ruiz, *Crisis and Continuity*, 61.

<sup>146</sup> Dillard, *Daughters of the Reconquest*, 72.

<sup>147</sup> MacKay, *Spain in the Middle Ages*, 40-43.

<sup>148</sup> Jean A. Stuntz, *Hers, His, & Theirs: Community Property Law in Spain and Early Texas* (Lubbock, Tex.: Texas Tech University Press, 2005), 12.

*de poblaci3n* through raiding and simple lack of women moving to the frontier in great numbers would create a high demand and a low supply.<sup>149</sup>

The *Fueros de Borja y Zaragoza* do not overtly encourage either settlement or marriage, but they do contain some codes that exhibit a concern for childbearing and for women's honor (which in turn affected marriageability). Code 43 regulates the disposal of an inheritance given to a married daughter, mandating that if she dies without bearing children, the inheritance must be repaid to the parents by the widower; this might not directly incentivize childbirth (depending if the husband could manage the inheritance and thus profit off of it or not), but it certainly is a statement of the importance of bearing children. Two codes specifically address women's honor: 78 and 80 take the form of involved fables about women who were attacked or dishonored in some way and the penalties visited upon their attackers; the emphasis in both is on the purity of the woman being violated or dishonored, both of which are states that would affect marriageability. Finally, code 106 regulates the process of proving that one was attacked with or without witnesses; a woman with no witnesses (who would not have access to trial by combat without a champion) would be required to risk crippling by lifting the heated iron to prove the worth of her cause. Taken together, these three codes provide circumstantial support of the importance of *Re poblaci3n* in that they put value on marriageability, but there is no strong indication in the *Fueros* that this was necessarily a concern on the frontier.

The *Forum Conche*, on the other hand, has large sections of codes dealing with the preservation of female honor and incentivizing marriage: both concerns that

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<sup>149</sup> Backman, *The Worlds of Medieval Europe*, 105-106.

support the repopulation process. The codes concerning the virtue of women show a communal concern for the production and rearing of children, and in and of themselves constitute a clear indication that repopulation/colonization is a major goal for the town. Chapter 11 prescribes penalties for a variety of direct assaults on the honor of Cuencan women: 11:24 penalized the sexual violation of an unmarried woman to the tune of 300 *solidi*, while 11:25 sentenced the violator of a *married* woman to death by burning alive. Violation of religious women merited death by hurling off the cliffs (11:27). Injury or homicide of a pregnant woman merited paying the fines for a double homicide (11:49). The *Forum Conche* also details a variety of punishments for manhandling, insulting, or injuring a woman; there were also substantial penalties for stealing or damaging clothing. For example, chapter 13 regulates penalties for kidnapping and holding another man's wife (13:3), which were almost identical to the penalty for boasting about having another man's woman (13:8): a fine of 300 *solidi* and the status of enemy of the town. The punishments for other crimes range from small fines for minor insults to exile from the city as an enemy for cutting the bosom of a woman; the penalties are ratcheted up in accordance with the severity of the damage to the woman or to her modesty (in the form of clothing). Indeed, law 2:32 mandates the penalty of being hurled off the cliffs for stealing the clothes of a woman while she is bathing.

The focus on the modesty of women requires more exploration, as it is part of an overall societal mindset of the Middle Ages, born on the expansion of the power of the Church and the expansion of wealth. This is perhaps best exemplified by sumptuary laws, laws governing the acceptable clothing of both men and women for a variety of

moral goals. These were especially prevalent in the Italian city-states in the 13<sup>th</sup> through the 16<sup>th</sup> century, and it is useful to examine that era as the most visible manifestation of the trend towards controlling women's bodies because the vast majority of the sumptuary laws during that time were aimed at women's clothing.<sup>150</sup> The sumptuary laws in Italy over that period were used by the state both to protect modesty but also as a fiscal tool to reign in conspicuous consumption that drove up debt levels and destabilized the economy, and as a tool for generating revenues through fines. They also were used as protectionist tools for preventing the use of materials produced by rival cities.<sup>151</sup> The laws were a reaction to the use of women's bodies as both tools for exhibiting wealth and as representations of a family's social status and honor.<sup>152</sup> Clothing was useful for this because it was visible. Catherine Killerby, in her comprehensive study of Italian sumptuary laws, summarizes it best, saying that, "at a single glance clothing could be used to display wealth, rank, profession, nationality, gender, and marital status."<sup>153</sup> This was not necessarily under a woman's direct control, as "a woman's public 'voice' ... was always linked to the male household and lineage to which she belonged. In other words, though clothing might give her a limited voice, she was speaking on behalf of men, not on her own account."<sup>154</sup>

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<sup>150</sup> Catherine Kovesi Killerby, *Sumptuary Law in Italy 1200-1500* (Oxford: Clarendon Press, 2002), 39.

<sup>151</sup> *Ibid.*, 46-48.

<sup>152</sup> *Ibid.*, 80-81.

<sup>153</sup> *Ibid.*, 112.

<sup>154</sup> *Ibid.*, 116.

Though this was more visible in Italy, the general pattern of the voice of woman being both representative of and controlled by the male household is very visible in the Spanish frontier environment. Catherine Killerby argued that any blight on a woman's honor was also seen as an attack on the man's honor, and could thus affect future marriage prospects, legal inheritance, or the man's ability to participate at all in the public life of the community; a sentiment echoed by Heath Dillard in his book on the lives of women on the Spanish frontier.<sup>155</sup> Dillard points out that the concern for modesty and marriageability led to an obsession with reputation and with the covering of body parts.<sup>156</sup> With this, the laws on clothing listed above come into focus; stripping off a woman's clothing also stripped her of her honor in the court of public opinion, making her "defenseless and pregnable."<sup>157</sup> This in turn was an attack on the honor of her family and of her male relatives, and so was taken very seriously. The larger implications for the frontier were that the loss of female honor meant that no legal heirs could be produced through marriage; in turn, this meant fewer settlers to continue the process of *Repoblación*, fewer participants in the economic life of the town, fewer warriors for frontier raiding, and so on. In that context, the codes protecting women show a conception of the frontier as a place where expansion was expected and thus where the production of future settlers had to be preserved.

In that same vein, the *Forum Conche* also had a wide variety of punishments for women who endangered their or other's fertility and their ability to raise heirs;

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<sup>155</sup> Killerby *Sumptuary Law in Italy*, 117; Dillard, *Daughters of the Reconquest*, 169.

<sup>156</sup> *Ibid.*, 171-174.

<sup>157</sup> *Ibid.*, 175-176.

abandonment of a child (or giving him into the care of the father despite mandated child support payments from the latter) merits a whipping, while abortion returns a death sentence. Spell casting, the practice of witchcraft or herbalism, murder of a husband, pandering or acting as a procuress (11:39-11:44) are all punished by either burning alive or by ordeal with the hot iron. The choice of penalties indicates a focus on proof and the judicial process: being caught in bed with an infidel (listed as either a Jew or Muslim) merits being burned alive with no mention of the ordeal as an alternative (11:48). Likewise, adultery is license for the husband to kill the wife without penalty if he catches her in the act. (11:28) Again, the common thread is the preservation of eligibility for marriage and the production of legitimate Christian heirs within the marriage.

#### INCENTIVIZING MARRIAGE

As above, the *Fueros* do not have extensive regulations on this subject. They do mention the rights of wives, however: codes 1 and 2 regulate the passage of inheritances to the wife of an *infançon* (minor noble) and *villain* respectively, granting the “better part” of those inheritances to the wife.<sup>158</sup> The *Forum Conche* is much more detailed: The first two provisions of chapter 9 (which regulate marriage and wills) mandate the payment of a dower of 20 *aurei* by a prospective husband to any unmarried woman and 10 *aurei* to any widow within the city; a dower is the husband’s contribution to the marriage, which passed irrevocably to the wife in the

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<sup>158</sup> “Si habet novem hereditates tres meliores sunt arras de la infançon.”

event of his death.<sup>159</sup> By mandating a specific amount in gold, the *Forum Conche* ensured that marriage guaranteed a certain level of fiscal support to a wife in the event that she became a widow. As an expression of value, the amount is comparable to the bounty for the capture of a Muslim leader in battle (as covered in code 31:18). This provided an incentive for valor, and shows that marriage was viewed as having a similar economic value. Code 9:4 prescribes an equal punishment to a husband or wife that rejects their spouse after the betrothal, and 9:5 mandates a severe penalty (100 *aurei* and the status of enemy of Cuenca) to a man who “has carnal relations with the wife and later rejects her.”<sup>160</sup> Taken together, these laws represent an economic incentive for women to secure betrothals and/or remarry, and that betrothals were considered binding contracts in the eyes of the town and were strongly encouraged.

