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

by

Carlos Alberto Campos

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

The Norman Paterson
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Carleton University,
Ottawa, Ontario, Canada

August, 1980

The undersigned recommend to the Faculty
of Graduate Studies acceptance of the thesis
"Entrepreneurial Spirit and the Climate of
Business in Castille-Aragon Before the Incorporation of America" submitted by Carlos Alberto Campos, B.A., in partial fulfilment of the requirements for the degree of Master of Arts.

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The Norman Paterson School of
International Affairs

ABSTRACT

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

By

Carlos Alberto Campos

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

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

IV.

The well-disposed attitudes of the authorities towards merchants and trade were shared, sometimes inspired by the Church. To the extent they reflect society at large, their disposition suggests a generally favourable climate of business during the period under consideration.

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Entrepreneurial Spirit and the Climate
of Business in Castille-Aragon
Before the Incorporation of America

Introduction

I

In the XVI Century the holder of the Crown of Castille-Aragon reigned over the largest and the first world-wide Empire of the Modern Age. One in which he could exultingly proclaim that the sun never set, and do so without exaggeration for his was the first world-wide Empire in true geographical terms. In less than a century, a distant land-mass many times the area of Europe, heavily populated and highly organised in some regions, had been incorporated to the realm. In the process, geographical accidents of a magnitude unmatched in Europe, and in many instances totally new to the European man, were overcome. At the same time, Castille-Aragon was the bastion of Christendom in the Mediterranean, blunting and keeping at bay the Turkish onslaught there as well as in Europe, where her land forces cooperated in the defense against the Moslem invaders. All the while Castille-Aragon successfully reduced France - the European ally of the Turks - to exist within her frontiers, intensified her activities in Northern Africa, participated in most of the European wars of the period, including the religious ones, in which she was the mainstay of the Catholic armies, could afford to donate Malta and Gozo long under the

the jurisdiction of Aragon - to the Order of Sain John, and managed to preserve her European possessions outside the Peninsula - and in fact to enlarge them, with the inclusion of the Duchy of Milan. After the coup d'état of Andrea Doria, in 1528, Genoa was also firmly enmeshed in the political, economical, and military interests of the realm, and became in effect a quasi-protectorate of Castille-Aragon. The ability to accomplish so much simultaneously, or merely to use as regular avenues of communication what could otherwise have been mighty geographical barriers, such as the Atlantic and the Pacific, suggests the existence of an economic base with an outstanding degree of organisational, managerial, and technical skill. Nowhere is this reflected in the few incomplete works dealing with the economic history of the Peninsula in a general fashion or in the many fragmentary studies where, per force, the perspective of the whole is lost.

Our reasons for writing this thesis are thus uncomplicated. Little systematic attention has been given by scholars to the period preceding those events, when we might reasonably expect that those skills were learnt, developed and used in various ways, a process that required a good endowment of entrepreneurial spirit as well as a positive reaction to economic incentives of large sectors of the population if it was ever going to take place. Far more

damaging than the relative neglect of this particular area of study or even our ignorance of it, is that this lacuna of the Peninsular historiography has been all too commonly summarily filled with legends repeated by historians without examination. Challenging them is not an attempt to vindicate anybody or anything: believing that historians have no right to sit as judges of the past, we see no sense in that. It is, rather, a service to historical truth and historical understanding - regardless of the political morals the reader may choose to draw from it. It is, a fortiori, an indispensable step to attain two important objectives. First, to gain a clearer understanding of the closely woven economic history of Europe and the former territories of Castille-Aragon. Secondly, to acquire a better grasp of the inter-relation of economic, social, religious, legal, and political factors that, at a given time, conferred specific features to the economic landscape of those regions. Both objectives can be realised only after considerable progress has been made towards filling that void of the Peninsular historiography, and legends have been replaced by a more rigorous historical perspective.

The main purpose of this thesis is to contribute to the development of such a historical perspective. The expansion of the European world and the other momentous events mentioned in the opening paragraph were not, as is often assumed, the dawn of a new economic era, but rather

the later phase of an old one. These events were the culmination of a prolonged economic period characterised by a high volume of relatively free exchanges. Both, long-distance and local trade, were favoured by the "policy of abundance", endorsed by the Church and the Scholastics, generally adopted by all political jurisdictions, and, perhaps, the only "economic policy" in the Middle Ages that can be regarded as such.

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

There are similarities in the economic attitudes of that period and those prevailing today. One of them was the pursuit of profits by men in order to satisfy their needs. In this regard, our findings for the period corroborate the views of

Walter Eucken, Otto von Zwiédineck-Südenhorst and others, who stress the unity and constancy of this basic attitude in man's economic behaviour through the ages, and consider fallacious the urge to contrast antithetically the pursuit of monetary gain and the meeting of needs. On the whole, however, the economy of the period under consideration, along with the political and social institutions, and society in general, differed widely from our own.

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

Two distinct tasks are determined by this approach: the first one is to establish the "climate of business"; the

second task is to test the manifestations of entrepreneurial spirit and the actual performance of the Peninsular entrepreneurs, both to a large extent contingent upon the "climate of business".

It is therefore important to seek answers about the position of the individual entrepreneur in the political, administrative, and legal world, and the regard in which he and his activities were held by the Church and society at large, before asking questions about the manifestations of entrepreneurial spirit and the performance of the Peninsular entrepreneurs compared to that of their European counterparts. Although we have made significant progress in the latter area, time, length, and other restrictions determine that the main objective of this study must be limited to the "climate of business". We shall be concerned specifically with the position of the individual entrepreneur with regard to the administration of the realm and the legal framework of the economy. Our interest shall be directed also to the status of trade and merchants in the eyes of the Church, by far the most important source of theoretical speculation in economic matters and the most comprehensive social mirror of the period under consideration.

II

The geographic and resource diversity of the Peninsula are such that they would, in themselves, be conducive to the growth of an economy characterised by variety, specialisation, and lively exchanges. Although its situation between the 44th and 38th parallels of latitude North places the Iberian Peninsula entirely within the temperate zone, its position between two seas - the Atlantic and the Mediterranean - and two continental masses, Europe and Africa, together with the peculiar arrangement of its soil relief, confer on the Iberian Peninsula the climatic variety of a small continent. Broadly speaking, four main climatic regions are distinguishable: sub-tropical in the southern coast, mild and temperate along the Mediterranean shores, a typically maritime climate on the Atlantic seaboard, rainy and cold in the Biscay and Galician coasts, progressively warming southwards through Portugal, and a harsh continental climate in the Meseta Central and the Ebro Valley, barred by high mountains from the moderating influence of the sea winds. These broad areas are, in turn, divided up in a large number of sub-zones.

If we add to that an equally large variety of soils,¹ the significant degree of agricultural specialisation reached by the Iberian Peninsula at a very early date can hardly come

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

All in all the Peninsula enjoyed a diversified resource base, recognised and fittingly sung in the famous De laude Spaniae,⁷ and one that would ideally lead to a certain degree of regional specialisation and a high level of economic exchanges. An early maritime vocation is to be expected, given the "condición marítima" of the Peninsula which, as Admiral Luis Carrero Blanco stresses, from the point of view of communications with Europe is very near to being an island, having 3,000 Km. of coastline and only 670 Km. of

land frontier with the continent that, for the most part, does not afford an easy access due to the abrupt orography of the Pyrenees.⁸ These conditions probably rendered the sea an easier, faster, and cheaper way of communication between the different regions than the overland routes, thus may have stimulated an all too obvious early maritime activity.

Just as a high level of economic activity at a given period does not automatically allow us to infer that this level must have been necessarily lower in the preceding one, the evidence of specialisation, exploitation of its various resources, and energetic trade at an early date does not permit us to assume that these features remained characteristic of the Peninsular economy. Nor can we take for granted those traits continued to be perceived as advantageous by the social body and were thus furthered by it. Production possibilities, or even output of any sort, are of little consequence in the absence of three basic elements: a legal framework and an authority with the power to enforce it, in order to assure peace, order, and a minimum of security to those engaged in economic activities; entrepreneurial spirit; and thirdly a business organisation capable of gathering the factors of production, combining them in a number of ways, and bringing together buyers and sellers.

(The relative importance of entrepreneurial spirit is emphasised when we follow Kurt Weidenfeld and Fritz Redlich in considering the entrepreneur of theory as the man or team of men who makes the decisions for the enterprise and therefore brings risks into being, and, at the same time, tries to mould it so as to protect his concern.⁹ The centrality of this factor for the existence of an active economy acquires a new dimension when due consideration is given to some of the regularities that surrounded the life of a Peninsular entrepreneur in the late Middle Ages and early Modern Times. Specifically, we are referring to those concerning the relations between the individual and the political and legal system in which he lived and worked.

The reference to "Castille-Aragon" in the title of this thesis was deliberately chosen for its descriptive accuracy. "Spain", with the geographical and political connotation of the modern nation-state, neither existed nor had any meaning during the period under consideration. Although the word "Hispania" or "Spanya" was often used to refer geographically to the entire Iberian Peninsula, "las Spanyas", in plural, by the different Christian Kingdoms in which it was politically divided when speaking about themselves collectively - an acknowledgement of their formal union and common roots - and was common abroad as a synonym of Castille or her subjects, (it had no other currency at the time. Castille-Aragon was a

XVIII

personal union of two independent kingdoms brought about by the marriage of Isabel la Católica of Castille and Fernando el Católico of Aragon in 1475. Both Kingdoms maintained separate administrations and their own institutions even long after that personal union had been consolidated by the heirs of the Reyes Católicos.

The Kingdom of Aragon consisted of the Kingdoms of Aragon proper, the Kingdom of Valencia, the County of Barcelona in the Peninsula - the latter including Cerdagne and Rousillon in "Catalunya Nord", North of the Pyrenees, the Kingdom of Majorca - all the Balearic Islands, the Island of Sardinia, and the Kingdoms of Naples and Sicily. As it is common with states, who often shift their frontiers but retain their names, the Crown of Aragon had had jurisdiction over Montpellier, Provence, the Island of Corsica, the Duchies of Athens and Neopatria in Greece, Esclavonia, Epir, and Albania at various times. The Kingdom of Castille comprised the Kingdoms of Castille proper, and those of León, Galicia, Murcia, Jaén Córdoba, the Algarves, Algeciras, Gibraltar, and Sevilla, and the "Señoríos" of Vizcaya and Molina. The Kingdom of Granada was incorporated in 1492, and the Kingdom of Navarre, South of the Pyrenees, in 1515, after 700 years of independent existence and not without considerable resistance. The Crown of Castille, therefore, had jurisdiction over the entire land mass of the Peninsula

West of Aragon and Valencia, with the exception of Portugal - which was itself incorporated to the Crown of Castille-Aragon at a later date. It had jurisdiction over the Canary Islands and several possessions in Africa, whilst the "Indias" (America) and all newly acquired territories were incorporated, as well to the Crown of Castille, as were the personal possessions in the Low Countries.

It is easily discernible from this brief sketch that the political landscape of the Iberian Peninsula was in many ways just as diverse as its geography and resources. The territorial expansion of the Crowns of Castille and Aragon took place over a long period of time and, as a rule, every new territory added, kept its status as a distinct entity, together with its laws, institutions, and the separate administration of the territory under its jurisdiction, all of which, of course, contributed to that political diversity. By no means alien to this body of practice was the traditional pre-eminence that local administrations enjoyed over the general administration of the realm. Throughout the late Middle Ages and early Modern Times this tradition was nourished by the approbation of the jurists, the Scholastics, the officials of government and the Crown, and the social body. This tendency was strengthened further by the legal system. Just as in Castille the Usus Terrae took precedence over the Lex Iudiciorum, during the same period the Lex Loc

had priority over the Lex Generalis, both in theory and in practice, and not only in the Peninsula but also abroad.

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

(reasons for this was the custom of the local authorities to negotiate directly reciprocal agreements on tariffs with foreign jurisdictions, a common practice that continued well after the XV Century. .

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

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(in spite of the obvious possibilities of such an enquiry for a thorough understanding of the economic history of Castille-Aragon - and that of America and other constituent parts of the realm - and Europe it has, to our knowledge, never received the searching investigation it deserves.

Strong suggestions of a fairly widespread entrepreneurial spirit are certainly not lacking; nor is there clear evidence of an active economic life, which must have been necessarily dependent upon it. Some evidence is physical and still standing. The magnificent "Llotjas" (bourses) of Barcelona, Valencia, Palma de Mallorca, and Perpignan, or even the more modest but sturdy remains of that of Tortosa, are as eloquent a testimony of a highly economic age as the Palacio Clariana - Padellàs in Barcelona is of the monetary success of some of the merchants taking part in it, or as the "drassanes" (shipyards) of that city are witness of an impressive shipbuilding industry. None of them are conceivable in the absence of an active economic life and the participation and positive response to economic incentives of the large number of people required by the infrastructure, services, and output indispensable to maintain it. In a more round-about way, extant witness of such an economic life is, of course, more abundant. "Jesús" and "María", the right and left towers of the Cathedral of Burgos evoke (the Cathedrals of Strassburg, Ulm, and other Southern

(German cities that inspired them, as well as an economy capable of generating sufficient surpluses for this type of investment and capable of offering sufficient incentives to attract foreign master-builders - Johannes von Köln in this case. These structures reflect an active economy as intensely as San Lorenzo del Escorial mirrors the ascetic soul of Felipe II, as the ceiling of the chapel of the Palacio Dalmases in Barcelona with its orchestra of 56 musicians speaks of the highly evolved musical life of that city around 1400, or the heroic proportions of the "clarines" (long reeds) of the organ at the Cathedral of Toledo echo the landscape and the skies of Castille, and, like every aspect of that great Cathedral, the spirit of its builder.

Evidence of abstract nature is of course more plentiful. The well known works on tariffs of Miguel Gual Camarena¹⁰ and Earl J. Hamilton¹¹ are amongst many on the subject that would suggest an economy whose level of exchanges was significant and whose varied products were distributed over wide areas. Concrete examples of this exchange economy as a by-product of a vastly diffused transhumance and involving a variety of industrial and pastoral goods are afforded by Julius Klein in The Mesta. It offers an example of an outstanding organisational achievement of Peninsular entrepreneurs of all sizes and backgrounds, which gathered

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(breeders from the greater part of Castille and major areas of Aragon.¹² The composite picture emerging from these and other familiar works is also that of an economically active society. This impression is confirmed in many passages of contemporary chronicles and by the accounts of travellers especially by Dr. Hieronymus Münzer, a particularly acute observer, obviously knowledgeable about business matters, who visited the entire Peninsula in 1494.¹³ His economic observations, all the more reliable because of his own involvement in business and that of his family, the well known Nürnberg merchants,¹⁴ also reveal a brisk and rather complex trade with the world outside the Peninsula, corroborated by a XV Century Catalan merchant's manual.¹⁵

An interest in the world as a whole and a striking degree of information about it, which was apparently common knowledge in Castille, is apparent in the Libro del Conocimiento de Todos los Reinos, Tierras, y Señoríos que son por el mundo, written by a Franciscan of Seville in the XIV Century.¹⁶ During the XV Century, this interest manifested itself in the numerous voyages of discovery and other related commercial undertakings carried out by the Castilleans from the Southern ports in the Canary Islands - which were incorporated to the Crown - and along the African coast, rivalled in daring only by the Portuguese, and by the Basque and fellow Castilleans from the Cantabrian ports who were

(fishing and whaling from the Canary Islands to Northern waters and Greenland. The interest in the voyages of discovery is also highlighted by the keen competition and hard bargaining to finance Columbus's eventful expedition and the various projects that preceded it. Amongst the latter, at a much earlier date was one of Cardinal Don Rodrigo de Borja, from Valencia, then Vice-Chancellor of the Holy See and later Pope Alexander VI.¹⁷

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

(The rapid "mise en valeur" of these vast territories -

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

cross-section of the population of Castille-Aragon was in the habit of responding positively to economic incentives and was willing to take risks. In other words, Castille-Aragon was seemingly endowed with a high dosis of entrepreneurial spirit.

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

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

Less frequently are acknowledged the efforts of the authorities to supervise the Christianisation of the Indians and their welfare, together with the widespread criticism permitted, and even stimulated by the Crown, which generated a vigorous controversy regarding the justice of the incorporation of the new territories and the just treatment of the Indians equal in size only to the magnitude of that enterprise. This created a polemical flood so free and open

that "really constitutes one of the glories of Spanish civilisation", according to Lewis Hanke.¹⁹ More rarely we hear of the three hundred years of relative peace, stability and prosperity, enjoyed by the new Kingdoms in marked "contrast to the squabbling nations of Europe" and the significant achievements in the fields of education, health, and welfare, achievements that deserve more honour than they have commonly received.²⁰

None of these acknowledged accomplishments are conceivable in the absence of a reasonably adequate economic base. It is simply not in the nature of man, for instance, to think of establishing universities, and doing so as early as 1538 in Santo Domingo and 1553 in Mexico, without having solved first the problem of supplying the basic requirements of life and thus satisfying more basic human needs beforehand. Such a reasonably adequate economic base, in turn, could not have existed if Castille-Aragon had not have been endowed with an entrepreneurial spirit relatively well distributed throughout the population. Yet, there has been a persistent tendency in the literature to assume that the spirit of enterprise was wanting in Castille-Aragon. This assumption is wrong and unwarranted. It continues to colour the view of an entire culture. It distorts our perspective of history and it should be cast aside if we are to be able to see the historic landscape as it really is.

(To a large extent the foundations for the notion we are contradicting are the result of methodological approaches and the rather uncritical adherence to dangerously oversimplified assumptions, whose validity are more the product of repetition than of substance or serious analysis. A summary of both can be examined in a familiar work, American Treasure and the Rise of Capitalism, by Earl J. Hamilton, an author acquainted with economic theory, but careless and inconsistent in his use of it as an analytical tool.²¹ Showing little sense for economic reality²² and no concept of how business decisions are made,²³ definitely unhistoric in his method, Hamilton's difficulty springs from the hypostatizing of a concept and its treatment as a thing, an object or a person. A general personified concept of "capitalism", a concept that after its "birth" is conceived as having an independent existence of its own, divorced from the rest of history, is used as a substitute for the study of the economic landscape or economic reality, as Walter Eucken says. As he adds, with characteristic perspicacity, the followers of this idea "fail to perceive that economic life, and hence industrialism also, is always and at every moment a part of the whole process of history with which it is in constant interaction, and that is the whole time affecting and being affected by, every other department of human life."²⁴

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(There are two clear consequences derived from the approach of Earl J. Hamilton and others, who are basically associating a concept with reality. The first one, is that since "capitalism" says nothing about the structure of the economy it cannot be used to describe economic reality. The second, is that it is an obstacle for a true understanding of history. Since "capitalism" is assumed to have "arisen" in the early XVI Century, our quite staggering ignorance of the preceding historical period can be dismissed as unimportant. A lower level of economic activity during that period is taken for granted - even though a light perusal of the literature should be sufficient to caution against such automatic assumptions. Those "oases" where traces of "capitalism" can be found, such as Flanders and a few "French" and "Italian" cities, are considered exceptions, without questioning how they managed to become that and how they maintained such exclusive characteristics, given a constant intercourse with the rest of the world indispensable for their prosperity.²⁵ In the eyes of Hamilton and other followers of this method - "capitalism" becomes a causa efficiens not only of economic life but also of historical events. He sees it in the XVI Century, for instance, as the cause for the interest of the authorities in protecting trade and improving the transport infrastructure.²⁶ This, however, was a constant preoccupation of the authorities in the Peninsula and many areas of Europe for at least four centuries before that, as will unambiguously

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(be shown in this thesis.

A fascination with business forms and methods has unfortunately obscured the view of many historians who had made a significant contribution towards a better understanding of the late Middle Ages. Just as double-entry bookkeeping is irrelevant for the choice between competing projects and other rational decision-making in business - as confirmed by standard business practice and historical evidence -²⁷ the organisational chart of a company tells nothing about its efficiency. No matter how admirable the organisation of a business may be, and certainly the long-distance Genoese trading companies studied by Jacques Heers were so, one cannot examine and evaluate the performance of an entire economy from the viewpoint of these companies as this gifted historian has basically done.²⁸ This is to ignore a number of fundamental considerations: first, and foremost, those companies and the Genoese merchants involved in the "grand commerce international" could not have functioned in a vacuum. Wherever they traded, an ample positive response to economic incentives was a condition sine qua non for trade to take place at all.

1. Secondly, the Genoese companies and merchants taking part in the long-distance trade cannot be used as the standard rod to measure business acumen, especially when
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(they are compared to entirely different endeavours, such as the transport services of the Basque and other Cantabrian shippers. The fact that the latter concentrated in providing shipping services does not mean that they lacked business vision and a wider horizon, but, quite simply, that they were in a different business.²⁹ Incidentally, the independent existence of such a specialised business bespeaks of a complex economy and would caution against making grand generalisations.

Thirdly, the acid test of a business is its profitability, not its organisation. There are not only many ways of carrying out a given trade, and scores of them were used in the Peninsula, in Genoa itself, and elsewhere, but not infrequently certain modes may be chosen in spite of their efficiency. The different options open to a fledgling new starter and a well established business may alone force such a decision. The need to open a new market or to maintain one's position in an old one may also dictate those choices, as well as market conditions, even though as George Katona rightly asserts, "prevailing conditions are very often neither precarious nor highly prosperous."³⁰

(In the fourth place, the competing opportunities for local investments within many areas of Castille-Aragon cannot be ignored in any economic comparison to Genoa. Jacques Heers

and others do this implicitly, but such a comparison, if at all possible, requires careful consideration of the differences in local investment opportunities. Anybody who has sailed into the port of Genoa, and is able to mentally put aside all the manifestations of modern industry that characterise it now, can hardly fail to feel how few alternatives to trade, and certain transformation industries depending on it, were open to the inhabitants of Genoa. If we compare that to Valencia and the "albuferas" of its "Huerta", one of the oldest recovered land areas under cultivation, famous since Roman times and still one of the most productive agricultural lands in the world, the alternatives for local capital investments, with a faster turnover, relatively fewer risks, and the opportunity for direct supervision and control offered by Valencia become readily discernible. The investment alternatives offered within the Kingdom of Valencia or Castille-Aragon as a whole would of course have dwarfed by comparison those existing in the "Huerta". The obvious question is whether the many men who opted for local investment opportunities, as we shall show in the text, can be considered to have been wanting in entrepreneurial spirit or to have had less business acumen than their counterparts in Genoa, who made the best of the lesser economic options open to them.

Jacques Heers and others have been struck by the presence

of large numbers of Genoese merchants in the Peninsula and the assorted nature of their business undertakings. This phenomenon, in addition to some hasty conclusions about their "monopolies"³¹ and the nature of some of their enterprises in the Peninsula,³² have on the whole been interpreted as a sign that their presence there was required in order to fill a gap left by the lack of Peninsular entrepreneurship. Put into its proper perspective, however, it is clear that the presence of foreign merchants was characteristic of all the most economically active areas of Europe. Their presence was, furthermore, encouraged in Genoa itself, as well as in Venice, Flanders, and elsewhere. Therefore, the activities of the Genoese merchants and those from other Italian and German cities and many other jurisdictions, as well as their relative importance in the Peninsular economy, cannot be evaluated before examining the practices and effects elsewhere. Only then would we be able to attempt assessing the likely impact of their activities upon the Peninsular economy. Only then would we be able to compare their attitudes to that of the Peninsular entrepreneurs, in the Peninsula and abroad, where they also ventured in large numbers.

It is also in this light that we would be able to gain some understanding about the attraction of the Peninsula for foreign capital investment. Foreign investments have

been interpreted often as an indication of a dearth of local investors, capital, and the means of capital creation. Such an explanation resides well with the role assigned by many to foreign merchants, but it is certainly not the only plausible one. Foreign capital could have been enticed by an abundance of attractive investments in the Peninsula. In view of this, relatively higher rates of interest compared to other areas of Europe may have prevailed. Just as easily, it could have been safer to invest in the Peninsula than in other areas of Europe and the need for relatively higher rates of interest might not have arisen at all. This matter is far from settled. It is by no means sure, for instance, whether there were net inflows or net outflows of capital from the Peninsula up to the first part of the XVI Century. We will not make great progress in this regard, but we will show that the leadership enjoyed by Castille-Aragon in the fields of insurance, banking, commercial and maritime legislation cannot be adequately explained in the absence of a constant experience with the problems that those laws attempted to solve, and without an active participation of Peninsular entrepreneurs in all the fields to which these laws were directed. Neither capital investments of any sort nor an economic life of a significant level were likely in the absence of an adequate legal framework. As we shall see that of Castille-Aragon was well developed in all areas, including the critical one of credit creation.

A number of well known and often repeated assumptions inosculated to the conclusions and viewpoints reviewed so far have also contributed to create the picture of apparent economic languor and entrepreneurial ineptitude in the Peninsula that we refuse to accept at face value. A kernel of truth, some misapprehensions, and plain prejudice are common to those assumptions as well as the additional comfort of repeating something endorsed by the assent of many others over a long period of time for, basically, those notions are indeed quite old. Most of them can be found, for instance, in the Relazione di Spagna, written by Francesco di Piero di Guicciardini, Ambassador of Florence to the Court of Castille-Aragon in 1512-1513. The by now almost axiomatic dearth of a "commercial class"³³ or of a "middle class"³⁴ in Castille is as clearly spelled out in Guicciardini's Relazione as the apparent congenital indolence of the Peninsulars.³⁵ - It is said that the dislike of work was particularly intense amongst the "Hidalgos", one of the many constituent elements of the social segment known collectively - and inadequately - today as the "nobility". There is ample evidence, however, that this supposition, sometimes refined nowadays to differentiate the work-loving, business-inclined Northern European "nobles" from their Meridional counterparts,³⁶ is as unwarranted as the so called "social objections" to the use of the pen by the "nobles"³⁷ which should in fact be a stern warning against hasty generalisations, given the "nobles" outstanding contribution

to the development of the Peninsular literature and languages. In stating his opinion that the "Hidalgos" considered work dishonourable, Guicciardini was following his own long held prejudices, not too different from those of a fellow Florentine, Niccolò Machiavelli. The latter, though confessing in private his ignorance about economic affairs,³⁸ thought nothing of indicting in public the assumed "idleness" of the "Gentiluomini"³⁹ - just as he distorted the life of Fernando el Católico in order to suit his "model" of a Prince.

Guicciardini's assertion that the Peninsula was simply an exporter of primary products and an importer of finished products, which he attributed squarely to the lack of working habits of its inhabitants, has been repeated often and has been the basic point of departure of those using "models" or simplified abstractions of modern conception, such as the "colonial economy"⁴⁰ or the "dependent economy".⁴¹ Though their followers probably believe that by using them they can penetrate below the surface to what is essential, the Peninsular economy they describe bears no resemblance to what in reality it is likely to have been in form and substance. Like a Procrustean bed, the use of these "models" produce uniformity only by deforming or mutilating the historic panorama. This is brought forth nowhere more clearly than by an examination of Peninsular foreign trade

itself. Far from being a plain exporter of primary products and an importer of finished goods - which in itself would shed little or no light on the character of the economy or the relative degree of prosperity attained by Castille-Aragon - the foreign trade of the realm was exceedingly complex, both on the import and on the export side.

Textiles, for example, were imported at different degrees of completion, re-exported with or without further processing, and manufactured for local consumption as well as for export. Involving as they did well in excess of one hundred products, some close substitutes and some others not, each with individual supply and demand curves, the consumption, production, import or export of any particular item may have expanded or contracted at very different rates and for very different reasons, including the building up or running down of stocks at home or abroad. In praesenti, we lack the indispensable data to establish the net movements of any single textile product at any given time during the period under study. All these considerations intimate the caution with which the textile sector, which is the aggregate sum of all those individual products, should be analysed. This is certainly not characteristic of those using the "colonial economy" and the "dependent economy" "models", though the textile segment of the economy has always been one of their favourite examples, and often the only one

presented. Its intricate nature is by no means reflected in the oversimplified, monistic description of the economy that emanates from that approach.

Failing to visualise the complex nature of the Peninsular foreign trade, its followers cannot but fail to put it into its proper perspective within the "grand commerce international" and to take notice of an important characteristic of the late Medieval and early Modern European economy: its interdependence. A rather large measure of freedom to trade, keen competition in the market, the encouragement and relatively high volume of exchanges, a significant degree of specialisation, and a considerable division of labour at the local and European levels are clear manifestations of that economic interdependence. A fortiori, the interdependent nature of economic life in general terms was recognised, explained, and encouraged for its efficiency in the theoretical writings of the Scholastics. Within this framework, a partnership such as the one formed by a landlord of Valencia and a large trading firm, the Grosse Ravensburger Handelsgesellschaft, to grow and refine sugar cane - which for some epitomises the idea of a "colonial economy"⁴² can only be regarded as a perfectly ordinary business deal, sensible from a strictly commercial point of view, and one that was carried out in similar terms everywhere, and, not infrequently, by Peninsulars abroad.

However, this economic interdependence at the European level co-existed with many other economic forms that complicate considerably the examination and analysis of any individual economy. Even within a single sector of a given economy, textiles for instance, it is impossible at the present state of knowledge to assert without hesitation whether the Peninsula was a net importer or a net exporter. To talk about Castille-Aragon being an "economic dependency of Europe"⁴³, or of Genoa's economic "mastery" over Castille,⁴⁴ or of an "Italian" "control" of the Castillean economy,⁴⁵ is to disregard all that; besides ignoring that no conclusive proof of that "dependency", "mastery", or "control" has ever really been advanced by any of the authors cited. It is to ignore as well other potentially significant factors. In the case of Genoa, for example, her reliance upon the political and military support of Castille-Aragon, and the very likely possibility that over half of her commerce and financial investments were linked to Castille-Aragon,⁴⁶ considerably further the possibility of a real economic interdependence and community of interest between the two.⁴⁷

The backward economy and the industrial and commercially passive population depicted by those who are persuaded that Castille-Aragon had a "colonial" or "dependent" economy or one that was "mastered" or "controlled" by third parties is the inevitable corollary of their basic proposition.

Francesco Guicciardini preceded them in much of that assessment, and, by logical deduction, it is an easy task to make him conform with most of it. We can understand and even sympathise with this highly cultivated man,⁴⁸ who, probably, saw himself and his countrymen as the true heirs of Rome and was resentful of the prominence attained by those he may have regarded as little more than Barbarians from one of the outer Provinces of the Empire. He may not have forgotten Seneca, Trajanus and other glories of the Empire who were born there, but he may have - not unreasonably - considered them to be a product of the Roman civilisation. The naval and military might of Castille-Aragon, and her military successes in the Italian Peninsula may have been particularly bitter to him. We can also understand that Father Juan de Pineda later in the XVI Century was angered by the enormous sums of money spent by Castille-Aragon for the defense of the Mediterranean and for her other European commitments, and who, perhaps because foreigners were noticeable or convenient to censure what he regarded as complacency in his fellow Peninsulars, spoke with obvious exaggeration of a "Spain" perennially exploited and abused by foreigners.⁴⁹

(We cannot, however, accept their statements uncritically. Neither can we ignore the personal reasons that may have generated them nor other evidence, just as common and freely available,

(that contradicts their perceptions. The accounts of Baron von Rosmithal (1465-1467),⁵⁰ Ritter Nikolaus von Popplau (1485),⁵¹ Dr. Hieronymus Münzer (1494-1495),⁵² and Antoine de Lalaing, Seigneur de Montigny (1501),⁵³ convey the idea of an economically active society, exploiting the many resources of the land, engaged in local and foreign trade, and rather prosperous in some areas. This is roughly the idea that one would gather from men who were perhaps closer in background to Francesco Guicciardini; Gaspar Contarini, Ambassador of Venice to Carlos V (1521-1525)⁵⁴ and Andres Navagero (1525-1527),⁵⁵ also Ambassador of Venice. Much later, some of their successors such as Marino Cavalli (1551)⁵⁶ and Leonardo Donato (1569),⁵⁷ who report some, detailed information on the economy and expenditures for defense, do not mention any Genoese "control" of trade or finances, which is particularly interesting on account of the commercial rivalry between Genoa and Venice, and the inquisitive nature of these writers.

There are other indications that would make us suspect the credibility that Guicciardini can command. A foray into an area other than the economy can provide a useful test of his accuracy. He was perhaps not used to vast expanses of land, and we admit that the ability to feel bewitched by the Castilleean plains or Las Marismas - the latter probably unknown to him - is a highly personal matter.

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(However, in his comments about some "desolate" areas in the Peninsula, he seems to have been unable to understand a different type of land to that which he knew and was accustomed. Such a landscape may not have conformed to his abstract notion of a "productive", "well exploited" land - a common problem and the cause of many misapprehensions - but in his indictment he seems to have forgotten regions such as the Po Delta, not too far from his native Florence, whose desolation was legendary even at a later date,⁵⁸ and that could not have been unknown to a well travelled man like himself.

His comments about Castille-Aragon being a cultural desert reflect a similar attitude. The military successes of Castille-Aragon in the Italian Peninsula may have contributed to form that impression, since the behaviour of victorious armies has seldom inspired the love of the vanquished. Though this did not prevent Ludovico Ariosto from being a firm admirer of the Emperor Carlos - "un principe, al valor del cual pareggio/nessun valor, di cui si parli o scriva "⁵⁹ others in the Italian Peninsula shared the views of Guicciardini.⁶⁰ Another contributing factor to the latter's negative cultural image of Castille-Aragon may have been the whole idea of refinement and urbanity that a city like his native Florence could convey, with her great concentration of wealth and mature business and the

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(city's ability to patronise the arts, perhaps rarely matched anywhere at the time. None of these possible explanations however, render Guicciardini's views acceptable at face value, as, surprisingly, J.N. Hillgarth and others seem to have done.⁶¹ Guicciardini's youth at the time of his writing and his political nature alone should caution against an uncritical acceptance of his opinions.⁶²

Well known factual evidence would suggest a radically different cultural tradition and cultural reality to that depicted by Guicciardini. The enormous efforts of Fernando el Santo, Alfonso el Sabio and their successors to obtain the services of the best specialists in every field of knowledge, shared by the holders of the Crown of Aragon, and the participation of members of the Royal Houses alongside representatives of several sectors of society in a rather voluminous literary and scientific output hardly requires a special mention. Moreover, the success of Peninsular scholars abroad, the reputation enjoyed by several universities, with the newly founded University of Alcalá de Henares and its first European School of Oriental Languages completing the famous Biblia Complutense at the time of Guicciardini's stay, and the general emphasis on education, as strong and parallel to the re-population drive in the "reconquista" effort, would easily cast serious doubts upon Guicciardini's statements, and those who accept

them without a critical evaluation.

So would the fact that the astronomical tables of Alfonso de Córdoba or "Tablas de la Reina Católica", were published in Venice in 1502, 1506, and 1517, and along with other scientific publications and instruments were widely used in the Italian Peninsula - as well as in England, France, and other areas of Europe.⁶³ Moreover, the famous Colegio founded in Bologna by Cardinal Alvarez Carrillo de Albornoz, the record of the Viceroys and other administrators of Castille-Aragon in Naples and Sicily, or indeed that of the Aragonese Kings and private individuals there⁶⁴ would also contradict Guicciardini and his followers past and present. The Crown and the administrators appear to have lent the same support to the universities and other studies in the Italian possessions as they gave in Flanders⁶⁵ or at home, where an academy of "farmacia y secretos de la naturaleza", authorised by Queen María de Aragon in 1441 preceded any of that sort and where the first pharmacopoeia published by a pharmacist, probably a result of that early academy, saw the light in 1457.⁶⁶ The influence of the choristers of Castille-Aragon in Rome during the XV and XVI Century, and of musicians such as Nuñez Calasanz, Escobedo, Ordóñez, and Cristóbal de Morales, or for that matter the obvious musical erudition displayed by Francisco Salinas, from Burgos, who was Abbot of Sancti Pancratii de Rocca

(Scalegna in Naples and professor of music in Salamanca,⁶⁷
are hardly compatible with the idea of men formed in a
cultural desert.