The egalitarian laws in the *Forum Conche* regarding property also encouraged marriage as a means to pool resources without losing the rights to those resources. Those laws are mostly contained in chapter 10: for instance, law 10:8 mandated that upon separation of the marriage, all property gained after the marriage must be divided equally, and goods from before the marriage go straight to the heirs rather than the spouse. This represented a large boon to women’s fiscal independence, as a man could not marry a woman, take her property, and then abandon her while still keeping his ill-gotten gains (as was the case in some other parts of Europe).<sup>161</sup> According to Dillard,

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<sup>159</sup> Hannawalt, *The Wealth of Wives*, 8.

<sup>160</sup> *The Code of Cuenca*, 64.

<sup>161</sup> Judith M. Bennet, *Women in the Medieval English Countryside: Gender and Household in Brigstock before the plague* (New York: Oxford University Press, 1989), 112.

this was a common feature of frontier law codes, and also served the purpose of incentivizing couples to improve and expand on their shared wealth.<sup>162</sup> James Powers likewise suggests that the lack of prohibition within the *Forum Conche* against women owning and operating businesses is a sign that they were allowed to do so, noting that other evidence from the towns confirms that this was actually the case.<sup>163</sup> Overall, the opportunities for an enterprising woman to make a fortune and improve her lot on the frontier were encouraged by law, and this, coupled with the many protections against abuse (detailed in the last section) would have been a significant draw for the town.

#### MAJOR DIFFERENCES BETWEEN THE CHARTERS

The major consistent difference between the two Charters lies in the penalties for crimes. The specific values of financial penalties are very different: Borja uses *Solidos* (silver coins worth a 20<sup>th</sup> of a pound of silver) and *denarii* (copper coins at 1/12 of a *Solidos*) as their main units of payment, while Cuencan penalties were usually in *Solidos* and/or *Aurei* (gold coins). Cuenca also employed capital punishment, a power likely reserved in Aragón for the Royal courts alone. These differences largely stem from the fact that Cuenca was a powerful town with defined measures for self-governance as a corporate entity, while the *Fueros* fall more into the pattern of the *bannum*, and had a greater degree of control from the King and the powerful local lords. The other major difference was simply that the *Fueros* governed two cities, while the *Forum Conche* dealt only with one. In the *Fueros* this chiefly arises through

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<sup>162</sup> Dillard, *Daughters of the Reconquest*, 73-74.

<sup>163</sup> Powers, "Introduction," 11.

several provisions that combat venue-shopping for justice between the two towns. In regards to the frontier, the main difference between the two is that the *Forum Conche* is considerably larger, and thus has more codes governing each particular situation than in the *Fueros*. This makes comparisons of the relative number of laws governing each area fairly unproductive, but the underlying vision of the frontier in both Charters remains the same.

### COMPARISONS TO VISIGOTHIC LAW

Since the customs that these laws were based on originated in Visigothic law, it is worthwhile to compare these charters to those earlier law codes to see whether the elements mentioned above apply in that different context. One useful source for this is the Laws of the Salian Franks. Likely issued by King Clovis in 507-511, and later revised by Charlemagne, the laws are a loose collection of several documents that applied mainly in northern Gaul.<sup>164</sup> Though these laws did not spread into Spain proper, they are useful for comparison because they originated in the same Germanic context as the various Visigothic codes and are geographically proximate.

There are clear parallels between the Salic laws and the town charters in the regulations regarding outsiders, inheritance, and female honor. The Salic laws focused on two general groups: Romans and Franks, with Romans being subjected to greater burdens of proof than Franks in proving innocence. A good example is law XIV, which regulates waylaying. Provision 2 states that a Roman who robs a Salic barbarian must clear his name with 25 oathhelpers, or be forced to endure the ordeal of boiling

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<sup>164</sup> Drew, "Introduction", 28-31.

water. If he failed, he would pay 2500 denarii, the general fee for anyone robbing a freeman. A Frank who robbed a Roman, on the other hand, would not be subjected to the ordeal and would only pay 1200 denarii (per provision 3).<sup>165</sup> There are similar regulations for arson in Law XVI, 5, and tying up a freeman in Law XXXII, 3. These regulations parallel the treatment of strangers in the *Fueros*, reflecting a greater level of mistrust and a lower value placed on the persons of strangers. They also show the origins of the practice of witnessing and the use of ordeals as an alternate mechanism for obtaining truth.

In regards to inheritance, the Salic laws make a distinction between Salic land and allodial land, defined as “land not held as a benefice—in other words, it is land referred to here as family land.”<sup>166</sup> Allodial land was inheritable by women, though there are some indications that male heirs held preference, while Salic land was only inheritable by males. Katherine Fischer Drew notes that this implies that land was held by the king in the feudal model and could be granted, while inalienable family lands passed by inheritance.<sup>167</sup> These provisions are held in the laws concerning Allodial Lands (LIX), and there are several unambiguous statements of the power of women to inherit said lands; this tradition is of course reflected in the Castilian and Aragonese codes, though the references are not nearly as clear as the Salian provisions.<sup>168</sup> The

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<sup>165</sup> *Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 79.

<sup>166</sup> Drew, “Introduction”, 44.

<sup>167</sup> *Ibid.*, 45.

<sup>168</sup> *Laws of the Salian Franks*, 122-123.

main difference between the codes is that the male-only inheritance provisions were removed in the later Hispanic codes, a significant change because it goes against the general European trend towards primogeniture and male inheritance mentioned previously.<sup>169</sup>

Finally, there are many provisions concerning women and honor which mirror the later laws in the *Forum Conche*. There are mounting penalties in the *Pactus Legis Salicae* for touching a free women, culminating with massive fines for touching a breast or cutting it in XX,4, and similar provisions for cutting a woman's hair or striking her in CIV and in XXIV. The laws on hair cutting also mention letting a woman's hood fall to the ground or untying hair ribbons, laws which again are reflected in the Code of Cuenca's focus on clothing. The Salic laws place more weight on the hair as the public symbol of societal status than the Code of Cuenca, reflecting a different measure of societal status, but the focus on the honor of the woman as a reflection of marriageability and family honor remains the same. The Salic Laws also have many regulations against actions that would harm a women's fertility. The killing of pregnant women is especially heinous, and if the fetus was proved to be a boy, additional fines were mandated (LXVe, 1).<sup>170</sup> Striking a pregnant woman was also elevated above assaulting a freewoman, and is paired with laws against striking or killing children (XXIV).<sup>171</sup> These laws are a clear value statement of the importance of

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<sup>169</sup> Gies, *Marriage and the Family in the Middle Ages*, 125.

<sup>170</sup> *Laws of the Salian Franks*, 127.

<sup>171</sup> *Ibid.*, 86.

childbearing and the need to protect that capacity, values which carry on into the later Hispanic law codes.

There are several areas where the codes do not overlap. The town charters show a greater concern with territorial borders, while the Salic laws focus on the house as the defined region while refraining from talking about kingdoms, the wilderness, or borders. Likewise, the provisions regarding Muslims and Jews are absent from the Salic laws, due to the lack of proximity to the former and possible lack of dispersal of the latter. Finally, the laws regulating military conflict are absent from the Salic laws, which is likely due to the laws being “national” in character as opposed to the charters for military towns.

The Visigothic traditions reflected in the Salic laws show that the regulations regarding women in the *Forum Conche* and *Fueros* were not necessarily targeted to the frontier context, but instead were grounded in cultural tradition that privileged the protection of female honor and reproductive capability. In the context of blood feuds, strict laws denoting the boundaries of acceptable conduct around women helped to preserve marriageability and constrain male behavior that might lead to bloodshed. With the transformation of the context to the frontier, however, the laws take on double purpose, reinforcing the existing provisions against blood feuds while acting also as a guarantee of future soldiers for the Reconquista.

## CONCLUSIONS

For the concept of the frontier to be useful, it has to have some interpretive utility. By seeing how the people of the time defined the type of border that would

later be described as the *frontera*, we can interpret their motivations in expanding it. This conception of the frontier is useful because it is defined from the perspective of the time period; unlike the etic conceptions of modern historians, where the definitions have become hazy and ill defined (as per Berend's criticism), an emic definition of the frontier allows for stronger conclusions because it is based in the primary sources and in the mindset of the people of that time period.