A fortiori, Peninsular women - whose freedom in Castille-Aragon was criticised by many "Italians" along with the "generally loose" religious habits of the Peninsulars -⁶⁸ were as noticeable in the cultural field in the Italian Peninsula as they were at home. Luisa Sigeo, from Toledo, was a celebrated poetess there. Isabel Poya, from Lérida, held a public professorship in Rome, and Isabel Losa (1473-1546) opened a school in that city. In these endeavours, they seem to have acted with the same ease that Beatriz Garrido, "La Latina", (1475-1535), from Salamanca, professor of Latin to Isabel la Católica and founder of a school in Madrid, Francisca de Nebrija, who succeeded her famous father to his chair at the University of Alcalá de Henares, Lucía Medrano, who held the chair of Latin Classics at the University of Salamanca, or, late in the XVI Century, Julia Morella, who learned fourteen languages and was able to earn a Doctorate at the University of Avignon in 1594.⁶⁹ Venice was obviously not the only place capable of producing the intellectual peers of Christine de Pisan. None of these manifestations could, in our view, be the product of a culturally barren land. And, incidentally, they underline the need to fill another notorious void in the Peninsular

historiography.

Further evidence would confirm that Guicciardini was an unreliable witness. He did not know the legal system of Castille, but did not hesitate to jump to conclusions about legal matters.⁷⁰ His logical reasoning can also be found to be at fault. If it was true what he said that "la ricchezza de' luoghi ecclesiastici è causata in gran parte dalle decime che pagano e' populi, e' quali danno alla Chiesa la decima parte di tutto quello che nasce in sul loro, cosi degli animali come delle possessione, che è grande cosa; e di questa decima ne va circa a dua noni nel re, l'altra si distribuisce parte nel prelato della chiesa, parte nel vescovo della diocesi"⁷¹, it is hard to associate all that wealth generated by the 10% tithe on production and rents with a society composed of a majority of slovenly people living in abject misery.

On purely logical grounds it is obvious that the wealth created by this tax alone could neither have been the product of a rachitic economy nor of an inappetent society when it came to responding to economic incentives. Quite to the contrary of the assertions of Guicciardini and his followers past and present, our findings suggest the existence of an active economy and a rather widespread entrepreneurial spirit in Castille-Aragon. In their absence, the development of

of a legal framework of the economy such as we have found is hardly conceivable. As far as the climate of business is concerned, a critical element for the existence of an active economy and the open manifestation of entrepreneurial spirit, our findings will show that, to the extent that the attitudes of the authorities and the Church reflected those of society at large, merchants, trade, and economic activities were not only well understood, but enjoyed a significant measure of support.

III

Sources, Methodology, Usages, and Historical Perception

All our sources are clearly indicated in the text. The primary ones include legal texts and compilations, "Fueros" and other privileges, public and private laws, treaties between foreign powers and other diplomatic material, the accounts of travellers and other observers, chroniclers, autobiographical material, historical, political, theological, philosophical, scientific, technical, and literary works produced during the period under consideration and published documentary evidence of assorted nature. The secondary sources are either works based on them or those of reputable authors in a number of disciplines that had a bearing on our study.

For the analysis of the "economic theories" of the Scholastics, to a large extent extrapolated from Confessionary Guides and other theological works, particular attention has been paid to the opinions of theologians and economic historians, such as Cardinal Joseph Höffner, or authors who are well versed in both fields, as Victor Brants, Amintore Fanfani, Gabriel le Bras, Raymond de Roover, Armando Saponi, Glauco Tozzi, and many others. Interpretative

(sources of comparable quality were not available in the case of Bishop Francesc Eiximenis. In our examination of his economic thinking we have paid special attention to the peculiarities of the writings of the Scholastics and to their habit of mind which in general requires that their teaching has to be meditated all round and in many directions, not straight through. Consequently, we have not only used in toto his Regiment de la Cosa Publica, from which we mostly quote, but also his Doctrina Compendiosa,⁷² primarily a Spiritual Guide, written for a very different audience, yet fully supportive of the views we have deemed representative of his economic thinking.

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

articles of faith of the Catholic Church.

Proper names are normally used in their original language, except in the case of places such as Seville, when the well established English version was preferred. All quotations have been made in the language of the source. In our analysis and interpretation of old texts, which often have been the cause of misapprehensions, we have taken special care to follow Eduard Wechssler's idea of linguistic generation and meaning,⁷³ trying to establish as accurately as possible what key words were generally understood to mean at the time they were used. The general context in which they were used - as well as cultural and linguistic differences - were also taken into consideration.

Similar care has been exercised in other areas. In the interest of precision and better understanding we have tended to use terms such as "caballero" or "mercader" when referring to specific social or occupational sectors, minimising the recourse to expressions such as "middle class" or "nobility", which as generally understood today were meaningless at the time. When we make references to morality we are clearly speaking about the moral feelings at the time we are writing, never to our own or those prevailing at any other time; as previously stated, we do not feel entitled to approach history as judges. In this area our

(use of "good" and "evil" is always related to their true meaning as theological permanencies. Cut off from their base they are emotionally charged words, semantically vague and confusing. The moral duality represented by "right" and "wrong", strictly speaking within the province of the political authority, has been used in this context.

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

(A chief concern has been to establish whether favourable conditions for trade and merchants and the presence of entrepreneurial spirit can be said to have existed consistently over a long period of time, and whether they were comparable to those of other areas of Europe. A rather greater amount of references pertaining to the XV Century, the result of available data, should not be taken to mean that there was necessarily a constantly increasing

(level of activity during that period. This is possible and might even be probable, but there is no reason to assume that that was in fact the case. The ups and downs, which are as inherent to any economic activity as its life and death, are only too visible during the period under consideration, and the data is far from conclusive to allow us to be certain at this point.

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

Though we have attempted to re-create some fundamental aspects of the period under consideration in order to look directly into the historic landscape and enhance our chances of interpreting correctly, we are well aware of the difficulties of this task. We are aware of the difficulties of re-creating our own living past, distorted as it is by the selective nature of our memory and because it is entirely possible that actions precede reasons, as Karl E. Weick and others are inclined to think.⁷⁴ An element of self-justification simply cannot be excluded from our "memories"

of past events. We are also aware of the impossibility of completely divesting ourselves from our own experience and the legacies of past generations.

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

As difficult as it is to isolate completely Father Victoria from Mozart, is to listen to the secular "villan-

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

Our personal viewpoint has to be considered at this juncture. A perfunctory declaration of objectivity is at best naive in any case. We happen to be one amongst many millions born in Spanish America who still consider a great privilege to be heir to the Faith, the culture, the language, and the traditions of Mother Spain. Regardless of other experiences, this patrimony has played a vital part in

(moulding our way of thinking and our outlook in life, for which we certainly can make no apology. However, as the old Spanish saying goes: "Amor no quita conocimiento", which we would freely translate as "Love does not necessarily imply partisanship." Our knowledge of what we are may in fact have been an important positive step towards being truly objective; at least, it has forced us to put special care in striving for objectivity and balance. It is to be hoped that we have gone a long way in achieving those goals. If there is an ounce of truth in what poets say, it might even be that being what we are has helped us along in that endeavour, for as Bartrina said:

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

Having expressed the difficulties of re-creating the past or even the atmosphere of the past it is in order to say that this places also a heavy burden upon the reader. No matter how gifted a writer may be in portraying his thoughts, a large measure of his success always depends on the reader. "Reality" lies very much in the eyes of the beholder, and no medium of expression is complete in itself, as music or painting will readily confirm. Music exists to a large extent in the intellect of the listener.

A composer can write and an interpreter play from alto
fortissimo to the almost inaudible pianissimo, but,
 ultimately, sounds would consummate their existence in the
 mind of the listener. So does painting. If we stand in
 the Titian Room at the Museo del Prado we can see on one
 wall the enormous portrait of Carlos V on horseback and in
 full armour, ready for battle, in the morning of his great
 victory at Muhlberg. On the opposite wall, there is a
 portrait of his wife, the beautiful Isabel de Portugal,
 looking on a landscape of mountains. There is nothing in
 that gaze of hers that seems to stare at us from another
 world, or in the determination of that pithy iron clad
 warrior, riding a dark Spanish horse - undoubtedly one of
 the finest equestrian portraits ever painted - that tells
 us of the deep love and affection that they felt for each
 other. At the time those portraits were painted Queen
 Isabel was long dead; yet, in spirit, she was very much
 with that great Emperor. She was a memory in every morning
 Mass, in the favourite music, another love they shared and
 an art at which they were both extremely accomplished, and
 physically no more than this and other portraits that
 accompanied the Emperor up to his last day at Yuste. It
 is only the knowledge of those details that confer upon
 those portraits a meaning, a warmth and human quality,
 a soul, and a palpitating life that transcends the canvas,
 and no brush, not even that of a giant like Titian, can

convey on its own. We certainly tend to look upstairs, but are under no illusion of being a Titian.

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

INTRODUCTION

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

Notes and References

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precious metals upon the economy will be entirely contingent on the use to which they are put and the way they go through the economy. His use of statistical method is also subject to strong criticism. He reduces annual prices to a single figure: an index number. If we wish to know what the real salaries were, we must "weigh" each product forming part of the index number, not use the simple arithmetic calculation carried out by Hamilton. Similarly, he uses established prices, rather than market prices for his calculations for Castilla la Vieja, which surely says little about the market conditions. Furthermore he uses the prices of a few cities, which could, and almost certainly did vary considerably with those of the countryside, and it is misleading to make them representative of regions and the country as a whole.

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de capa y espada', vivió en Roma y Nápoles, respetado por su producción literaria y conocimiento de la lengua." Many other examples throughout the volume.

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CHAPTER I

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

Summary

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

We shall see the Crown intervening in local affairs, but doing so at the request of the local authorities, to confirm decisions already taken by them or pre-existing agreements. The Crown also emerges as the ultimate authority whose seal of approval

was a condition sine qua non to sanction the legality of many acts, as well as appearing as an authority whose function is to buttress the local authority, the rule of law and order, and to no small extent those actions that by fostering peace, trade or otherwise were deemed beneficial for the common good. The ability of individuals to influence local and legal matters extended to the conclusion of what would be termed today "international agreements" which were later submitted for ratification by the Crown via the local "Consejo".

I. POLITICAL STRUCTURE AND INSTITUTIONS OF PUBLIC LAW

The Monarchy and the Realm

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

The peculiarities of the Reconquest and the contemporary perception of law and custom explain, to some degree, those characteristics. War and fluid frontier were distinctive traits of the Reconquest, a period of constant expansion for the small Christian Kingdom that eventually became Castille-Leon, and, consequently, one of constant foundations of new cities or repopulation of abandoned ones. These cities were granted FUEROS, which were, according to the classical definition of Ricardo Levene: "A collection of privileges, franchises, and immunities conceded by the Royal power to a city, corporation

or individual." Thus, the cities enjoyed municipal institutions very similar to the Roman or Visigothic ones, with a council, municipal magistrates and IMPERIUM over the walled area and the surrounding rural district, where rural village councils were subordinate to the city council.

The concession of immunities, from the IX and X Century onwards, meant that the authority of the King ceased to be exercised directly over the whole territory of the realm and over all the subjects. This is the argument put forward by Luis Garcia de Valdeavellano y Arcimis in his Historia de Las Instituciones Españolas.¹ Although the King remained the ultimate judge in judicial disputes, and the same FUERO was often bestowed upon different cities - notably those of Sepulveda and Toledo,² - the autonomy enjoyed in local matters and varying local needs made for great diversity in the legislation of the realm. This means that when a whole kingdom was incorporated, neither identity nor autonomy were lost, as Toledo, Cordoba, or Seville well illustrate.³

In the case of Aragon - aside from peculiarities that cannot be analysed here - José Maria Font y Rius comes to a very similar conclusion after a long study of documentary evidence and juridical works. According to him, the Catalan-Aragonese state was, in the XV century, a true Mediterranean imperial community, based on the most absolute respect for the autonomy of its

individual kingdoms.⁴ When not existing, autonomous institutions were created, as was the case with the parliaments of Sardinia and Sicily, which were obviously inspired by the Catalan Cortes. Other examples can be found in the short lived Greek possessions, the Duchies of Neopatria and Athens, Albania and, since the early XVI Century, the Duchy of Milan.⁵

The marriage of Isabel of Castille-Leon and Fernando of Aragon simply meant the personal union of the two branches of the House of Trastámara.⁶ In accordance with the terms of the Concordia signed in Segovia in 1475, Isabel remained the Queen of Castille-Leon and Fernando the King of Aragon; the administration of the states of each Crown, and even the Royal finances, remained independent of each other.⁷ The descendants of the Catholic Monarchs plainly added the possessions of the two Crowns to their titles. Vanity had little to do with that. As Leopold von Ranke asserted, royalty had a different nature in Castille, Aragon or Sicily.⁸ Furthermore, in Barcelona, Flanders and Tirol the Kings were only Counts, in Burgundy, Brabant and Milan, they were Dukes, whilst in Guipúzcoa, Vizcaya and Molina the power of the rulers was based on the fact that they were Barons and hereditary Lords of those lands. The different titles expressed the differences of their power over the constituent units of the realm.

In spite of these limitations García de Valdeavellano sees the kingdoms of Castille-Leon and Aragon - as well as Navarre and

Portugal - as the legal and public expression of a political community made up by the Prince, the territory and the subjects with the purpose of attaining public ends and the common good. Those public objectives were, chiefly: the Utilitas publica or the accomplishment of the common good, often expressed in the formula "procurar el bien del país", which has passed into most Spanish American constitutions; the maintenance of the peace and internal laws or Tranquilitas regni; the preservation of the territorial integrity; the defense and war against external enemies; protection of the faith and of the Church; maintenance of the traditional legal order; and the administration of justice.⁹

Subjects were the men and women born in the territory, habitually residents in it, and those who had become so by marriage or the acquisition of a permanent abode in the realm.¹⁰ Their association with the crown was characterized by the oath of fidelity, loyalty and obedience given to the king on his accession to the throne.¹¹ The rights of the subjects varied considerably, and many of them had a purely local character, such as the exemption of taxes or personal services, the freedom enjoyed by the inhabitants of a town or village, the free choice of domicile enjoyed by many peasants with manorial duties, and many others. In conjunction with those ad hoc rights the subjects of the crown had the benefit of some general rights. The maintenance of the public peace, the respect of the local law and custom and the protection of the person and property of every subject against any "tropelia"

(vexation, injustice) or "desafuero" (transgression of fuero) were guaranteed to all subjects of Leon - and later of Castille-Leon - by King Alfonse IX in 1188 in the Cortes of Leon. These decrees, sometimes called the Magna Carta Leonesa, were an oath of the King to uphold those general rights of his subjects, and not, as the English Magna Carta, a limitation of the royal power exacted by the nobility.¹² The subjects of Aragon, Valencia and Catalonia were guaranteed similar rights by Pedro III of Aragon in the Cortes of Zaragoza of 1283. These decrees, known as the "Privilegio General de Aragón," were the basis of the political constitution of Aragon.¹³

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

The monarch was the natural lord of all the kingdom - territory and subjects.¹⁴ His power - potestas regia, imperium - was

essentially a political one, though he added to that the personal rights (*dominus*) over his private domains (*señorios*) and property. The monarchy was not absolute. The royal power was limited, not only by the moral norms that forced the monarch to govern with honesty and with a view to the common good, but also by the constraints imposed by the local laws and customs, the statutory privileges of individuals or groups of individuals, corporations, and towns. Any violation of them, be it a "*desafuero*", "*contrafuero*" or "*agravio*", could be taken to the courts of law.¹⁵

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

"...todos los omes deven ser tenidos de obedecer las levas, e mayormente los Reyes..."¹⁶

As the first man and natural lord of the kingdom, the king was the supreme commander of its army.¹⁷ Along with this military power - potestas militaris - he enjoyed legislative and judicial powers and some prerogatives with regard to the Church. The *Partidas* ascribed to the king the power to make the laws and established that those decreed without the royal assent were null and void (Partidas, II, I, 12). The Ordenamiento de Alcalá de Henares, which in 1348 gave legal sanction to the *Partidas* declared that:

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

(Tit. XVIII, ley 1).

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

It would appear that this idea of the king, his power and his functions survived for a long time, for a playwright so tuned into the spirit of his time as Félix Lope de Vega could, around 1600, make King Juan II reply to a request for justice: "Hacerla es mi oficio. Eso significa el cetro".¹⁹

Perhaps, however, nothing could be more eloquent than the self-perception of two office holders, shortly before that time. Carlos V and Felipe II saw themselves in that light in their last wills, a document that being written with death - and the Real Life that was to follow it - in mind, could be presumed to exude a great deal of sincerity.²⁰

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

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

Regalías were also certain faculties of the crown, which the Fuero Viejo de Castilla enumerated as follows:

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

Fuero Viejo de Castilla: I,1,1²⁵

The royal power included some ecclesiastical prerogatives. Their origin lies in the isolation of the small Astur-Leonés kingdom at the beginning of the Reconquest and to the peculiarities of this process. The Patronato (Ius Patronatus), the right to propose the names of the candidates for the Church offices was the most important of those prerogatives. This right was officially given by Pope Gregory IX to King San Fernando of Castille-Leon, in 1236 for the kingdom of Cordoba and in 1237 for all the churches reconquered from the Moslems. The same Pontiff conceded equal rights to Jaime I of Aragon in 1239 for the Kingdom of Valencia, whilst in 1486 Inocensio VIII made similar concession to the Catholic Monarchs for the Kingdom of Granada and the Canary Islands. The practice of the Castilleean Kings to require exequatur before the publication of the Papal Bulls in the realm, which started in the XIII Century, was also part of the Ius Patronatus. This prerogative was extended to America, where it still remains a feature of public law.²⁶

Constantly travelling and unable to be on hand at all times, the Peninsular Monarchs often delegated their royal powers. The vicarious representatives (Vicarii) who became permanent from the XII Century onwards, received different names in accordance with the faculties with which they were invested. Thus, there were Procuradores (procuratoris), Procuradores Generales, Lugartenientes (Locum tenens) - who, as the name suggests, acted in place of the king and enjoyed all his powers - Gobernador (gubernatoris), or Virreyes (vicerreres). As permanent assistants to the king they helped him to discharge his duties, often the tenure of these offices was a training ground for the heir to the throne. This was officially decreed for Aragon by the Cortes of Calatayud, in 1366, which granted a special fuero for the office of the Gobernador General of the Kingdom of Aragon, to be occupied by the heir to the throne from his fourteenth birthday. He was assisted by Lugartenientes (Gerens vices gubernatoris) in Aragon, Cataluña, Valencia, Rosellon, Sardinia and the other territories of the Aragonese crown.²⁷

The Curia and the Consejo Real

The monarch could not possibly discharge his duties without the help of an administrative body, which grew in size and importance along with the realm. A royal or condal council (palatium, concilium, curia), known as Curia or Cort, and formed by palace officials, members of the Royal Family, nobles, ecclesiastical authorities and "BUENOS OMES de VILLAS," was the first of such administrative bodies.²⁸ The Curia Ordinaria was normally in residence at the court, but the king could convoke the dignitaries of the realm to a Curia Extraordinaria to attend to public matters of great importance and with a sphere of competence as wide as the government problems demanded.²⁹

A number of jurists or "sabidores de derecho" were added to the Curia Ordinaria of Castille at the end of the XII century, partly a consequence of the reception of Roman law and partly as a result of the increased complexity and volume of the administrative affairs.³⁰ The "Curia Ordinaria", aside from being a council was a tribunal of justice, presided over by the king and his wife, with jurisdiction over all the civil and criminal causes submitted to the royal justice. In Aragon and Navarra the King himself had to submit his disputes with the nobles to the judgements of his Curia Regia.³¹

At the same time, the officials of the "Curia Ordinaria" in

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

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

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

The structure of the Consejo Real was changed on a number of occasions. In 1480, in the Cortes of Toledo, the Catholic

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

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

In 1489 there appeared for the first time a "Presidente del Consejo Real de Castilla", which later became the highest civil office on the land, deciding on all matters requiring its intervention as an advisory body (librar por cámara) and by its own authority on all other matters (librar por expediente).³³ The

American affairs were dicussed later in a special chamber until the formation of the Consejo de Indias, equal in rank to the Consejo de Castilla.³⁴

The Cortes

The Curia Extraordinaria, sometimes called Concilium del Rey, Concilium del Reino (Concilium Regis, Concilium regni), Curia Plena or Corte Pregonada - for the "pregón" (proclamation) that summoned its members to the meeting place - was convened from time to time to deliberate upon matters of great importance submitted by the monarch. The assembly was competent in all areas of the administration of the kingdom. It discussed war and peace and the relations with Rome, the award of local Fueros and Inmunidades (immunities, privileges, franchises), the marriages of the monarch and his children, the investiture of the title of Emperor to Alfonso VII of Castille-Leon - in the Curia Plena of Leon, in 1135 - the imposition of extraordinary tributes, the maintenance of the public peace and other judicial affairs, and it was at the Curia Plena where the swearing of allegiance to the heir of the crown took place.³⁵ The Curia Plena met in public, and from the XII century the representatives of the cities and town councils began to take part in the deliberations, modifying the character of the assembly, which began to be known as Cortes.³⁶

The participation of the representatives of the cities can be linked to the importance acquired by the free townsmen as a social group and the political and financial support that they were able to offer to the king.³⁷ Many cities possessed abundant

economic resources and Milicias Consejiles (Municipal militiae) capable of defending the frontiers and often attacking the Moors and other enemies.

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

The Cortes of Castille-Leon - unlike those of Aragon - comprised all the kingdoms and states under the Castille-Leon crown, except for the Basque regions of Vizcaya, Alava and Guipúzcoa, where city and district representatives assembled periodically in Juntas de Hermandad. A further peculiarity is that the clergy, nobility, and commons do not appear to have been as conspicuously separated as in the Aragonese Cortes, for the king, without whom the assembly was legally impossible, could preside over the deliberations in the absence of any of the estates. The commons were often that absent estate, and in the XV Century it was replaced by the Procuradores or town representatives.³⁹

The commons had participated in the Cortes by means of representatives called "procuradores" - and sometimes "personeros", "hombres buenos" or "diputados" - since 1255. Their number depended exclusively on the will of the local community represented by them, and since the Cortes of Valladolid of 1371, they enjoyed special immunities.⁴⁰

The method of selecting the Procuradores changed over time, sometimes it was by direct election of the "Consejo" (local Assembly) or the "Ayuntamiento" (municipal authorities) and on other occasions an "insaculation" (list of names was put in a bag) took place and one or more names were picked at random.⁴¹ Their expenses and emoluments were paid by the local council and since the second half of the XV century largely by the Hacienda Real.⁴²

The "Procuradores" were empowered by a special mandate called "Carta de Personería". The earliest surviving one of them date from around 1260, and although the "procurador" was a well established legal institution before that time, the survival of older specimens was rendered unlikely due to their temporary validity, observes Evelyn S. Procter.⁴³ This particular one was incorporated into the Title 18 of the Tercera Partida, a short treatise on documents, and it is reproduced in the Ley 98 - a formula which was extensively used in America. The ad hoc mandate qualified the "Procurador" to appear before the Cortes

for the duration of the session and moreover authorised him to cast a vote. It contained the city's official position in the matters proposed for deliberation in the Royal Convocation and a number of local petitions. Anything not covered by them required a specific injunction.⁴⁴

The Municipality

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

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

an immunity) and the municipality itself as a "Señor" (Lord).⁴⁷

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

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

María del Carmen Carlé has shown that in the Peninsula, as in most of Europe, investments in real estate often combined rural and urban properties.⁴⁹ At any rate, there was a clear interdependence within the district, and the tendency over time was for the "Concejos" (councils) of the rural villages to form a "COMUNIDAD" with that of the main urban centre.

Towards the end of the XII Century there were in Castille and Leon many such large Comunidades headed by Salamanca, Avila, Segovia, Soria, Cuenca, Guadalajara, and Madrid, and in Aragon, those of Calatayud, Daroca and Teruel. However, from the XIV Century onwards a number of towns situated within the large municipalities separated from them to form their own municipalities after receiving from the crown the "privilegio de villazgo".⁵⁰

Procter notes that the word "Consejo" (Latin Concilium), meaning the assembly or court of the town, by the XIII Century had become synonymous with the town itself.⁵¹ The elective nature of most municipal offices was a well established custom before that, even though the crown or the local lord - depending on the term - of the "Fuero" and whether the municipality was in "Realengo" or "Señorío" land - could exercise some restrictions in the appointment of certain officials. The "Fuero" generally established the conditions of eligibility to vote in the "Consejo", an institution that enabled the participation of the "estado llano" (the commons) in the local government and in many decisions affecting the realm.⁵²

The "Consejo" was made up by the urban and rural "Vecinos" of the district, though the latter were also members of the smaller rural councils. The requirements for "vecindad" were generally: birth or residence for some time in the town or village "encendiendo fuego" (forming a home), "tener raíz" (ownership of

real estate), payment of "pechos" (taxes), and admission as a "vecino" por el "Consejo". Nobles, unless there was a waiver of their privileges within the district, clergy, foreigners, and simple "moradores" (residents) were excluded from the "Consejo"; and, of course, from office. Towns had a vicarious liability for the actions of their "vecinos" outside their jurisdiction, which explains, to some degree, the requirements demanded for the conferral of such status. Foreigners and different religious groups often lived apart and in accordance to their own "Fueros" and laws, and with their own authorities within the municipality.⁵³

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

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

of the local defense, the supply of services, and many aspects of the local economy and social life.

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

Jesús Fernández Viladrich has pointed out the considerable fiscal latitude at the disposal of the municipal authorities.⁵⁵ They were empowered to the local "Pecheros"⁵⁶ (those paying a census or rent for the use of the land, and by extension other tributes) to avoid depopulation, but it was widely used to encourage outside immigration into the frontier lands and the settling of merchants and artisans in the towns.⁵⁷

The real power of municipalities, of course, varied considerably. Time, circumstances, their location, and their economic and military strength were important determinant factors of the municipalities' real power. As a rule they fiercely defended their autonomy. The cities of the "Señorío" of Vizcaya give us a good idea of how autonomous the municipalities could

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really be, for although their Lord was the King of Castille-Leon himself, up until 1484 naval service prescribed for the crews and vessels from the towns was subject to a treaty with the crown every time it was required. This right was only relinquished in that year in exchange for free fishing privileges in all Castillean waters.⁵⁸ Barcelona, on the other hand, still maintained her own fleet in 1621.⁵⁹ Furthermore, cities commonly sent their own envoys abroad, and concluded treaties that were merely ratified by the Crown.⁶⁰

II. THE ADMINISTRATION OF THE REALM

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

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

The prevalence of the Usus Terrae over the Liber Iudiciorum

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

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

Claudio Sánchez Albornoz y Menduina has singled out the innovative spirit of the Castilleean judges.⁶⁶ One is tempted to venture that the rapid changes of the Castilleean language may have been a major factor making for innovation.⁶⁷ Rarely, if ever, are two sets of facts identical, but a language in the midst of a very dynamic grammatical and syntactic transformation, with

marked regional differences, must have at times been vague enough to allow the local judges to draw distinctions between similar circumstances and find answers better suited to local conditions and current values. This also avoided a slavish following of the stare decisis doctrine.

Yet, this strong local differentiation was not confined exclusively to Castille or the Iberian Peninsula. It was even evident in Law Merchant, despite the peculiarities of its development. The early codes of maritime and mercantile law were derived directly from Byzantine and late Roman Law. The special jurisdiction of the mercantile courts allowed the incorporation in legal practice of specific aspects of the Roman Jurisprudencé without an actual "reception" of the total body of doctrine in the Corpus Juris. However, as Abbot Payson Usher observed, Law Merchant was far from being a unified code accepted by all those trading in the European and Mediterranean world. He found very significant local differences in banking and credit, even within a region of the Italian Peninsula, where he thought that they ~~appear~~ to have had a common development.⁶⁸ Florence Edler de Roover also noticed, in the same region, sharp local differences in the basic procedure and legal forms of insurance, after premium insurance was well established in business practice.⁶⁹

The desirability of special jurisdictions was in accordance with the conception of law and the role of judges at the time. Long

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

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

The strength of this established order and the peril incurred by any contemporary government attempting an abrupt departure from it, are highlighted by the downfall of Siena as a commercial centre. The Municipality, reports Armando Saponi, modified by law the Usus Mercatorum, and abolished the immemorial rule of the tribunals that considered all partners in a company collectively and unlimitedly responsible for it. Although the law was repealed shortly afterwards, it was too late. Having lost confidence, businessmen abandoned Siena and moved instead to Florence.⁷¹

The legislative concern of the government authorities lay primarily in matters of government proper. In the Peninsula, and everywhere, they were constantly reminded of their duty. The Ordenanzas of Peñafiel, in 1345, did so in no uncertain way:

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

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

Although Real Díaz is referring concretely to American laws and documents, the generally unchanged⁵ mechanics of this process can be examined in a series of Royal Decrees selected from a list published by Juan Torres Fontes, and pre-dating by almost two hundred years the incorporation of America to the realm. The documents are concerned with the commercial relations between the Kingdoms of Murcia and Mallorca, which at the time belonged

respectively to the Castille-Leon and Aragonese Crowns, as well as some internal matters of Murcia.⁷⁵

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

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

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

"E porque me embiastes dezir que esto que eran grant mio servicio e acrecentamiento de las mis rentas e poblamiento de la mi cibdat de Murcia e que plaze a todos los mercadores desa tierra e eran avenidos en ello, tengo por bien de vos lo otorgar que lo podades fazer fasta dos años e non mas, en tal manera que se paguen todos los querellosos de la renta que y montare."⁷⁶

The Mallorcan side of the event is seen in Document V, which is the confirmation by Felipe of Mallorca, tutor of Jaime III,

of the agreement concerted by the merchants of Murcia and Mallorca. Succinctly, but in no uncertain terms we can see once more the process unfolded before us:

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

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

"Et a lo que me dexieron que vos enbiase dezir en como aviades a guardar la paz, yo enbio mis cartas al rey de Aragon e al rey de Granada que las sus gentes non pasen por la mi tierra a fazer mal a otros....E otrosy, de las cartas que me pidieron para el rey de Aragon e para el rey de Mallorcas sobre aquellos IIII dineros por dobla que vos toman en la su tierra, que ge las mande dar."

In addition, (2) Alfonso XI informs the Council that his alter ego in Murcia, the "Adelantado Mayor" has been reminded of his duties, due to the complaints made by the Council:

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

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

"E pedieronme merced que vos enbiasse mandar que librades este pleito en aquella manera que mas conpliesse para mi servicio. E yo tengolo por bien, porque vos mando, vista esta mi carta, que libredes este fecho con acuerdo de omes buenos en aquella manera que fallardes por derecho e fuese mio servicio."⁷⁹

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

"Sepades que el conceio de la noble cibdat de Murcia nos enbiaron mostrar por sus cartas por Andres Montaner, escrivano de la nuestra camara e su escrivano publico, que ellos usaron de tiempo aca, por ordenamiento que fezieron, porque non ay conplimiento de cevada para las bestias e encarecia mucho, que el arroz que non se pilase para enblanquecer en cuanto entendiesen que conplia

porque se aprovechasen del para dar a los cavallos e a las otras bestias, porque se podiesen y mantener mas omes a cavallo para deffendimiento de la tierra.... E nos mandamos por bien e mandamos que los ordenamientos que el dicho consejo a fecho en esta razon... que lo fagades conplir e guardar; e non fagades ende al so pena de la nuestra merced e de cient maravedis de la moneda nueva a cada uno por cada vez."⁸⁰

Document III is a ratification by King Fernando IV of Castille-Leon of an agreement between the Municipal Council of Murcia and the "Adelantado Mayor" in that Kingdom, Don Johan Osórez. The accord, arrived at with the assistance of merchants and seamen, was for the purpose of building a seaport in Murcia. The sovereign, informed about it by the council, endorsed the decision, and commanded his "Adelantado Mayor" to divert 15,000 Maravedies of the "Moneda Forera" (a tribute due to the crown)⁸¹ towards the project. In his words:

"Sepades que el consejo de Murcia me enbiaron dezir que porque en Murcia nin en los otros mios logares deste regno non han puerto de mar, que vos e ellos fallastes con acuerdo de marineros e de mercaderes sabidores que se puede fazer buen puerto a un lugar que dizen Alcaçar, a teniente de la mar, termino de Murcia, e faziendo ay torres e camino que se puede y bien fazer. E enbiaronme pedir merced que mandase y dar que se puede y bien fazer. E yo entendiendo que es mio servicio e acrecimiento de las mis rentas e gran mejoramiento de la mi tierra, tengolo por bien. Porque vos mando que de los maravedis de la moneda forera que vos auedes e echar en esa tierra, que les mandedes dar XV mill maravedis que pongan en lauor en dicho lugar. E mandat ge los dar de los primeros e mejor parados que y fueren e tomad dellos carta de pagamiento, e yo recebirlos vos he cuenta".⁸²

A pattern becomes readily discernible in these documents: the Crown intervenes in a number of local affairs, but it does so at the request of the local authorities, to confirm decisions already taken by them, or pre-existing agreements, even those of international nature and concluded amongst private interested parties. It is also at the behest of the local authorities that the Crown carries out specific diplomatic initiatives, warns its agents to keep within the boundaries of their functions, prompts them to mediate in a dispute, and ask them to adjudicate in accordance to law and the council of local expertise.

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

This explains, to some degree, the fact that administrative decisions were predominantly local or regional, even though calamities such as drought or frost often widened their geographical area. It should be noted that in the latter case the decisions were taken at the "Cortes", where a problem could be assessed in its entirety, and a number of "Procuradores" were

likely to have a similar petition on hand. Pedro Aguado Bleye cites, for instance, the prohibition to export wheat and legumes from Castille by order of the "Cortes" of Valladolid (1351), Guadalajara (1390), Madrigal (1438), Valladolid (1442), Burgos (1453), and sometimes also wine, Valladolid (1351).⁸³

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

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

At least two factors, from a practical point of view, reinforced the role of the local authority. First, the Curia was not served by a sufficiently large or well enough trained bureaucracy to aspire to the concentration of power in their

hands, nor had the bureaucracy, such as it was, established channels of routine communications, which are indispensable to control the flow of information and the implementation of decisions. All the Court had, as we have seen, was a retinue of notaries and legal experts attached to the "Curia", apparently not noted for their expeditiousness.⁸⁵ Secondly, the Court neither had a permanent seat nor even a number of fixed places of residence at established periods of time. Kings were itinerant rulers during the Middle Ages and early Modern times, and the Court, of course, moved along with them. This which only began to change late in the XVI Century as far as Castille-Aragon is concerned, would certainly have increased the difficulties of a very centralised decision making process.⁸⁶

From a legal point of view, the basis for a centralised administration of the realm were feeble. Although the King was indeed the supreme authority of the realm, his authority, as we have seen, emanated from the fact that he was the head of each of its political divisions - Count of Barcelona, for instance - and thus legislative or administrative acts were not automatically applicable everywhere. This was, at times, enhanced by specific undertakings of the Crown, such as the promise of Jaime I not to sanction an emission of Valencian currency without the previous consent of the City Council; a promise, Earl J. Hamilton adds, that was formally reiterated at the coronation of every successor of Jaime el Conquistador,⁸⁷ and one which, the city made certainly

sure, was not taken lightly.⁸⁸

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

greater clarity than in other areas how the merchant 'nations' of Vizcaya, Guipúzcoa, 'Espagne' (Castille) and Aragon followed independent courses of action, which often put them at odds with each other and were the cause of frequent litigation.⁹³

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

From an organisational point of view, the only contemporary large scale administration that could have been used as a guide and source of inspiration was the Catholic Church. As laid down in

the Canon Law, eight hundred years ago, a large number of carefully defined canonical functions can only be discharged by the local administrator, id est, the Parish Priest. The Bishop, who is the regional administrator, enjoys wide powers in his Diocese, but within the Parish, only the Parish Priest can perform the exclusive functions reserved to his office. An administrative structure modelled after the Church's organisation would have been hierarchical, with well defined lines of authority and communication between the different administrative offices and officers, but also with considerable discretionary powers at the local and regional level. As Fray Justo Pérez de Urbel⁹⁸ and Julio Puyol y Alonso⁹⁹ have shown, the Monastic Orders enjoyed perhaps an even greater freedom of action at the local and regional level.

However, in terms of theory of organisation, the absence of the concepts of 'nation' and 'state' with today's general and precise legal meaning,¹⁰⁰ including the abstract goals generally attributed to them, was probably more decisive in determining the administrative structure of the realm. If we think that structure is a means for attaining the objectives and goals of an institution, and if we have gathered correctly the prevailing ideas of justice and law, then it would seem more likely that the local administrations really enjoyed most of the powers they had on paper, whilst the Crown largely limited itself to the role of Iudex or Arbiter.¹⁰¹

In a way, Petition CXIII of the Cortes of Madrid of 1534, and its reply, corroborate that view:

"Otrosi, se de orden como no se saquen los cordouanes destos reynos, que a sido causa de encarescer el calzado y cosas que se hazen dellos ye se ponga por capitulo de cosas vedadas.
A esto respondemos que mandamos que los nuestros corregidores y otras justicias cada una en su jurisdiccion prouean lo que mas conuenga."¹⁰²

In other words, despite a request for a general prohibition, it was left to the local authorities to allow or to forbid the exports of "cordoban" according to the available supplies of the product and other conditions of the local market. Abbot Payton Usher has shown that the regulation of the grain trade in France, before and after 1571, was based on the same principle and carried out in a similar fashion.¹⁰³ An analogous pre-eminence of the local authorities in the regulation and control of food products is clearly discernible in Provence¹⁰⁴ and in cities as far apart as Toulouse,¹⁰⁵ Pavia,¹⁰⁶ Bilbao,¹⁰⁷ Avila,¹⁰⁸ Sevilla,¹⁰⁹ Zaragoza¹¹⁰ and Majorca.¹¹¹

We should hesitate to characterise the administration of the realm entirely in this manner. And we do. But the chief role of the Crown, the systematic use of "Petitiones", the routine consultation with experts and interested parties, the legal structure and the concept of law, and a significant degree of local autonomy - none of them typical or exclusively a Peninsular characteristic in any way - can explain at least a substantial amount of the prodigious legislative output of the period. Beyond

doubt, all those factors were major contributors to the fragmentary and often contradictory nature of a good deal of that legislation - particularly that regarding economic matters - when we examine it from the perspective point of the realm as a whole.

Much of that legislation was ultimately the result of compromise, even in instances when the Crown was the initiator of the original project. The Ordenanzas Generales para el obraje de paños en Castilla, finally signed in Seville in 1511, after almost twenty years of attempts, studies, projects, and deliberations, highlight the difficulties of passing general laws, and, once again, the characteristics of the administration of the realm. The process leading to the Ordenanzas of Seville started with the Pragmática sobre la venta de paños of Medina in 1494, which immediately elicited protests from Segovia, Avila, Palencia, Sepúlveda, Riaza, Santa María de Nieba, and the towns of the valley of Escaray, all of whom obtained immediate exemptions and amendments to this law. The Consejo Real subsequently decided to carry out an enquiry with expert merchants and producers of cloth, such as Francisco de Prato, a Lombard established in Huete, Francisco de Olmeda from Cuenca, and others, on whose advice was based a project of Ordenanzas submitted to the most important cloth-making cities along with the experts' reports for their comments and suggestions. This eventually resulted in the Ordenanzas de Granada of 1500, which created a new wave of complaints and exemptions. In view of this the Consejo Real

gathered in Toledo "algunos maestros e azedores de los dichos pannos" and other experts in the textile industry to prepare a new project of Ordenanzas Generales. Signed by Bartolomé Ruiz de Castañeda, the new project was sent in 1502 to the cities "para que 'tomeys maestros e personas que sepan de los dichos oficios, e juntamente con ellos veays las dichas ordenanzas, e veays si estan bien o si an menester enmyenda alguna dellas'."¹¹² Detailed replies were sent by Cuenca, Segovia, and other interested cloth-making cities, which led to a new project in 1504. When the Ordenanzas finally received pragmatic sanction in 1511, they were considerably watered down, contained no innovations, and produced no radical changes in the textile industry of Castille, in the estimation of Paulino Iradiel Murugarren.¹¹³

This may or may not have been so, but it is of no consequence for our immediate purpose - though we would hazard that the original aim of the Crown was probably far more modest than Iradiel Murugarren seems to think it was. The Ordenanzas were clearly sanctioned by the Crown as required by law, but it is transparently clear too that they were the result of exhaustive consultations with interested individuals, "universitas" and local authorities, and extensive advice from merchants and other experts in the textile industry. Compromise is the hallmark of the mediator's work, and the Ordenanzas were manifestly a compromise, probably without victors or vanquished in any absolute sense, and reflecting the legal, political, administrative and

economic reality of the realm. This example gives a good idea of some of the demands that reality as much as law and theory imposed upon the Monarch. As the ultimate mediator, he required considerable skill and energy to preside over the rival claims of individuals and local administrations, who had varied, and often conflicting needs, views, and perceptions of the "common good" and of their own interests. He had to ponder over a number of non-economic factors, be they of political, legal or even irrational nature, such as the vanity of his subjects, and he had to pay due attention to the ever changing momentary constellations of contesting forces in pursuit of power and advantages. Under these circumstances, the greatest triumph of the Monarch was to maintain a moderate and uncommitted stance, balancing forces whose balance was bound to change. Even if the King and the Consejo Real had had a well thought out plan for a general law, and even if such a project was supported by powerful groups, it is highly unlikely that its real outcome would have coincided with the original idea. Not only because historically the momentary constellations of forces are just that, and their balance tends to shift over time, but primarily because the legal, political and administrative structure of the realm obviously rendered that an extremely improbable result.

The tenor of the transcribed remarks accompanying one of the projects of the Ordenanzas sent to the local authorities for examination is highly suggestive of a large measure of autonomy

in economic matters. The local authorities were mainly responsible for economic "policy" in the Middle Ages - and early Modern times - stresses Walter Eucken, who sees in that factor the main reason why the towns and their immediate surroundings have been often "wrongly regarded as closed economic areas, the range of validity of their legal decisions being confused with the range of their economic relations",¹¹⁴ - conclusions that our findings will largely corroborate. The exemptions to the Pragmática of Medina and the Ordenanzas of Granada that were granted to many local authorities would point further towards their considerable freedom of action in the economy of their jurisdiction. Far from injuring the authority of the Crown or of the Law, the relaxation of general laws - a frequent case with those concerning general import or export prohibitions - made them probably more responsive to the real needs of a given area at a particular time, and thus of the people that in theory they were supposed to serve. Though time consuming, the procedural requirements to obtain such concessions were not entirely void of advantages for the parties involved. The most significant one was that by forcing the local authorities and interested individuals to prove the merits of modifying a general law or administrative decision, they forced them to re-evaluate the needs and conditions of a locality, and to discuss them, a step that allowed the Crown a close scrutiny of those circumstances and was not without value for the local authorities or the individual entrepreneurs.

As far as the latter are concerned, the process leading to the Ordenanzas of Sevilla illustrates yet another way in which they could and did participate in administrative decisions and the law making mechanism. The latitude at which individuals could exercise their influence in those areas was, as we have seen, very wide, extending to the ability of contracting agreements with foreign rulers or their subjects that included the payment of compensatory taxes, which were later submitted to the Crown for ratification. As late as 1553, a "Real Provisión" from Carlos V ordered that the "Corregidor de Cuenca haga una investigación entre los fabricantes de paños de la ciudad acerca del precio de los paños y de las ganancias que sería justo asignarles,"¹¹⁵ which evidences the continuous practice of consulting the interested merchants and producers before decreeing prices for their products. An even greater degree of participation of individual entrepreneurs and their "universitas" in the administrative decisions of the realm, and the development of the legal framework of the economy, will be clearly seen in the following Chapter.

CHAPTER I

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

I. Political Structure and Institutions of Public Law

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15. Isola, Las Instituciones, pp. 82-83.
García de Valdeavellano, Historia, p. 424.
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17. This was not a "national" army, but one formed by the King's own contingents drafted from his private domains, and, above all by the individual hosts of the lords and free cities of the land. (Vide: Fernando Díaz Plaja, Otra Historia, p. 88. form comment on the Catholic Monarchs' Army). The payment of cash for redemption of military duties was applied for part-payment of Mercenary Forces, a common feature in most armies in Medieval and Modern times.

18. Isola, Las Instituciones, pp. 70-145.

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

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

Joaquín Gimeno Casaldueiro, La Imagen del Monarca en la Castilla del Siglo XIV, Madrid, Revista de Occidente, 1972, p. 100 et seq.

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

Robert B. Tate, Ensayos sobre la Historiografía Peninsular del Siglo XV., Versión Española de Jesús Díaz, Madrid, Gredos, 1970

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

Valdeón Baroque, El Reino, pp. 80 and 104.

19. Félix Lope de Vega y Carpio, El Caballero de Olmedo, 1944, Act III, Scene 18, p. 155, Santiago de Chile, Empresa Editora Zig-Zag.

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

Manuel Fernández Alvarez, Política Mundial de Carlos V y Felipe II, Madrid, Consejo Superior de Investigaciones Científicas, 1966.

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

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

21. García de Valdeavellano, Historia, p. 414.
22. Reyna Pastor de Togneri, "La sal en Castilla y León. Un problema de la alimentación y del trabajo y una política fiscal (Siglos X-XIII).", C.H.E., XXXVII-XXXVIII, 1963, pp. 42-87.
23. H.J. Habakkuk, "Economic functions of English landowners in the seventeenth and eighteenth centuries", Explorations in Entrepreneurial History, (E.E.H.), Vol. Vi, 2, 1953, p. 96.
24. García de Valdeavellano, Historia, pp. 444 and 445.
25. Ibid., 445.

Juan del Nido y Segolera. Estudio sobre las regalías de la Corona de España. Madrid: Librería de los Sucesores de Hernado, 1910.

26. García de Valdeavellano, Historia, pp. 446 and 447.
27. Ibid., 447-49

Isola, Las Instituciones, pp. 95-98.

Jesús Lalinde Abadía, "Virreyes y Lugartenientes Generales en la Corona de Aragón", C.H.E., XXXI-XXXII, 1960, pp. 98-172.

-----, La Gobernación General en la Corona de Aragón,
Madrid-Zaragoza, Instituto Jeronimo de Zurita, 1963.

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

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

Ca muchos son los hombres que se han de
gouernar
Por lo que quatro o cinco quieren de ordenar.

Y pues

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

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

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

p. 89.

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

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

Nilda Guglielmi, "La Curia Regia en León y Castilla",
C.H.E., XXIII-XXIV, 1955, pp. 116-267; XXVIII, 1958,
pp. 43-101.

30. García de Valdeavellano, Historia, p. 457.

31. Ibid., 454

32. Ibid., 457
33. Ibid., 457-460
34. Ricardo Levene, Las Indias No Eran Colonias, Buenos Aires, Espasa-Calpe, 1951.
35. García de Valdeavellano, Historia, pp. 455-57.
36. Ibid., 455-56.
37. García de Valdeavellano, Historia, p. 469.
38. Ibid., 470-71.

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

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

39. Garcia de Valdeavellano, Historia, pp. 474-76.
40. Ibid., 475.
41. Ibid., 474.

Manuel Colmeiro, Edit., Introduction, Cortes de los antiguos reinos de León y de Castilla, Madrid, Real Academia de la Historia, 1883, Primera Parte, Tomo I, pp. 28-34. "Las palabras 'elijades e nobredes' dirigidas a todas las ciudades y villas, debe interpretarse en el sentido que la elección y el nombramiento estaban en uso al principio del

siglo XVI segun los estatutos y ordenanzas de cada consejo. La elección o el nobramiento de los procuradores era un acto propio del gobierno municipal, cuya variedad se reflejaba en el diferente modo de constituir su mandato el consejo de cada ciudad o villa de voto en Cortes. Burgos nombraba por sus procuradores dos regidores sacados por elección. León dos regidores por suerte. Granada dos veinticuatro. Sevilla un veinticuatro, alcalde mayor, y un jurado por suerte.... Galicia enviaba a las Cortes dos diputados elegidos por las siete ciudades del reino (Santiago, Coruña, Lugo, Orense, Betanzos, Tuy y Mondonedo)....." p. 33.

42. Ibid., 41-45; 305

García de Valdeavellano, Historia, p. 475.

43. Evelyn S. Procter, "The Towns of Leon and Castille as Suitors before the King's Court in the Thirteenth Century", The English Historical Review, LXXIV, Num. CCXC, 1959, pp. 9-10.
44. Colmeiro, Cortes de las antiguos Reinos, pp. 37-41.

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

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

"A estas Cortes - Madrid, 1390 - en las cuales se había de tratar y resolver lo conveniente a la crianza del Rey y gobernacion del reino, acudieron los infantes, duques, prelados, maestros, condes, ricos hombres, caballeros, escuderos e hijosdalgos, y mas de ciento veinte y cinco procuradores de cuarenta y nueve ciudades y villas;...

Después de platicar largamente y discurrir cual sería el mejor medio de gobernar a todos en paz y en justicia durante la minoridad del Rey, acordaron que fuese regido el reino por Consejo, entrando en él así los grandes y caballeros, como los prelados y los vecinos de las ciudades y villas.

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

45. Ibid., 525-526. The extent of the "Señorios" varied considerably during the Middle Ages, and so did their power, which fluctuated in response to circumstances and the personality of the office holders. García de Valdeavellano finds "La Tierra de Santiago" as one of the few Spanish "Señorios" comparable to the large trans-Pyrenean ones. This was particularly so during the time of Diego Gelmírez, the first Archbishop of Santiago, who in 1105 received the administration of La Tierra de Santiago and the right to mint currency from King Alfonso VI Leon and Castille. Queen Doña Urraca added to that in 1120 exempting the Archbishop from two of the fundamental duties of the "Señores de cotos inunes": to join with their hosts the royal army, and to assist the king with his council in the Curias. An extraordinarily dynamic personality, Archbishop Gelmírez, expanded his domain, hired the service of Genoese ships, had the Genoese Augerio building galleys for him in Iria, and commanded powerful sea and land forces. In the XIII and XIV century there were other large "Señorios" - as those of the López de Haro and the Condes the Lara - and large "Maestrazgos" of the Military Orders, which grew as a consequence of the Reconquest, but did not enjoy the privileges mentioned ut supra. In the course of the Low Middle Ages some of them were incorporated to the crown and became "bienes realengos". The "Señorio de Molina" was in 1292 by marriage of Doña María de Molina with King Sancho IV. Similarly the Condado y Tierra de Alava (1332) and the Señorio de Vizcaya were incorporated during the reign of Juan I of Castille (1379-1390). (pp. 526-27). In the last third of the XV century the Catholic Monarchs incorporated to the crown the Canary Islands, until then

divided in a number of "Señoríos" (1477) and the "Maestrazgos" of the Orders of Calatrava (1487), Santiago (1493) and Alcántara (1494). (pp. 527-28).

46. Procter, The Towns, p. 1.

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

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

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

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

49. María del Carmen Carlé, "La Ciudad y su Contorno en León y Castilla (Siglos X-XIII)", A.E.M., 8, (1972-3), pp. 101-103.

Armando Saponi, Le Marchand Italien au Moyen Age, Paris, Librairie Armand Colin, 1952, p. XXXII.

Heinrich Sieveking, "Der Kaufmann im Mittelalter", Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft, 52, 1928, p. 1045.

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

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

51. Procter, The Towns, p. 1.

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

Carlé, "El Municipio de Oviedo, excepción", C.H.E., LI-LII, 1970, pp. 24-33.

53. Ibid., 32.

García de Valdeavellano, Historia, p. 543.

54. Ibid., 554.

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

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

55. Jesús Fernández Viladrich, "La Comunidad de Sepúlveda Durante la Edad Media", A.E.M., Vol. 8, 1972-73, p. 207.

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

57. Lacarra y de Miguel, El Desarrollo Urbano de las Ciudades de Navarra y Aragón, Zaragoza, C.S.I.C., 1959, p. 5.

González y González, Repartimiento, Vol. I.

58. Carlos Clavería Arza, Los Vascos en el Mar, Pamplona, Editoria Aramburu, 1966, p. 36.

59. Antonio de Capmany y de Montpalau, Memoria Historica sobre la Marina, Comercio y Artes de la antigua ciudad de Barcelona, Reedición anotada (E. Giralt y Raventós y C. Batlle y Gallart) Barcelona, Camara Oficial de Comercio y Navegacion, 1961, Tomo I, p. 127.

60. Ibid., 32; 365-383.

Presbítero D. Joaquín Antonio del Camino y Orella, Historia Civil-Diplomático - Eclesiástica Anciana y Moderna de la Ciudad de San Sebastián con Varias Noticias Particulares Pertenecientes a la Provincia de Guipúzcoa, Introducción, Notas, y Epilogo por Fausto Arocena, San Sebastián, Ediciones del Excmo. Ayuntamiento de la Ciudad de San Sebastián, 1963, Primera Edición 1892, pp. 64-65, concordia con Inglaterra; for fleets of the city vide pp. 62-63.

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

Phillippe Dollinger, Die Hanse, Stuttgart, Alfred Kröner Verlag, 1966, pp. 503-504.

Charles Emmanuel Dufourcq, "Les Consuls Catalans de Tunis et de Bougie au temps de Jacques le Conquerant", A.E.M., 3, 1966, pp. 469-479.

Cesáreo Fernández Duro, Arca de Noé. Libro Sexto de las Disquisiciones Náuticas, Madrid, Aribau y Cia., 1881, pp. 280-281.

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

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

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

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

Carmelo Viñas y Mey, "De la Edad Media a la Moderna. El Cantabrico y el Estrecho de Gibraltar en la Historia Política Española, Hispania, 2, 1940-1, p. 54 et seq.

II The Administration of the Realm

Notes and References

61. Luis García de Valdeavellano y Arcimis, Historia, Madrid, pp. 555-586.

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

Manuel Basas Fernández, El Consulado de Burgos en el Siglo XVI, Consejo Superior de Investigaciones Científicas, 1963, *passim*. For historical development *vide* Chapter I, pp. 25-48.

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

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

Claude Carrère, Barcelone centre économique à l'époque des difficultés 1380-1462, Paris-La Haye, MCMLXVII, Vol. I, pp. 37-52, and 52-69 for the special privileges and collective organisation of the merchants.

Renée Doehaerd, Les Relations commerciales entre Gênes, la Belgique, et l'Outremont d'après les Archives Notariales Génoises aux XIII et XIVe. siècles, Bruxelles/Rome, Palais des Académies/Academia Belgica, 1942, pp. 147-48.

Phillippe Dollinger, Die Hanse, Stuttgart, Alfred Kröner Verlag, 1966, pp. 488-495.

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

J.A. Goris, Etude sur les Colonies Marchandes Méridionales (Portugais, Espagnols, Italiens) à Anvers de 1488 à 1567. Contribution à l'Histoire de débuts du capitalisme moderne, N. York, Burt Franklin, 1971 (Reprinted, first edit. Louvain, 1925), pp. 33, 121-27 for Spanish and Portuguese influence in the Maritime Code of Antwerp.

Guiard y Larrauri, Historia del Consulado y Casa de Contratación de la Villa de Bilbao, Vol. I, pp. 213-240 and 532-560.

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

Paul Huvelin, Essai Historique sur le Droit des Marchés et des Foires, Paris, Librairie Nouvelle de Droit et de Jurisprudence, Arthur Rousseau Editeur, 1897, pp. 383-426.

Amada López de Meneses, "Los Consulados Catalanes de Alejandría y Damasco en el Reinado de Pedro el Ceremonioso", Estudios de la Edad Media de la Corona de Aragon, Vol. 6, Zaragoza, Consejo de Investigaciones Científicas, 1956, pp. 83-183.

Joseph Marechal, "La colonie espagnole de Bruges du XIV e. au XVI^e siècle", Revue du Nord, XXXV, num. 137, 1953, pp. 5-41.

Valentín Sainz Díaz, Notas Históricas sobre la Villa de San Vicente de la Barquera, Santander, Institución Cultural de Cantabria, Centro de Estudios Montañeses, Patronato "José María Cuadrado" del C.S. de I.C., 1973, p. 537.

Adolf Schaube, Handelsgeschichte der Romanischen Völker des Mittelmeergebiets bis zum ende der Kreuzzüge, Osnabrück, Otto Zeller Verlag, 1973 (Neudruck der Ausgabe 1906), pp. 769-783.

Robert Sidney Smith, The Spanish Guild Merchant. A History of the Consulado, 1250-1700, Durham, North Carolina, Duke University Press, 1940, *passim*, its specific concern is with the evolution and jurisdiction of the Consulado, pp. 18-33.

Fernando Valls-Taberner, Obras Selectas, Madrid/Barcelona, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales, 1954, Vol. II, Estudios Historico-Juridicos, pp. 167-187.

Ferran Valls i Tavermer, Edit., Consolat de Mar, Barcelona, Editorial Barcinò, 1930/1931/1933, (Els Nostres Classics, Col·leccio A, Vol. 27, 37, 41), 3 Vols., *passim*.

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

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

62. Julius Klein, "Medieval Spanish Guilds", Facts and Factors in Economic History. Essays presented to Edwin Francis Gay, N. York, Russell & Russell, 1932, p. 172.
63. García de Valdeavellano, Historia de España, I De Los Orígenes a la Baja Edad Media, Segunda Parte, Cuarta Edición, Madrid, Revista de Occidente, 1968, pp. 118-120.
64. José María Lacarra y de Miguel, "Las Cortes de Aragón y de Navarra en el Siglo XIV", vide our footnote 38, Part I, Chapter I.

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

"Otro si, suplicamos a Vuestra Magestad que declare por ley la costumbre general destos reinos, que es que los parientes mas propinquos hereden ab intestato a los clérigos, como ellos heredan a los tales parientes, y si necesario fuere, dello se aya aprouacion de su Sanctidad.

A esto vos respondemos que mandamos que, cerca de lo que en vuestra suplicacion contenido, se haga justicia a las partes conforme a derecho."

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

65. Ernst Mayer, Historia de las instituciones Sociales y Políticas de España y Portugal durante los Siglos V al XIV, Madrid, Centro de Estudios Históricos, Tomo I, 1925, pp. 276-316, Tomo II, 1926, pp. 124-255.

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

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

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

Rafael Gibert y Sánchez de la Vega, in Emilio Sáez, Rafael Gibert y Sánchez de la Vega, Manuel Alvar, Atiliano González Ruiz-Zorrilla, Los Fueros de Sepúlveda, Segovia, Publicaciones Históricas de la Excm. Diputación Provincial de Segovia, 1953, pp. XIIX, 596.

66. Claudio Sánchez-Albornoz y Menduina, Emilio Sáez et al., Los Fueros, p. XLVII, footnote 47.
67. Rafael Lapesa Melgar, Historia de la Lengua Española, Madrid, Escelicer S.A., 1959, Quinta Edición, pp. III-217.
68. Abbot Payson Usher, The Early History of Deposit Banking in Mediterranean Europe, Cambridge, Mass., Harvard University Press, 1943, Vol. I, p. 27.

69. Florence Edler de Roover, "Early examples of Marine Insurance", The Journal of Economic History, 5, New York, 1945, pp. 185-87.

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

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

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

71. Armando Saponi, Le Marchand Italien au Moyen Age, Paris, Librairie Armand Colin, 1952, pp. XXXII-XXXIII.
72. Juan Beneyto Pérez, Textos Políticos Españoles de la Baja Edad Media, Madrid, Instituto de Estudios Políticos, 1944, 6, p. 25.

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

73. Evelyn S. Procter, "The Towns of Leon and Catille as Sutors before the King's Court in the Thirteenth Century", The English Historical Review, LXXIV, num. CCXC, 1959, p. 22.
74. José Joaquín Real Díaz, Estudio Diplomático del Documento Indiano, Sevilla, Escuela de Estudios Hispano-Americanos, 1970, pp. 70-80.
75. Juan Torres Fontes, Relaciones Comerciales entre los Reinos de Mallorca y Murcia en el Siglo XIV, Murcia, Sucesores de Nogues, 1971.

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76. Ibid., Document IV, pp. 14-15.
 77. Ibid., Document V, pp. 15-16.
 78. Ibid., Document VI, pp. 16-17.

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

79. Torres Fontes, Relaciones, Document VII, pp. 17-18.
80. Ibid., Document IX, pp. 19-20.
81. García de Valdeavellano, Historia de España, pp. 578-79.
82. Torres Fontes, Relaciones, Documento, III, p. 14.
83. Pedro Aguado Bleye, Manual de Historia de España, Madrid, Espasa-Calpe S.A., 1958, Octava edicion, primera Edicion, 1914, Tomo I, p. 923.
84. Earl J. Hamilton, Money, Prices, and Wages in Valencia, Aragon, and Navarra, 1351-1500, Cambridge, Mass., Harvard University Press, 1936, p. 19.
85. Carpere, Barcelone, Vol. I, p. 61, footnote 2, shows some quaint records of gifts to high ranking officials, presumably to influence their decision or to speed it up. For instance:
 "... le 15 déc. 1433, on verse 5 l. 10 d. à Pere de Muntros 'per confits que pres per dar los al vicicanseler; fou per ordinacio dels consols en consel, per la questio dels Jenoveso'..."
86. Felipe II was the first King to establish a more or less permanent residence in Spain. His father, the Emperor Carlos I (V of Germany) probably travelled more than any of his predecesors, having been away from the Peninsula for as long as twelve years. Vide: Fernando Díaz-Plaja, Otra Historia de España, Barcelona, Plaza & Janes, 1972, pp. 163 et seq.

Rafaela Rodríguez Raso, Maximiliano de Austria, Gobernador de Carlos V en España. Cartas al Emperador, Madrid, Consejo Superior de Investigaciones Científicas, 1963, passim.

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87. Hamilton, Money, pp. 8-9.
88. Ibid., 32-34; 36-37, 39-40.
89. Manuel Fernández Alvarez, Política Mundial de Carlos V y Felipe II, Madrid, Consejo Superior de Investigaciones Científicas, 1966, pp. 48-49.
90. Karl Ferdinand Werner, "Les Nations et le sentiment national dans l'Europe Medievale", Revue Historique, CCXLIV, Num. 496, octobre-décembre 1970, p. 304, and pp. 285-304, for perspective view.
91. Edouard Perroy, "Le commerce Anglo-Flammand au XIIIe. siècle: La Hanse Flamande de Londres", Revue Historique, Tome CCLII, num. 511, juillet-septembre 1974, pp. 3-18, specially p. 17.
92. Adrien Jules Finot, Etude Historique sur les Relations Commerciales entre la Flandre et la République de Gènes au Moyen Age, Paris, A. Picard, Librairie Editeur, 1906, pp. 209-210.
93. Ibid., 146-170.
- , Etude Historique sur les Relations Commerciales entre la Flandre et l'Espagne au Moyen Age, Paris, A. Picard et Fils, 1899, passim.
94. Sánchez-Albornoz, Ensayos sobre Historia de España, Madrid, Siglo Veintiuno de España Editores, 1973, p. 82
95. Luis Suárez Fernández, "El Reino de Castilla en el Siglo XV", Historia de España, Dirigida por Ramón Menéndez Pidal, Tomo XV, Madrid, 1970, p. 12.
96. Isola, Las Instituciones, p. 86:

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

Caten leyes e fueros, e llamen y letrados

.....

Si en lo que le demandan dubda si es derecho
Mande que los letrados lo vean el tal fecho
E lo libren por fuero sin prescio e sin pecho."

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

97. C.H. McIlwain, "Medieval Institutions in the Modern World", Speculum, Vol. XVI, num. 3, 1941, p. 278.

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

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

98. Fray Justo Pérez de Urbel, Los Monjes Españoles en la Edad Media, Madrid, Ediciones Ancla, 1945, Segunda Edición, Primera Edición 1934, 2 Vols., passim.
99. Julio Puyol y Alonso, El Abadengo de Sahagún, Madrid, Real Academia de la Historia, (Imprenta de la Suc. de M. Minuesa de los Ríos), 1915, pp. 13-322.
100. José Antonio Maravall, El Concepto de España en la Edad Media, Madrid, Instituto de Estudios Políticos, 1964, Segunda Edición, pp. 476-477.
- Otto Vossler, L'Idea di Nazione dal Rousseau al Ranke, Traduzione di Giovanna Federici Airoldi, Firenze, G.C. Sansoni, 1949, passim.
101. This concept of the role of the Monarch is of course at the centre of the idea of "De Monarchia Orbis". For its development vide: José Antonio Maravall, "Sobre el concepto

de la Monarquía en la Edad Media Española", Estudios Dedicados a Menéndez Pidal, Madrid, Consejo Superior de Investigaciones Científicas, Patronato Marcelino Menéndez y Pelayo, 1954, Tomo V, pp. 401-417.

102. Cortes de los Antiguos Reinos de León y de Castilla, Tomo 4, p. 616.
 103. Abbot Payson Usher, The History of the Grain Trade in France, 1400-1700, Cambridge, Mass., Harvard University Press, 1913, pp. 236-240.
 104. Louis Stouff, Ravitaillement et alimentation en Provence aux XIVe. et XVe. siècles, Paris/La Haye, Mouton & Co., MCMXX, pp. 125-130, "La réglementation de la boucherie: une affaire avant tout communale".
 105. George et Geneviève Frêche, Les prix des grains, des vins et de légumes a Toulouse (1486-1868), Paris, Presses Universitaires de France, 1967, p. 3.
 106. Dante Zanetti, Problemi alimentari di una economia preindustriale. Cereali a Pavia dal 1398 al 1700, Torino, Editore Paolo Boringhieri, 1964, pp. 39-55.
 107. Angel Rodríguez Herrero, Edit., Ordenanzas de Bilbao. Siglos XV y XVI, Bilbao, La Editorial Vizcaina (Publicado por Acuerdo del Excmo. Ayuntamiento de Bilbao), 1948, passim.
 108. El Marqués de Foranda, "Las Ordenanzas de Avila", Boletín de la Real Academia de la Historia, Tomo LXXI, Cuaderno V, Madrid, 1917, pp. 381-425, 463-520; Tomo LXXII, Cuaderno IV, Madrid, 1918, pp. 310-326.
 109. Carande y Thovar, Sevilla Fortaleza y Mercadeo, passim.
 110. José Maria Lacarra y de Miguel, Aragón en el Pasado, Madrid, Espasa-Calpe S.A., 1972, (Colección Austral, N. 1435), p. 159, in particular, also pp. 13-202.
 111. Antonio Pons, Libre del Mostassaf de Mallorca, Mallorca, Consejo Superior de Investigaciones Científicas, 1949, (Escuela de Estudios Medievales, Textos: XI; Sección de Valencia, No. 2), passim.
- Paulino Iradiel Murugarren, Evolución de la Industria Textil Castellana en los Siglos XIII-XVI. Factores de desarrollo, organización y costes de la producción manufacturera en Cuenca, Salamanca, Acta Salmanticensia, Ivssv Senatvus Universitatis Edita, 1974, (Filosofía y Letras, 84) p. 141.

112. Ibid., 142. For the entire process vide: pp. 132-142, and Doc. Num. 24-38, pp. 346-392.
113. Walter Eucken, The Foundations of Economics. History and Theory in the Analysis of Economic Reality, Translated by T.W. Hutchison, London/Edinburgh/Glasgow, William Hodge and Company Limited, 1950, p. 327, Note 16.
114. Iradiel Murugarren, Evolución de la Industria Textil, Doc. Num. 39, pp. 393-402.

CHAPTER II

THE LEGAL FRAMEWORK OF THE ECONOMY

Summary

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

Most important, we shall show in this Chapter the participation of individuals in the creative, interpretative, and enforcement aspects of much of that legal fabric. This was not only in the realm of taxes, many of which as late as in the XVIII Century were often negotiated, imposed, and administered by the merchants

and other professional universitas themselves, or in the "international" field, where many commercial treaties were negotiated by merchants and even survived wars and other political vicissitudes for as long as 241 years - 1492-1733 in the case of Bilbao and Nantes. Above all other areas, this was true of the privileged commercial and maritime jurisdictions. The most salient aspect of the latter was their law creating activity, highly innovative particularly in procedural, banking and insurance law, fields in which the Peninsulars were at times European innovators and leaders.

These laws were not born out of the sudden inspiration of a jurist or the fiat of the legislator. They were the product of custom, of a free exchange of ideas from far and near, and the practical decisions of countless anonymous merchant-judges, mariner-judges, and arbitrators from the same extraction, who - at least on occasions - did not hesitate to pass sentence against themselves. A surviving related institution is still functioning today. The Tribunal de les Aigües convenes in front of the Porta dels Apostols of the Cathedral of Valencia to solve, in an entirely oral procedure and without appeal, problems related to irrigation in the Huerta of Valencia. The judges are chosen amongst the "llauradors" from the Huerta, just as merchants and mariners were selected for the ad hoc mercantile and maritime tribunals. Seeing the judges of the Tribunal de las Aigües render prompt decisions with a cool, dispassionate approach to

the law, unconcerned with their personal moral views on the case, one is left with little doubts about the high legal standards of this tribunal and its ability to expedite justice. These qualities appear to have been present to a large degree in the old mercantile and maritime courts, whose procedures, in some instances, were probably very similar to those of the Tribunal de les Aigües.

Aside from voicing and displaying an understanding of the benefits derived for trade and merchants from the privileged jurisdictions for commercial and maritime affairs, the authorities showed a willingness to protect, organise, and promote trade and production in many other ways. One, of course, was the consolidation of the rule of law and the furthering of the general security of the realm. The protection of foreign merchants figured prominently amongst the concrete steps taken to attain this objective, and given that such special protection was already included in the Liber Iudiciorum, it bears witness to the early interest of the authorities in commercial matters and to the importance attained by commerce itself at that time. Other important areas attracting the direct attention of the authorities were the maintenance of public goods and the infrastructural works necessary to trade being carried out, as well as the use of the tax apparatus to stimulate economic production and exchanges.