From a scholarly perspective, then, the frontier is best examined as a conceptual model in that mindset. Careful examination of the *Fueros de Borja y Zaragoza* and the *Forum Conche* provides that conceptual model: From the laws regarding the wilderness, we determine that the populace and elites saw the world around them in terms of zones of control and regulation, with the zones on the periphery like the wilderness or the lands outside the city limits being places of greater opportunity. From the codes on warfare, we determine that the society protected its central core with walls but maintained a mobile strike force; the codes on mobile warfare reflect a limitation of manpower (which was needed for outright conquest), and an expectation of raiding as a consistent mode of warfare. From the laws on strangers, there is a strong identification with the citizens over all strangers, reflecting the willingness to fight other Christian powers, but the laws on Jews and Muslims make it clear that there is a distinct caste system and that the primary targets of raiding and general warfare were more likely to be Muslim, specifically for ideological reasons. The laws on inheritance allow for easier territorial expansion via partible inheritance, and provide opportunity within the towns for women to inherit and grow their own wealth; this in turn hearkens to the expectation of casualties and the importance of protecting

and enticing women who settle in the towns in order to continue expanding and settling for the *Repoblación*.

Thus the overall concept of the frontier in both Charters becomes clearer: a nebulous area marked by a differential in faiths where raiding, slave taking, and casualties was expected, and where the opportunity existed for settlement, conquest, and expansion by the towns. The disparity in treatment of the Muslims under the Charters reveals that the frontier with Muslim kingdoms was inherently unstable for the long term; the Charters structurally support and expect warfare against those kingdoms. A historian of the *Reconquista*, José Antonio Maravall Casesnoves, argues that a sense of manifest destiny marked the *Reconquista*, similar to that of the American West.<sup>172</sup> The structural instability of the frontier in the Charters seems to support this notion, as does the cultural ideal (seen in other sources) that the territories of Spain were illegitimately occupied by the Moors.<sup>173</sup> The twinned efforts of *Reconquista* and *Repoblación*, while not explicitly stated in the Charters, are fully supported by them nonetheless, and in the larger scheme this ties the notion of manifest destiny to the frontier as well.

The fact that several elements of this frontier definition are similar to Frederick Jackson Turner's conception of the frontier leads to the next question: do these Charters support his notion that the existence of a frontier shaped custom and law and led it away from the European models that preceded it?<sup>174</sup> In order to answer that

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<sup>172</sup> Casesnoves, *El Concepto de España en la Edad Media*, 269.

<sup>173</sup> *Ibid.*, 287.

<sup>174</sup> Turner, "The Significance of the Frontier in American History," 189 - 196.

question, the next chapter will compare these Charters to a larger, more Pan-Hispanic law code: *Las Siete Partidas*.

## CHAPTER 5

### *LAS SIETE PARTIDAS* AND THE INFLUENCE OF FRONTIER LAW CODES

The footprints of municipal Charters like the *Forum Conche* and the *Fueros de Borja y Zaragoza* are visible within *Las Siete Partidas*, the great 13th century law code written by Alfonso X *El Sabio* (The Learned) of Castile-Leon. Alfonso X acknowledges the importance of those municipal Charters in the introduction to the second Title of his first *Partida*, saying that

nothing can prevent the laws from having the force and authority which we have mentioned except three things; first usage, second custom, third fuero. These grow out of one another, and include natural law in themselves, as is demonstrated in this book; for just as a word is composed of letters, and meaning is derived (sic) from words, and reason from meaning, so usage originates from time, custom from usage, and fuero from custom.<sup>175</sup>

In stating how custom and *fueros* could undermine the laws of the king, this section acknowledges the power that municipal Charters held in determining what the people of Castile considered good law. That power shaped Alfonso's great legal project, and since those *fueros* were constructed in the frontier environment they represent a vector for the frontier to influence national law.<sup>176</sup>

The quote above also reflects the mechanism by which the frontier affected that law. As Visigothic customs were codified into *fueros*, those *fueros* became even more

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<sup>175</sup> Alfonso X, *Las Siete Partidas*, trans. Samuel Parsons Scott and ed. Robert I. Burns (Philadelphia: University of Pennsylvania Press, 2001), 10.

<sup>176</sup> A note on citation; since *Las Siete Partidas* is organized into *Partidas* (divisions), then *Titulos* (titles), then *Leyes* (laws), the notation for a particular law will be "P"#/ Title # : Law #. For example, *Partida* 5 Title 16 Law 4 would be written as P5/16:4.

cemented in the national sense of what was natural and right. Thus when the more comprehensive national laws were codified, those customs continued to survive. This is particularly important in terms of the laws regarding women, where Spanish practice diverged historically from the rest of Europe, but is also relevant in the treatment of Muslims and Jews. Two things, then, need to be established: first, what aspects of the frontier elements discussed in the last chapter are visible within the depths of *Las Siete Partidas*, and second, how much influence did the frontier Charters have in shaping the national code of Alfonso X?

#### THE ORIGINS OF LAS SIETE PARTIDAS

*Las Siete Partidas* was not a “frontier code,” but rather a national law code for the entire country of Castile-Leon. It represented the first solid influences of the 12<sup>th</sup> - 13<sup>th</sup> century renaissance of Roman law, containing sections on the practice of law in addition to the statutes and regulations.<sup>177</sup> *Las Siete Partidas* was actually the third major law code promulgated by Alfonso; his first was the *Especulo*, a manual detailing the laws of the royal court, and the second was the *Fueros Real*, an attempt (likely distributed in 1254) to supplant the municipal charters of previous ages with a more standardized work.<sup>178</sup> The *Fueros Real* was met with fervent opposition from the towns, and in 1272 many of them managed to force Alfonso X to grant them their

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<sup>177</sup> Robert I. Burns, “The *Partidas*: Introduction,” in *Las Siete Partidas* (Philadelphia: University of Pennsylvania Press, 2001), vol.1, xi.

<sup>178</sup> Joseph O’Callaghan, “Alfonso X and the *Partidas*” in *Las Siete Partidas*, (Philadelphia: University of Pennsylvania Press, 2001), vol.1, xxxiii.

previous charters.<sup>179</sup> That experience is an excellent example of how codified custom can become affixed in the public mind as a right not to be trifled with, and thus may have been the genesis of the quote that opened this chapter.

The year 1272 also marks the earliest possible starting date for the creation of *Las Siete Partidas*. That work was far more general, for where the *Fueros Real* was a more practical municipal charter, (albeit intended for repeat use with multiple towns), the *Partidas* were intended to apply to all of Spain as a national law code. It was not implemented during Alfonso's reign; Jerry Craddock, a historian of Spanish legal history, argues that it was likely created as a doctrinal treatise, but came to be viewed as a much more foundational legal document in later years.<sup>180</sup> Following Craddock's reasoning, the purpose of the *Partidas* was as a statement of the underpinnings and theory of the law in Spain, grounded in Roman tradition.

*Las Siete Partidas* was created in a very different context than the earlier codes. Spain at the death of Fernando III (Alfonso's father) was essentially comprised of 5 kingdoms: the tiny Navarre to the north, Portugal to the west, Aragon to the east, Muslim Granada to the south, and Castile-Leon, about as big as all of the others combined, stretching from the north coast to the south.<sup>181</sup> Granada, surrounded by mountains, was a tough nut to crack, so the steadily expanding frontier of the earlier ages was effectively stalled. Castile-Leon was the only country bordering Granada,

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<sup>179</sup> Jerry R. Craddock, "The Legislative Works of Alfonso el Sabio," in *Emperor of Culture*, ed. Robert I. Burns (Philadelphia: University of Pennsylvania Press, 1990), 187.

<sup>180</sup> *Ibid.*, 190.