All these measures, which shall be examined in detail in this Chapter, were perfectly congruent with the repopulation "policy" that was the plinth of the Reconquista effort.

Therefore, it cannot be surprising to see the concern of the authorities with the material well-being of the population - frequently expressed in the formula "para hacerlos mas ricos et mas honrados" - reiterated and materialised in a remarkably consistent fashion from the earliest Fueros to the XVI century.

A similar pattern from a time perspective point of view will be clearly discernible with regard to the actual use of laws and legal institutions reviewed in this Chapter. Many of the examples cited did in fact precede their inclusion into compilations such as the Siete Partidas, and thus they will provide additional proof and valuable information about the historical evolution of some of those laws and legal institutions.

THE LEGAL FRAMEWORK OF THE ECONOMY

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

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

and merchants made an important contribution to the general welfare.³

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

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

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

- 1) Merchants, fairs, markets, and related taxes were the subject of the Quinta Partida, Titulo VII - De los Mercadores, e de las Ferias, e de los Mercados; e del Diezmo, e del Portazgo, que han de dar por razon dellas.⁵ Portazgos and other ad hoc taxes are discussed in extenso in Ley V to Ley IX,⁶ with Ley V making a clear distinction between tools and things for personal consumption, which were tax-free, and those for sale.⁷ Ley VII specified that these taxes were to be publicly rented out to the highest bidder,⁸ whilst Ley VIII cautioned against abuses in the collection of such taxes.⁹ Fairs are also treated in two collection of laws contemporary to the Partidas¹⁰ the Espéculo - Libro V, Titulo VI¹¹ - and the Fuero Real - Libro II, Titulo V.¹²

- 2) Companies merited a separate title, Quinta Partida, Titulo X - De las Compañias que fazen los mercaderes, e los otros omes entre si, para poder ganar algo, mas de ligero, ayuntando su auer en uno.¹³ The introduction, as well as Ley I and II,¹⁴ indicate clearly that a company, which could be formed for a limited or unlimited life span, could enter into the same contractual obligations opened to individual merchants. Ley III¹⁵ specified the manner in which a company could be formed, its object, scope, and the distribution of profits and losses, all of which was left at the discretion of the partners. The distribution of profits and losses is dealt with in extenso in Ley IV to Ley IX.¹⁶ Dissolution and renovation of the company, as well as liabilities and withdrawal of the partners are treated in Ley X to Ley XVII.¹⁷ According to Ley X,¹⁸ the death of one of the partners meant the automatic dissolution of the company, unless there was a specific agreement to the contrary in the contract of formation. The heirs could be part of the renewed company,¹⁹ but did not have to be.
- 3) Sale of real and personal property - both, choses in action and goods or chattels - are the subject of a long title in the Quinta Partida, Titulo V - De las Vendidas, e de las Compras.²⁰ Included in its sixty-seven laws are easements and other restrictive covenants, as well as a number of vitiating elements, such as fraud, misrepresentation, undue

influence - presumed by Ley IV in the case of Guardians of minors,²¹ and by Ley V in that of Adelantados or judges,²² who were thus forbidden to purchase from these under their custody or within the jurisdiction of their office - error, and illegality. Bailment or mortgage by the buyer subsequent to his purchase, which are, of course, important financial tools, are included in Ley LXVII.²³ Ley VIII²⁴ is of singular importance, for it allowed the sale to take place in the absence of the object of the transaction and in the absence of both, seller and purchaser, who could be represented by procuradores. Some key general aspects of the sale laws are also included in the Fuero Real, Libro III, Titulo X.²⁵

- 4) The prior set of laws was complemented by those on possession, adverse possession, and the limitation statutes, expounded collectively in Tercera Partida, Titulo XXVIII, De las cosas en que ome puede auer señorio, e como lo puede ganar;²⁶ Tercera Partida, Titulo XXIX, De los tiempos porque ome pierda las sus cosas, tambien mueble como rayzes;²⁷ and Tercera Partida, Titulo XXX, En quantas manera puede ome ganar Posesion e tenencia de las cosas.²⁸ Principals could gain possession through their procuradores or agents, and masters through their servants or employees. This was clearly stated in the Tercera Partida, Titulo XXX, Ley III³⁰ and Ley XI.³¹

This topic is also set forth in the Fuero Real, Libro II, Titulo XI;³² and in the Espéculo, Libro V, Titulo V,³³ and Libro V, Titulo VIII.³⁴

- 5) Easements and other restrictive covenants, an equally significant complement to the sale laws, were, in addition to their treatment in that title, dealt with specifically in the Tercera Partida, Titulo XXXI, De las seruidumbres, que han unas cosas en otra, e como se pueden poner.³⁵
- 6) Barter and contractus innominatus were treated in the Quinta Partida, Titulo VI, De los Cambios que los omes fazen entre si: e que cosa es cambio.³⁶ Cambios, which could be transacted by anyone legally capable of buying and selling, encompassed not only the simple permutatio or do ut des - exchange of one thing for another. It also included - through the contractus innominatus - the exchange of one thing for a service - do ut facias, the exchange of a service for a thing - facio ut des, and the exchange of services - facio ut facias. Thus, the contracting parties were able to choose a combination of transactions to suit virtually any business situation. Cambios were also treated in the Fuero Real, Libro III, Titulo XI.³⁷
- 7) Rentals and leases were the subject of the Quinta Partida, Titulo VIII - De los Logueros, e de los Arrendamientos.³⁸

Ley III³⁹ details the ample scope of rental and leasing, which included "obras que ome faga con sus manos", beasts, vessels - the latter further discussed in Ley XIII,⁴⁰ the usufruct of land and other properties, and factors of production - which are dealt with in extenso in Ley XIV.⁴¹ Storage is treated at length in Ley XXV,⁴² and the liabilities of inn-keepers, hoteliers, and mariners in Ley XXVI and XXVII⁴³, whilst the contractus emphyteuticus is the subject of Ley XXVIII.⁴⁴ The price of renting or leasing, and its payment, was left open to the local use and custom - "segund la costumbre que fuere usada en cade lugar," as clearly stated in Ley IV.⁴⁵ In the Fuero Real, rentals and leases were the topic of Libro III, Titulo XVII.⁴⁶

- 8) Vessels also merited a special title, Quinta Partida, Titulo IX - De los Navios e del pecio dellos.⁴⁷ The obligations of the master and crew towards the shippers were clearly spelled out in Ley I⁴⁸ and Ley II⁴⁹, liability and compensation for loss, damage or jettison of the cargo in Ley III to Ley XIII,⁵⁰ and the special jurisdiction for all maritime matters in Ley XIV.⁵¹ Vessels were also the theme of a separate article in the Fuero Real, Libro IV, Titulo XXIV.⁵²

- 9) General contracts are the subject matter of a long title,

which includes, of course, a number of vitiating elements, in Quinta Partida, Titulo XI - De las Promisiones, e Pleytos, que fazen los omes unos con otros, en razon de fazer, o de guardar, o de cumplir algunas cosas.⁵³ Ley X is of particular importance for it contains the essential elements of what later became a bill of exchange. Although this law described an oral procedure, and acceptance was expressed by the words "I promise", the basic concept of what later was to be the drawer, the payee, and the acceptor, would appear to have been, we would venture, distinctly present.⁵⁴ Ley VII to Ley IX dealt with the obligations contracted by procuradores on behalf of their principals.⁵⁵

- 10) Cautions, guarantees, and other securities given for the performance of contracts and other obligations are treated in Quinta Partida, Titulo XII - De las Fiaduras que los omes fazen entre si, porque las promisiones, e los otros pleytos, e las posturas que fazen, sean mejor guardadas.⁵⁶ Ley XVI⁵⁷ established that the death of the guarantor did not extinguish the guarantee, pro tanto adding a necessary element of stability to a business transaction secured in that fashion. Ley XIX⁵⁸ complemented the prior law. Whilst Ley I⁵⁹ declared that anyone legally capable of entering into general contracts could be party to a contract of suretyship, Ley XX to Ley XXXIV⁶⁰ contemplated a number of circumstances in which such engagements could be carried out

by procuradores, servants or employees, and third parties. In the latter case, Ley XXII⁶¹ is of particular importance for it recognises that interest could be paid in such circumstances. The topic was also included in the Fuero Real, Libro III, Titulo XVIII,⁶² and in the Leyes Nuevas,⁶³ Ley XXIX.⁶⁴

- 11) Pledges, bailment, chattel mortgages, and mortgages are the object of Quinta Partida, Titulo XIII - De los Peños que toman los omes muchas pegadas, por ser mas seguros, que les sea mas guardado, o pagado, los que les prometen de fazer, o de dar.⁶⁵ Ley VIII is of particular interest, for it allowed the personero or procurador and the mayordomo - manager or administrator - to enter into such contractual obligations.⁶⁶ Ley VI⁶⁷ and Ley IX⁶⁸ complemented the prior law. The subject was also treated in the Fuero Real, Libro III, Titulo XIX.⁶⁹
- 12) The discharge of contracts by performance, by agreement - material alteration of the terms, accord and satisfaction, and novation, by tender of performance, by the contract provision of its own dissolution - conditional contracts, by frustration, perishing of the thing or act of God, and by operation of law is treated in great detail in Partida Quinta, Titulo XIV - De las Pagas, e de los Quitamientos, a que dizen en latin Compensacion, e de las Debdas que se

pagan a aquellos a quien las non deuen.⁷⁰, Restitution, substitution, and compensation, are interspersed throughout the title. Ley XXII and XXIII⁷¹ deal with the compensation of losses amongst the partners in a company due to negligence, fraud or other reasons. Ley XLIV⁷² stipulated the restitution of any prepayment given to a messenger of envoy, whether in a master and servant or an arm's length relationship, when the mission's departure was prevented through acts of God or the decision of the sender, or when it could not be carried out due to the envoy's fault or volition. Ley XLVI⁷³ extended that remedy to prepaid services in general, and specifically those of procuradores or lawyers. Ley V,⁷⁴ VII,⁷⁵ and XXIV,⁷⁶ allowed the procuradores to discharge contracts in any of the prescribed forms if the powers conferred by their principals so entitled them. The discharge of contracts is also treated in the Fuero Real, Libro III, Titulo XX.⁷⁷

- 13) Insolvency and bankruptcy are dealt with in Partida Quinta, Titulo XV - Como han los debdores a desamparar sus bienes, quando no se atruen a pagar lo que deuen: e como deue ser reuocado el enagenamiento, que los debdores fazen maliciosamente de sus bienes.⁷⁸ Ley I⁷⁹ establishes the bankruptcy proceedings, which could be initiated by the debtor himself, in person, by letter or through a procurador, and, of course, by a court decision. Ley II⁸⁰ makes a clear distinction

between preferred and ordinary creditors. Ley III⁸¹ instituted that the discharge of a bankrupted debtor cancelled the unpaid portion of his debts remaining after their reduction by the liquidating dividends, and, subject to interpretation, it left an honest but unfortunate debtor free to resume business life.⁸² However, the guarantor or surety remained liable for the unpaid portions of the primary debt. Ley V and VI⁸³ provided for a scheme of arrangement or composition as an alternative to bankruptcy proceedings. Ley IV⁸⁴ - which committed a recalcitrant debtor to gaol until payment was made or bankruptcy proceedings started - and Ley VII to XII⁸⁵ dealt with the unauthorised transfer of assets made by a debtor in order to defeat his creditors, which were either void or both void and fraudulent, whilst Ley X specified how to deal with the absconder and any property found on him.⁸⁶

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

- a) Personeros or Procuradores are the subject of the Tercera Partida, Titulo V - De los Personeros.⁸⁷

We have already discussed them in Part I, in connection with the administration of the realm. They could

equally represent cities, individuals or corporations before the courts, carry out their petitions to administrative bodies and the King, and enter into a wide range of contractual agreements on behalf of their principals.

In addition to the Partidas, Personeros or Procuradores were treated in the Espéculo - Libro IV, Titulo VIII,⁸⁸ the Fuero Real - Libro I, Titulo X,⁸⁹ and in the Leyes del Estilo - Ley XII to Ley XVII.⁹¹

- b) Agency proper, both as an arm's-length agreement and within a master and servant relation, is specifically dealt with in the Quinta Partida, Titulo XII, Ley XX,⁹² XXI,⁹³ XXII,⁹⁴ XXIII,⁹⁵ XXIV,⁹⁶ and XXV.⁹⁷ These laws are complemented by those of the Tercera Partida, Titulo XXX, Ley XIII,⁹⁸ Titulo XXX, Ley III⁹⁹ and Ley XI,¹⁰⁰ as well as Titulo XXXII, Ley I.¹⁰¹ An agency relationship could also be established by ratification, as it can clearly be seen in Quinta Partida, Titulo XII, Ley XXVI,¹⁰² Ley XXVII,¹⁰³ Ley XXVIII,¹⁰⁴ Ley XXIX,¹⁰⁵ Ley XXX,¹⁰⁶ Ley XXXI,¹⁰⁷ Ley XXXII,¹⁰⁸ Ley XXXIII¹⁰⁹ and Ley XXXIV.¹¹⁰

- c) Witnesses, who had a prime role in the formalities of notarial acts, in those surrounding a contract, and in the court proceedings that could arise from it, were the

object of the Tercera Partida, Titulo XVI - De los Testigos.¹¹¹ The laws of this long title attempted by every means possible to ensure the trustworthiness of witnesses and avoid situations where a conflict of interest was likely to arise. In keeping with that ideal, were the barring of lawyers and procuradores from acting as witnesses for their principals - Ley XX¹¹² - and the partners from being each other's witness - Ley XXI.¹¹³ Ley XXXVI compelled the broker to be a witness if all the parties of a transaction carried out through him were in agreement.¹¹⁴ Witnesses were also the subject of a long title in the Espéculo - Libro IV, Titulo VII.¹¹⁵

- d) Notarial documents were dealt with in a long title in Tercera Partida, Titulo XVIII - De las Escrituras, por que se preuan los pleytos.¹¹⁶ This long title detailed in precise fashion the requirements and formalities of a large number of notarial acts, both public and private in nature. Amongst the former, the "Quita de pecho por el Rey" (Royal Grant of tax exemption) was the subject of Ley X;¹¹⁷ the "Carta de quitamiento del portazgo" (Royal Grant of exemption of Portazgo duty) was treated in Ley XI;¹¹⁸ Ley XIII¹¹⁹ - Como deue ser fecha la Carta de los arrendamientos, que el Rey faze - dealt with the rental of taxes, ports, salt deposits and other

Royal rights; Ley XVI¹²⁰ with the contracts for public works ordered by the Crown; Ley XIX¹²¹ with the security of cattle in transit; and Ley XX¹²² with the special Royal Permits required to export forbidden items.

Amidst the very many private notarial acts prescribed in this title, the most significant for our purpose were those treated in Ley LVI¹²³ - real estate transaction, Ley LVII¹²⁴ - Carta de fiadura de la vendita (sureties), Ley LXI¹²⁵ - sale by personero, Ley LXIV¹²⁶ - quando un ome a otro vende el derecho que el ha en alguna cosa (sale of choses in action), Ley LXV¹²⁷ - sale of beasts, Ley LXVI¹²⁸ - Carta del cambio (barter agreement), Ley LXX¹²⁹ - Carta de los empréstidos, sobre las cosas que suelen medir, o contar, of pesar (loan agreements, including those secured by pledges or mortgages), Ley LXXI¹³⁰ - loan of beasts or chattels, Ley LXII¹³¹ - money on deposit, Ley LXXIII¹³² - carta del alquiler - tenancy of a house, Ley LXIV¹³³ - arrendamiento de viñas, o de huertas, o de otra cosa (tenancy of rural property, which, similarly to the prior law appear to contemplate only the creation of a leasehold interest in which the lessor granted a term certain to the lessee), Ley LXXV¹³⁴ - Carta de la lauor (contract of services), Ley LXXVI¹³⁵ - contract of rental of beast of burden, Ley XXVII¹³⁶ - Carta del apletamiento de la nave (charter

vessel), Ley LXXVIII¹³⁷ - Carta de la compañía (company formation act), Ley LXXIX¹³⁸ - Carta quando algund ome da a otro su heredad a labrar a medias (moiety agreement), Ley LXXXI¹³⁹ - Carta del quitamiento de la debda (discharge of debt agreement), Ley XCVII¹⁴⁰ - Carta de la Personeria (agency contract) and Ley CVI¹⁴¹ - Carta del compromisso (compromissi in arbitrum or arbitration agreement).

- e) Notaries were the subject of the Tercera Partida, Titulo XIX - De los Escriuanos, e quantas maneras son dellos, e que pro nasce de su oficio quando lo fizieren lealmente.¹⁴² There were two classes of notaries, according to Ley I: "los vnos que escriuen los preuillejos, e las cartas, e los actos de la Casa del Rey" - Crown Notaries concerned exclusively with public administration and the Royal Chancellery, "e los otros, que son los Escriuanos publicos, que escriuen las cartas de las vendidas, e de las compras, e los pleytos, e las posturas que los omes ponen entre si en las Cibdades, e en las Villas" - Public Notaries, who were concerned with the business of private persons.¹⁴³ Ley VIII¹⁴⁴ - Que pro nace en fazer los Registros, e que deuen fazer, e guardar los Registradores - establishing the registry that was to be kept by Crown Notaries; Ley IX¹⁴⁵, prescribing a similar one for the Public Notaries; Ley X¹⁴⁶ - Como el

Escruiano deue refazer la Carta otra vez, quando áquel a quien la dio dixere que auia perdido - determining the manner and circumstances in which copies from the registry to renew damaged originals, were probably amongst the most significant legal contributions to the stability and predictability of the economic life of the period. Notaries were also dealt with in the Espéculo - Libro IV, Titulo XII,¹⁴⁹ and in the Fuero Real, Libro I, Titulo VIII.¹⁵⁰

The Ley III of the Tercera Partida, Titulo XIX - Quien deue poner los Escruianos en la Corte del Rey, e en las Ciudades, e en las Villas¹⁵¹ determined that only the King or Emperor and those cities with a "speciale privilegium" had the authority to install escrivanos in office - an exclusivity reiterated in the Fuero Real, Titulo VII, Ley I,¹⁵² and in the Espéculo, Libro VI, Ley I.¹⁵³ Abbot Payson Usher, who discusses in detail notaries and notarial acts in the Siete Partidas,¹⁵⁴ finds them largely similar to those of the later and less explicit French legislation on the subject,¹⁵⁵ both set of laws having shared a development common to Italy and other Western European areas.¹⁵⁶ Renée Doehaerd, who analyses notaries and laws of the notarial acts of Lombardy and Genoa, depicts a panorama strikingly similar to that of the Partidas,¹⁵⁷ including the

special privilege given by the Prince to cities like Genoa and Pavia so that they could invest notaries in office,¹⁵⁸ as well as the registration and formalities involving representation agreements¹⁵⁹ and the law of contracts.¹⁶⁰

Since in the Peninsula, in France, and Italy, the basis of a contract remained, as in Roman Law, the oral agreement of the parties, and the role of the notary was to record what he saw and heard,¹⁶¹ the legislation on representation, notaries, and notarial acts, had a crucial importance for the development of business. By freeing the parties from having to contract in person and, as clearly stated in the Partidas, from having the thing sold in front of them,¹⁶² the legislation removed all legal obstacles regarding the area and volume of transactions into which a single party could enter. Furthermore, it not only allowed a person or business entity to get simultaneously into any number of contractual engagements, but also to sue or be sued, and to plead before the Crown or any administrative authority, in virtually any jurisdiction. In addition to enhancing the possibilities of doing business, this set of laws added a degree of certainty and predictability to it. A notarial act attested the date, place, and basic details of a contract until it was successfully challenged in court, which together with the fact that one of the originals was kept permanently in the notary's register, must have certainly contributed to

facilitate the control of agents, procuradores, and business in general, as well as to reduce misunderstandings and litigation.¹⁶³

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

For our purpose, the greatest significance of this Code lies in the fact that its laws on contracts, association and the other essential areas that we have outlined were a reflection of existing laws, jurisprudence, and doctrine. Each of them contained a number of exceedingly complex legal abstractions, developed through accretion over a long period of time. It is unlikely that they would have survived, let alone evolved, unless they had been subject to constant use.¹⁶⁷ Even if we ignore the large body of legal historians who sustain the notion that the reality of law ultimately reflects the reality of life in a given period,¹⁶⁸ it would appear clear from an

examination of the text that King Alfonso el Sabio and his team of jurists were not interested in collecting oddities. Although, in accordance with the stylistic standards of the time, a certain amount of hyperbole and a hortatory note are not infrequent, the laws are well founded and for the most part straightforward.

Often they are so to the point of being terse, as the "compraventa" - sales law,¹⁶⁹ which is a good example of what a general legal definition should be like. In other instances, in a very specific law such as the "Carta del afletamiento de la nave" - chartering of vessels,¹⁷⁰ all the essential aspects of a complex operations, including the customary credit terms, are set forth in a fresh, easy manner, which would suggest a close acquaintance with an everyday affair. All in all, the solid legal fabric of the Partidas would seem to point towards the existence of an intense economic life in the Peninsula; or, at least, and by the most cautious reckoning, the possibility of it cannot be dismissed.

That legal fabric was strengthened by other pieces of legislation and administrative decrees whose specific objective was to protect, organise, or promote trade and the economy as a whole. The sources of this ad hoc legal framework were varied, and included the Crown, the local authorities, the professional corporations, a number of functionaries who acted on their behalf,¹⁷¹ and the Cortes. Privileges and exemptions formed probably the bulk of it, and, for the most part, these concessions were the result

(of petitions from the local authorities,¹⁷² corporations,¹⁷³ or individuals.¹⁷⁴ They encompassed a wide variety of subjects, covering the entire spectrum of the Peninsular economic life, and made use of a number of devices to attain their goals, from the granting of tax exemptions and monopolies to the induction into the ranks of the nobility of all merchants and "gentes de la mar" of Seville by its reconqueror, King San Fernando of Castille.¹⁷⁵

Even though any such measure, whatever its ostensible purpose, is bound to have had an effect through the entire economy,¹⁷⁶ we will divide the ad hoc legal framework into two major areas, according to whether the main objective for its enactment was the promotion of security or that of trade and production. The jurisdictional privileges of merchants and other professional corporations will be gathered into a third group to facilitate its consideration.

I. Promotion of Security

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

In Castille, the same principle was embodied in the formula "salvos y seguros", says María del Carmen Carlé,¹⁸⁰ with which the safety and freedom of merchants were guaranteed, as can be clearly seen in the Privilegios given by King Alfonso X to Seville¹⁸¹ and Badajoz.¹⁸² The Siete Partidas repeated that formula in the Quinta Partida, Titulo VII, Ley IV,¹⁸³ a very explicit law that extended that protection to the merchandise and all the belongings of the merchants, not only in the fairs, but en route to and from them. In addition, the city council or the local lord were made liable for the restitution of any property taken from those merchants, plus a compensation for any loss or

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

Ley III of the same Quinta Partida, Titulo VII,¹⁸⁴ forbade the exaction of tributes from merchants other than those expressly granted in the privilege of the fair. It also protected the coming merchants from execution orders against tangibles, attachments against choses in action, and the outright seizure of their property, except for their own debts and sureties, if they were contracted during the fair, in a previous one, or were due to be discharged during the fair in question.¹⁸⁵ The sequestration of the merchant's mules was specifically prohibited on a number of occasions, at the request of cities and individuals.¹⁸⁶ These safeguards were part of a customary Ius Fori, which evolved with common characteristics throughout Europe, as shown by García de Valdeavellano,¹⁸⁷ Pierre Huvelin¹⁸⁸ and Adolf Schaube,¹⁸⁹ amongst many authorities. In the Peninsula, they were reiterated ad infinitum in successive issues of fair privileges,¹⁹⁰ in the Cortes,¹⁹¹ in a number of documents,¹⁹² and were also inserted in numerous Fueros.¹⁹³ Pro certo habere the special rights were restated once more in the Cortes of Nieva, in 1473, as petitioned by the Procuradores of several cities,¹⁹⁴ as well as in the Novísima Recopilacion.¹⁹⁵

Foreign merchants were the object of a very early attention, which would suggest that their presence was a common event and that

it was considered important for the common good. The *Libér Iudiciorum*, as we have seen, was already concerned with the "transmarinis negociatores", and recognised them the right to be judged by special judges.¹⁹⁶ This concern for the well being of foreign merchants, and the special protection given to them, was shared in contemporary France, according to Pierre Huvelin,¹⁹⁷ and, generally, elsewhere in Europe, as the classic study of Wilhelm Heyd would appear to indicate.¹⁹⁸

According to Florentino Pérez-Embid, a number of ambiguities in the legal status and fiscal responsibilities of the merchants in Seville gave rise to a joint petition to King Alfonso X. The Monarch answered with the "Privilegio a los mercaderes de dentro y fuera del reino", signed in Burgos in 1281, which gave equal privileges to all merchants, subjects and foreigners alike.¹⁹⁹ In Aragon, a Pragmatica - Royal Ordinance - of Martín I, in 1401, conferred to foreign merchants the same rights enjoyed by the subjects, merchants or not, as it had been demanded by the main trading cities of the Kingdom.²⁰⁰ This attitude of the cities was consonant with the many instances in which local merchants rallied in support of foreign merchants, petitioning against expulsion orders.²⁰¹ Therefore, even though here as elsewhere, the status of foreign merchants was subject to the vagaries of local and international politics (and that could mean a considerable number of ups and downs)²⁰² the tendency, as Claude Carrère concluded,²⁰³ appears to have been for foreign

merchants to enjoy a considerable amount of freedom, in addition to the customary protection afforded to them.

Security, in general terms, was strengthened with the development of the Hernandades. Originally they were associations of municipalities created at the initiative of the town councils, often together with the local lords and nobles, which were conceived primarily to provide a regional police force, so as to enforce peace and order, particularly on the highways, and probably to prevent smuggling.²⁰⁴ Rafael Gibert y Sánchez de la Vega sees the Hernandades as one of the few instances in which the extreme political and administrative localism of the time was transcended.²⁰⁵ In 1476, in the Cortes of Madrigal, at the initiative of the Procuradores of Burgos, and after repeated petitions and efforts going back to 1370, an uneasy agreement was reached, by which many of those forces were gathered in a single Hernandad, much later known as the Santa Hernandad.²⁰⁶ The intricate gestating process of this agreement,²⁰⁷ and that of the Ordenamiento de Madrigal, a set of rules establishing the jurisdiction of the Hernandad,²⁰⁸ have been studied in detail by Luis Suárez Fernández, and constitute an interesting example not only of the intricacies and vicissitudes leading to many administrative decisions, but also of the tendency of the time for the small, local outlook, to prevail over the large, general one.²⁰⁹

II. Promotion of Trade and Production

The "Privilegio de Mercado", be it in its daily or in its many periodical forms, was one of the earliest recorded privileges granted with the deliberate aim of promoting trade.²¹⁰ The power to make such concessions, when there was not an already established customary market, laid on the Crown, or on those bodies - generally the cities - to which the Crown delegated it, according to the Quinta Partida, Titulo VII, Ley III - De las Ferias, e de los Mercados, en que usan los omes fazer vendidas e compras.²¹¹ The Royal prerogative to grant "ferias" was recognised also in the Segunda Partida, Titulo I, Ley II - Que poder ha el Emperador, e como deue usar el Imperio.²¹²

Ad hoc privileges granting the freedom of trade,²¹³ monopolies,²¹⁴ and special permits²¹⁵ were prominently used to promote trade and production in its many ramifications. So were subsidies,²¹⁶ and a host of local statutes that endeavoured to, make economic transactions easier and safer through the provision of an equal and predictable treatment for all those taking part in them. Highly noticeable amongst these statutes were those stipulating the use of a uniform set of weights and measures,²¹⁷ and the many ordinances, often self-imposed by the professional groups,²¹⁸ which attempted to secure a standard quality for their goods²¹⁹ and services,²²⁰ and to clarify the established liabilities of professionals and independent contractors.²²¹

However, out of all the legal means available for the promotion of trade and production, perhaps none was employed more frequently and in a greater variety of situations than taxes. The Crown was unequivocally invested with the basic power to tax, as clearly stated in the Tercera Partida, Titulo XXVIII, Ley XI - En quales cosas los Emperadores, e los Reyes, han señorio propriamente.²²² In spite of that, the tax structure in the Peninsula,²²³ like elsewhere in Europe, was exceedingly complex, not only on account of the many layers of government and universidades to which taxing powers had been delegated, but also because many taxes varied considerably according to the local Fueros, special concessions, and the status of those who were liable to pay them.²²⁴

One of the fundamental functions of taxes was to provide funds for the construction and maintenance of a basic number of public goods, without which no economic activity could have taken place. The division between private and public goods was made clear in the Tercera Partida, Titulo XXVIII, Ley VI - Como de los puertos, e de los caminos puede vsar cada vn one;²²⁵ complemented by Leyes III to V,²²⁶ and VII to X²²⁷ of the same title. Rivers, ports, public highways and bridges were recognised as public goods, and, as such, the access to them was made available to all.²²⁸ This condition was also stressed in the Fuero Real.²²⁹ Further reference to the proper upkeep and legal status of ports was made in the Tercera Partida, Titulo XVIII, Ley XVII;²³⁰ to that of

bridges in the Tercera Partida, Titulo XXXII, Ley XX;²³¹ and, as far as public highways were concerned, in the Primera Partida, Titulo VI, Ley LIV,²³² Segunda Partida, Titulo XI, Ley I,²³³ and Tercera Partida, Titulo XXXIX, Ley VII.²³⁴

The local authorities had the responsibility of maintaining those public goods, which aside from the local transportation infrastructure, included defense works, such as forts, city walls and gates, indispensable to protect that infrastructure and the community as a whole. There were three main sources of revenue for that purpose. The first one was a number of local taxes and mulcts that the local Council was empowered to collect, and the rents of pastures, forests, and other publicly owned property, often granted collectively in the Fueros, Cartas Pueblas, and other privileges extended to the town for that specific purpose.²³⁵ A second source of revenue were ad hoc taxes raised to pay for a particular facility.²³⁶ The third source of revenue was the town's share of the Portazgo duty. According to the Quinta Partida, Titulo VII, Ley VII,²³⁷ this and all Royal taxes were to be publicly rented out to the highest bidder. The same law established that two thirds of the proceeds from the rent of the Portazgo duty was to go to the Royal coffers and one third to the place of collection, where it was to be used in public works. In practice, it was common for the Crown to donate its share,²³⁸ and not unusual for the cities to purchase it.²³⁹ Private interest played also a significant role in the maintenance of

these essential public goods. Aside from farming taxes,²⁴⁰ merchants and other individuals or corporations were frequently concerned with the upkeep of vital facilities,²⁴¹ contributing to it with self-imposed taxes or subsidies.²⁴² They also brought to the fore the need for new ones, contributing with designs and amortisation plans,²⁴³ and, on occasions, individuals built and outrightly owned important public works.²⁴⁴

The general taxing power of the Crown included the faculty of levying duties on the production, trade, and transit of goods. The Portazgo,²⁴⁵ Almoxorifazgo,²⁴⁶ and other tributes specifically related to the transit of goods for sale were dealt with in the Quinta Partida, Titulo VII, Ley V - De los Portadgos, e de todos los otros derechos, que han a dar los Mercadores, por razon de las cosas que lleuan de vnos lugares a otros.²⁴⁷ Whilst there were clear dispositions to prevent double taxation in Castille²⁴⁸ and in Aragon,²⁴⁹ the large number of granted²⁵⁰ or restated²⁵¹ tax waivers, the obvious success of the "Ferias Francas" and the keen competition to establish them, clearly evidenced in the records of the Cortes,²⁵² which portray rather vividly the inability of the Crown to control the competition of the Señorios and the cities to grant "Ferias Francas" in open defiance of the exclusive jurisdiction of the Crown,²⁵³ would seem to indicate that tax exemptions were amongst the most favoured promotional instruments.

This old and tried practice²⁵⁴ was used with remarkable frequency and consistency over an extremely long period of time with regard to Portazgos and other transit duties; and, as the documentary evidence collected by Father Andrés Marcos Burriel and other writers clearly show, those exemptions often covered the entire area of the realm and were granted already in the X Century.²⁵⁵ A vigorous litigation was pursued by cities and other beneficiaries of those exemptions in order to enforce them²⁵⁶ - which on occasions led to further confirmations of the privileges,²⁵⁷ sometimes stressed by a flat refusal to pay and threats of violence.²⁵⁸ In addition to that, the purchase of taxing rights was used as a viable alternative,²⁵⁹ and a relentless fight against unauthorised transit duties of any kind was carried out at all times.²⁶⁰

If we add to all that the fact that credit terms for the payment of taxes were by no means unusual, even in the case of exported goods,²⁶¹ the casting of some doubts upon the hindrance value traditionally assigned to transit duties in Medieval trade²⁶² would appear to be warranted, at least as far as the Peninsula is concerned. The fact that the merchants of Burgos were repeatedly forced to underwrite the maintenance of the roads and bridges to the northern ports, even at the height of their use for a very profitable trade,²⁶³ would seem to lend further ground for those doubts, since the insufficiency of taxes ostensibly levied to maintain those facilities would suggest that they were not

collected in full.²⁶⁴

The Alcabala, a universal and by far the most generalised consumption tax, according to Salvador de Moxó Ortíz de Villajos,²⁶⁵ was levied ad volorem on all purchases, sales, and barter, although it was also exacted at times as a transit tax.²⁶⁶ Conspicuously enough, the Alcabala was waived for all sorts of promotional purposes by the Crown,²⁶⁷ and by private holders of the right, generally nobles.²⁶⁸ In an unauthorised fashion, city councils and Señoríos, eager to further the fairs and general trade of their jurisdictions, frequently avoided the imposition of this tax.²⁶⁹ Royal exemptions from Alcabala, of varying length and amplitude, were granted in the XIII Century and consistently confirmed thereafter to cities, fairs, institutions, and geographical regions throughout Castille. Córdoba, Xerez, and Seville,²⁷⁰ Cádiz,²⁷¹ Málaga, Medina Sidonia, Gibraltar, Osuna, Arcos de la Frontera, and in general the cities of Southern Andalusia, were repeatedly endowed with that privilege.²⁷² Similar exemptions were granted to the fairs of Segovia - in terms that show a clear understanding that the benefits derived from a tax-free fair transcended the city itself and even the realm, and illustrate the way of publicising the privileges of the fair²⁷³ - and the market of Sigüenza.²⁷⁴ Guádalupe and the Monastery of Santa María del Río Seco were granted territorial exemptions from Alcabala,²⁷⁵ and so were Simancas,²⁷⁶ the Tierra de Ayala, in Alava,²⁷⁷ and many localities in the North-Western

area,²⁷⁸ where it was given in conjunction with other extensive tax exemptions and special privileges.

Special concessions were granted to San Sebastián,²⁷⁹ Bilbao,²⁸⁰ and in general to the "Villas" and localities of the "Señorío de Vizcaya", where the exemption from Alcabala²⁸¹ was added to very ancient and extensive trade and tax privileges.²⁸² The heavy dependence of the area upon trade to compensate for its food deficiency²⁸³ was probably instrumental in obtaining many of these privileges. Thus, we see already in the Fuero Viejo de Vizcaya that foreign seamen were free to sell victuals, and in general to buy and sell at will upon arrival,²⁸⁴ whilst "Labradores",²⁸⁵ "Hijosdalgos",²⁸⁶ and "Vizcaínos" in general were allowed to wholesale and retail in their houses.²⁸⁷ This would in fact strengthen the notion that trade was by and large a tax free activity in Vizcaya, for although similar concessions were granted elsewhere,²⁸⁸ notably to "los de la mar" in Seville²⁸⁹ and the "Hijosdalgos" in Seville and Toledo,²⁹⁰ the generalised fashion of the privilege in Vizcaya would suggest a lack of concern with tax evasion, which was the main reason to restrict trading activities to a number of fixed and known places.²⁹¹

While the privileges of Vizcaya were resented and challenged²⁹² they were vigorously defended with very extensive litigation²⁹³ and a steady stream of petitions to the King and the Royal Councils,²⁹⁴ as well as by means of the Hermandad, an ad hoc

association of the "Villas". Although it was unable to abate the fierce individualism and intense rivalry of its constituent members,²⁹⁵ the Hermanidad was nevertheless able to realise the manifest purpose of its creation: "guardar los privilegios que nos el - King Fernando IV - dió, é nos otorgó, é lo que el juró é prometió, é fizo nos jurar."²⁹⁶ In fact, the Monarchs had to swear to preserve the integrity and the privileges of the Señorío de Vizcaya,²⁹⁷ and not only made the point of reiterating them, but on occasion even augmented these privileges, as Teófilo Guiard y Larrauri²⁹⁸ and Estanislao Jaime de Labayru y Goicoechea²⁹⁹ have shown in their well documented studies. The exceptional status of the Señorío was also reflected in the fact that the "Mercedes" of Vizcaya were reserved for resident "Vizcaínos"³⁰⁰ and the economic privileges of the region were incorporated into international treaties as late as 1665 and 1713.³⁰¹

Ramón Prieto Bances has depicted very similar tax exemptions and economic privileges in Oviedo, Asturias,³⁰² which also shared the food deficiency and need to trade of Vizcaya.³⁰³ San Antonio de la Barquera,³⁰⁴ together with Castro Urdiales, Laredo, and Santander, the other main "Villas" on the Biscay shores of Castille proper, enjoyed a very similar status. Documentary evidence presented by Valentín Sainz Díaz reveals that all of them were founding members of the "Hermanidad de las Marismas",³⁰⁵ formed to defend their privileges menaced by a Diezmo tax on all

imports and exports.³⁰⁶ The privileged condition of the members and the economic benefits derived from it were described in no uncertain terms by Cesáreo Fernández Duro: "Causa y fundamento de la expansión y prosperidad de las villas marítimas era la libertad absoluta de que habían gozado y gozaban, no interviniendo para nada la Corona en sus presupuestos y operaciones."³⁰⁷

A very ample freedom of trade, in the current sense of the term,³⁰⁸ was also a characteristic note of Catalonia since its earliest days, and very much a factor of its economic success, according to Antonio de Capmany y de Montpalau³⁰⁹ and Charles Verlinden.³¹⁰ As we have seen, the use of tax exemptions to promote trade was very visible there, and, in general throughout the territories of the Crown of Aragon.³¹¹

Tax exemptions were also extensively employed to promote the settlement of land and urban centres. These incentives, continuously used from the very early days of the "Reconquista" "para que la dicha ciudad se pueda mejor poblar," were not only granted by the Crown³¹² but also by nobles,³¹³ city councils,³¹⁴ the Church³¹⁵ and the Military Orders³¹⁶ and were frequently enhanced with the remission of debts and other crimes.³¹⁷ They often applied to a whole Kingdom, such as the exemptions of Portazgo, Almorizaje and other duties granted by the Catholic Monarchs to those willing to settle in the newly reconquered Kingdom of Granada in 1490.³¹⁸ Aside from the universal condition

that in order to enjoy the temporary exemptions, the settlers had to be from another territorial jurisdiction,³¹⁹ these promotional grants made no distinctions between subjects of the Crown and foreigners. Immigration was thus encouraged and tax exemptions to new settlers "quier de Francia, quier de España o de qualquiera nacion que vengan hi poblar",³²⁰ were common and general. Further examples of this policy are amongst many to be seen in Seville,³²¹ Toledo,³²² Burgos (where Julián García Sainz de Baranda has shown that many of the original settlers were "Francos" - French and Flemish - Germans and Gascons³²³) as well as the other cities along the road to Santiago de Compostela, in Navarra, La Rioja and Aragon, where the presence of immigrants is also a matter of fact.³²⁴

Economic production was stimulated in several ways. Aside from the obvious potential benefits derived from the repopulation "policy" as well as from transit and consumption tax waivers - which should have generally increased the demand for goods and services, production was also directly promoted by means of tax reductions³²⁵ or exemptions.³²⁶ Often these specific measures were designed to aid exports and give incentive to the consumption of local products,³²⁷ or even those made elsewhere in facilities owned by "vecinos" and local "residentes." A typical example of the latter is the complex tax structure and regulations governing the commercialisation of wine in Seville, analysed by Ramón Carande y Thovar.³²⁸ Tax exemptions for migrant workers,

including their families, implements, and personal belongings, were used "since time immemorial," as asserted in the documentary evidence presented by Antonio Collantes de Terán Sánchez, to ensure the supply of labour for the harvest of olives in Seville.³²⁹

From 1419 onwards these tax exemptions were made part of the conditions imposed upon the rentiers of the taxes of that city. Given the fact that olives and olive oil were one of the chief export items of Seville, these tax exemptions could be considered a hidden export subsidy, in so far as they reduced production costs. Julio Valdeón Barúque has shown the use of tax exemptions to be what we would call today fringe benefits, for all those working in the mint of Seville,³³⁰ which presumably, reduced the wage bill of that institution; Hipólito Sancho de Sopranis has shown tax exemption to be part of the encouragement made of productive investments in rural property in Jerez de la Frontera, to assure the supply of Cádiz.³³¹ Further stimulus of agricultural production and tool making should have resulted from the fact that working tools "o otras cosas, para labrar sus viñas, o las otras heredades que ouiere" were - provided that they were kept for the owner's use - exempted from Portazgo duty, according to the Quinta Partida, Título VII, Ley V.³³² The same law exempted from the Portazgo duty writing paper, books, and other materials for students. The Cortes of Toledo, in 1480, made all books, including the imported ones, absolutely duty free in the entire realm, on account of the universal benefit derived from them.³³³ The same Cortes also sought to enforce the tax

exemptions and the regulations prohibiting the exaction of more than one Montazgo duty from the flocks of sheep and the herds of cattle, swine, and other animals, in terms which suggest a very close interdependence of those industries with several others throughout the realm and beyond it.³³⁴

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

It would also appear important to underline the fact that taxes - in some cases as late as the XVIII Century, according to the testimony of Rafael Antúnez y Acevedo, a distinguished Minister and Judge of the Supreme Council of the Indies³³⁸ - were often negotiated,³³⁹ imposed³⁴⁰ and administered³⁴¹ by the merchants and other professional *universitas*. This may have accounted for the respect shown on some occasions for special privileges;³⁴² above all, the ability of those liable to pay the

taxes to do so without undermining their competitive position was presupposed. If that was not the case, merchants and producers had channels to voice their complaints and obtain legal redress, be it as members of the local government,³⁴³ as a collective group,³⁴⁴ as individuals³⁴⁵ or through their condition of "vecinos" or "avecinaados"³⁴⁶ of a city.³⁴⁷

The keen competition amongst the cities and other local jurisdictions to attract settlers and new businesses, which occurred everywhere³⁴⁸ - to the point of requiring some worried counter-measures³⁴⁹ - gave merchants and producers a leverage that could hardly be overlooked.³⁵⁰ The Crown, as the ultimate judge of all disputes, was often placed in the unenviable position of having to settle irreconcilable claims and conflicts of interest. The endless nature of some of those conflicts suggests the tactical use of litigation by merchants to protect certain economic advantages³⁵¹ which, of course, could not be prevented by the Crown. The suggestion of trying "una avenencia por medio de amigables componedores"³⁵² was often advanced, and, naturally, not all decisions ~~were~~ economically sound - particularly when we analyse them with the benefit of ~~of~~ hindsight, and without knowledge of the pressures and other considerations under which they were made. However, it is to be pointed out that in carrying out this duty, the Crown displayed, at times, a remarkable ability to recognise changing needs and circumstances, and to adjudicate or give legal sanction to actions that were in accordance with

them. The flexibility shown in granting monopolies³⁵³ or withdrawing them,³⁵⁴ in providing the legal basis for some economic activities,³⁵⁵ or in removing a tax that experience had shown to have caused "grandes danyos et incomodidades,"³⁵⁶ are clear evidence of this.

The Crown also played a prominent supportive rôle in the diplomatic field. In this area, Antonio de Capmany, y de Montpalau,³⁵⁷ Jules Finot,³⁵⁸ Teófilo Guiard y Larrauri,³⁵⁹ and other historians,³⁶⁰ document an intense activity of the Castilleean and Aragonese merchants, their universitas, and cities on behalf of them, as well as revealing routine business operations in places as far apart as Frankfurt and Damascus, Bruges, Cyprus, Rhodes, Marseille, Ragusa, Northern Africa, England and Byzantium. In the pursuit of these diplomatic endeavours, often carried out by permanent representatives in loco³⁶¹ or ad hoc envoys,³⁶² the merchant universitas and the local authorities displayed imagination, resilience, and an enduring independence, to the point that even in the middle of the XVI century, a number of Castilleean and French cities concluded several trade agreements in spite of the war between the two Kingdoms;³⁶³ in the case of Barcelona, that independence remained in evidence as late as in the XVIII Century.³⁶⁴ The Crown's endorsement of many of these diplomatic efforts,³⁶⁵ its attitude towards the requests for help from cities and merchants,³⁶⁶ and its own diplomatic drives in response to them³⁶⁷ would seem to indicate a significant

awareness of the intricate needs of trade and the general good that could be derived from it. Judging by the responsiveness showed by Moslem³⁶⁸ as well as Christian³⁶⁹ states, and from the more general picture drawn by Wilhelm Heyd³⁷⁰ and Adolf Schaube,³⁷¹ it would indeed appear that the Crown's awareness of the importance of trade was widely shared at the time.

Perhaps, it could be argued that a certain degree of economic interdependence was already present at an early date. This, to some extent, and particularly with regard to some products, is fairly obvious. Indeed, the diplomatic efforts before the King of England by Guy de Dampierre, Count of Flanders,³⁷² and the cities of Ghent, Ypres, and Bruges,³⁷³ on behalf of merchants and shipping from Castille, Aragon, and Majorca, and their successful results, would lend support to the suggestion of an early economic interdependence of a more general sort. Still, what does appear to be beyond speculation is that the necessity of conducting international exchanges within an ad hoc legal framework, capable of providing a minimum of security and predictability, as well as a mechanism to solve disputes, and the economic advantages that could be derived from it, were clearly felt everywhere.

Tangible proof of the intensity of those feelings were the resolute efforts of the Crown and every interested party to constrain privateering within the boundaries of a "justa represalia."³⁷⁴ Moreover, there are numerous trade agreements -

often explicitly proclaiming their trade promotion value - between such diverse jurisdictions as Barcelona-Aragon and Bougie,³⁷⁵ Egypt,³⁷⁶ Fez,³⁷⁷ France,³⁷⁸ Morocco,³⁷⁹ Tunis,³⁸⁰ and Venice.³⁸¹ Equally revealing a promotional objective are the agreements between Castille or Castillean cities and England,³⁸² Flanders³⁸³ - later accorded by Flanders and Aragon in very similar terms³⁸⁴ - France,³⁸⁵ the Hanseatic League,³⁸⁶ and Portugal,³⁸⁷ as well as treaties concluded by the province of Guipúzcoa and England in 1481,³⁸⁸ and the extremely curious "Confrérie de la Contractation," agreed upon by the merchants of Bilbao and Nantes, sanctioned by Charles VIII in 1492 which remained operational until after the first quarter of the eighteenth century.³⁸⁹

Even though the Catholic Monarchs took a first step to rationalise the "tratos e fazimientos" of the newly united Kingdoms of Castille and Aragon in the Cortes of Toledo, in 1480³⁹⁰ - limited to eliminate the "cosas vedadas"- it should be stressed that in keeping with the administrative divisions of the realm, commercial treaties seldom applied to its entire territory. They were for the most part restricted to a given area of it, just as the commercial agreement between Murcia and Majorca,³⁹¹ in the XIV century, never included the rest of Castille or Aragon. In fact, by an ironic coincidence, as Finot noted,³⁹² at the very moment that Fernando and Isabel had united the Peninsula, the old and uneasy combined representation of the Iberian merchants in Bruges broke down in 1494. The merchants

of Vizcaya and Guipúzcoa, Aragon, Catalonia, and Portugal left the "Hôtel des Espagnols" or Casa Negra", the premises of the Consulado de Castilla and their joint centre in Bruges, and finally, after many disputes, they went their separate ways.³⁹³

III. Jurisdictional Privileges

No review of the legal framework of the economy could be completed without considering the jurisdictional privileges of merchants and the professional universitas. With illustrious advocates since antiquity, as shown by Paul Huvelin³⁹⁴ and Robert Sidney Smith,³⁹⁵ from very early times the advantages of a special jurisdiction for commercial and maritime matters did not go unnoticed in the Peninsula. Even in the late XVII Century, a man with a vast legal and administrative experience, Joseph de Veitia Linage, together with Solórzano y Pereyra and Bobadilla, two of the best jurists of that period, were firm advocates of an ad hoc commercial and maritime jurisdiction, independent from the general judiciary.³⁹⁶ Towards the close of the XVIII Century, Antonio de Capmany y de Montpalau was still in full agreement with them.³⁹⁷ A consistently repeated argument in favour of a special jurisdiction was that speed was of the essence in the solution of commercial and maritime disputes, and that that could be better ensured by an ad hoc tribunal than by the ordinary courts.³⁹⁸

In addition to that, the pronouncement of "omnes buenos e sabidores," men of good moral and professional standing, and well acquainted with the use and customs of a given trade at a given place, was a cornerstone of legal procedure and judicial fairness. As such, judgement by peers and a special jurisdiction for

professional matters was a rule rather than an exception, and it was enjoyed by the members of institutions as diverse as the University of Salamanca and the Confraternity of Fishermen of Seville. In fact, in these two cases, the jurisdictional scope and autonomy was significantly greater, since the University court was competent to judge criminal offenses committed by students and professors,³⁹⁹ and both kept their own gaols for, as in the case of the Seville fishermen, the 'yerros cometidos en razón de su oficio."⁴⁰⁰ Neither of these were common attributes of the commercial jurisdictions.⁴⁰¹

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

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

The Tercera Partida, Titulo IV, Ley I - Que quiere decir Juez, e quantas maneras son de Judgadores⁴⁰⁴ - was equally explicit:

"...E aun otros (judges) y a, que son puestos por todos los Menestrales de cada logar, o por la mayor partida dellos: e estos han poderio de judgar los pleytos, que acaeciessen entre si por razon de sus menesteres..."⁴⁰⁵

The territorial limits of that jurisdiction were made clear in the same law.

"...E todos estos Juezes, que auemos dicho, llamanlos en latin Ordinarios; que muestra tanto, como omes que son puestos ordinariamente, para fazer sus officios sobre aquellos que han de judgar, cada vno en los logares que tienen."⁴⁰⁶

Institutionally, the development of a separate maritime and mercantile jurisdiction followed a different path in Castille and Aragon. In Castille, it consisted, for a number of centuries, of a special court presided by an Alcalde, who was assisted by six good men "entendidos en cosas de la mar,"⁴⁰⁷ and under the overall jurisdiction of the Admiral.⁴⁰⁸ In Aragon, this judicial junction - after a very similar initial period - was carried out by the Consulado.⁴⁰⁹ Essentially a Mediterranean institution, the Consulado combined the functions of a maritime and mercantile court with that of a merchant's Guild,⁴¹⁰ thus centralising a number of activities that in Castille were carried out by separate institutions.⁴¹¹ First in Barcelona, according to Capmany,⁴¹² or in Valencia, as stated by other sources,⁴¹³ the Consulados of those two cities played a significant role in the development of the institution. Well known amongst those of Aragon were also the Consulados of Majorca, Tortosa, Gerona, and Perpignan.⁴¹⁴ Even San Feliu de Guixols, a small port not far from Barcelona, had a Consulado,⁴¹⁵ and so did Sardinia and the other Italian possessions of the Crown of Aragon.⁴¹⁶

In Castille, the Consulado was adopted by Burgos in 1494,⁴¹⁷ Bilbao in 1511,⁴¹⁸ and, after numerous petitions from the merchants engaged in the trade with America, a Consulado or Universidad de los Cargadores a las Indias was established in Seville in 1543.⁴¹⁹ On the whole, the Castillean Consulado followed the pattern of the Mediterranean ones, the advantages of which were extolled by the promoters of the Consulado of Burgos.⁴²⁰ However, they appear to have been far more independent from the local authorities than the Consulado of Barcelona and the others in Aragon.⁴²² Perhaps this was to some extent due to the long autonomy enjoyed by the Consulado of the Castillean merchants in Bruges, an obvious inspirational source in the case of Burgos, with a tradition going back to the early XIV Century.⁴²³ At any rate, the only mention of the local authorities of Burgos in the Real Cédula of 1494 was the obligation of the Merino and his Lugartenientes to assist in the execution of the sentences passed by the Prior and Consules or to provide help as requested,⁴²⁴ a task that in the case of the Consulado of Seville was reserved to the Executor and Alguaciles of the Casa de Contratacion.⁴²⁵ It would also seem worth noting the very considerable maritime and commercial jurisdiction of some universitas, such as the Cofradía de Pescadores de San Vicente de la Barquera.⁴²⁶

The benefit of a special maritime and commercial jurisdiction was enjoyed by merchants and mariners, whether they were "vecinos",⁴²⁷ local residents or foreigners. Although we do not

know of any specific reciprocity statute in either Castille or Aragon⁴²⁸ comparable to the Luccan one,⁴²⁹ there was hardly any need for it. On the whole, standard procedural laws determined that the plaintiff must follow the fuero of the defendant.⁴³⁰ There were significant differences as to what constituted a mercantile act⁴³¹ that could determine the need to sue at a different court,⁴³² but even someone as far removed from a merchant as a priest could clearly,⁴³³ and successfully,⁴³⁴ be brought to a commercial court if he was buying and selling "pro lucro captando."

In addition to that, foreign merchants and mariners had recourse to their own consuls in loco for the resolution of their internal conflicts and when mediation with the public powers was required, which was an old established and generalised privilege.⁴³⁵ It should be noted that the word "foreign" had a much wider connotation throughout the Middle Ages and early Modern times than nowadays. It virtually encompassed all those who were not "vecinos" or "avecinaados" in a given local jurisdiction. King Don Alfonso, as early as 1280, made that quite clear when he reorganised the Puerto de Santa María and granted:

"a todos los castellanos, leoneses, e valoneses, o portugueses, e a todos los del sennorio del Rey de Francia, e del Rey de Anglaterra, e del Rey de Aragon, e a los de Marsella e a todo el otro sennorio del Rey Charles, e a los de Benosa, e de Pisa, e de Venecia, e a todos los otros logares qualesquier que sean, que an comun sobre si, que

ayan sus privilegios e sus franquezas e sus rentas apartadas e sus alcalles, asi como lo han los de Sevilla, los que ellos quisieren aver."⁴³⁶

Accordingly, the merchants and mariners of Genoa,⁴³⁷ Portugal,⁴³⁸ and Barcelona,⁴³⁹ along with those of many other places, had their consuls in Seville and the Southern ports. Included amongst them were those from the towns of the Bay of Biscay, as stated in the studies of Carmelo Viñas y Mey⁴⁴⁰ and Teófilo Guiard y Larrauri.⁴⁴¹ In the late XV Century the Universidad de Mercaderes of Burgos still had exclusive consuls not only in Flanders but also in the main commercial centres of Castille,⁴⁴² and so did Barcelona, after the union of Castille and Aragon.⁴⁴³

As may be expected, the co-existence of several jurisdictions led to a number of conflicts; more visible, or at least better studied, are those that concerned the Consulado. Its jurisdictional competence was challenged first, and quite naturally, by those who by so doing were able to gain time, or thought that other jurisdiction could be more advantageous to them.⁴⁴⁴ Challenge also came from the ordinary courts⁴⁴⁵ and from institutions with judicial privileges, such as the mints of Barcelona, Perpignan, and Valencia.⁴⁴⁶ The jurisdiction of the Consulado was disputed as well by individuals with judicial prerogatives, like the Comisario General de la Cruzada,⁴⁴⁷ and last, but not less vigorously, by other Consulados.⁴⁴⁸ To a large

extent these conflicts were unavoidable. They were also the healthy sign of the slow but constant creative process by which Law Merchant developed. The jurisdictional boundaries of the Consulado, clearly but widely defined,⁴⁴⁹ expanded together with Law Merchant, and so, in due course, the "Jurisdicción Privativa"⁴⁵⁰ of the Consulado stretched from its original role as a maritime court,⁴⁵¹ to include a comprehensive commercial jurisdiction and the custody of ~~statutory~~ regulations on bankruptcy, banking, bills of exchange, insurance and sea-loans.⁴⁵²

Far from being entirely detrimental,⁴⁵³ jurisdictional conflicts forced legal argumentation and the cautious pondering of lawyers and merchants,⁴⁵⁴ and thus made not a negligible contribution to the honing and perfecting of Law Merchant. They were also, in all probability, not an insignificant factor in the popularity of private arbitration,⁴⁵⁵ which by no means abated the vitality of the Consulado. The defense of the independence and continuously expanding privileges of the Consulado was as energetic as any of the ones reviewed so far, and often enlisted the support of the cities, which considered that institution as one of their own fundamental privileges.⁴⁵⁶ On the whole, the privileges of the Consulado were confirmed⁴⁵⁷ and enlarged.⁴⁵⁸ Nothing, however, is a better proof of its success as an independent tribunal than its survival until well into the XIX Century, when its judicial role was taken over by a newly created branch of the ordinary judiciary.⁴⁵⁹

It is beyond the scope and possibilities of this study to attempt an evaluation of the role played by the Consulado in the development of the Peninsular economy. - For the purpose of this Chapter it is sufficient to record its existence and its institutional vigour as a necessary support of an economic activity commensurated with that of the most advanced European and Mediterranean areas during the period under consideration. As such, the Peninsular Consulados and other commercial and maritime courts were part of a general Western European legal development;⁴⁶⁰ but their role in it was by no means that of passive travellers.⁴⁶¹ They were highly innovative in at least two areas, Procedural Law and Insurance Law.

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

crucial in order to achieve an equitable solution of disputes.⁴⁶²

Valencia was amongst the undisputed leaders in Procedural Law. The Orde Judiciari de la Cort dels Consols de Valencia,⁴⁶³ with all its numerous references to the Costums de mar of Barcelona⁴⁶⁴ and - as stressed by José María Font Rius - its open clause allowing for the incorporation complementary legislation or new judgements,⁴⁶⁵ was the first known procedural code of its kind.⁴⁶⁶ It was not only followed in Valencia, but also in Majorca - where an official copy was forwarded,⁴⁶⁷ Barcelona, Perpignan and other courts of Aragon, as well as in Castille, France, and Italy.⁴⁶⁸ Other well known rules of procedure complementing and updating those of Valencia were the Ordre Judiciari de la Cort dels Consols de Mar de Barcelona,⁴⁶⁹ and those found in the Ordenanzas of the Consulados of Burgos,⁴⁷⁰ Bilbao,⁴⁷¹ and Seville.⁴⁷²

In the area of maritime insurance, the Ordenanzas de Seguros Marítimos of Barcelona, written by the merchant's "Universitas" and sanctioned by the authorities in 1435, 1436, 1458, 1461, 1481, and 1484., formed a veritable insurance code, which included a first attempt to control the solvency of the insurer.⁴⁷³

"La sistemazione giuridica presuppone ovviamente l'esistenza di una pratica assicurativa," says Mario Del Treppo, who adds that "a Barcellona, tra il 1435 e il 1484, l'assicurazione marittima fu l'oggetto di un profondo e originale lavoro di sistemazione e

di interpretazione, destinato a costituire un modello nella legislazione commerciale agli albori dell'età moderna, anche per gli stati italiani."⁴⁷⁴

In Castille, the Prior and Consules de la Universidad de Mercaderes de Burgos compiled the Ordenanzas para los Seguros Marítimos of 1537 - where reference is made to a similar codification made in 1500, now lost - established a compulsory policy type that could not be altered in any way without permission from the Prior.⁴⁷⁵ The Ordenanzas of Bilbao of 1520, 1526, 1531, and 1560,⁴⁷⁶ and those of Seville of 1553 and 1556,⁴⁷⁷ which contained a variety of policy types for specific uses - incorporated in the Ordenanzas of Bilbao of 1560, were equally innovative at the time of their appearance. All these Ordenanzas, in conjunction with the first Ordenanzas de Seguros para la Bolsa de Amberes, promulgated by Felipe II in 1563, and the Estatutos de Seguros y Averías para Holanda y Zelanda decreed in Amsterdam in 1598, gave to the Peninsulars the world's leadership in this legal field during the XVI Century. Then, according to L.A. Boiteux - who in part reflects views expressed much earlier by Antonio de Capmany y de Montpalau, those: "Ordenanzas ont, en fait, réglementé l'assurance maritime non seulement en Espagne mais aussi en France, dans les Flandres, à Londres et jusque'à Hambourg où de nombreux marchands espagnols s'étaient installés."⁴⁷⁸

3

Another area in which those associated with the Peninsular maritime and commercial courts showed a considerable adroitness was in the codification of laws. The Llibre del Consolat del Mar,⁴⁷⁹ probably the outcome of the efforts of a Secretario of the Consulado del Mar of Barcelona,⁴⁸⁰ was the most comprehensive maritime code of its time. Praised in later days by a host of well known jurists, including Hugo Grotius, it was translated into a number of languages and served as the standard maritime code in several jurisdictions outside the Peninsula. Here it was in continuous use from the XIV century until the promulgation of the Código de Comercio in 1829.⁴⁸¹ The Llibre del Consolat del Mar, and other compilations that were incorporated into it, such as the Ordinacions de la Ribera marítima de Barcelona,⁴⁸² the Costums de Tortosa,⁴⁸³ the Capitols del Rey En Pere sobre los fets e actes marítims⁴⁸⁴ and the Capitol del Libre del Consolat de Mar sobre esportades d'Alexandria,⁴⁸⁵ share a common denominator: directness and simplicity. This, which was also characteristic of more specific ordinances,⁴⁸⁶ is a clear evidence of the eminently practical purpose with which those laws were collected: to clarify a number of contractual relations and to render fast judgements possible.⁴⁸⁷

Whilst the impressive record of the maritime and commercial courts in the realm of law reception, creation, and codification is readily apparent, how well they lived up to their avowed purpose of delivering prompt and equitable justice is much more

difficult to assess.⁴⁸⁸ If one relies on the perceptions of the users, some very positive,⁴⁸⁹ others very negative,⁴⁹⁰ the most sensible answer has been provided by Manuel Basas Fernández: their opinions varied in accordance to the way their personal case fared at the court.⁴⁹¹ As to the probity of judges, another basic element of the courts capacity to achieve just settlements,⁴⁹² there is evidence that it was by no means uncommon for the judges to pass sentence against themselves⁴⁹³ which was indeed a rather remarkable feature. The case of Jaume Pou also shows that for all their prestige and importance in the local government, the Consules were not always able to interfere with it, or change the course of the ordinary justice.⁴⁹⁴

Perhaps, the most relevant aspect of the maritime and mercantile courts was their laws. They were not born out of the sudden inspiration of the jurist or the fiat of the legislator. Their laws were the product of custom, of a free exchange of ideas, and the practical decisions of countless anonymous merchant-judges, mariner-judges, and arbitrators of the same extraction. Two historians as far apart in time as Antonio de Capmany y de Montpalau⁴⁹⁵ and José Maria Font Rius⁴⁹⁶ are in full agreement on that. Ferran Valls i Taverner has shown that at least part of the codification effort was entirely private, without any intervention of the public authorities.⁴⁹⁷ But nothing can reflect more eloquently the spirit of those courts, their mixture of respect for tradition and precedent⁴⁹⁸ with a

practical open mind to solve unforeseen problems than the article

41 of the Orde Judiciari de la Cort dels Consols de Mar de

Valencia:

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

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

IV. Concluding Remarks

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

If we think for a moment in hypothetical terms, and in terms of taxes, it is easy to envisage a number of combinations by means of which a businessman could have turned that legal system very much to his advantage. He could marry someone exempted from Alcabala,⁵⁰¹ or, less drastically, he could acquire residence in the most advantageous place,⁵⁰² or enter into a series of partnerships that would secure him an array of tax exemptions over the area in which he was interested to trade.⁵⁰³

These perfectly legal and fairly obvious ways of reducing the tax burden were used, and were just a few of the many options available to achieve that.⁵⁰⁴ If we consider credit, another crucial factor for a high level of economic activity, it was common, as we have seen, for things as diverse as shipping⁵⁰⁵ and the purchase of land.⁵⁰⁶ It was also sanctioned and practiced for something as official as export taxes,⁵⁰⁷ not to mention purchases to satisfy the requirements of life,⁵⁰⁸ and that borrowing at various rates of interest⁵⁰⁹ by cities⁵¹⁰ and professional universitas⁵¹¹ was normal and endorsed by the Crown.⁵¹² The Bishop of Burgos agreeing to pay punitive interest for delays in the discharge of a contract⁵¹³ and the role of the Church amongst the creditors reaching a composition with Lérida to re-finance the debts of the city⁵¹⁴ are instances that would suggest that the Church, a major actor in the economic life of the period, understood and participated in those activities. They would also endorse the well substantiated views of Raymond de Roover⁵¹⁵ and Abbot Payson Usher⁵¹⁶ who asserted that the Church neither held a monolithic attitude towards money lending and interest nor was it entirely opposed to it,⁵¹⁷ and thus it was not per se an obstacle for the development of an active economic life. The lending and general economic activities of the Orden de San Juan de Jerusalén in Aragon and Navarre⁵¹⁸ would also corroborate their views.

Proceeding in the realm of actualities, examples of loans⁵¹⁹ -

often "international" in nature,⁵²⁰ pledges,⁵²¹ mortgages,⁵²² sureties⁵²³ - often given by none other than the King,⁵²⁴ unsecured debts,⁵²⁵ contracts of services,⁵²⁶ sales,⁵²⁷ and "ad plantandum",⁵²⁸ usufruct,⁵²⁹ emphyteusis,⁵³⁰ rental of beasts of burden,⁵³¹ tools,⁵³² and other means of production⁵³³ or transportation,⁵³⁴ rental of rights,⁵³⁵ rents,⁵³⁶ and taxes,⁵³⁷ as well as "permutas",⁵³⁸ and contracts of "cambio",⁵³⁹ all of them indicative of an economically active society, are by no means uncommon. In addition to that, the very considerable expenditures for defense and public works carried out by the merchant universitas⁵⁴⁰ and the cities⁵⁴¹ via taxes, presupposes a tax base capable of bearing them without major detriment to its revenue generating power. The cities were, according to Ramón Carande y Thovar, unsurpassed, amongst the public institutions, in their debt contracting capacity,⁵⁴² probably a significant factor behind their high visibility in the economic life of the period. Legally, one can see them engaged in such diverse acts as buying and selling titles,⁵⁴³ purchasing cities,⁵⁴⁴ "lugares",⁵⁴⁵ water works⁵⁴⁶ or the privilege of incorporation into a larger city,⁵⁴⁷ floating "baratas",⁵⁴⁸ and other financial obligations,⁵⁴⁹ guaranteeing large debts for military services rendered to them on credit,⁵⁵⁰ or increasing their landholdings via adverse possession,⁵⁵¹ with considerable ease and dexterity.

The views of Carande y Thovar regarding the financial capacity and activities of the cities are largely shared by José

María Lacarra y de Miguel. He notes, for instance, that the "Ayuntamiento de Zaragoza podrá resarcir con mil monedas de oro a los ganaderos de la ciudad de las pérdidas sufridas en la guerra (1301); comprar la Puebla de Alfindén en 13.000 sueldos (1315); hacer al rey donativos de mil cahíces de trigo y otros tantos de cebada y avena (1344); dar para la guerra con Castilla 50.000 sueldos y poner en pie de guerra mil hombres, 500 ballesteros y 500 lanceros (1356); comprar la villa de Zuera en 170.000 sueldos, ayudando en esa forma al rey a resarcirse de los gastos de la guerra (1366)."⁵⁵² Lacarra y de Miguel sees a general expansion in the financial capabilities of the municipalities during the XIV and XV Centuries.⁵⁵³ Such development required a corresponding growth of their tax base, unattainable without a parallel movement in the general level of economic activity. This, in turn, implied the increasing use and refinement of the legal institutions and the entire legal fabric of the Peninsular economy.

Though not necessarily saying that the economy moved in the direction suggested by the above mentioned authors, or even that the number of economic transactions actually increased, the documentary evidence examined in this Chapter clearly reveals the existence of an ongoing process of maturation at the legal end of the Peninsular economy. Further to the manifest liveliness of the Peninsular legal framework, both cause and effect of its development, the concessions obtained in France,⁵⁵⁴ Flanders⁵⁵⁵

and England,⁵⁵⁶ and treaties such as the one concluded with the Hansa,⁵⁵⁷ with Tunis,⁵⁵⁸ with Bougie-Tunis - which assured the Aragonese the equivalent of the most favoured nation clause,⁵⁵⁹ or the long standing one between Castille and France - which as Carmelo Viñas y Mey noted, it survived for one hundred and forty years the turbulent relationship with that Kingdom⁵⁶⁰ - would suggest that economic exchanges with the Peninsula and the Peninsulars seemed rather important to the signing parties. Moreover, the relentless and successful litigation carried out in Flanders by the Peninsular "nations" against the "nations des Ytales" (Genoa, Venice, Florence, and Lucca) to force them to pay the "Derecho de Avería" - due on all merchandise loaded on Peninsular vessels in the Italian Peninsula and Southern France and payable to the "nations" of Vizcaya and Catalonia up to the Strait of Gibraltar and to those of "Espanne" (Castille) and Guipúzcoa from there to Flanders⁵⁶¹ - is another indication that the economic activities of the Peninsulars were not limited to the home market, and that abroad they may have been a force to be taken into consideration. This example is all the more suggestive when one takes into account that the Peninsular "nations" were far from united in Flanders, and were often litigating amongst themselves over this issue.⁵⁶²

We may, in the final analysis, agree or disagree with the contention of Capmany that the bank insurance laws, enacted like most ad hoc legislation at the request of the interested parties,

could only be the result of a relatively important banking activity.⁵⁶³ We are hesitant to generalise his viewpoint.