<sup>181</sup> O'Callaghan, *Reconquest and Crusade in Medieval Spain*, 121.

which existed as a perpetually rebellious vassal state of Castile. During the reign of Alfonso X the Marinids, a resurgent Muslim dynasty that had replaced the Almohads in Africa, spurred Granada into repeated rebellion with military and financial aid and fought against the Castilian naval advances around the Strait of Gibraltar.<sup>182</sup>

Additionally, Alfonso X had to deal with a rebellious Muslim population in the recently conquered Andalusia and Murcia, who themselves were encouraged by the king of Granada to deflect military attention away from his kingdom. This eventually resulted in the expulsion of the *Mudejars* (Muslims under Christian control) from Andalusia and the segregation of Muslim and Christian farmers in Murcia in the years leading up to 1272.<sup>183</sup> Thus the *Partidas* were created in the context of a fairly stable (geographically) military border with sporadic conflict against the Muslim powers to the south, and with a need for repopulating Christian settlers into areas within the kingdom to replace and/or outnumber the indigenous Muslim population.

In this regard, that vision of the frontier seen in the earlier Charters is relevant for *Las Siete Partidas*. That vision was of a region that was not geographically defined in any permanent sense, marked by religious differences, contested, structurally unstable, and understood ultimately to be a target for expansion and conquest. The frontier at the time of Alfonso X was much smaller, especially in terms of opportunities for raiding, conquest, and repopulation, but it still contained elements of the earlier definitions. The major difference was that the Castilian frontier had more

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<sup>182</sup> O'Callaghan, *Reconquest and Crusade in Medieval Spain*, 210.

<sup>183</sup> Joseph O'Callaghan, "Image and Reality: The King Creates His Kingdom," in *Emperor of Culture: Alfonso X the Learned of Castile and His Thirteenth-Century Renaissance*, ed. Robert I. Burns (Philadelphia: University of Pennsylvania Press, 1990), 16-17.

definition due to the mountain ranges protecting Granada and to the slow rate of expansion. Both the border region and the recently conquered territories were marked by religious difference and contested at various times, and both were structurally unstable due to those aforesaid differences. Finally, the status of Granada as a vassal of Castile did not detract from its status as a long term target of conquest, as is seen in the long history of Muslim vassal states bled for tribute and then finished off later in the earlier years of the *Reconquista*.<sup>184</sup> Because the border regions of Castile and Aragon contained similar elements during both time periods, it is possible to compare *Las Siete Partidas* to the earlier charters in terms of their respective visions of society and what they imply about the frontier.

#### BOUNDARIES AND THE FRONTIER IN LAS SIETE *PARTIDAS*

*Las Siete Partidas* contains only vague references to the actual borders of the kingdom, a similar approach to the *Fueros de Borja y Zaragoza*. The most direct reference in the *Partidas*, P3/ 5:6, states that “knights receiving pay, who are in the service of the king or of other lords on the frontier, or elsewhere, cannot be attorneys for others in court during the time they are under the command of their lords wherever they may be.”<sup>185</sup> This code does not directly define the frontier, but the military context of the term (and the general use of the word in Spain) does reference the Muslim border. This general vagueness in both documents regarding boundary lines hinges on the fact that they were written to govern across fairly large kingdoms, as

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<sup>184</sup> O’Callaghan, “Image and Reality: The King Creates His Kingdom,” 29-30.

<sup>185</sup> Alfonso X, *Las Siete Partidas*, 587.

opposed to the *Forum Conche* which covered a single town with clear and easily definable border lines.

The importance of the kingdom as the organizational unit manifests itself in *Las Siete Partidas* through the frequent use of the word “country”. For example, P3/ 14:14 acknowledges the difficulties that arise in verifying a person’s death in a foreign country, saying that after a reasonable period like 10 years the person can be declared dead based on rumor alone, and P3/ 29:10 governs lapsed control on property, granting more time for owners known to be out of the country to claim it. These laws are comparable to the *Fueros de Borja y Zaragoza*, which use “*terra*” in the same context of property disputes and inheritance while traveling in other lands. The *Partidas* also speak of “the enemy’s country” in P7/ 25:9, which regulates the treatment of Moorish envoys, and several provisions in P2/ 19 which regulate the citizen’s obligation to guard their king when he campaigns in an enemy’s country. These resemble the *Forum Conche*’s regulations on *requa* caravans into the “land of the Muslims,” but the language of enmity in the *Partidas* is far more explicit.

Together, these references reveal a worldview where the important unit of organization was a country. However, there are no specific references in the codes as to how those domains were measured. This is consistent with the idea that the kingdom or country was comprised of the areas under the control of the king, a fluid definition subject to change through marriages, conquest, and changes in allegiance. Some confirmation of this can be seen in P7/ 14:19, which punishes the receipt of stolen cattle with banishment from “the dominions of the king.”<sup>186</sup> In the original

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<sup>186</sup> Alfonso X, *Las Siete Partidas*, 1387.

Spanish of the code, this is written as "*el señorío del rey*," rather than "*tierra*" (land); *señorio* has more connotations of control and personal ownership than *tierra*.<sup>187</sup>

The *Partidas* are much clearer on territorial definitions within the kingdom, like towns' districts of control. P3/ 16:33 specifically mentions town districts and their boundaries (in the context of how much time is allowed for a plaintiff to get a witness to come to court), and P7/ 7:8 likewise regulates the measuring of lands owned by individuals: both these laws demonstrate that the concept of defined property and lands was alive and well, and both hearken back to the town districts of the *Forum Conche*. Teofilo Ruiz, a scholar on medieval Castile, notes that this conception of property was part of a shift from a jurisdictional concept of property (similar to the zones of control discussed in the previous chapter) to a focus on "land grounded on notions of geographical space and location."<sup>188</sup> He argues that the shift towards measuring out property lines in detail was due to the increased security in previously conquered regions of Old Castile; this explains the lack of such specific descriptions of property lines in the previous frontier codes, though the boundary stones of Cuenca (mentioned in codes 31:16, 37:6, and 37:8 in the *Forum Conche*) are an indication that the people of Castile were beginning to think in terms of defined geographic boundaries.

The implication for the frontier is that it had the potential to become an increasingly defined space, both geographically and as the border to another country.

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<sup>187</sup> Alfonso X, *Las siete partidas del rey don Alfonso el sabio* (Madrid: Imprenta Real, 1807), 621.

<sup>188</sup> Teofilo F. Ruiz, *From Heaven to Earth: the Reordering of Castilian Society, 1150-1350* (Princeton: Princeton University Press, 2004), 67.

This border, however, was unstable due to the possibility of Marinid invasions, rebellions, and other hostile actions. Thus while a relatively defined border did exist between two countries, its inherent instability dictates that it is better understood as a glacially moving version of the frontier regions of 12<sup>th</sup> century Castile and Aragon rather than as a traditional political boundary or European style fortified border.

### STRANGERS AND FOREIGNERS

This focus on countries also raises the question of the treatment of strangers and foreigners. For the most part, *Las Siete Partidas* did not treat foreigners differently, a break from both the *Fueros* and the *Forum Conche*. The one major exception comes from P1/ 6:21 which mandates that no foreigners should be ordained as bishops. That distinction is better understood in the context of P1/ 5:18, which gives Kings the right of confirmation over Bishops; essentially, both are best understood as a power grab by Alfonso X for the control of the clergy in Spain (over that of the pope), and thus those laws do not have broader implications as to the general attitude towards strangers in 13<sup>th</sup> century Castilian law. The general lack of differing legal standards for foreigners can partially be explained in terms of a move away from personal law and towards geographical or territorial law. Following the arguments of Teofilo Ruiz, this territorial hypothesis is supported within the *Partidas* by P4/ 11:7, which states that marriages performed in other countries must be judged under the customs of those countries for determining disposition of dowries. Still, the argument that earlier regulations against strangers were rooted in a sense of personal law cannot be taken too far, as the *Fueros* and *Forum Conche* couched their different regulations for

strangers in the context of xenophobia rather than acknowledging any right for strangers to be tried under their own laws.

Apart from the section on foreign enemies (which deals with armies and not individuals), there is one other prominent mention of foreigners in *Las Siete Partidas*. P3/ 28:6 sets aside harbors, rivers, and highways as common property, and opens them up to use by everyone, specifically including foreigners. This would imply an interest in trade, as free use of highways and waterways would certainly be an advantage to a merchant beset by local toll-takers. In other countries in the Middle Ages, great lords and princes viewed roads and merchants as personal revenue generators, so the explicit guarantee of free use of roads in Spain stands in contrast to the general practice during the 13th century.<sup>189</sup>

Overall, the lack of statutory animus towards foreigners who were not actively at war with the kingdom has the effect of removing foreigners from the category of untrustworthy other that is visible in the earlier Charters. This represents a certain degree of trust in the bordering Christian kingdoms, implying that *Las Siete Partidas* was not focused on them as military targets despite its extensive regulations concerning military activity.

## MILITARIZATION IN SOCIETY

The militarization of society along the frontier (as seen in the *Forum Conche* and alluded to in the *Fueros de Borja y Zaragoza*) is also evident in *Las Siete Partidas*, which dedicates Titles 18-30 to the proper practice of war. Descriptions of military

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<sup>189</sup> Daniel Power, *The Central Middle Ages* (Oxford: Oxford University Press, 2006), 78.

tactics, coming from of the leader of the armed forces of the kingdom, do not necessarily indicate that the entire society was organized for war. However, the *Partidas* contain chapters on the duties of civilians to unilaterally form military forces for both offensive and defensive missions in support of the king's efforts: Title 19 regulates how a King's people should protect him from his enemies, including mandates to mobilize an army against a foreign invasion (P2/ 19: 4, 5, and 6), and to mobilize and assist the king in attacking foreign countries (P2/ 19: 7, 8, and 9.) These laws reflect the importance of the militarized frontier towns in the course of the *Reconquista*. Of course, the shrinking of the frontier zone meant reduced opportunities for easy profit through raiding, and these laws also serve as a pointed reminder to those towns of their duty, reflecting Alfonso's problems getting urban knights and towns to actually perform their military obligations.<sup>190</sup> In context, then, the military regulations do represent a vision of a society organized for war, though the actual implementation of that vision remained problematic.

Like the *Forum Conche*, the *Partidas* include extensive regulations on how a military expedition is to be carried out, the division of spoils from those missions, and the punishments for going against orders. The primacy of horsemen is emphasized, with a chapter on Knighthood and the military and frequent references to light cavalry. There are also provisions for reparations for horses killed in battle in P2/ 25:4. This mirrors the focus on cavalry visible in both the *Fueros* and the *Forum Conche*. There is one major factor distinguishing the *Partidas* from those Charters: where the earlier documents merely alluded to the fact that Muslims were the likely target of military

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<sup>190</sup> Joseph O'Callaghan, *The Learned King, : The Reign of Alfonso X of Castile* (Philadelphia: University of Pennsylvania Press, 1993), 92-93.

actions, *Las Siete Partidas* frequently framed conflicts to be against “enemies of the faith.” P1/ 9:38 mandates excommunication for assisting enemies of the faith directly or for selling them war materials like weapons or wood for construction, going so far as allowing the captors of the guilty party to enslave the offenders “as if they were Moors.”<sup>191</sup> From the secular side, P5/ 5:22 repeats that those actions are considered treason. P3/ 28: 20 grants property taken from enemies of the faith to the one who captured it, unless it was within a city or town (another point towards the importance of the city or town as a defined zone). There are also several allusions to the “enemies of the faith” concept in the section on captivity. P4/ 32:1 gives 3 possible paths to slavery, the first being taken captive in war with enemies of the faith, and P4/ 32:4 repeats the possibility of enslaving Christians who aid enemies of the faith.

That specific term “enemies of the faith” hearkens back to the crusading rhetoric employed by Pope Urban II to mobilize the first crusade, which is understandable due to the status of Spain as a crusading theater even in Alfonso's time.<sup>192</sup> That tone bleeds into defensive structures as well: P3/ 28:15, citing Romulus, argues that walls and gates are holy, and thus to pass over a wall in any way other than through a gate (such as via a ladder) was a sacrilege. Of course, that comparison should not be overstated, as regulations on wall building recognized the general importance of walls to the corporate identity of a given town. P3/ 32: 20, for instance, mandates that castle and town walls should be maintained (similar to the regulations in both the *Fueros* and the *Forum Conche*), adding the provision that knights tax exemptions from maintaining

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<sup>191</sup> Alfonso X, *Las Siete Partidas*, 155.

<sup>192</sup> Jill Claster, *Sacred Violence: The European Crusades to the Middle East, 1095-1396* (Toronto, Canada: University of Toronto Press, 2009), 36-37.

those walls vanished when the common fund of money for repairs ran dry. This added provision represents a change from the exemption in the *Forum Conche*, and recognizes that the walls are vital to the entire community. Even with these provisos, the language of sanctification in P3/ 28:15 takes on a different meaning when viewed in conjunction with the laws above.

Of course, the vast balance of military references in the *Partidas* does not reference holy war. Some codes even allude to other foes: P2/ 19:1 defines foreign enemies (as opposed to domestic) merely as “those that openly make war against the king,” a category which could certainly include fellow Christian monarchs or great lords.<sup>193</sup> Likewise, the aforementioned laws on citizen mobilization never reference the faith of the foes they would be fighting; still, the overall context of the laws shows a presumption that the majority of conflict would be against the Muslims. This is particularly evident in P2/ 29 and P2/ 30, the two titles that govern the fate of captives and the process of redeeming them from captivity. Title 29 delineates the difference between a prisoner and a captive, reasoning that

those are properly called captives who come under the control of men embracing another belief, for these have the power to put them to death after they have taken them prisoners, on account of the contempt which they have for their religion, or they can subject them to cruel punishments, or make use of them as slaves.<sup>194</sup>

Ten of the remaining 11 laws in that title govern the legal status of captives and their property. Title 30 continues on this theme, regulating the profession of *alfaqueques*,

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<sup>193</sup> Alfonso X, *Las Siete Partidas*, 402.

<sup>194</sup> *Ibid.*, 516 -517.

“men of good faith appointed for the ransom of captives.”<sup>195</sup> Given that the Jews in Spain did not have an independent military presence, the only possible opposing faiths were heretical variants of Catholicism (such as the Cathars, who did not have any effective presence in southern Spain), and the Muslims.<sup>196</sup> Because the *Siete Partidas* devoted two titles in the laws to the ransom and status of captives, this indicates an expectation of conflict with the Muslims to the south.

### THE JEWS AND THE MUSLIMS

Additionally, *Las Siete Partidas* assume that slaves would be predominantly Muslim, an attitude which is in concordance with the *Forum Conche* and the *Fueros de Borja y Zaragoza*. This predominance of Muslim slaves was part of a general evolution away from Christian slavery towards solely Muslim slavery over the course of the *Reconquista*, which reflects more a distaste with the institution of slavery as applied to co-religionists than any change in attitude towards Muslims.<sup>197</sup> This is borne out in P7/34:2, which states that “slavery is something which men naturally abhor,” and in the regulations mandating that good neighbors should help to free captives.<sup>198</sup>

The assumption that Muslims would be the primary source of slaves is visible in the regulations in P4/ 21 on becoming a slave. Outlined in the first law of that title, the

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<sup>195</sup> Alfonso X, *Las Siete Partidas*, 524.

<sup>196</sup> Ruiz, *From Heaven to Earth*, 26.

<sup>197</sup> William D. Phillips, *Slavery From Roman Times to the Early Transatlantic Trade* (Minneapolis: University of Minnesota Press, 1985), 107.

<sup>198</sup> Alfonso X, *Las Siete Partidas*, 1478.

first kind of slaves are “those taken captive in war who are enemies of the faith,” which fits with the regulations on military captives mentioned above. The other types of slaves were “second, those born of female slaves; the third, when a person is free and allows himself to be sold.”<sup>199</sup> The second path to slavery is referenced also in the *Forum Conche*, which notes in 11:23 that if a child is born of a Moorish woman, that child is the servant of the woman’s master and is not entitled to the goods of the father unless he becomes free. Since the majority of slaves during Alfonso’s time were female urban domestics, this second path provided a method of producing slaves other than conquest.<sup>200</sup> The third path to slavery was a way to escape crushing debt, but taken together these regulations had the effect of keeping the pool of slaves Muslim due to the continued presence of a rebellious Granada and internal rebellions of Mudejars, which provided a source of “captives.”

This presumption of slavery was part of what kept the Muslims firmly on the third tier of the caste system in Castile. Even though the majority of Muslims in Castile were free, the existence of the predominately Moorish slave population created a tension in the legal code because the laws governing Muslims were divided between the laws on slaves and the laws governing the Mudejars.<sup>201</sup> This tension was not existent for the Jewish community, since even though the status of the Jews was waning (as will be discussed below) they were not seen primarily in the context of slavery or enmity like their Muslim counterparts. Additionally, the Jewish

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<sup>199</sup> Alfonso X, *Las Siete Partidas*, 977.