However, from our examination of the legal framework, both local and "international", it does not appear to be far fetched to conclude that the limits for a high level of economic activity in the Peninsula are not to be found there. Friedrich Augustus von Hayek emphasises the significance of the predictability of the legal framework within which economic activities take place.⁵⁶⁴ In the case of the Peninsular legal framework the element of predictability was present, and sometimes refined to a high degree by virtue of its ability to incorporate automatically the customs and terms of business peculiar to each trade, which as Hans Grossmann-Doerth notes, even today regulate the internal transactions of each one of them and have a quasi-legal nature.⁵⁶⁵

In addition to this, and to offering a wide variety of ways by which economic transactions and productive activities guided by individual decisions and circumstances could be carried out, the Peninsular legal framework allowed an extensive personal input into its own development from those taking part in economic endeavours. A fortiori, the vigorous litigation in which all economic actors seem to have engaged at one time or another, which in itself was an important part of the law creating process, suggests that recourse to the courts was open and accessible to all. As far as the civil authorities are concerned, we have

documented ex abundantia the support lent by all layers of government to the legal framework in every one of the vital roles it played in the economy, as well as the generally favourable attitude of the authorities to trade and merchants.⁵⁶⁶ Far from encountering serious inhibiting factors in the area under scrutiny in this Chapter, our findings suggest that an active economy and the presence of a rather widespread entrepreneurial spirit were a conspicuous part of the Peninsular reality during the period under consideration.

CHAPTER II

THE LEGAL FRAMEWORK OF THE ECONOMY

Notes and References

1. Eli F. Heckscher, An Economic History of Sweden, Cambridge, Mass., Harvard University Press, 1954, p. 50.
2. Ibid., 32-41. Heckscher, who tackles the "Naturalwirtschaft" versus "Geldwirtschaft" controversy in general terms, rather than restricting himself to Sweden, adds the compulsory payment of taxes and dues, which implies the need to produce in excess of consumption, as a further argument to support his view of an open economy in which movements of goods played a considerable role. (pp. 40-41).

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

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

3. This can be easily corroborated by the administrative decisions to promote and protect trade and the security of those engaged in it, often clearly spelled out in their introductory clause or under the general formula "para facer bien et merced," as well as by the opinions expressed in most contemporary literary sources. The increase in tax revenues derived from an increase in trade was not alien to the favourable attitude of the authorities. A decision of King Alfonso XI of Castille to extend the duration of the fair of Santiago, as requested by the procuradores of

that city in the Cortes of Valladolid, in 1351, plainly acknowledges that interest: "A lo que dizen que en la cibdat de Santiago que ay dos fferias en el anno, et que non dura la fferia mas de tres dias; et porque la dicha cidbat esta en tal comarca que de todos los logares del dicho rregno van alas dichas fferias con sus mercadorias, et que quando a ellas lilegan, quelas ffallan desffechas por rrazon que non duran mas de los dichos tres dias como dicho es, et por esta rrazon que los mercadores e las otras gentes non pueden conprar nin vender las mercadorias, et que rreciben grant danno e yo grant menoscabo en mis derechos. Et pedieron me merced que mande e tenga por bien que cada vna delas dichas fferias que dure quinze dias. A esto rrespondo quelo tengo por bien." Cortes de Valladolid de 1351, 47, Cuaderno II, reporduced in María del Carmen Carlé, 'Mercaderes en Castilla. (1252-1512), Cuadernos de Historia de España, C.H.E., XXI-XXII, 1954, p. 153, footnote 53.

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

Claude Carrère, Barcelone, centre économique à l'époque des difficultés. 1380-1462, Paris/La Haye, Mouton & Co., MMLXVII, Vol. I, pp. 174-178, "Le marchand devant l'opinion publique."

Infante Don Juan Manuel, Libro de los Estados, I, XCIII, p. 387, "...porque la tierra se aprovecha dellos porque los mercaderos compran et venden...;" reproduced in Delia I. Isola, "Las Instituciones en la obra de Don Juan Manuel," C.H.E., XXXI-XXII, 1954, pp. 135-135, footnote 252.

4. Las Siete Partidas del Sabio Rey Don Alonso El Nono, glosadas por el Licenciado Gregorio López, del Consejo Real de Indias de S.M., Madrid, En la Oficina de Benito Cano, Año de MDCCLXXXIX, Tomo II, que contiene la IIIa. IVa. y Va. Partida, Quinta Partida, Titulo VII, Ley IV, p. 723-724: Como los Mercadores, e sus cosas, deuen ser guardados. The original spelling has been respected in this and all further quotations. Amongst many differences, V appears frequently instead of the modern Spanish U - vsan instead of usan - and U in lieu of B - deuen for deben.
5. Ibid., 721-729.
6. Ibid., 725-729.
7. Ibid., 725-726.

8. Ibid., 727.
9. Ibid., 727-728.
10. Real Academia de la Historia, Opúsculos Legales del Rey Don Alfonso el Sabio, Publicados y Cotejados con varios Codices Antiguos, De Orden y a Expensas de S.M., Madrid, En la Imprenta Real, Año de 1836, Tomo I, El Espéculo o Espejo de Todos los Derechos, one of such contemporary legal collections, is considered by several legal authorities as a preliminary draft of the Siete Partidas - Prologo, pp. IV - VI. The Fuero Real, another such collection of laws, appears to have been the actual Fuero granted by King Don Alfonso el Sabio to the cities of Santo Domingo de la Calzada y Burgos - Prologo, pp. VII and VIII respectively.
11. Opúsculos Legales, Tomo I, pp. 330-337.
12. Ibid., Tomo II, 41-42.
13. Siete Partidas, Tomo II, pp. 769-782.
14. Ibid., 769-770.
15. Ibid., 770-771.
16. Ibid., 771-776.
17. Ibid., 776-782.
18. Ibid., 776-778. Certainly a contentious issue, but the large body of doctrine cited under heading (I) of Ley X appears to be inclined to support this interpretation, p. 776.
19. Ibid., vide under heading (I), p. 776: Secundo limita, nisi testator in testamento praeciperet haeredi, ud ad certum tempus perseveret in societate...; and Tercio limita, nisi post mortem defuncti haeres cum sociis continuaret societatem, quia videretur tunc renovata cum eo...
20. Ibid., 668-718. The sale of choses in action, so important in business affairs, is specifically treated in Ley XIII, pp. 675-676.
21. Ibid., 670-671.
22. Ibid., 671-672.
23. Ibid., 717-718.

24. Ibid., 673. Contrahitur venditio etiam inter absentes per procuratorem ad hoc constitutum, vel per nuncium, vel per epistolam, etiam si res non sit in presentia. Hoc dicit.
25. Opúsculos Legales, Tomo II, pp. 87-91.
26. Siete Partidas, Tomo II, pp. 372-397.
27. Ibid., 397-415.
28. Ibid., 415-423.
29. Ibid., 405.
30. Ibid., 416.
31. Ibid., 419.
32. Opúsculos Legales, Tomo II, pp. 54-56.
33. Ibid., Tomo I, 314-330.
34. Ibid., 337-356.
35. Siete Partidas, Tomo II, pp. 423-438.
36. Ibid., 718-721.
37. Opúsculos Legales, Tomo II, pp. 92-93.
38. Siete Partidas, Tomo II, pp. 729-761.
39. Ibid., 730-731. Quaelibet res in commercio hominum existens potest locari, vel conduci. Item & usufructus alicujus rei pro certo pretio annuatim... In the rental of the usufruct of land and other property, the death of the lessee brought about the automatic termination of the contract (sed tunc motuo conductore, expirat locatio; cum de sui natura morte usufructarii finiatur).
40. Ibid., 738.
41. Ibid., 738.
42. Ibid., 749-750.
43. Ibid., 750-752.
44. Ibid., 752-758. Emphyteosis est datio res immobilis ad annum censum in scripta celebrata; & fit cum partium voluntate ad vitam recipientis, vel etiam haeredum; & si res tota casu perit, est emphyteota liberatus... (p. 752).

45. Ibid., 731.
46. Opúsculos Legales, Tomo II, pp. 105-107.
47. Siete Partidas, Tomo II, pp. 761-769.
48. Ibid., 761-762.
49. Ibid., 762-763.
50. Ibid., 763-769.
51. Ibid., 769.
52. Opúsculos Legales, Tomo II, p. 161. An interesting inclusion if indeed this was the Fuero granted to Burgos and Santo Domingo de la Calzada, two inland cities of Castilla la Vieja.
53. Siete Partidas, Tomo II, pp. 782-811. Ley I - pp. 782-783 - described thus the essence of a contract: Promission es, otorgamiento que fazen los omes vnos con otros, por palabras, e con intencion de obligarse, auiniendose sobre alguna cosa cierta, que deuen dar, o fazer, vnos a otros. E tiene grand pro a las gentes, quando es fecha derechamente e con razon..." The law accepted the oral agreements carried out through interpreters when the contracting parties spoke different languages.
54. Ibid., 790, Como Puede ser demandada lo promission, que es fecha en nome de otri sin carta de personeria. Debda de dineros, o de otra cosa, deuiendo vn ome a otro, si este debdor rescibiese promission de otro, en nome de aquel cuyo debdor es, diziendo assi: Prometedesme, que dedes a fulano tantos maravedis, o tal cosa, que le deuo yo; si el otro respondiере, que si promete, finca porende obligado, e es tenuto porende, de complir la promission. E puedele apremiar este que la rescibio del, que la cumpla; como quier que el otro, en cuyo nome las rescibio, no le podria apremiar, nin le podria demandar, que le compliesse tal promission. E non tan solamente es tenido de cumplir la promission, mas aun de pechar todos los daños, e los menoscabos, que fizo por razon de que la non quiso complir.
55. Ibid., 788-790.
56. Ibid., 811-836.
57. Ibid., 824.
58. Ibid., 826.

59. Ibid., 811-812.
60. Ibid., 826-834.
61. Ibid., 828. "... E esto seria, como si alguno ouiesse menester marauedis, e rogasse, o mandasse a algun Judio, que le diesse, o le emprestasse estos marauedis a ganacia, a el, o a su mayordomo, o a su personero, de aquel que lo mando fazer. Tal mandado como este es a pro del que lo manda fazer, porque se aprouecha de los marauedis, en aquellas cosas que mande fazer a su mayordomo, o a su personero. Otrosi es a pro del que rescibe el mandado, porque le den ganacia de los marauedis que presto. E porende dezimos, que aquel que manda esto fazer, es tenuto de pagar los marauedis, con la ganacia, a aquel que rescibio el mandato del. Ca, pue su mayordomo, o su personero, los rescibe por mandado del, tenuto es, como si el mismo los rescebiesse. La quinta manera de mandamiento es, quando vn ome manda a otro manda que faga, o de alguna cosa, a pro tan solamente de aquel que rescibe el mandada, e dé otro tercero. E esto seria, como si alguno mandasse a otro que diesse sus marauedis a ganacia a otro tercero, nombrandolo. En tal caso como este dezimos, que si este que dio los marauedis, non los pudiesse cobrar de aquel que los rescebio, que los puede demandar despues, a aquel que gelos mando dar. E esso mismo seria, si alguno mandasse a otro, que prestasse cierta quantia de marauedis a otro tercerto, sin ganancia, o otro pro que esperasse auer del prestamo." An interesting body of doctrine is cited in support of this law. From the text itself one would gather that there was considerable room to manoeuvre lending operations, and obviously to guarantee business transactions by means of loans or ad hoc deposits.
62. Opúsculos Legales, Tomo II, pp. 107-110.
63. Ibid., Tomo I, Prologo, pp. X-XI, also issued by King Don Alfonso el Sabio, to clarify some aspects of the Fuero Real.
64. Ibid., Tomo II, p. 197, Ley XXIX, Titulo de las fiaduras y de las debdas.
65. Siete Partidas, Tomo II, pp. 836-872.
66. Ibid., 841.
67. Ibid., 840.
68. Ibid., 841-842.
69. Opuscúlos Legales, Tomo II, pp. 110-112.

70. Siete Partidas, Tomo II, pp. 872-903.
71. Ibid., 887-888.
72. Ibid., 897.
73. Ibid., 897-898.
74. Ibid., 875-876.
75. Ibid., 876-877.
76. Ibid., 888.
77. Opúsculos Legales, Tomo II, pp. 112-117.
78. Siete Partidas, Tomo II, pp. 903-911.
79. Ibid., 903-904.
80. Ibid., 904.
81. Ibid., 904-905.
82. Ibid., 904-905, "El desamparamiento que faze el debdor de sus bienes, de que fablamos en las leyes ante desta, ha tal fuerca, que despues non puede ser el debdor emplazada, nin es tenuto de responder en juyzio, a aquellos a quien deuiesse algo; fueras ende, si ouiesse fecho tan gran ganacia, que podria pagar los debdos todos, o parte dellos, e que fincasse a el de que podiesse biuir..."
83. Ibid., 905-907.
84. Ibid., 905.
85. Ibid., 907-911.
86. Ibid., 909-910.
87. Ibid., 70-88.
88. Opúsculos Legales, Tomo I, pp. 220-232.
89. Ibid., Tomo II, pp. 24-28.
90. Ibid., Tomo I, Prologo, p. XI, the Leyes del Estilo are not one of the codifications made under King Don Alfonso el Sabio. Also known as Declaraciones sobre las Leyes del Fuero, they appeared probably during the reign of his son, Don Sancho, and were a clarifying set of laws, which accompanied the Fuero Real.

91. Ibid., Tomo II, pp. 241-242.
92. Siete Partidas, Tomo II, pp. 826-827.
93. Ibid., 827.
94. Ibid., 828.
95. Ibid., 828-829.
96. Ibid., 829.
97. Ibid., 829-830.
98. Ibid., 405.
99. Ibid., 416.
100. Ibid., 419.
101. Ibid., 438.
102. Ibid., 830.
103. Ibid., 830-839.
104. Ibid., 831.
105. Ibid., 832.
106. Ibid., 832.
107. Ibid., 833.
108. Ibid., 839.
109. Ibid., 833-834.
110. Ibid., 839.
111. Ibid., 169-195.
112. Ibid., 179.
113. Ibid., 180.
114. Ibid., 191.
115. Opúsculos Legales, Tomo II, pp. 191-220.
116. Siete Partidas, Tomo II, pp. 204-289.

117. Ibid., 210.
118. Ibid., 211.
119. Ibid., 212-215.
120. Ibid., 213.
121. Ibid., 214-215.
122. Ibid., 215.
123. Ibid., 238-239.
124. Ibid., 239-240.
125. Ibid., 243.
126. Ibid., 245-246.
127. Ibid., 246.
128. Ibid., 247-248.
129. Ibid., 252-253.
130. Ibid., 253-254.
131. Ibid., 254-255.
132. Ibid., 255.
133. Ibid., 255-256.
134. Ibid., 256-257.
135. Ibid., 257.
136. Ibid., 257-258.
137. Ibid., 258-259.
138. Ibid., 259.
139. Ibid., 260-261.
140. Ibid., 270.
141. Ibid., 274.
142. Ibid., 289-301.

143. Ibid., 289.
144. Ibid., 294-295.
145. Ibid., 295-296.
146. Ibid., 296-297.
147. Ibid., 298-299.
148. Ibid., 299.
149. Opusculos Legales, Tomo I, pp. 247-283.
150. Ibid., Tomo II, pp. 20-22.
151. Siete Partidas, Tomo II, p. 291.
152. Opusculos Legales, Tomo II, pp. 20-21.
153. Ibid., Tomo I, p. 248.
154. Abbot Payson Usher, The Early History of Deposit Banking in Mediterranean Europe, Cambridge, Mass., Harvard University Press, pp. 56-58.
155. Ibid., 58-61.
156. Ibid., 49-50.
157. Renée Doehaerd, Les relations commerciales entre Gênes, la Belgique et l'outremont d'après les archives notariales génoises aux XIIIe. et XVe. siècles, Bruxelles/Rome, Palais des Académies/Academia Belgica, 1941, Vol. I, pp. 1-40.
158. Ibid., 17-18.
159. Ibid., 111-115.
160. Ibid., 40-60, 106-141.
161. Usher, The Early History, pp. 56, 37-44 for evolution in Roman Law.
162. Siete Partidas, Tomo II, p. 673, "Estando delante el comprador e el vendedor, pueden fazer la vendita: e avn podria ser fecha, maguer el vno estouiesse en vn lugar, e le otro en otro, por cartas, o por mandaderos, consintiendo ambos a dos en vno en la vendita, e pagandose el comprador de la cosa, e el vendedor del precio. E avn dezimos que se podria fazer la vendita, maguer non este la cosa delante del comprador, e del vendedor, consintiendo ambos en ella, segund que es sobredicho."

163. This was the avowed desire of the compilers, clearly expressed in the introduction to the corresponding sections in the Siete Partidas, Tomo II, Tercera Partida, Titulo XVIII, p. 204; the Espéculo, Opúsculos Legales, Tomo I, p. 247; and the Fuero Real, Opúsculos Legales, Tomo II, p. 20.
 164. Ibid., Chapter I, Part II.
Usher, The Farly History, p. 59.
 165. Ibid., 56.
 166. Ibid., 56.
 167. Claudio Sánchez-Albornoz y Menguina, Investigaciones y Documentos sobre las Instituciones Hispanas, Santiago de Chile, Editorial Juridica de Santiago, 1970, particularly Documents num. VII, VIII, IX, pp. 169-170, for sales of property by husband and wife collectively; and Document XIII, p. 172, for a donation of a woman to a monastery of her paternal inheritance plus half of what she acquired during her marriage. These examples, from the early period of the Astur-Leonés Kingdom, illustrate not only the presence of complex legal concepts, but also that these legal acts were already being carried out in a manner essentially similar to that prescribed in the Partidas.
- Federico Udina Martorell, El Archivo Condal de Barcelona en los siglos IX-X. Estudio Crítico de sus fondos, Barcelona, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales, Publicaciones de la Sección de Barcelona, No. 15, MCMLI, Doc. 142, p. 305, sale of land by husband and wife in the County of Vich; Doc. 159, pp. 326-328, sale by Borrell II, Count and Marquess of Barcelona, of freehold land; Doc. 161, pp. 329-330, sale of some houses and land in the territory of Barcelona, with recognition that they were in the "Señorio" - Lordship or Seignior - of the Monastery of San Cugat; Doc. 162, pp. 330-332, and Doc. 163, pp. 332-334, barter of freehold land; Doc. 164, p. 335, sale of land with a water dam and irrigation canals. These Catalan examples, of a later date than those mentioned ut supra, but preceding the Partidas by about three hundred years, already contained the essential requirements for the acts as set down in that Code. This illustrates the common development of the Peninsular Law, and also the common use of the general principles and laws compiled in the Partidas.
168. Fritz Hartnug, Roland Mousnier, "Quelques problèmes concernant la monarchie absolue," Relazione del X Congresso Internazionale di Scienze Storiche, Storia Moderna, Volume IV, Firenze, G.C. Sansoni Editore, 1955, pp. 33-34.

169. Siete Partidas, Tomo II, p. 668, Quinta Partida, Título V, Ley I, Que cosa es vendida: "Vendida, es vna manera de pleyto que vsan los omes entre si; e fazese con consentimiento de las partes, por precio cierto en que se aueienen el comprador, e el vendedor."
170. Ibid., Tercera Partida, Título XVIII, Ley LXXVII, pp. 257-258, En que manera deue ser fecha la Carta del afletamiento de la naue, "... e la carta del afletamiento deue ser fecha en esta manera. Sepan quantos esta carta vieren, como Don Jordan, Maestre de la naue que ha nome Buenauentura, afleto essa misma naue a Aleman el Mercadero, para llevar a el con todas sus cosas, e con tantos quintales de cera, e con tantos frexes de cueros, desde Seuilla fasta la Rochela. E prometio, e otorgo el Maestre sobredicho al Mercador, de leuar esta naue bien aguisada de velas, de antenas, e de masteles, e de xarcias, e de ancoras, e de restas; e con dos naucheles, e quarenta marineros, e con diez sobresalientes armados, e guisados con sus ballestas, e quatro seruienes, e vn batel; e de todos los otros gouierños, e guarnimientos que pertenescen, e son menester a naue que va en tal viaje. E otrosi prometio el Maestre, de entrar con su naue en el Puerto de Lisbona, o en el de Ribadeo, o en el de la Coruña, o de Santander, por llevar ende tales Mercaderos que son sus compañeros, o tales mercadurias que tiene y el Mercadero allegadas. Otrosi prometio el Maestre al Mercador, de entrar; e de salir del Puerto con la naue a su voluntad, e a su mandar, e de guiar, e de guardar Mercador, e a sus cosas bien e lealmente en todo este viaje. E este otorgamiento, e este afletamiento fizo el Maestre al Mercader por dozientos marcos de plata, los quales marcos de plata le prometio el Mercador, de dar, e de pagar, a ocho dias que la naue fuere llegada al Puerto de la Rochela. E otrosi le prometio el Mercador al Maestre sobredicho, de auer cargada la naue en el puerto de Seuilla en todo el mes de Marco de tantas mercadurias quantas dichas son de suso; de manera que el Maestre pueda mouer de Seuilla en Calendas de Abril, dandole Dios buen tiempo..."

This Ley LXXVII and Ley LXXVIII - Notarial Act prescribed for the formation of a company, Siete Partidas, Tomo II, pp. 258-259, are regarded as copies of actual contracts by Julio González y González, Repartimiento de Sevilla, Madrid, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales, 1951, Tomo I, pp. 335-336. The same view, with regard to Ley LXXVIII, appears to be shared by Luis García de Valdeavellano y Arcimis, Curso de Historia de las Instituciones Españolas. De los Orígenes al final de la Edad Media, Madrid, Revista de Occidente, 1970, Segunda Edición Corregida y Aumentada, p. 291.

171. Such as the Mayordomo de la Cofradía de mareantes de San Vicente de la Mar, who, by virtue of the Privilegio de los Pescadores Mareantes, reconfirmed by a Royal Letter of 1453, was empowered to distribute the "pechos de la mar, según sus privilegios y costumbre" amongst the members of the corporation. In Valentín Sainz Díaz, Notas Históricas sobre la Villa de San Vicente de la Barquera, Santander, Institución Cultural de Cantabria, Centro de Estudios Montañeses, Patronato "José María Quadrado" del Consejo Superior de Investigaciones Científicas, 1973, p. 142, Disposición 4a.

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

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

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

Teófilo Guiard y Larrauri, Historia del Consulado y Casa de Contratación de Bilbao y del Comercio de la Villa, Bilbao, Editorial La Gran Enciclopedia Vasca, 1972, Reproducción Facsimil de la Primera Edición, 1913, Vol. I, pp. XIX-XX, Royal Letter confirming rights of Bilbao residents to buy fish in Galicia without impediment, granted at the request of the Procurador of Bilbao.

Enrique Mut Remola, La Vida Económica en Lérida, de 1150 a 1500, Lérida, Instituto de Estudios Ilerdenses, 1953, pp. 114-117, different requests of City Council to the Crown regarding the local fairs, all of them granted.

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

173. Capmany, Memorias, Vol. I, pp. 799-800, several petitions from the merchants of the Lonja (stock exchange) of Barcelona to King Alfonso V in 1453, requesting him to make peace with the Sultan of Egypt in order to restore to normality the very important Levantine trade - in very similar terms to a 1448 request from the city council, Vol. II, p. 526, taxes and other every-day business matters.

Carlé, Mercaderes, pp. 194-196, for a number of privileges requested and obtained by the weavers of Segovia, Palencia, Murcia, Soria, and other cities.

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

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

174. Guiard y Larrauri, Historia del Consulado, I, pp. XII-XIII, underlines the personal intervention of the Lords of Biscay to obtain economic privileges for the Señorío and its merchants from the Castilleian Monarchs.

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

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

175. Carlé, Mercaderes, pp. 229 and 240.
176. James E. Meade, The Controlled Economy (Being Volume Three of a Principles of Political Economy), London, George Allen & Unwin Ltd., 1971, pp. 11-28.
177. García de Valdeavellano, El Mercado, pp. 105-133.

-----, "Compra a desconocidos y compra en el mercado en el Derecho Español Medieval," Homenaje a Don Ramón Carande, Madrid, Sociedad de Estudios y Publicaciones, 1963, I, pp. 397-445.

Pierre Huvelin, Essai Historique sur le Droit des Marchés et des Foires, Paris, Arthur Rousseau, Editeur, 1897, pp. 338-359, particularly p. 346, for the general evolution of the peace of the market.

178. Mut Remola, La vida económica, p. 115, "La protección al comerciante se establece en la siguiente manera: Statuentes firmiter quod quilibet hominum undecumque sit veniens ad nundinas sive ferias supradictas sive sit debitor sive sit fideiussor, sive alias malefactor excepto homicida, sit in nostra protectione et guidatico speciali cum omnibus rebus et mercaturis suis quas secum duxerit vel portaverit usque quo ad propria sit reversus.

Los que alteraran esta tranquilidad incurrían en "iram et indignationem" del Monarca, viniendo obligados a restituto damno prius in duplum passo et penam mille morabatinorum se noverit absque remedio incursorum."

Those principles were reiterated in many confirmations and other documents related to the fairs, vide pp. 114-117; Doc. num. 29, pp. 271-272, which is a confirmation of the privilege for the Pentecost fair, given by Alfonso V in 1437; Doc. num. 30, pp. 273-274, in which the same Monarch authorised a change of a fair from August to September, in 1440, clearly due to a request from the city: "Ad supplicationem humilen vestri dilectorum, et fidelium nostrorum Patiarium, et Proborum hominum, Civitatis Ilerdae" p. 273.

Sainz Díaz, Notas Históricas, shows that the same formula and extra penalties were used to protect other Royal Privileges granted to the fishermen universitas and the town of San Vicente de la Barquera, in Biscay, even as late as 1563. Vide Pergamino Num. 29, pp. 596-601, "Ca qualquier of qualesquier que lo fisieren o contra ello o contra alguna cosa o parte dello fueren, o viniesen avrian la mia yra e pechar me han la pena contenida en dicha carta de privilegio," p. 600; Pergamino Num. 30, pp. 602-614, "E defiendo firmemente que ninguno ni algunos no sean osados de vos yr ni passar contra esta dicha carta de previllejo... ca qual quier e qualesquier

que lo ficieren o contra ello fueren o passaren, avra la ,
nuestra yra, e demas pecharme yan la pena contenida en la
dicha carta de previlegio..." p. 613; Pergamino Num. 32,
pp. 614-621, a confirmation of several privileges by King
Felipe II, in 1563, "... y mandamos y defendemos firmemente
que ninguno ni algunos no sean osados de vos yr ni pasar
contra la dicha carta de previlegio y confirmacion...
e a qualquier o qualesquier que lo fisieren e contra ello o
contra alguna cosa o parte dello fueren o pasaren, abran
nuestra Yra, e demas pechamos han lá pena contenida en la
dicha carta de previlegio e confirmacion." p. 620.

179. Mut Remola, La vida económica, p. 117, "Como vemos, el Rey no hacía más que sancionar lo que le proponían los mismos habitantes de las ciudades." Vide exempli gratia: Doc. num. 35, 36 and 37, pp. 281-286, for different Royal confirmations concerning regulations for the sale of foreign wine in Lerida.
180. Carlé, Mercaderes, pp. 154-155.
181. Ibid., 155, "E mando que todos aquellos que vinieren a estas feryas de mio señorío o de fuera de mio señorío a comprar e vender, christianos é moros é judios, que vengan salvos por mar é por tierra por todo mio señorío con sus mercadurias, é con todos sus averes.... Et mando é defiendo que ninguno non sea osado deles contrallar, nin deles fazer fuerça, nin tuerto, nin mal ninguno a ellos, nin en ninguna de sus cosas. Ca el que gelo fiziese, pecharme ye en coto mill mrs., é a ellos todo el dapño doblado...." Privilegio de Alfonso X a Sevilla.
182. Ibid., 155, "Y mando que todos aquellos que vinieren a esta feria de mio señorío y de fuera de mio señorío a comprar y a vender, christianos, y moros, y judios que vengan salvos y seguros por mar y por tierra y por todo mio señorío con sus mercadurias y con todos sus haberes." Privilegios a Badajoz.
183. Siete Partidas, Tomo II, pp. 723-724, Como los Mercadores, e sus cosas, deuen ser guardados.
184. Ibid., Tomo II, p. 723, De las Ferias, e de los mercados, en que los omes fazen vendidas, e compras.
185. Fairs, with a known and fixed place and date of meeting appear to have been a much preferred spot for the discharge of contracts. Both, the Fuero Real and the Espéculo, stressed that aspect of them - Opúsculos Legales, Tomo II, Libro II, Titulo V, pp. 41-42; and Tomo I, Libro V, Titulo VI, pp. 330-337, respectively.

186. Carlé, Mercaderes, p. 221.

Presbítero Dr. Estanislao Jaime de Labayru y Goicoechea, Historia General del Señorío de Bizcaya, Bilbao, Biblioteca de la Gran Enciclopedia Vasca, 1968, Segunda edición, facsímil de la primera, Bilbao/Madrid, 1897, Tomo II, Apéndice num. 24, pp. 813-814, Cédula del Señor de Bizcaya D. Juan Nuñez de Lara sobre las acémilas detenidas por el preboste de Bilbao Joan de Arbolancha, a judgement of the Lord of Biscay, confirming this general principle.

187. García de Valdeavellano, El Mercado, pp. 105-135.

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

188. Huvelin, Essai Historique, pp. 151-157.

189. Adolf Schaube, Handelsgeschichte der Romanischen Völker des Mittelmeergebiets bis zum ende der Kreuzzüge, Osnabrück, Otto Zeller Verlag, 1973, Neudruck der Ausgabe 1906, p. 716.

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

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

Capmany, Memorias, Tomo II, pp. 681-683, Privilege conferred by the Viceroy of Catalonia, in 1577, confirming and extending, at the request of the city and Consulado of Barcelona, the two fairs held in that city since very early days. The standard special assurances are repeated in this late XVI century example: "Volentes et concedentes inter cetera, quod in predictis mundinis et retrorundinis possint fieri omnes et quoscunque contractus, solutiones, negotiationes, cambia et acta mercantilia... sint salvi et securi veniende, stando ac etiam redeundo, et sub speciali protectione, emparamento, salvaguardia ac guidatico regiis contituti; sic quod non possint capi, deteneri, pignorari, mercari seu

aliquatenus impediri, culpa, crimine vel debitis alienis, nisi ipsi in eis principaliter fuerint aut fidejussorio nomine, obligati..." p. 683.

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

191. Carlé, Mercaderes, p. 155.

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

García de Valdeavellano, El Mercado, pp. 124-126, 128-130. Some extended the special privileges enjoyed by the merchants in the fairs to the daily and weekly markets, such as the privileges granted by Fernando IV to the weekly markets of Villalpando, Benavides and Lara, pp. 125-126. Other documents making specific mention of the special guarantees were safeconducts, such as the one granted by the Count of Galicia to the merchants of Galicia - p. 124, footnote 329, which according to Huvelin - Essai Historique, pp. 362-382 - evolved from this individual contract of insurance into a generalised guaranty of peace and security, for which the Crown became entitled to perceive an ad hoc tax.

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

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

García de Valdeavellano, El Mercado, pp. 64-68, 116-122, 126-131. Many of these Fueros extended the special privileges to the ordinary market, notably that of Leon: "Qui mercatum publicum quod fit in secunda feria pertbaverit cum nudiis gladiis, sicut ensibus et lanceis, XLa. solidos monetae regis persolvant, medietatem domino et medietatem Concilio. Qui in die predictae mercati a mane usque as verperum aliquen pignoraverit, nisi deuitorem aut fidiatorem suum et istos

extra mercatum, pectet LX solidos domino et duplet pignoram illi quem pignoravit...." p. 117, footnote 304.

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

194. Cortes de los Antiguos Reinos de León y de Castilla, Publicadas por la Real Academia de la Historia, Madrid, Rivadaneira, 1866, Tomo Tercero, pp. 869-870, Cortes de Santa María de Nieva de 1473, Petition 19. The reply clearly said: "... qual quiera que lo contrario fiziere caya e yncurra en las penas en que caen los que quebrantan tregua y seguro puesto por su rrey e sennor natural, e demas que las justicias que sobre ello fueren rrequeridas luego que lo supieren, tornen e rrestituyan los tales bienes a los queles fueron tomados e delibren las personas sin costa e dilacion alguna, so pena que pierdan los oficios e paguen las costas dobladas al que rrecibio el danno." p. 870.
195. Carlé, Mercaderes, p. 155, footnote 57, Novísima Recopilación, IX, VII, III. Here, it was further clarified that "por obligaciones ni por deudas, que qualesquier Consejos ni personas singulares debiesen a cualesquier personas, ni por sus cartas o otras sentencias, que sobre esto tuviesen los acreedores, no pudiese ser fecha ni represaria, ni execucion ni prision en las dichas personas de los que fuesen a las dichas ferias, y por la estad y tornada de ellas, salvo si fuese por su deuda propia."
196. García de Valdeavellano, El Mercado, pp. 36-37, Liber Iudiciorum, Libro XI, Titulo III; and pp. 107-108, Liber Iudiciorum, Libro XI, Titulo III, Ley II.
197. Huvelin, Essai Historique, p. 152, and according to a letter from Charlemagne - ref. 3 - was considered part of the customary law already in 796: "De negotiatoribus quoque scripsisti nobis. Quos volumus ex mandato nostro ut protectionem et patrocinium habeant in regno nostro legitime iuxta antiquam consuetudinem negotiandi." The Church, according to Huvelin, exerted a great influence in the development of a special legal protection for the merchants. "A côté de la royauté, l'Eglise affirmait de plus en plus son influence. Cette influence qui tendait à faire prévaloir des idées d'égalité, qui dégageait peu à peu les notions élémentaires du droit des gens, devait avoir une importance particulière au point de vue commercial. C'est par elle que peu à peu se formulait l'idée de la protection des pauvres et des faibles, idée qui n'était point étrangère à la sauvegarde prêtée par le roi aux marchands voyageurs." pp. 155-156.

198. Wilhelm Heyd, Histoire du Commerce du Levant au Moyen Age, Leipzig, Otto Harrassowitz, 1923, Reimpression, 2 Vols., passim. For some specific examples vide Vol. I, pp. 160-161, 318-321; and Vol. II, pp. 346-348, for similar protection given to European merchants in the Middle East.

199. Pérez-Embid, Navegación y Comercio, p. 71.

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

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

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

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

203. Carrère, Barcelone, I, pp. 32-33.
 An examination of the Cédula of King Alfonso V, establishing, in 1420, the rights and duties of the subjects of the German Emperor and the Duke of Savoy in Aragon - Capmany, Memorias, Tomo I, pp. 780-783, would corroborate the views of Carrère. A succinct argument is made in the preamble to the Cedula to defend the fairness of demanding certain duties in exchange for the security guaranteed to the foreign merchants and the profits derived from it, a rationale that bears out the conclusion of Huvelin - vide footnote 192 - regarding the evolution of this principle. If for any reason, the Crown terminated the guaranteed safeconduct, the foreign merchant

was given six months to wind up his business and leave in peace. This too, was an old established custom - Heyd, Histoire du Commerce, I, p. 323, rights of Pisans in Tripoli.

204. Probably a significant problem, if we consider Ley VI of the Quinta Partida, Titulo VII - De los Mercadores que andan descaminados, por furtar, e encubrir los derechos que han a dar, de las cosas que lieuan - a relevant witness of the time - Siete Partidas, Tomo II, pp. 726-727.
205. Rafael Gibert y Sánchez de la Vega, El Consejo de Madrid, Su organizacion en los siglos XII a XV, Madrid, Publicaciones del Instituto de Estudio de Administración Local, Serie "Estudios Históricos", 1949, p. 107.
206. Luis Suárez Fernández, "Las Bases del Reinado", Historia de España, Dir. Ramón Menéndez Pidal, Tomo XVII, La Epoca de los Reyes Católicos, Vol. I, pp. 232-238.