<sup>200</sup> Burns, “Introduction to the Fourth *Partida*,” in *Las Siete Partidas*, vol. 4, xxiii.

<sup>201</sup> Phillips, *Slavery From Roman Times to the Early Transatlantic Trade*, 108.

communities tended to be more urban, whereas the free Moors were more diffuse and were also valuable to landlords as agricultural tenants due to the ongoing manpower deficit in Spain; a situation that led to the common saying “No Moor, no Money.”<sup>202</sup> Thus the Muslims were associated with farm labor and the Jews with more high status artisan jobs or mercantile positions.

The position of the Jews in the *Siete Partidas* was more restricted than the earlier charters, though they maintained their status as a separate community under the shield of the King. This heightened restriction on the Jewish community needs to be explored, as at first glance it would seem to contradict the notion that the frontier led away from European mainland customs. Alfonso X defines the status of Jews within the Christian kingdom (in P7/ 24) as,

a people who, although they do not believe in the religion of Our Lord Jesus Christ, yet, the great Christian sovereigns have always permitted them to live among them... We intend to speak here of the Jews, who insult His name and deny the marvelous and holy acts which He performed when he sent His Son, Our Lord Jesus Christ, into the world to save sinners.<sup>203</sup>

Likewise he explains why they are allowed to live amongst Christians in P7/ 24:1, saying that it "is because they always lived, as it were, in captivity, as it was constantly in the minds of men that they were descended from those who crucified our Lord Jesus Christ."<sup>204</sup> Both of these points hearken back to the status of Jews as serfs of the King mentioned in the *Forum Conche*, but the status of "captive" is an interesting addition because it implies that the Jews were seen as captured enemies of the faith, bringing their status within the Christian community more in line with that of

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<sup>202</sup> Burns, "Introduction to the Seventh Partida," vol. 5, xxxiii.

<sup>203</sup> Alfonso X, *Las Siete Partidas*, 1433.

<sup>204</sup> *Ibid.*, 1433.

the Muslims. The rhetoric in the *Partidas* is more in line with the rhetorical treatment of Jews in the *Fueros de Borja y Zaragoza*, which focused on the Jews as traitors and potential cheats. However, the level of detail and specificity in the *Partidas* concerning the failings of the Jewish community is higher and even more condemnatory than that in the *Fueros*.

Another heightened restriction is found in the section on oaths, where the *Partidas* generally take the same position as the earlier codes that oaths made in the respective holy places of Jews and Muslims should be respected. The twist comes in the section of P3/ 11:20 for oaths made by Jews: in addition to Jewish witnesses, a Christian must be present with them in “see[ing] how he takes the oath.”<sup>205</sup> The *Fueros* law on this subject is worded similarly, but it omits the need for a Christian witness, which would seem to represent a certain degree of trust in the Jewish judicial authorities in the *Forum Conche*. Still, the level of trust in the *Fueros* should not be overstated, as code 131 notes that Christian judges were uniformly superior to both Jewish and Muslim ones. This tradition is continued in P7/24:5, which mandates that disputes between Christians and Jews be settled by the judges of the king and not the rabbis.

There are two other regulatory shifts, in the areas of tithing and clothing. Tithing is treated in P1/ 20:6, which mandates that lepers, Jews, and Moors must pay tithes on immovable property; this breaks from the historic trend of reserving taxation privileges from those communities solely to the King, and reduces the financial advantage that Jews held over the Christians around them. In terms of clothing, P7/

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<sup>205</sup> Alfonso X, *Las Siete Partidas*, 639.

24:11 mandates that all Jews should bear a distinguishing mark, a practice common in many parts of Europe at the time. This mandate was created because of fears of inappropriate sexual contact between the faiths, a crime worthy of the death sentence for the male Jew involved (as per that same Title.)

It bears repeating that the lack of certain regulations in the earlier Charters did not mean that those regulations did not exist or were not enforced through other mechanisms such as unwritten custom or royal decree. This is especially relevant in terms of the Jews, who were financial wards of the king in the *Forum Conche* and who could easily have been subjected to further regulations as part of that relationship. Nevertheless, these law codes are all royal documents promulgating a vision of society, and in explicitly outlining these restrictions the kings revealed a growing mistrust for the Jews in their midst.

#### AUTHORITY, TRUST, AND CONVERSION

That mistrust revealed itself in other ways as well: The two titles on Jews and Muslims are both housed in the seventh *Partida*, which covers crimes and criminals, and a major contributing factor to that placement was the concern with the crime of converting from Christianity to either Judaism or Islam.<sup>206</sup> This concern was justified; there were sporadic conversions documented in the historical record between all three religions throughout the Mediterranean region and in Spain in particular.<sup>207</sup> The act of conversion from Christianity was seen as a betrayal that fundamentally compromised

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<sup>206</sup> Burns, "Introduction to the Seventh *Partida*," vol. 4, xxvi.

<sup>207</sup> *Ibid.*, xxxiv.

the trustworthiness of the convert, as noted in several regulations. P6/ 1:9 mandates that women and converts to Judaism or Islam cannot witness a will, and conversion from Christianity was also grounds for disinheritance as per P6/ 7:6 and 7:7, along with failure to ransom one's parents from captivity amongst the Moors. Most importantly, conversion was also a death sentence, separately mandated in P7/ 24:7 and 25:4; the act of conversion is referred to in those codes and "treason," "great wickedness," "as if he had become a heretic," and "insane."<sup>208</sup>

The mention of treason is particularly interesting, as it is also referenced in the *Fueros de Borja y Zaragoza*, using the term *proditores* or traitors to describe the Jews. The idea of treason in medieval Spain was likely influenced by the Germanic definition of the concept, which focused on a betrayal of personal trust, and by the Roman concept of treason as a betrayal of public authority.<sup>209</sup> The early Visigothic law codes were influenced by the Roman concepts on treason, and the revival of Roman law during this time period was a major influence on Alfonso X. Taken together, the context for the term "treason" when used to reference conversion was that it was a betrayal of the religious community as the public authority and a personal betrayal of Jesus as the King of Kings. The *Fueros'* use of the term bears this out, as Jews are seen as traitors in the strict Germanic sense of having betrayed Christ to the Romans.

The specific issue of conversion is not addressed at all in either the *Forum Conche* or *The Fueros de Borja y Zaragoza*; the one mention of conversion is in the

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<sup>208</sup> Alfonso X, *Las Siete Partidas*, 1439-1445.

<sup>209</sup> J.G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge, U.K.: Cambridge University Press, 1970), 1.

context of Muslim slaves gaining their freedom through conversion to Christianity, a proviso that is repeated in the *Partidas* in P4/ 21:8. This acted as a de facto way of privileging Christians in terms of agriculture; the fact the Muslim slaves had an escape hatch from slavery to other Muslims effectively excluded free Muslims and Jews from building up large estates (which required slave labor), which is one possible factor that pushed the Jews into urban communities.

The growing mistrust of both Muslims and Jews in Castile also manifested in their lack of capacity to hold offices or authority over Christians, again in line with common European practice. This is seen in P4/ 21:8 which mandates that neither a Jew nor a Muslim can hold a Christian as a slave. In the case of the Jews, this is part of a larger concern, explained in P7/ 24:3 as “on account of the treason which they committed in killing their lord, they should lose all said honors and privileges, so that no Jew could ever afterwards hold an honorable position, or a public office by means of which he might, in any way, oppress a Christian.”<sup>210</sup> This mandate against holding positions of authority is not explicitly repeated in the following title on Muslims, but that P7 25:2 does “decree that Moors shall live among Christians in the same way that we mentioned in the preceding Title that Jews shall do, by observing their own law and not insulting ours.”<sup>211</sup> This general prohibition against non-Christians having any form of power over Christians is reflected in regulations on legal proceedings; P3 16:8 prohibits Jews and Muslims from testifying against Christians in any criminal case short of treason. This particular prohibition represents a change from the *Forum*

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<sup>210</sup> Alfonso X, *Las Siete Partidas*, 1434.

<sup>211</sup> *Ibid.*, 1438.

*Conche*'s mandate that any interfaith dispute must have witnesses of both faiths involved. As a final legal nail in the coffin, P3/ 19:3 states that only Christians may be notaries, which again shows the lack of trust in the word of Jewish and Muslim citizens, as well as the loss of a potentially valuable profession.