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

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

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

discussed beforehand by the Procuradores of the cities and the Royal Council, and, we would gather that the decision was reached prior to the actual meeting of the Cortes.

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

Gibert y Sánchez de la Vega, El Consejo, pp. 108-110.

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

209. Suárez Fernández, Las Bases, pp. 232-250, part. 241-250, for a number of objections from the cities to the workings of the agreement and their withdrawal from it. The root of the problem seems to have been the unwillingness of the cities to relinquish part of their jurisdiction on the Hermandad, for, as Gibert y Sánchez de la Vega says - El Consejo, p. 110: "La Hermandad se coloca en la esfera de sus atribuciones sobre los Consejos, tomando disposiciones que son acatadas por este." A further problem was the extraordinary contributions that the Hermandad was empowered to exact from the local Councils, which, judging by the case of Murcia in 1480, forced the Councils to impose additional taxes - Angel Luis Molina Molina, "La Economía Concejil Murciana en 1479-80", Miscelánea Medieval Murciana, Departamento de Historia de España, Murcia, Universidad de Murcia, 1973, pp. 124-126. A Real Cédula of 1498 simplified the organisation of the Hermandad and terminated its power to collect a special tax, making it dependent on the ordinary contributions assigned by the local Councils for police purposes - probably an assuaging gesture of the Catholic Monarchs, we are tempted to speculate - Gibert y Sánchez de la Vega, El Consejo, p. 110.
210. Carlé, Mercaderes, pp. 146-154. The objective can be clearly seen in the Privilegios al Consejo de la villa de Riazza, 16 de Mayo de 1304: "Don Fernando ... Sepades que por facer bien y merced al Consejo de Riazza, porque son pobres dereigados de lo que habian por razon de las guerras, e porque se pueble el lugar mejor para nuestro servicio, y sean mas ricos, y por razon que ellos no han mercado ninguno, tengo po bien de los dar que hayan mercado un dia en la semana..." p. 147, ref. 2.

García de Valdeavellano, El Mercado, pp. 60-76, 88-102.
 As the author points out - p. 89, ref. 245: "En las concesiones de mercado es frecuente indicar que tal concesión se hace por favorecer al lugar en que se otorga." Thus, the formula "por facer bien et merced" of the document quoted above, embodying that purpose, is often repeated. We find it in earlier concessions, such as the one to Haro: "Por fazer bien et merced al Conceio de Haro, et por que me lo pidieron por merced, doles que ayan mercado" p. 89, ref. 224; and, again, it is repeated by the Catholic Monarchs in 1476, in a concession to the Villa of Villada: "... e porque la dicha villa de aqui adelante se pueble y ennoblezca mas, y sea mejor poseida e abastada de los mantenimientos e cosas necesarias, tenemos por bien y es nuestra merced que agora y de aqui adelante por siempre jamas haya en esa Villa de Villada un mercado franco por el dia miercoles de cada semana...." p. 92.

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

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

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

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

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

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

Guiard y Larrauri, Historia del Consulado, Volúmen Primero, pp. LXXI-LXXIV, freedom of trade of Bilbao. "La libertad de comercio declarada en la carta-puebla, y en el privilegio

de Doña María, se complementa con las expresiones de las sucesivas cartas ganadas a los Señores, y en las declaraciones del Fuero del Señorío, cuyo era parte la villa." - LXXII-LXXIII. The privilege of 1372, ratified in 1379 declared that the townsfolk of Bilbao could: "comprar e vender francamente heredades y todo lo vuestro como homes francos e libres e que fagades en guisa lo que vieredes que mas vuestro pro sea" p. LXXIII.

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

Sainz Díaz, Notas Históricas, pp. 144-145, "Mercado franco, libre e quitó de alcabalas e de qtros tributos" granted in 1469, after repeated requests, to San Antonio de la Barquera.

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

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

Isabel González García - J. Ignacio Ruiz de la Peña, "La Economía Salinera en la Asturias Medieval", Asturiensia Medievalia, Oviedo, 1976, pp. 11-155, for the administration of the Royal monopoly of the salt, over several centuries, in this big importing region. The normal form of perception of the rent from the "alfolies" - magazines of salt - was through a farming contract along the lines specified in the mentioned Tercera Partida, Título XVIII, Ley XIII and the Espéculo - Libro IV, Título XII, Ley XXI, according to the authors - vide specially pp. 103-104.

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

215. The procedural form for special export permits was specified in the Tercera Partida, Título XVIII, Ley XX - Siete Partidas Tomo II, p. 215. Horses - according to that law - coin and bullion - Carlé, Mercaderes, pp. 303-306 - were amongst the

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

Carrère, Barcelone, I, pp. 19-22, for special license system in Barcelona.

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

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

217. Carande y Thovar, Sevilla, pp. 112-119, points out to some remarkably early attempts of the Crown to obtain a uniform system of weights and measures for the entire Kingdom of Castille. It was not entirely successful, but, according

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

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

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

Carlé, Mercaderes, pp. 175-177, with numerous references to local laws concerning weights and measures, often included in the local Fueros. All stipulated that the units used should be the same for the local inhabitants and for the foreigners, which Carlé sees as the source of a similar clause in the Fuero Real - Libro III, Titulo X, Ley I: "Mandamos que los pesos e las medidas porque venden e compran, que sean derechos e iguales a todos, tambien a los estraños como a los de la villa...", Opúsculos Legales, Tomo II, p. 87. Carlé also mentions several decrees of the Castilleean Crown, establishing the compulsory use of certain units for some

specific items in all the territory of the realm. For cloth, for instance, was the vara of Burgos, where all the cities and "villas" which were head of a "partido" had to send representatives to receive the standard units in front of a Notary.

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

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

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

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

Antonia Heredia Herrera, "Los Corredores de Lonja en Sevilla y Cádiz", Archivo Hispalense, 2a. Epoca, Tomos L-LI, Num. 183-189, Sevilla, 1969, pp. 183-197.

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

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

Carlé, Mercaderes, pp. 177-183, for many regulations concerning the quality of products in Ordenanzas and Fueros.

Carrère, Barcelone, I, pp. 438-458, 470-475, for many ordinances establishing the standard quality of Barcelona made and Barcelona dyed cloth respectively. The process to be followed and the raw materials allowed were clearly specified, and the final product must conform to the official sample in the Draper's Hall, before receiving approval and the 'Bolla', Barcelona's official seal for export.

220. Capmany, Memorias, Volumen II, Segunda Parte, pp. 866-873, Ordenanzas de los Corredores de Lonja y Oreja, of 1271, regulating the services of brokers in that city, and their responsibilities and fees.

Carlé, Mercaderes, p. 166, for one of the oldest testimonies of self-policing of services by the Cofradia de Tenderos de San Miguel de Soria, authorised by King Don Alfonso el Viejo to select two of their members for that purpose.

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

Labayru y Goicoechea, Historia General, Tomo III, pp. 737-738, Apéndice num. 43, Confirmacion de ciertas hordenanças de los pilotos de Cadiz, 8 de Marzo de 1500.

221. Siete Partidas, Tomo II, Quinta Partida, Titulo VIII, Ley X to Ley XVII - pp. 736-741, Ley XXVII and Ley XXV pp. 750-752, dealt with the general liabilities of professional and independent contractors. The core of that liability, in general terms was happily summarised in the Ley X: "... E esto que diximos de los orebzes, se entiende tambien de los otros maestros, e de los Fisicos, de los Cirujanos, e de los Albeytares, e de todos los otros que resciben precio, para fazer alguna obra, o melezinar alguna cosa, si errare en ella por su culpa, o por mengua de saber" - p. 736. Incidentally, it would appear from this paragraph and the commentaries that the liabilities were quite considerable.
222. Ibid., 377-378, "Las rentas de los puertos, e de los portadgos que dan los mercadores, por razon de las cosas que sacan, o meten en la tierra, e las rentas de las salinas, o de las pesqueras, e de las ferrerias, e de los otros metales, e los pechos, e los tributos que dan los omes, son de los Emperadores e de los Reyes: e fueronles otorgadas todas estas cosas, porque ouissen con que se mantouiessen onrradamente en sus despensas; e con que pudiessen amparar sus

tierras e sus Reynados, e guerrear contra los enemigos de la Fe; e porque pudiesen escusar a sus Pueblos, de echarles muchos pechos, o de fazelles otros agrauamientos." This law was complemented by the Ley II, of the Segunda Partida, Titulo I - Tomo I, pp. 360-362.

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

224. Carande y Thovar, Sevilla, pp. 92-97.

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

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

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

Perez-Embind, El Puerto, pp. 64-65.

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

González y González, Repartimiento, I, p. 50, ref. 124 bis, privilege of the clergy of Cordoba and its "quinteros",

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

-----, El Reino de Castilla en la Epoca de Alfonso VIII, Madrid, Consejo Superior de Investigaciones Cientificas, 1960, (Escuela de Estudios Medievales, Textos Vol. XXVII0, Tomo III, Doc. 665, Excusa de Tributación los collazos que el monasterio de Trianos tenía en Villamofol, en el alfoz de Cea, 1198 - pp. 176-177; Doc. 666, Exime de tributación los solares y collazos de Villacreses, pertenecientes a Don Tello, 1198 - pp. 177-179; Doc. 682, Confirma los Fueros de Guipúzcoa, "Piscarca maris vel fluminis sit libera", 1200 - p. 225.

225. Siete Partidas, Tomo II, p. 374.
226. Ibid., 373-375.
227. Ibid., 375-377.
228. Ibid., 374, Ley VI: "Los rios, e los puertos, e los caminos publicos pertenecen a todos los omes comunalmente; en tal manera que tambien pueden vsar dellos los que son de otra tierra estrana, como los que moran, e biuen en aquella tierra do son."
229. Opúsculos Legales, Tomo II, pp. 130-131, Fuero Real, Libro IV, Título VI, De los que Cierran las carreras, e los rios, e los exidos.
230. Siete Partidas, Tomo II, pp. 213-124.
231. Ibid., 448-449.
232. Ibid., Tomo I, pp. 151-152.
233. Ibid., 432.
234. Ibid., Tomo II, pp. 401-402.
235. García Sainz de Baranda, La Ciudad de Burgos, II, pp. 460-465, Doc. num. 48, Privilege of Alfonso XI, granting Burgos a "segund que lo avian fasta aqui" (463), in 1345.

Carande y Thovar, Sevilla, pp. 128-192

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

Miguel Angel Ladero Quesada, "Donadíos en Sevilla. Algunas notas sobre el régimen de la tierra hacia 1500", Archivo Hispalense, Segunda Epoca, Tomo LIX, num. 181, 1976, pp. 20-24.

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

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

Miguel Gual Camarena, Vocabulario del Comercio Medieval. Colección de Aranceles Aduaneros de la Corona de Aragon. (Siglos XIII y XIV), Tarragona, Publicaciones de la Excelentísima Diputación Provincial, 1968, p. 31, Doc. XI and XIII, duties established for the repair of roads.

237. Siete Partidas, Tomo II, p. 727.
238. Carande y Thovar, Sevilla, pp. 172-173, 179, numerous donations of taxes to Seville. Often, as the author points out - p. 173 - these "mercedes" originated in services rendered by the city to the Crown.

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

to the King (p. 178).

239. Ibid., 177.

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

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

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

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

242. Basas Fernández, El Consulado, pp. 149-150, "Una de las inversiones mas interesantes del dinero de averias (special tax) era para cubrir los gastos, 'en edeficios de puentes y caminos d'esta ciudad e de los puertos de la costa de lá

mar para poder llevar y carretear las lanas y otras mercaderias d'est dicha Universidad a los dichos puertos para las navegar e para traer d'ellos los fardelos'."

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

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

243. Ibid., I, 62-63, such as the artificial port and the pontoon in Barcelona; II, pp. 789-792, and a new breakwater in that city, noticeable for some very innovative techniques employed. All three works, carried out between 1439-1454, were substantially defrayed with proceeds from de Dret del Periatge.
244. Chabas Llorens, Historia de la ciudad, Tomo II, pp. 76-77, lighthouse of Denia, built and owned by the Marqués of Denia, Don Bernardo de Sandoval, by special Royal Privilege.
245. García de Valdeavellano, Historia de las Instituciones, p. 601, the old Roman - Visigothic Portorium or Teloneum tax, and indirect duty on the transit of goods for sale, paid, as the name suggests, normally at the gates of the cities, and also, with different names, at sea and river ports, bridges, "puertos secos" (inland custom houses), and other locations. The equivalent in Aragon was known as Peaje (as well as Pedaticum, Pedagium, and Peagem) - p. 606, Leuda or Lezda - p. 607.
246. Ibid., 604-606, the Almoxarifazgo or Almojarifazgo, also known as Diezmo in Northern Castille - for the 10% rate - was an import - export duty applied to all merchandise leaving or entering the realm. The equivalent in Aragon was known as Dreytos de la Generalitat, Generalidades, and in Navarre as Tablas - p. 605.
247. Siete Partidas, Tomo II, pp. 725-726. Incidentally, the introduction of the law - "Gvisada cosa es, e con razon, que pues que los mercadores son seguros, e amparados del Rey, por todo su Señorío, que ellos, e todas sus cosas le conozcan Señorío; dandole partadgo de aquello que a su tierra traxeren a vender, e sacaren ende." - and particularly commentary (I), elaborating on the rationale for the levying of these taxes, bear out, once more, the argument of Pierre Huvelin about their evolution - vide references 192 and 203 in this chapter.

248. Carlé, Mercaderes, pp. 233-234, Privilegio de Alfonso X, in 1281: "Otorgamosles otrosi, que los mercaderos que pagaren el diezmo de lo que truxieren en los nuestros puertos segund es ordenado, que non sean escatimados de entrada por los caminos, nin en las villas, salvo ende en los puertos que han a pagar su diezmo mostrando alvala de los desmeros de que como han pagado su derecho, e jurando sobre los Santos Evangelios que nos (sic) train al, sinon aquello que desmaron en los nuestros puertos..." Text also in Garcia Sainz de Baranda, La ciudad, II, pp. 431-433.

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

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

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

250. Carlé, Mercaderes, p. 156, Privilegio del Rey Don Alfonso X, exempting those going to the Seville fairs of Portazgo and other duties, in 1255: "... por fazer bien e mercet a todos los cavalleros fijos dalgo e a todos los cibdadanos e a todo el pueblo de la noble cibdat de Sevilla, quito e franqueo a todos los que vinieren a las ferias de Sevilla vezinos e estraños todos los portadgos e todos los derechos que y avien a dar..." In similar terms exemptions were granted to Badajoz, Cadiz, Talavera de la Reina, Jumilla, Segovia - pp. 156-157; and had been included before that in a number of Fueros. In that of Oreja, in 1129, it was granted in clear and very comprehensive terms: "Los pobladores de Oreja en cualquier cibdat, o en cualquier Castillo, o en cualquier villa de mi Reino estuvieren, no paguen ningun portadgo, si no fuere en Toledo. E en Toledo si alguno vendiere alguna cosa propia suya, o se de su propio dinero alguna cosa en la dicha cibdat algo comprare, no pague ningun portadgo; empero si de otro dinero en la dicha cibdat algo comprare o trogiere a vender cosa agena, pague el portadgo..." - p. 225, ref. 267. Thus, even in

Toledo, the tax exemption still applied if purchases were for personal needs, though it did not apply for business purposes; a clause that was frequent in this type of concession. Privileges of exemption of Portazgo resembling that of Oreja were also given to Calahorra, Santiago de Compostela, and to a large number of big and small towns throughout the XII, XIV, and XV centuries - p. 225-226. As the author puts it: "En el siglo XV disfrutaban de ese privilegio (exemption of Portazgo duties) no solo poblaciones de importancia como Sevilla, Soria, Logroño, Laredo, Córdoba, Valladolid, Burgos, Zamora, Segovia, Santiago, Simancas sino también pequeñas villas y aldeas como Chinchilla, Tamajón, Muela de Morón, Pareja, Frías, Almazán, Peñas de San Pedro, Hellín, Isso, Ojacastro, Escaray, Zorraquín, Valgañón, Yanguas, et." - pp. 226-227.

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

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

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

García de Valdeavellano, El Mercado, p. 155, Confirmation by Sancho IV of the privileges given by Alfonso X to Cádiz in 1284: "e otrosi les otorgaba que hobiesen feria, y que durare un mes, y los mercaderes que hi viniesen que fuesen francos y quitos de portazgo y de maltota y de los otros derechos que mercaderes debiesen dar, y esto mismo otorgaba a los vecions de Cadiz que non diesen portazgo ni maltota de quanto comprasen, o vendiesen, o sacasen del reino, nin en las tierras de las ordenes, ni de los otros lugares ningunos."

Mut Remola, La vida economica, 112-113; Documento Anexo num. 9, pp. 230-231, and num. 10, pp. 232-233, Confirmation of tax waivers by Alfonso III (1332), and Pedro III (1340) respectively.

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

252. Carlé, Mercaderes, pp. 162-164

Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Burgos de 1430, Peticion 25, pp. 89-90, "Otrosi en rrazon de lo que me fezistes rrelacion que muchos delos sennorios de ciertas villas e lugares delos mis rregnos, veyendo la grant poblacion que en Medina del Campo rrecrecia por ser las ferias francas, han arrendado e tomado e toman de cada anno las rrentas de las alcavalas delos dichos sus lugares, e que fecho neua mente ferias en las dichas sus villas e lugares, e que avn eso mismo fizieron muchos mercados en dias sennalados, e que franquean las dichas feriäs e mercados para que non paguen alcauala delo que asi vendieren, todo esto acaescio por se poblar las dichas villas e lugares, e por quelos sus tributos valgan mas... ." Cortes de Palencia de 1431, Peticion 16, p. 103, "... las quales ferias e mercados franquean e non pagan alcauala delo que ende se vende, lo qual todo fazen los dichos sennores por poblar las dichas sus villas e logares e acrescentar sus tributos... ."

253. Carlé, Mercaderes, pp. 162-164.

Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Madrid, 1435, Peticion 40, pp. 237-239; Cortes de Toledo, 1436, Peticion 3, pp. 260-263 - with particularly interesting arguments; Cortes de Madrigal, 1438, Peticion 14, pp. 324-329, where the failure of many attempts to stop the practice of having "Ferias Francas" in the Señorios without Royal consent was expressed unequivocally: "... e como quiera sennor, que vuestra alteza asi lo mando, nin por eso non se guarda nin cumple asi ante ello e por ellos se fazen muchos engannos e colisiones en tal manera que non cesan las ydas delas dichas ferias e mercados asi para vender como para comprar." The problem persisted, receiving new attention in the Cortes de Santa Maria de Nieva, 1473, Peticion 19, pp. 869-870. In 1491, the Catholic Monarchs tried once more to prevent cities and Señorios from organising "Ferias Francas" without permission from the Crown. The manner in which they addressed the problem would suggest a widespread practice:

"Por quanto algunos Perlados, Duques, Condes, Marqueses y Maestres de la Ordenes, y otros Caballeros y personas, y otros algunos Consejos de algunas ciudades villas y lugares de los nuetros reynos y señorios, por su propia autoridad sin nuestra licencia y mandado han fecho y cada dia facen ferias y mercados, contra lo que esta proveido por leyes destos Reynos..." - Carlé, Mercaders, p. 164. If the practice of organising "Ferias" and "Mercados Francos" was as widespread as the words suggest, it could also be taken as an indication of the existence of a rather well developed business sense throughout the Peninsular population.

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

Huvelin, Essai Historique, pp. 587-592. "Le système des franchises d'impôts nous retiendra davantage. Il a joué dans le développement économique des marchés au moyen âge un rôle capital. C'est en effet par des franchises d'ordre fiscal que les seigneurs ou le roi cherchent à attirer les marchands dans les marchés qu'ils veulent favoriser." - p. 587.

Schaube, Handelsgeschichte, pp. 80-93.

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

255. Andrés Marcos Burriel, S.I., Memorias para la vida del Santo Rey Don Fernando III, anotadas y editadas por Miguel de Manuel Rodríguez, Madrid, MDCCC, Ediciones El Albir, Barcelona, 1974, Carta Puebla de Cartagena, 1246, p. 484, "... vecino de Cartagena, è que sea franco, è en todo el regno de Murcia..." pp. 420-421, confirmation of privilege granted by his father exempting from Portazgo in all Leon,

and extending it to all Castille. San Fernando confirma el privilegio de exención de todo tributo que su abuelo don Alfonso el VIII habia dado a la villa de Aceca, estando a Io. de noviembre de 1188 - en Toledo a 9 de Abril de 1218. Confirma uno y otro diploma don Sancho el IV. en Toro a 2 de noviembre de 1284 - pp. 260-262. El fuero de Ledigos dado por San Fernando en la era de 1256 y sus confirmaciones - pp. 263-268. Confirma a los de Frias, y la Mola, que es su puebla, el fuero de Logroño, y todo lo que le habia concedido su abuelo don Alfonso el VIII (1217) - "Et homines de Fridas non persolvant portaticum in regno meo de propriis rebus suis" - p. 255. Confirma los fueros dados a Zorita por su abuelo don Alfonso el VIII. con el maestre de la orden de Calatava en el año 1180 - "Los hombres de término de Zorita no den portago en alguna tierra" - p. 272, pp. 270-274, confirmed in 1256. Exime la Villa de San Mancio de todo pecho y tributo - "Absolvo itaque vobis Villam illam, que dicitur villa sancti Mancij, ab omni fonsado, fonsadera et pedido, et ab omni prorsus regio pecto, et gravamine in perpetuum." - p. 281, confirmed in 1218. Confirma la exención de tributos que su abuelo habia concedido a la villa de Saelices de Ceas - "concedo, roboro, et confirmo cartam absolutionis..." in 1218, also confirmed by his son, Alfonso X, in 1256 - p. 282. Hace libres de todo portazgo en el reyno a los hombres del Hospital Real de Burgos por loas cosas del hospital - "Absolvo, itaque, et concedo, quod homines predicti Monasterii non den portaticum in aliqua parte regni mei de rebus propriis hospitalis." in 1219 - p. 287. Confirmado por don Sancho IV. en Toledo a 24 de Mayo de 1285 - pp. 287-288. Confirma los fueros de Castro Xeriz, que venian autorizados desde el conde de Castilla Garci Fernandez en el año 974 - "Et varones de Castro non dent portazgo, ni montazgo..." - p. 415, extended in 1234 to "... in tota terra de illo rege..." - p. 417 - pp. 415-418. Confirma el privilegio que el monasterio de Valverde tenia de su padre, librandole del portazgo en todo Leon, que extiende a Castilla, 1234 - pp. 420-421. This privilege was also confirmed by Sancho IV, in 1286, and Fernando IV, in 1301 - p. 421. Da al Monasterio de Palazuelos, y a su abad Emiliano, privilegio para que sus ganados apacienten por todo el reyno, y ni los monges y sus criados paguen portazgo en parte alguna por lo que lleven a comprar o vender, 1238 - pp. 439-440. Confirma los fueros de Melgar de Suso, que dio su señor Fernando Armentales, y aprobo el conde de Castilla Garci Fernandez en el año 950 - "Et esta villa non den portazgo en las tierras, nin en los mercados de Castilla." - (p. 524) in 1250 and 1251. This privilege was also confirmed by Alfonso X in 1255, Sancho IV in 1285 - who extended it to all the realm, except Toledo, Sevilla, and Murcia, Fernando IV in 1296, Alfonso XI in 1229, 1336 and 1346, Enrique II in the Cortes of Toro, in

1371, and Juan I in the Cortes of Burgos, in 1379. Further confirmations were issued by Enrique III in the Cortes of Madrid, in 1393, and by Juan II in 1408 and 1420 (pp. 523-525).

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

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

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

García Sainz de Baranda, La Ciudad de Burgos, II, p. 327, Privilegio de Mercado Franco in Burgos, confirmed and extended several times, including confirmations by the Catholic Monarchs in 1475 and Carlos I in 1524; and Privilegio de Exencion de Portazgo in a wide area for the "Vecinos" of Burgos. Doc. num. 15, pp. 420-421, Privilegio of King Fernando III (1278) exempting "Vecinos" of Burgos of Portazgo in Torquemada and Muño. Doc. num 16, p. 421, Privilegio of King Fernando III, 1219, exempting "Vecinos" of Burgos of Portazgo in Torquemada, Palenzuela and Muño. Doc. num. 53, pp. 475-476, Privilegio of King Juan I, granted in the Cortes of Burgos, 1410, "Otro si a lo que nos pedistes por merced que los vecinos e moradores desta cibdad, que non paguen portazgo, nin ronda, nin pasaje, nin peaje, nin catelania (sic) nin otro tributo alguno por doquier que fuesen en todos nuestros reynos nin sus mercaderias, nin aquellos que las trujeren por ellos segun que lo avian en Toledo, en Sevilla, e en Murcia: a esto respondemos e lo tenemos por bien que non paguen ... agora nin de aqui en adelante..." - p. 476. Doc. num. 64, pp. 489-490, Privilegio del Rey Don

Juan II ordenando no se pongan guardas a las puertas de Burgos ni cobren cosa alguna de las mercaderias de sus vecinos de paños y otras cosas. Dado en Segovia a 15 de Abril de 1407. It seems designed to add emphasis to the tax exemptions enjoyed by Burgos for it ordered the tax renters that "non pongan guardas algunas en la dicha cibdad nin demanden nin apremien a los dichos mercaderes de la ciudad de Burgos que esivan sus paños e mercaderias nin los trayan a pleito nin emplazo sobre la dicha razon nin los demanden sobre las cosas que les son vedadas fuera de la dicha ciudad que mi merced es que se guarden sus buenos usos e costumbres segun fasta aqui fueron guardados..." Thus, a number of interferences with the very ample tax exemptions and commercial privileges of Burgos were specifically forbidden. Doc. num. 65, pp. 490-491, Confirmation by Juan II, in 1422, of exemption of Portazgos for the merchants of Burgos.

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

González y González, *El Reino de Castilla*, Tomo II, Doc. 558, Concede al monasterio de Silos exención de portazgos y libertad de pastos en Castilla, 1190 - pp. 958-960. Doc. 496, Concede al monasterio de Santa Maria de Parraces exención de Portazgo para sus cosas en todo el reino, 1188 - pp. 854-855. Tomo III, Doc. 645, Excusa de portazgo en todo el reino los transportes de la Orden de Santiago, 1195 - p. 145; Doc. 668, Excusa de portazgo el transporte de las cosas destinadas al monasterio de Iéas Huelgas, 1198 - p. 186.

Guiard y Larrauri, *Historia del Consulado*, Tomo I, pp. LXII-LXXIV, aside from the exemptions granted in the Carta Puebla, Privilegio of Doña María, the Fuero del Señorío and a number of Privilegios, the Privilegio granted by Don Juan, in 1372 confirmed: "Otrosi que non dedes portazgo nin trentazgo nin oturas nin enmiendas nin peages nin entrada nin salida en ninguno de los mis lugares de mi señorío... Otrosi mando que sean quitos los mis vasallos de Bilbao en todo el mi señorío y en todos los mis lugares de portazgo y trentazgo e de oturas e de enmiendas e de peaje e de coezas e de rocaje e de todas las otras cosas que trogieren o llebaren tambien por mar como por tierra salvo el peaje de la vena que retengo para mi."

Labayru y Goicoechea, Historia General, Tomo II, Apéndice num. 30, Carta Puebla de Guernica, granted by Don Tello, Conde de Bizcaya, in 1306, pp. 843-845, "Otrosi mando que non dedes portazgo nin treintazgo et mando que en Portuondo nin en la barra de Mundaca nin en toda la canal deis fasta esta mi villa de Guernica precio ninguno de nabe nin de Bagel nin de otra mercaduria que benga et baia de este Lugar de Guernica o que ban de ella pagando las costumbres et los derechos mios et que non sean detenidos nin embargados po razon de precio..." - p. 844. Apéndice num. 31, pp. 845-848, Privilegio de fundacion de la villa de Larrabezua, granted by the Infante Don Juan in 1415, "Otrosi mando è tengo por bien que los vezinos e moradores de la dicha villa nueva de Berresonaga, que no paguen portazgo, ni Peage ni Pasage ni otro tributo alguno en adelante segun que las otras villas de mi Señorio de Vizcaya" - p. 847.

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

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

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

num. 26, pp. 265-266.

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

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

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

256. Basas Fernández, El Consulado de Burgos, pp. 192-201.

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

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

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

Luis Vicente Díaz Martín, Los Oficiales de Pedro I de Castilla, Valladolid, Universidad de Valladolid, Facultad de Filosofía y Letras, (Estudios y Documentos, num. 35), 1975, Doc. num. X, Carta plomada de Pedro I por la que confirma la sentencia dada por los justicias de Sevilla declarando a la Iglesia de Guadalupe, sus hombres y pertenencias exentos del pago de portazgo y demás tributos - pp. 124-128. The letter, written in 1403, confirms a sentence upholding the privilege exempting the Church of Santa María de Guadalupe "et todos sus ganados et todas sus cosas et que podiesen andar por todas las tierras de mis señorios et que comiesen las yeruas e veuiesen las aguas et que non pagasen portadgo nin montadgo nin tryntanadgo nin rroda nin assadura nin castelleria nin barcaje nin pesaje nin tercio nin quarto nin quinto nin otro derecho alguno, segunt que se contenia en el preuillégio que dicha eglefia tenia en esta rrason..." -

p. 125. A very ample exemption indeed.

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

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

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

257. Sainz Díaz, Notas Históricas, pp. 658-668, for an interesting sequence of events, starting with a confirmation of the old Privilegio de las Cuatro Leguas de Mar, granted in 1503, pp. 658-661; a recourse against that letter of confirmation initiated by the city councils of Reloba, Cobreces, Nobales, and Ruiseñada - pp. 661-663; Sentence in favor of San Vicente de la Barquera, ordering that the Carta de Privilegio was to be obeyed under any circumstance - pp. 664-665; and, a Carta de Privilegio y Confirmacion, requested by San Vicente de la Barquera, and granted "porque mejor e mas cumplidamente vos valiese e fuese guardada agora e en todo tiempo la dicha Sentencia e Carta Executoria, e la dicha nuestra Carta de merced en ella contenida, que todo suso va incorporado..." - pp. 665-669. This confirmation, granted in 1504, was restated by Felipe III (1599), Felipe IV (1621) and Carlos II (1676), amidst general confirmations of all the Privilegios, Gracias and Mercedes enjoyed by the city - pp. 668-670. In 1726, a Real Carta of Felipe V, issued as a result of pending litigation, confirmed once more, making reference to numerous prior confirmation, the exemption of Diezmos and Aduana taxes "de todos los géneros, mercaderias y bastimentos que necesitaren para consumo de sus casas y familias los vecinos de las dichas quatro Villas de la Costa de la Mar, Laredo, Santander, Castrouridiales, San Vicente de la Barquera, Merindad de Trasmiera, Puerto de Santoña, y demas Villas y Lugares de la dicha Costa de Mar..." - pp. 357-360.
258. Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Santa Maria de Nieva de 1473, Petición 5, pp. 843-845, requesting the cancellation of new taxes granted from 1464 onwards to "qualesquier concejos e vniversidades e fortalezas e perlados e caualleros e otras quales quier personas e a cada uno e qual quier dellos de qual quier ley estado o condicion que sean para pedir coger e llevar portadgo nuevo ny acrecentado

o pasaje o pontaje nin rroda nin castilleria nin otro tributo ny derecho alguno, por personas nin por cargas ny por bestias ny carretas nin mercaderias ny por ganados algunos ni por paso de madera por el agua ni por otra alguna cosa dello, e les mande e defienda que de aqui adelante no lo pidan ny lleven, e mande e defienda alos arrendadores e cogedores dellas e a otras quales quier personas que no lo pidan ny cojan por qual quier color nin cabsa que sea... e sy lo contrario tentaren de fazer, que qual quier gelo pueda rresystir alos vnos e alos otros poderosa mente e con mano armada syn pena alguna, e demas que yncurran enlas penas en que caen los salteadores de caminos..."

Richard Kometzke, "Forschungsprobleme zur Geschichte der Wirtschaftlichen Betaetigungen des Adels in Spanien", Homenaje a Don Ramón Carande, I, pp. 147-148.

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

259. Mut Remola, La vida económica, p. 112, purchase by the city of Lérida of the right to collect Leuda in the river Sagre from the noble Mateu de Moncada, in 1468.
260. Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Madrid de 1433, Peticion 24, p. 175; Cortes de Santa Maria de Nieva de 1473, Peticion 6, pp. 843-845. Tomo Cuarto, Cortes de Tolédo de 1480, Peticion 90, pp. 172-175, which restated the clear position of the Crown in this matter and added severe penalties for infringements. In the answer the Crown said: "Ordenamos e mandamos que de aqui adelante no se pida ni coxa delos ganados que passaren a extremo a enuajar e de los que salieren del dicho enuaje mas de vn seruicio de montadgo, segun que se acostumbro pedir e coger en estos nuestros reynos en los tiempos antiguos, e que este dicho seruicio e montadgo se pida e coxa e recabde por los nuestros arrendadores e recabdadores e receptores que nos para ello dieremos por nuestras cartas libradas e sobrescriptas por los nuestros contadores mayores, nin por uirtud de otra carta nin priuilegio alguno lo pida, sopena que qualquier que de otra guisa lo pidiere o coxiere muera por ello; e el dicho seruicio e montadgo se pida e coxa en los puertos antiguos, donde en los tiempos passados se acostumbro coger, e no en otras partes... e que no se pidan ni coxan en otros puertos algunos, so pena que qualquiera que lo pidiere o lo coxiere, muera por ello; e eso mismo, no se pida ni coxa almorixifadgo ni diezmo ni otros derechos, ni en puertos dela tierra ni dela mar, ni en barca, ni en rios, ni por otras personas ni en otros lugares; saluo por quien e como e donde se solian e acostunbrauan pedir e coger antes del dicho anno de setenta a quatro... - p. 173 - e otrosi

mandamos e defendemos que de aqui adelante no se pidan ni lleuen los dichos derechos e portadgos ni pasages ni pontajes ni rodas ni castellerias, ni borras ni asaduras, ni otras imposiciones por mar ni por tierra, ni se fagan cargas ni descargas en otros puertos de la marni en otros lugares, salvo en los que antes se fazian..." - p. 174.

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

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

Pedro López Elum, "Contribución al estudio de las relaciones comerciales marítimas de Castellón de la Plana durante los años 1412 a 1418 y 1422", Estudios de la Edad Media de la Corona de Aragón, Vol. IX, Zaragoza, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales, Estudios: XLIII, 1973, p. 258.

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

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

263. Basas Fernández, El Consulado, pp. 149-153.

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

265. Moxó, Exenciones Tributarias, pp. 173-176.

-----, La Alcabala. Sobre sus orígenes, concepto y naturaleza, Madrid, Consejo Superior de Investigaciones Científicas, Instituto "Balmes" de Sociología, 1963, pp. 26-61. "El alcabalista Lasarte se expresa en esta forma: 'vendendo aut permutando in Regnis Castellae et Legionis omnes homines ad Regiam Deciman obligantur, cuiuscumque sexus, aetatis, religionis, conditionis que sint'; o sea que, como vemos, todos los hombres del reino se hallaban obligados formalmente a tributar en concepto de alcabala. Tan sólo encontramos en la legislación la excepción en favor de los clérigos, excepción que debía cesar respecto de aquellos bienes que los mismos vendieran por vía de granjería, trato y negociación." - p. 45.