The increasing barriers between the faiths in Spain would seem to match the general European practice, and this presents a challenge to the frontier model that frontiers led societies away from prevailing customs in the rest of Europe. Still, *convivencia* (the peaceful coexistence of cultures in Spain) is not necessarily disproved. Larry Simon, a scholar of medieval law codes who has focused on *Las Siete Partidas*, notes that "this legislation indicates a degree of social integration and interaction between Jews and Christians that was not found elsewhere in Europe at this time."<sup>212</sup> The relative tolerance in Castile does indicate that the presence of the Jews and Muslims was useful to the kingdom because of the continuing manpower issues for working the land. Still, that status quo was trending toward greater oppression, not less, and this requires a more nuanced view of how the frontier affixed culture than the classic Turnerian model of the frontier. That view starts from the premise that the changes to the overall culture engendered by the frontier arose from the power structures and people living on the frontier, not from an outside source. Because Muslims and Jews had no power base in Castile-Leon, they were not able to combat the growing animosity towards religious differences that was fueled by the crusading culture and continued Muslim threat. By contrast, matters such as partible inheritance

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<sup>212</sup> Larry Simon, "Jews in the Legal Corpus of Alfonso el Sabio," quoted in "Introduction to the Seventh *Partida*," in *Las Siete Partidas*, v.5, xxxi.

had a built in constituency of tax paying, militarized citizens who had the power to protest vociferously if what they saw as their rights were being violated.

## INHERITANCE, REPOBLACION, AND THE ROLE OF WOMEN IN THE *PARTIDAS*

One of the major advances in *Las Siete Partidas* is that it clarifies underlying assumptions while keeping customs intact. An excellent example is Alfonso's code regarding legal writing and pronouns. James Powers noted in his introduction to the *Forum Conche* that standard practice in Spanish legal writing was to refer to a generic man or women using the male pronoun, but Alfonso X actually references this practice in P7/ 33:6 by saying

we are accustomed to insert in the laws of this our book words like the following: "Such-and-Such a man who commits such-and-such an act, shall suffer such-and-such a penalty;" and we mean by this that the punishment shall apply to a woman as well as to a man, although no mention of her is made; except in such special cases as the laws of this our book permit.<sup>213</sup>

This is crucial for several laws on inheritance and on the rights of women in Castilian society.

One area where *Las Siete Partidas* expanded its explanations is partible inheritance, the enduring nature of which is intriguing considering that the nobility operated under a primogeniture system in regards to passing down titles (and to an extent, lands taken by conquest.)<sup>214</sup> Alfonso X explains the application of primogeniture for the sons of kings in rather glowing terms, writing in P2/ 15:2 that

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<sup>213</sup> Alfonso X, *Las Siete Partidas*, 1473.

<sup>214</sup> Ruiz, *From Heaven to Earth*, 105-109.

“superiority, by reason of primogeniture, is a great mark of affection which God bestows upon the sons of kings by distinguishing them from their other brothers who are born after them.”<sup>215</sup> He even explains why primogeniture is used, citing the “wise and learned men” who know that dividing a kingdom through Partible inheritance would lead to its destruction. Crucially, he notes that “if there were no sons, the eldest daughter should inherit the kingdom,” a provision that enshrines at the highest level the assumption of a woman’s right to own lands as property.<sup>216</sup> This detailing of primogeniture shows the reasoning behind its use; by implication, the fact that partible inheritance is implemented elsewhere implies that division of large estates was not as important to the King as was following Visigothic tradition.

The partible inheritance mandate lives in P6/ 4:11, which states that “a child is entitled to his legitimate share of the property of his father and mother, freely and without any burden or condition whatever.”<sup>217</sup> This construction is very close to the *Forum Conche*’s code 10:1, and is similar in spirit to the *Fueros* code 55 (though that code was a negative prohibition against disinheritance instead of a positive right to that inheritance.) The right to partible inheritance is also visible in P6/ 15:2, which allows any heir with inheritance right to demand a partition of a single piece of property in the inheritance pool. The general principle enshrined in these laws is shared control and rights to parental property, and the law continues the underlying Visigothic traditions that were fixed into law initially through the municipal Charters.

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<sup>215</sup> Alfonso X, *Las Siete Partidas*, 366.

<sup>216</sup> *Ibid.*, 367.

<sup>217</sup> Ruiz, *From Heaven to Earth*, 1207.

The ability of women to own property is also continued, both through the aforementioned provision for royal daughters but also through P3/ 9:1, which governs when sequestration of assets is appropriate. It cites as an example the case where a husband begins to improvidently become poor; the law grants his wife the power to sue to have her personal property sequestered from his to protect it, and said property could be immovables such as land.

These provisions on inheritance also implicitly support the *re población* effort by privileging the inheritance rights of children over spouses. P3/ 14: 2 notes that the property of a wife was assumed to be her husband's: the burden of proof was on her to show that she owned it after his death or the entirety would be given to the children. This is in concordance with similar laws in the *Fueros* and the *Forum Conche* that privileged the children's inheritance rights: two typical examples are 9:1, prohibiting a husband from leaving something in his will to his wife if the heirs do not wish it, and 10:17, which orders widowers to pay their children half of all their goods obtained before or after the death of the mother, though he may not wish to due to "ignorance and greed."<sup>218</sup> These terms reflect a moral component to inheritance, which is repeated elsewhere: P3/ 11:27 argues that leaving a wife is equivalent to disinheriting one's children in that it was "injustifiable."(sic) Again, this existed in the previous charters, such as Code 55 in the *Fueros* which limits disinheritance to children who strike their parents or otherwise assault them or their reputation and 10:41 in the *Forum Conche*, which mandates disinheritance for children who strike their parents. Taken together,

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<sup>218</sup> *Forum Conche*, 70.

these provisions privilege children over the adults for the purposes of inheritance, which gibes perfectly with the focus on repopulation.

## REPOBLACIÓN

That focus is explicitly laid out in P2/ 20:1, which is entitled “The People Should Endeavor to Beget Offspring, in Order to Provide Inhabitants for the Country.”<sup>219</sup>

Based on the biblical commandment to “Increase, and multiply, and replenish the earth,” the law urges “those who have arrived at a proper age should marry early,” for the avoidance of sin, the production of offspring and the advantageous fact that if “one of them dies, the survivor can marry subsequently, and thus have children at a fit time, which those who marry late cannot do so well.”<sup>220</sup> This urge to marry for the purpose of creating children is frequently repeated: the introduction to the 4<sup>th</sup> *Partida* points out that the purpose of women is companionship and production of a man’s descendants, and reinforces the latter with 2:4 by noting that the biblical purpose of marriage was the production of offspring. This dynamic is also reinforced by the provisions for annulling marriages: 2:7 and 8:4 point to emasculation as grounds for divorce and as an absolute bar to marriage, respectively, and 2:9 brands sex within marriage as a venial sin unless it is for the production of children. The point on remarriage in the introduction is also reinforced by P4/ 12:3, which allows widows to remarry after a period of one year. This explicit focus on *Re población* reflects the continuing problems of the king in finding enough Christian settlers to repopulate

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<sup>219</sup> Alfonso X, *Las Siete Partidas*, 410.

<sup>220</sup> *Ibid.*, 410-411.

Andalusia and Murcia so as to control the large Muslim populations therein.<sup>221</sup> That focus is also reflected in laws tangential to inheritance or marriage: abortion by a pregnant woman is tantamount to murder per P7/ 8:8, and P3/ 29:5 mandates penalties for stealing a "female slave, a mare, a cow, or any other property of this kind of the class which spontaneously yields an increase."<sup>222</sup> The status of women as the securers of future inheritance, coupled with their status as the bearers of family honor, led to many provisions regarding their legal status and their honor.

## WOMEN

The diminished legal capacity of women in the *Partidas* contrasts with more egalitarian standards in the earlier codes. The *Forum Conche* allowed all citizens (a subset that included women) and children to testify as witnesses against anyone, with the exception that 12 year old boys had limited capacity to witness unless they were willing to submit to judicial combat (As per 20:12 and 20:18). In the *Partidas*, by contrast, women carried a legal status similar to minors, which were defined as children 25 years old or younger, notably in P3/ 13:1. Additionally, P3/ 5:12 equates women with minors under 25 in denying them the status of attorney, and P3/ 6:3 mandates that no woman can be an advocate even though male children 17 and older can as per 6:2. This stems in part from a broader legal principle that being under the control of another person grants a diminishment of legal capacity in exchange for a shield from legal liability. This principle is seen in laws like P3/ 11:7, which states that

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<sup>221</sup> O'Callaghan, "Image and Reality: The King Creates His Kingdom", 16-17.

<sup>222</sup> Alfonso X, *Las Siete Partidas*, 839.

those subject to the control of another may not administer or offer judicial oaths; this applies to women, minors, and often knights under the command of a lord, as in P3/ 14:6 which protects those parties from the burden of proof in the case of recovering wrongful payments of a debt. The diminished capacity of knights is also mentioned in the law on the frontier (P3/ 5:6), which prohibited them, like women, from being attorneys. This shift towards diminished capacity did not affect the rights of inheritance established in the earlier Charters (as shown above), and the change is likely due to the fact that the *Partidas* did not need to attract women for settlement because it covered the entire country. As discussed in the earlier chapter, the increased legal capacity of women to sue and witness could have been used to attract women to the dangerous frontier towns.

In regards to feminine honor, the *Siete Partidas* is again very direct in explaining why it is a concern: it threatens the honor of the man and (implicitly), the legality of inheritance and thus the process of *Repoblación*. P7/ 17:1 notes that being cheated on by her husband does not dishonor the woman, but a woman cheating on her husband damages his honor because it threatens the certainty that his children are indeed his. This concern certainly contributed to the proliferation of exclusively female spaces.<sup>223</sup> The segregation of women is touched on in P3/ 7:3, which protects women from being summoned before a court because mingling with men is not proper, and P3/ 14:12, which argues that the only fact necessary in proving adultery is to catch the woman talking with the man she is suspected of cheating with. This standard of proof (and the gender segregation) is somewhat stricter than the *Forum Conche*, which focuses on

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<sup>223</sup> Dillard, *Daughters of the Reconquest*, 149-150.

catching people in the act. The *Forum Conche* did not contain any principles concerning segregation (apart from the bathhouses), but it did share the same essential concern over female honor.

There is also a pervasive underlying theme that women are to blame in sexual situations. A provision concerning the rape of the King's relatives, P2/ 14:2, frames that crime as "causing them to commit wickedness with their persons."<sup>224</sup> Likewise, P7/ 9:18 argues that virgins raped whilst wearing "clothes which bad women are accustomed to wear" were "greatly to blame" for their dishonor because they were "wearing clothes which were not suitable for [them]."<sup>225</sup> This reflects the *Forum Conche's* regulations on the damaging of clothing; any harm to the clothing could change the clothing to "bad clothes" that exposed body parts, and thus contribute to a good woman's culpability in other crimes committed against her. Dishonor led to further losses of legal status: P3/ 15:1 states that women, like men, can be witnesses if they are of good character (except in regards to wills per P3/ 16:17). Prostitutes, per 16:10, could not testify in criminal cases, putting them on the same level as Muslims and Jews. Those groups were also considered a major danger to female purity: both Jews and Muslims that slept with Christian women faced the death penalty, and a married person who converted from Christianity forfeited all their property to their spouse.

Taken together, these regulations on women reflect a desire to protect them as the guarantors of future population growth and as legitimate vectors of property transmission. While the methods of that protection vary between the different codes,

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<sup>224</sup> Alfonso X, *Las Siete Partidas*, 363.

<sup>225</sup> *Ibid.*, 1359-1360.

the underlying focus on inheritance and *Repoblación* remains unchanged throughout the years.

## CONCLUSIONS

In the previous chapter, the frontier was shown to be inherently expansive, evidenced by the constant need for *re población* and the concomitant regulations on women and on partible inheritance. These themes are also present in *Las Siete Partidas*, and the fact that they were continued from the earlier Charters underscores the point that the existence of the frontier shaped the national customs. The question then is the mechanism by which the frontier influenced those customs; this is the point at which traditional Turnerian theories about the frontier tend to break down, as they do not address specifics but rather speak in general terms about national character.<sup>226</sup>

Alfonso X's essay on how custom becomes law is a direct answer to that question. The Spanish frontier region was dotted with castles and militarized towns, and because the towns were necessary to the war effort, their customs were enshrined in *Fueros*. This increased the cultural sense that those customs were inviolate, and when more national laws began to be created through *Las Siete Partidas*, many of those customs were continued. One of the major reasons they were continued was that powerful groups within Castile fought for their privileges to be included (as was mentioned in the section on origins). This mechanism, cultural transmission through entrenched privileges, explains why the customs regarding Jews and Muslims changed while the provisions on partible inheritance did not; there were no power groups lobbying for the rights of Jews and Mudejars.

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<sup>226</sup> Turner, "The Significance of the Frontier in American History," 189-196.

While this concept of the frontier mechanism for cultural transmission is useful for Spain, it is not generalizable due to the combination of centralized control from the Spanish kings and the other unique territorial conditions that characterized the Iberian Peninsula. The larger question arises, therefore, as to whether the frontier is a useful concept for historians, as opposed to treating it as just another type of border. The fact that there was an emic definition of the frontier during the *Reconquista* implies that the answer is yes; this will be further addressed in the concluding chapter of this thesis.

## CHAPTER 6

### CONCLUSION

The frontier regions of Spain were a crucial factor that drove Spanish custom and law away from the European norm. In order to incentivize *reoblación* and conquest, the Spanish kings granted better privileges to the frontier towns, but in so doing they created large numbers of municipalities with a vested interest in preserving their status quo. The influx of Roman law codes in the 12<sup>th</sup> century ran headlong into the large entrenched constituency for the Visigothic tradition, and thus the changes in Europe took a different route in Spain. Finally, the forces that worked against transhumance in the rest of Europe were nonexistent in Spain due the twin forces of *Reconquista* and *reoblación*.<sup>227</sup> The influence of the Spanish frontier on cultural change thus mirrors the theories of Frederick Jackson Turner concerning the American frontier, and this in turn has implications for the use of the term “frontier” by medievalists in general.

There is no generally agreed upon concept of the frontier in the historiography, and this stems in large part from the fact that these definitions are etic ones, outside theoretical structures overlaid on the historical record as an explanatory mechanism. Unfortunately for those structures, each frontier situation to which they have been applied has been different, and the term, never on solid ground to begin with, fractured under the pressure into a kaleidoscope of differing lexicons and terminologies. The

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<sup>227</sup> Berman, *Law and Revolution*, 361.

Spanish *frontera* offers a solid path out of this historiographical morass; by using the emic definitions of the term, visible in the historical record through laws and other primary sources, scholars can construct a solid basis and definition for their use of the term “frontier”, and from there can begin to widen the scope by comparing those definitions on the ground to other cultures ideas about borders and expansion.

Based on the municipal charters of the 11<sup>th</sup> century and the great law code of the 12<sup>th</sup>, the Spanish frontier was characterized by strong religious divisions (both within and without the Christian Kingdoms) and was marked by instability due to those divisions as well as a strong expansionist drive that was similar to the American concept of manifest destiny. The comparisons of the law codes over time (and the historical blowback that stemmed from attempts to change entrenched rights) showed that the frontier had a strong impact on fixing the Visigothic heritage of Spain in place against some of the countervailing culture concepts from the French border and from the rest of Europe. Those three points (ideological division, instability, and cultural impact) present an excellent starting point for differentiating a “frontier” from a “border”, and the fact that these definitions are grounded in the primary sources of the time as well as in the outside theoretical structure makes them excellent for comparison with other cultures.

This suggests several avenues for further research. For Spain, a larger comparison of the frontier themes in more of the *Fueros* would be valuable to see the variations between the kingdoms of Spain, as well as whether those customs changed once access to the frontier was cut off. Likewise, a comparison between these laws and the codes on the frontier of the Holy Roman Empire and the pagan lands would be

valuable to see if those three factors were present and if it fundamentally impacted the culture of that polity. On a more granular level, excellent work has been done by historians like Jean A. Stuntz in tracking the impact of Spanish law on American inheritance and property codes. If the Spanish frontier continued (as some historians argued) across the seas, then tracking its presence in the law codes as they hit the Americas and moved north would be valuable to see if the concept of the frontier held up.

Ultimately, this work suggests that rather than focusing on their own definitions of the frontier, historians would be better suited to return to the primary sources and work out of the existing culture definitions of such regions. If similarities emerge in those conceptions, then the concept of Frontier Theory can be revisited as a more coherent field.

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