-----, "Los cuadernos de alcabalas. Orígenes de la legislación tributaria castellana.", Anuario de Historia del Derecho Español, XXXIX, 1969, pp. 317-450.

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

266. Moxó, La Alcabala, p. 39.

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

268. Ibid., 87, "Res fueron las vias o medios a traves de los cuales llegaron los nobles castellanos a percibir las alcabalas de tan gran numero de lugares: lo., por compra; 2o., por donacion real; 3o., por la simple posesion continuada..." We can see then how the Marquis of Santillana was able in his own right to declare the famous

Benedictine Monastery of Sopetrán free and exempted of all Alcabalas; also in the XV century and in the same region of Alcarria, the Count of Medinacilli, Don Luis de la Cerda, exempted his town of Cogolludo from Alcabalas in 1461.

269. Vide reference num. 253 in this chapter.
270. Carande y Thovar, Sevilla, pp. 92-94. "Ruy diaz de rojas, mio alguazil mayor en Seuilla, a pero martinez, e juan martines, mios alcaldes, sus mensageros (mostraron), en como el rey Don Alfonso, mio visabuelo, e el rey Sancho mio abuelo, e el rey Don Fernando mio padre..., les fizieron merced en que les dieron franquezas e libertades, que non pagasen ningun derecho, de todas las cosas que comprasen, o vendieren, por todos los regnos... que les yo confirmé... porque, especialmente, non fazen mençion en los priuilegios de las alcabalas, que algunos en nuestros lugares enbargan a los uezinos de seuilla, quando y acaecen, e les pedides alcabala, de las bestias que conpran. E esta gracia de las alcabalas, que la an los de cordoua e de Xerez, e de los otros lugares de la frontera, e enbiaron me pedir que en esto del alcabala que les feziere merced... e yo, con consejo, e con otorgamiento de la dicha reina donna Maria, mi abuela e mi tutora..., tengo por bien que los vezinos de Sevilla que non den alcauala de las bestias que compraren, en ningun lugar" - pp. 93-94. This confirmation of a very old privilege, with the added clarification that Alcabala was included in a general exemption of purchase and sales taxes, was granted in 1320, during the minority of the King, and again in 1360. It is a clear example of the consistency with which those exemptions were maintained, and also of the wide area covered by them - "por todos los regnos" - as well of the many cities endowed with them, in this case Cordoba, Xerez, Seville and the Sourthern frontier towns.
271. Sancho de Sopranis, La Repoblación, p. 529, Confirmation by the Catholic Monarchs "que sus vecinos fuesen quitos de diezmo e de portazgo e de todos los otros derechos que pagan otros mercaderes" in the same sense and to the same extent of the privilege granted by Alfonso X in the XIII century. In addition, this privilege of King Alfonso granted to Cadiz "...que todo mercadero extraño que hi viniese con mercaduria, que diese el tercio menos de los derechos que hoviese a dar segun dan en Sevilla." - p. 527.
272. Carande y Thovar, vide reference num. 270 in this chapter.
- Moxó, La Alcabala, p. 47, "Los Reyes Católicos, en la Ley IX de su Cuaderno de Alcabalas de 10 de diciembre de 1491, reconocen las villas, fortalezas y lugares fronterizos que debían considerarse exentos de alcabalas por privilegios

de franquicia. Las villas consignadas son: Tarifa, Teva, Olvera, Alcalá la Real, Alcalá de los Gazules, Chanhen, Antequera, Zahara, Priego, La Torre de Halaquin, Cañete, Pruna, Aznalmara, Xódar, Ximena, Gibraltar, Archidona, Alcaudete, Medina Sidonia, Alhama, Lucena, Arcos, Espeja, Vejer y Gelbés."

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

273. Juan Torres Fontes, "Las Ferias de Segovia", Hispania, Tomo III, nums. X-XIII, 1943, pp. 133-139. "... e por les facer bien e merced, entendiendo ser asy conplidero a mi seruicio e a prouecho a bien de la dicha cibdad e do los vecinos e moradores della e de las otras cibdades e villas e lugares de los mis Reynos e Sennorios e de fuera dellos, e ordenado e mando que el anno benidero del anno de mill e quatrocientos e sesenta annos, e dende en adelante en cada un anno par syempre jamas se fagan en la dicha cibdad dos ferias... E que sean libres e francas e quitas de alcauala de todas las mercadurias e ganados, e de todas otras qualesquier cosas que en ellas y cada una dellas se vendieren e conpraren e trocaren por los vendedores e conpradores dellas, saluo solamente de las heredades e de la carne muerta que se vendiere a peso y a ojo, e del pescado e sardina que se vendiere de gamella remojado, e del vino que se vendiere por menudo e por granado..." - p. 136. "...E por que es conplidero a mi seruicio e a pro e a bien de los dichos mis Reynos e Sennorios, e de mis vasallos e subditos, e naturales dellos, que lo suso dicho les sea notificado e fecho saber, e por que los que quiscyeren venir a las dichas ferias e a cada una e qualquier dellas puedan venir e estar en ellas e tornar a sus casas seguramente, mande dar esta mi carta en la dicha razon, por que vos mando a todos e a cada uno de uno de vos en vuestros lugares y jurisdicciones a quien fuera mostrada, o el dicho traslado sygnado como dicho es, que luego fagades pregonar publicamente por voz de pregonero e por ante escriuano publico e testigos por las placas e mercados acostunbrados desas dichas cibdades e villas e lugares del dicho obispado de Cartagena e del dicho Reyno de Murcia..." - p. 137.
274. Moxó, La Alcabla, p. 49, continued in Modern times.

275. Moxó, Exenciones Tributarias, p. 175, Ref. num. 51, "Cfr. Ley XIII, Tit. XVIII, Lib. IX de la Recopilación. Se consignaba esta exención en la Ley 11 del Cuaderno de 1491. Estas Exenciones en favor de religiosos tendían a centrarse, no obstante, sobre la propia institución y sus dependencias. Tenemos como ejemplo la exención de alcabalas otorgada por Juan I en 1386 al Monasterio de Santa María del Rio Seco."
276. Ibid., 175-176, included in Ley XVIII, Titulo XVIII, Lib. IX de la Recopilación.
277. Ibid., 176.
278. Moxó, La Alcabala, p. 47.
- Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Toledo de 1436, Peticion 3, pp. 260-263, for some of the abuses and attempted solutions to the problems generated by different exemptions of Alcabalas.
279. García de Valdeavellano, El Mercado, p. 155, Ref. 456, Fueros de San-Sebastián, granted by Sancho el Sabio de Navarra in 1180: "Similiter dono et concedo eisdem populatoribus de Sancto Sebastiano, que por mare ad Sanctum Sebastianum arribaverint, vel per terram ad predictam villam cum sua mercatura venerit quod non dent lezdam ibi, nec in tota mea terra; hoc solum modu retinere, quod si aliqui de populat-
oribus ad Bayonam troselos vel aliquam mercaturam comp-
araverint, et per Sanctum Sebastianum transierint, ut in alio loco vendant predictam mercaturam, non dent lezdam,"
280. Guiard y Larrauri, Historia del Consulado, Vol. I, pp. IX-XXI, LXXII-LXXV. Vide entry in Ref. num. 255 of this Chapter.
281. Carlé, Mercaderes, p. 163, "Vizcaya exenta de alcabalas."
282. Labayru y Goicoechea, Historia General, Tomo II, Apéndice num. 8, Fuero antiguo de la Merindad de Durango, pp. 775-786; Apéndice num. 19, Fundación de Plencia en Villa, pp. 804-805, "... et que nin dedes portazgos nin peajes, nin treintazgo, nin enmiendas en ningunos de mis lugares; et do bos mas que haiades por mercado cada semana el sabado con los cotos que se contienen en el buestro fuero, et feria de quince dias franca et libre cada año por Santa María de Candelaria, et terminos para Ballenas matar del agua que corre medio de Barquero fasta Portugalete: que podades poner guardas et tener buestras galeas, do mas quisieredes."; Apéndice num. 20, pp. 805-806, Carta Puebla de Bilbao, "Et que non dedes portazgo, nin treintazgo, nin enmiendas en ninguno de mios Logares: et otro si, bos otorgo que en el nuestro puerto

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

283. Ibid., Tomo III, p. 149, Fuero Viejo de Bizcaya, Otrosi dijeron que por quanto la Tierra de Vizcaia de la Encartacion y de Durango es Muy Montañosa y no siembran ni cogen Pan ni ay las otras vituallas de que se pueden Mantener, salbo del Pan y de Zebada o carne y sal y faba y otras legumbres que se suelen benir por mar e por Asturias.
284. Ibid., Tomo III, p. 149, Fuero Viejo de Bizcaya, "... que los bretones e franceses que vitualla trajeren otros cualquiera que sean amigos del dicho Señor Rey llegaron a los puertos de las costas de Vizcaia o de las encartaciones o de Asturias... que les Manden que Vengan e descarguen libres e sueltamente las Vituallas que así trageren y los vendan, y que puedan vender fierro e otra Mercaderia qualquiera que quisiere llevar, contando que no sea Vitualla ni otras cosas

de las vedadas."

285. Farmers would be the nearest translation of the term.
286. García de Valdeavellano, Sobre los Burgos y los Burgueses de la España Medieval, Madrid, Real Academia de la Historia, 1960, p. 115, nobles or "fijosdalgos".
287. Guiard y Larrauri, Historia del Consulado, Vol. I, p. LXXIV, Ley 14, Juramento de los Reyes Católicos de 1493, Titulada: Que los vizcaynos son francos de vender e comprar en sus casas guardando las ~~costume~~ privilegios a las villas, y la Ley 16, de la Libertad para vender en sus casas. Ley 10 del Fuero de 1526, "Otrosi dijeron, que habian de Fuero, uso y costumbres y libertad que los dichos Vizcainos hijosdalgo fuesen é sean libres y exentos para comprar y vender é recibir en sus casas todas é cualesquier mercaderias, asi de paño como de hierro, como otras qualesquier cosas que se puedan comprar é vender, segun que hasta aqui siempre lo fueron." - p. LXXV.

Labayru y Goicoechea, Historia General, Tomo III, p. 151, Fuero Viejo de Bizcaya, "Otro si todo hijo dalgo que es libre é quito para comprar é bender en sus casas é recibir Paños e tierra e otras mercerías cualquier que sea. Que siendo Guardado a las Billas sus privilegios usos costumbres segun usaron fasta aqui salbo si algunos tubieron Previlegios del Señor de Vizcaia en contrario sean entonces que guarden sus previlexios." "Otro si dijeron que los hijos dalgo é labradores de las tierras llanas del Condado de Bizcaia sean esentos é libres de vender Pan e bino é sidra é carne é otras viandas en sus casas en otras qualesquier comarcas a Prezio de los fieles de la tal anteyglesia."
288. García de Valdeavellano, El Mercado, p. 145, "El articulo XXXIV del Fuero de Leon establece que todo habitante de la ciudad venda su cebada en su casa, por derecha medida, sin calumnia, y el XL consigna un precepto analogo, permitiendo tambien al viñatero que venda su vino en su casa."
289. Andrés Marcos Burriel, S.I., Memorias, p. 146, Fuero de Sevilla, "E damosvos, e otorgamosvos que podais comprar e vender en vuestras casas paños, e otras mercanderias en gros, e a dental como quisieredes..."
290. Ibid., 145, Fuero de Sevilla, 1250, "Otrosi damos, e otorgamos a los del barrio de Francos, por merced que les facemos, que vendan y compren francamente e libremente en sus casas sus panos, e sus mercadurias, en gros, o a dental, o a varas, que todas cosas que quieran comprar e vender en sus casas que lo puedan facer, e que hayan hi pellegeros e alfayates, asi como en Toledo, e que puedan tener camios

en sus casas, e otrosi facemosles esta merced demas que non sean tenudos de guardar nuestro Alcazar, ni el Alcayceria de levate, nin de otra cosa, así como non son tenudos los del barrio de Francos de Toledo: Otrosi les otorgamos que non sean tenudos de darnos emprestito, ni pedido por fuerza, e damosles que hayan honra de caballeros, segun fuero de Toledo; e ellos a Nos de facer hueste, como los caballeros de Toledo..."

291. García de Valdeavellano, El Mercado, pp. 140-145.
Huvelin, Essai Historique, pp. 197 and 587.
292. Carlé, Mercaderes, pp. 162-163.
293. Guiard y Larrauri, Historia del Consulado, Vol. I, pp. XVI-XVII, LXVIII-LXXII, and specially 11-35.
294. Basas Fernández, El Consulado, pp. 36-39; "enviando memoriales, procuradores y diputados ante los Reyes y sus Consejos" - p. 37.
295. Guiard y Larrauri, Historia del Consulado, Vol. I, pp. LXII-LXVII, 32-35.
296. Jesús Elosegui, "Texto inédito (?) de documento de 1296", Boletín de la Real Sociedad Bascongada de los Amigos del País, Año XXXIII, Cuadernos 1ro. y 2do., San Sebastián, 1977, p. 88, complete text pp. 87-94.
297. Guiard y Larrauri, Historia del Consulado, Vol. I, pp. LXXIV-LXXV.
Labayru y Goicoechea, Historia General, Tomo III, Apénd. num. 9, Jura de los fueros de Bermeo y de todas las villas de Bizcaya por don Enrique, 1457, "Et luego dixo que juraua et juro a Dios e a Santa Maria e a las Palabras de los Santos Evangelios do quier que están e a la Señal de la Cruz que con su mano derecha tanxo de guardar al dicho Consejo de la dicha villa de Bermeo e a todos los vesinos della e a las otra villas de Vizcaya e les confirmaba sus fueros e preuilejos e buenos usos e buenas costumbres e franquesas e libertades e mercedes..." - pp. 628-629; Apénd. num. 10, Acta de aprobacion de los cuadernos de la hermandad y fueros de Bizcaya, 1463, "... juro a Dios (Don Enrique)... de guardar a los dichos Caballeros Escuderos hijos dalgo y labradores Y otras Personas de qualquier Estado e condizion que sean del Señorío de Vizcaya sus fueros E Prebilegios..." - pp. 630-632; Apénd. num. 14, Carta Real privilegio de D. Enrique asegurando que no habia hecho merced del Señorío de Bizcaya a nadie ni villa o parte de el, y juramento de no

apartarle de la Corona de Castilla, 1470 - pp. 645-648; Apénd. num. 15, Carta privilegio de doña Isabel jurando a Bilbao sus privilegios y el no desprender a la villa de la Real Corona, 1473, pp. 649-650; Apénd. num. 24, Jura de los fueros y privilegios de las villas y ciudad del Señorío de Bizcaya por el Contador mayor Alonso de Quintanilla, en nombre de Doña Isabel, en Santa Eufemia de Bermeo, a 7 de Abril de 1481, "... Item que en las villas e Ciudad non imporna ni demandara ni consentira que le sean puestas ni demandadas otras nuevas imposiciones ni Cargos ni servicios de maravedis, e allende de ellos que le son devidos segun el tenor e forma de los dichos sus Previllejos e libertades..."- pp. 675-677.

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

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

Apénd. num. 11, Albalá de Don Enrique confirmando la bizcainia de Orduna y todos sus privilegios, pp. 633-638, "... e que en todo gosen de los dichos previllejos e libertades e exenciones del dicho mi Condado y Senorio de Viscaya... e non de Alcabalas..." - p. 634. Apénd. num. 18, Privisiones de Don Fernando y Dona Isabel, 1475, pp. 656-659. Apénd. num. 20, Provision del Rey Catolico para que no se prenda a ningun bizcaino sobre deuda civil, 1475, pp. 662-663. Apénd. num 31, Carta Real Patente sobre el modo de entenderse

y guardarse algunos privilegios de las villas del Condado de Vizcaya facultando al licenciado Chinchilla para verlos y examinarlos, 1486, pp. 649-695.

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

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

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

302. Prieto Bances, El abasto de Oviedo, pp. 357-379.

303. Ibid., 361-362, "En realidad, los de Oviedo si eran pobres de pan y de vino. Era la constante situacion de los pueblos del norte escasos de cereales y de vino." - p. 361.

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

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

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

307. Ibid., quoted on page 480.

308. Raymond de Roover, Business, Banking, and Economic Thought in Late Medieval and Early Modern Europe, Selected Studies of Raymond de Roover. Edited by Julius Kirshner, Chicago/London, University of Chicago Press, 1974, pp. 273-284, for differences between current notion of the term, which implies tax free or moderately taxed trade, with that of the period we are considering, and in fact up to the XIX century, when it meant trade free of fraud, collusion or any other malpractice.
309. Capmany, Memorias, Volumen I, Capitulo V, pp. 397-414.
310. Charles Verlinden, "La Place de la Catalogne dans l'histoire commerciale du monde Méditerranéen Médiéval. I Avant 1300. II. de 1300 à 1500.", Revue des Cours et Conférences, XXXIX, I^{ère} Série, Paris, 1937-1938, pp. 586-606, 737-754.
311. Vide Ref. 255 in this Chapter.
312. García de Valdeavellano, El Mercado, pp. 152-153.
- , Sobre los Burgos, p. 97, "En el año 1129 Alfonso 'el Batallador', siguiendo la politica repobladora de su padre, Sancho Ramirez. otorgo el fuero de Jaca a los 'francos' que poblasen en el llano de San Saturnino de Iruña o Pamplona, concediendoles un mercado propio y eximiendoles del pago de los impuestos de trafico en todo su Reino."
- López, Memorias Históricas, p. 81, "10 Idem. Que para que la dicha ciudad se pueda mejor poblar, de alli en adelante, para siempre jamas, que no paguen los vecinos y moradores de Cuenca y sus arrabales fonsadera ni moneda, salvo la moneda forera de siete en siete años."
- Justiniano Rodríguez Fernández, "Fuero de Laguna de Negrillas", Archivos Leoneses, Año XXX, nums. 59-60, pp. 291-316, "III, todo vasallo del poblado de Laguna non de portadgo en alfoz nin en termino de Laguna nin alfonsadera" - p. 309, granted by Alfonso IX for Laguna de Negrillas and its 13 "aldeas" (hamlets or villages) and confirmed by several monarchs in 1303, 1336, 1369, 1401, and 1408 - pp. 291-295.
- Sainz Díaz, Notas Históricas, pp. 16-22.
313. García de Valdeavellano, El Mercado, p. 152, Fuero of Melgar de Suso, granted by Fermin Armentales and approved by Count Garci Fernandez in 950.
- Labayru y Goicoechea, Historia General, Tomo II, Apénd. num 17,

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

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

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

Mut Remola, La vida económica, p. 35.

315. García de Valdeavellano, El Mercado, pp. 152-153, "Fuero dado por el abad de Oña don Pedro a los pobladores de Cornudilla: '9. Quicunque etian domos habuerit et vecino fuerit in ipsa villa non det portaticum in ipso mercato'." - ref. 448.
316. Ledesma Rubio, La encomienda de Zaragoza, p. 73.
317. Mut Remola, La vida económica, Doc. Anexo num. 5, pp. 225-226, Martín I establece la agregación de Borjas Blancas y parte real de Castellots. Remisión y absolución de crímenes

y delitos cometidos por los que irán a poblar estos lugares, excepto los autores de crímenes de lesa majestad, falsificadores de moneda o hayan dañado o injuriado vecinos de Lérida.

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

318. Libro de las Bulas y Pragmáticas de los Reyes Católicos, Madrid, Instituto de España, 1973, Provision que exime de portazgos y otros impuestos personales, por ganados y mercancías, en las ciudades, villas, lugares y fortalezas del reino de Granada a los que vayan a ellas, p. 131 and back.
319. Labayru y Goicoechea, Historia General, Tomo II, Apéndice num. 31, Privilegio de fundación de la villa de Larrabezua, 1367, "Otrosi por fazer bien e merced a los que vinieren a poblar la dicha villa, e porque ellos mas ayna se puedan poblar mando que todos los labradores que sean moradores dentro de los dichos terminos que yo do a la dicha villa que vinieren a poblar e morar la dicha villa que pechen del dia que vinieren a morar en la dicha villa en adelante los pechos que les fueron echados segun que pechan los otros labradores de Vizcaya e todos los hixos dalgo de los dichos terminos que quisieren venir a poblar e morar e ser vezinos de la dicha villa..." - p. 847. This was a fairly typical clause, excluding local residents from the temporary exemptions of Pechos and other land tributes and obligations granted to outsiders - Vide corresponding part in entry in ref. 313 of this Chapter - with the obvious purpose of avoiding depopulation. Exemptions of Portazgos, Alcabalas and other transit or consumption duties were common to all and of a permanent nature, but special deals were often offered to new settlers, their tools, and personal belongings. An idea of amounts paid as Pechos or canons is given in pp. 671-675.
320. Ibid., Tomo II, p. 603, Carta Puebla of La Fenestrosa granted in 1287 by Don Lope Diaz, Señor of Vizcaya and Count of Haro. For complete text, vide pp. 800-802.

Rafael de Urena y Smenjaud, Edit., Fuero de Cuenca (formas primitiva y sistemática: texto latino, texto castellano y adaptación del fuero de Iznatoraf), Madrid, Real Academia de

la Historia, 1935, Cap. I, Ley 8, p. 121, "... qual quier que a Cuenca viniere poblar, de qual quier condicion que sea, e si quier sea xristiano, si quier moro o judio, si quier franco, si quier siervo, vengan seguros e non responda por enemistad, nin por debda, nin por fiadura, nin por erencia..."

321. Carande y Thovar, Sevilla, pp. 92-97.

González y González, Repartimiento, I, pp. 312-346.

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

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

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

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

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

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

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

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

González y González, El Repartimiento de Sevilla, I, p. 51, Ref. 124 bis, 452-453.

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

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

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

José Luis Martín, "Nacionalización de la sal y aranceles extraordinarios en Cataluña (1365-1367).", Anuario de Estudios Medievales, 3, Barcelona, 1966, pp. 521-523.

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

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

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

330. Valdeón Baraque, Un Ordenamiento, pp. 285-287, "Obreros y monederos de la Casa de la Moneda de Sevilla obtuvieron privilegio de no ir en huste ni armada, no pagar pecho, moneda, vela, ni otro impuesto Consejoil," granted by Alfonso XI and confirmed by Enrique II in 1370; and the Catholic monarchs in 1478.

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

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

Roughly thirty years after the Siete Partidas declared students' materials free from Portazgo duty, "Philippe, Roi des Français," ordered in 1297 that "les objets appartenant aux maitres et aux étudiants de Paris circulent sans payer de Tonlieu" - Alphonse Guillaume Guislain Walters, Table Chronologique de Chartes et Diplômes Imprimés concernant l'Histoire de la Belgique, Bruxelles,

F. Hayez, Imprimeur de l'Academie Royale de Belgique, 1881, Tome VI, p. 586.

333. Cortes de los Antiguos Reinos, Tomo Cuarto, Cortes de Toledo de 1480, Peticion 98, p. 179, "Considerando los reyes de gloriosa memoria quanto era prouechoso e honrrroso a estos sus reynos se traxiesen libros de otras partes, para que con ellos se fiziesen los hombres letrados, quisieron e ordenaron que delos libros no se pagase alcauala, e porque de pocos dias a esta parte algunos mercaderes nuestros naturales e estrangeros han traydo e de cada dia traen libros muchos buenos, lo qual paresce que redunda en prouecho universal de todos e ennoblecimiento de nuestros reynos; por ende ordenamos e mandamos que allende dela dicha franqueza, que de aqui en adelante de todos los libros que se traxesen a estos nuestros reynos, asi por mar como por tierra, no se pida ni se pague ni lleue almorixadgo ni diezmo ni portadgo ni otros derechos algunos..."
334. Ibid., Peticion 90, pp. 172-175, "... e porque es notorio que de todo lo susodicho se ha seguido menguamiento e perdimiento de la cabanna de los ganados destos nuestros reynos e grand agrauio de los pastores, recueros e labradores e mercaderes e mareantes e caminantes, e grand carestia en las carnes e ganados e calzado e otras cosas, que sobresto los dichos procuradores de Cortes nos han suplicado mandasemos proueer e remediar..." - p. 172.
335. Capmany, Memorias, Volumen II, Primera Parte, pp. 735-738, Traslado de varios capitulos de Actos de Cortes, relativos al fomento del comercio, industria y navegacion de Cataluña, propuestos y otorgados en las Cortes de Barcelona de 1481, y en las de Monzon de 1547; de 1553; pp. 739-744, Traslado de varios Capitulos de Actos de Cortes, relativos al fomento del comercio y navegacion de Cataluña, propuestos y otorgados en las Cortes de Barcelona del año 1599, y 1702. A common denominator of these decisions is the tendency to assure - via the tax system - an adequate supply of raw materials and local processing to stages as close to final products as economically possible, as well as to avoid double taxation.
336. García de Valdeavellano, Sobre los Burgos, pp. 109-115.
Cortes de los Antiguos Reinos, Tomo Tercero, Cortes de Burgos de 1430, Peticion 34, p. 94, for an illustration of the success of tax exemption schemes. Vide also ref. num. 252 and 253 in this Chapter.
337. Guiard y Larrauri, Historia del Consulado, pp. XVIII-XIX, echoes the views of reputable contemporary sources, such as Gonzalo Fernández de Oviedo, Fray Tomás de Mercado, and

Luis Valle de la Cerda.

338. Rafael Antúnez y Acevedo, Memorias Históricas sobre la legislación y gobierno de los españoles con sus colonias en las Indias Occidentales, Madrid, En la Imprenta de Sancha, Año de MDCCXCVII, pp. 250-258, Del Derecho de toneladas; pp. 177-207, De la contribucion de averia.
339. Basas Fernández, El Consulado de Burgos, pp. 187-188, 190. agreements between the "Condestable" of Castilla, D. Pedro Fernández de Velazco, holder of the "Diezmo de la Mar", and the "Universidad de Mercáderes" of Burgos, in 1480 and 1503, concerning the list of goods subject to the tax, the rates, and the mode of collection, generally on credit terms and payable at a given fair - p. 190.

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

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

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

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

Capmany, Memorias, Volúmen II, Primera Parte, pp. 543-545, Privilegio de D. Juan Rey de Navarra, y Regente de los Reynos de Aragon, en que confirma y amplia varias Reales

gracias al Gremio de los Pelayres de la Ciudad de Barcelona acerca de la facultad de imponer y exigir ciertas gabelas para el bien comun de su Comunidad, Barcelona, Marzo 1457."

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

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

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

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

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

341. Basas Fernández, El Consulado de Burgos, pp. 146-154, 185-192.

Carrère, Barcelone, I, pp. 52-69.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 59-112.

Robert Sidney Smith, The Spanish Guild, pp. 105-111, pp. 139-141, Appendix VI, Revenues of the Barcelona (Periatge Duty) and Seville (Blanca al Millar, Escrivanias) Guilds.

342. Basas Fernández, El Consulado de Burgos, p. 188, "Que a todos los mercaderes que son de la Universidad de Burgos, conforme al asiento y concierto que sobre ello hay, se les carga la masia a 740 mrs. el millar que es a 74 mrs. por ciento y de alli abajo al respecto. A todos los otros mercaderes d'estos reinos y fuera d'ellos se les carga a 800 mrs. el millar y de alli abajo al respecto."

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

343. Capmany, Memorias, Volumen I, pp. 333-337; Volumen II, Segunda Parte, pp. 860-866, pp. 1025-1045, Catalogo Cronologico de los Consellers del Ayuntamiento de Barcelona de 1455 a 1714.

Carrère, Barcelone, I, pp. 507-513

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

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

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

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

Carrère, Barcelone, I, p. 511, "Une vielle contestation existe entre la municipalité et les parayres, au sujet de laines anglaises livrées en 1441 et n'ayant pas la finesse

requisie. Les parayres se sont tournés vers le roi, pourtant à Naples, et en ont obtenue une provision que les Conseillers jugent 'molt per judicial a les constitutions de Cathalunya e privilegis de la ciutat.' Les consuls des parayres ont présenté cette provision au Gouverneur, lequel a assigné devant lui les Conseillers et les administrateurs de la Taula."

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

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

345. Ibid., 369, challenge and subsequent legal action of tax collector Velasco Perez, of Zamora, of the tax exemptions allegedly abused by merchants of Oviedo.
 346. Mut Remola, La vida económica, Doc. Anexo num. 6, p. 227, Formula del juramento para los que se avecindaran en la ciudad; Doc. Anexo num. 7, p. 228, Jaime II ordena al Bayle de Lérida que guarde a los avecindados en la Ciudad, las franquicias que tienen los vecinos y naturales de Lérida, 1294.
 347. Prieto Bances, El abasto de Oviedo, pp. 360-379, for some of the innumerable examples of these activities of the cities on behalf of the economic interests of their "vecinos" and "avecindados".
 348. Particularly noticeable by the extra advantages offered by comparatively less attractive places, such as: Collantes de Terán Sánchez, Puente de Viar, pp. 117-118. Fernando Giménez de Gregorio, "Tres puentes sobre el Tajo en el Medievo", Hispania, Tomo XIV, num. LIV-LVII, 1954, pp. 204-205.
- Sancho de Sopranis, La Repoblación y el Repartimiento de Cadiz, pp. 483-539.
349. Gibert y Sánchez de la Vega, El Consejo de Madrid, p. 293, Madrid demanded heavy sureties from the "vecinos" who left town for whatever circumstances, a common practice to

discourage emigration.

350. Particularly in view of the fact that "voting with the feet" was by no means uncommon in Medieval and early Modern times. Often, a generous immigration policy had a crucial effect in the economic development of a place; such as Genoa, for instance, which owed so much to disgruntled Flemish and other immigrants - Doehaerd, Les Relations commerciales, I, Chapitre III, pp. 149-186.
 351. Vide for instance the constant litigation between Portugalete and Bilbao - Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 66-67.
 352. Prieto Bances, El abasto de Oviedo, p. 375.
 353. Carrère, Barcelone, I, p. 432.
- Prieto Bances, El abasto de Oviedo, p. 362.
354. Carlé, Mercaderes, p. 195, "Y Murcia, cuyos hombres, dieciseis años mas tarde, solicitaban a Alfonso XI que derogara la disposicion por la cual su bisabuelo, Alfonso X, les prohibiera emplear el tinte judio, grana, lacar y brasil, reservandose su monopolio. Podrian entonces en Murcia, como en muchos otros lugares - afirman los peticionantes - teñir y tejer paños. En las Cortes de 1313 el monarca accedia a su pedido, segun consta en privilegio expedido en Cuellar el 8 de Agosto del mismo año y confirmado el 25 de Mayo de 1322."

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

Cortes de los Antiguos Reinos, Tomo Cuarto, Cortes de Toledo de 1480, Peticion 79, pp. 152-153, "Mucho se agrauian algunos pueblos de ciertas prouincias de nuestros reynos por una merced nueuamente intentada quel dicho sennor rey don Enrique nuestro Hermano, fizo a ciertos cavalleros para que todos los cueros delos ganados que en ciertos obispados e arzobispados se ouiesen de uender, fuessen traydos a lugar cierto, e alli se uendiessen en dias e lugares sennalados, e que a otra persona no se uendiesen, saluo al que tiene la dicha merced, passado cierto tiempo, e que otro alguno no los pudiesse comprar ni cargar, so cierta pena, la qual dizen que es neua inposicion e gran detrimento e danno dela cosa publica de los dichos arzobispados e obispados e de los uezinos e moradores dellos... por ende, queriendo remediar e proveer sobre ello, con acuerdo delos de nuestro Consejo quitamos el dicho derecho e inposicion e reuocamos e anulamos

la merced e mercedes e cartas e sobrecartas e otras prouisiones que sobrello tienen quales quier personas de qual quier estado o condicion, preheminencia o dignidad que sean, e quales quiera nuestras cartas de mercedes e confirmaciones que sobre ello tengan, e qual quier vso e costumbre que ayan estado delo leuar..."

355. Sainz Díaz, Notas Históricas, pp. 194-208, 658-670, Confirmacion por los Reyes Catolicos del llamado Privilegio de las dos leguas a la villa de San Vicente de la Barquera, Alcalá de Henares, 1503, "Sepades que por quanto a nos es fecha relacion que la villa de San Vicente de la Barquera tenia privilegios de los Reyes nuestros progenitores para que en la mar que esta cerca de la dicha villa de San Vicente dos leguas por largo asi de la una parte de la dicha Villa hazia la Villa de Santander, como de la otra parte hazia la Villa de Llanes, ninguna persona ni Consejo, ni Universidad no pudiesen hacer puerto, ni carga, ni descarga de mercaduria alguna, ora fuesse de pescado fresco, o salado, sino en la dicha villa de San Vicente, ni pudiesen hacer pesqueria dentro de los dichos limites, sino con licencia de la dicha villa, e no en otra manera... E assi mismo certificados que los vezinos e moradores de los dichos Consejos de Rilova, e Cobrices, e Novalles, e Roseñada antiguamente tenían pocas barcas, e pesquerias, e por esto aunque algun vezino viniessen a hazer su carga a la dicha villa de san Vicente de los que pescaba en los dichos limites, porque era de poco perjuicio se mirava tanto en ello, e agora que han multiplicado tanto en barcas, y pinazas, y pesquerias, que hazen tanto cargo, e descargo fuera de la dicha villa de san Vicente, e lo hazen en otras partes, e que si no se remediase podrian seguirse los dichos danos a la dicha villa, e a nuestros Reynos, de cuya causa si en los tiempos pasados el dicho privilegio tovo razon de ser concedido, aora mucho mas..." - pp. 194-195. With the same basic common sense the Crown confirmed the exclusive fishing rights of San Vicente de la Barquera over the rivers Deva and Nansa, very rich in salmon, which the Villa rented out every year to the highest bidder on the day of Saint John. This privilege was granted by Alfonso VIII VIII in 1210, and confirmed periodically, as late as in 1760 - pp. 285-302, 309-316.
356. María Luisa Ledesma Rubio, "Proceso de las Cortes de Maella de 1404", Estudios de la Edad Media de la Corona de Aragon, Vol. IX, Zaragoza, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales, Estudios: XLIII, 1973, p. 604, "Como experiencia haya mostrado los grandes danyos que por causa del bectigal de tres dineros por livra, impuesto en la cort que ultimamente celebramos en la ciudat de Çaragoça, se han subseguidos et se espera mayores

a subseguir si no si providia, por tanto nos de voluntat de la cort tiramos e removemos del todo el dito bectigal de las entradas de tres dineros por livra et la exaccio de aquell..."

357. Capmany, Memorias, Volúmen I, pp. 217-337, 744-779, Volúmen II, Primera Parte, Documentos Numeros: 64, 65, 66, 67, 68, 69, 70, 72, 73, 75, 86, 94, 96, 99, 105, 117, 119, 120, 121, 146, 216, 219, 220, 221, 223, 224, 225, 227, 228, 233, 240, 242, 293, 296, 298, 299, 300, 303, 320, 324, 325, 331, 344, 346, 354, 357, 360, 361, 365, 366, 368, 372, 373, 379, 385, 389, 390, 391, 396, 398, 399, 400, 409, 411, 412, 414, 415, 418, 419, 423, 428, 430, 431, 436, 449, 450, 453, 454, 456, 461, 462, 463, 464, for diplomatic activities of the Magistrados of Barcelona; Documento Numero 278, Carta de los Mercaderes Catalanes de Pisa a los Magistrados Municipales de Barcelona a fin de que el Rey de Aragon no diese auxilios a los Florentinos para subyugar a los Pisanos protectores del comercio de Cataluña.
 358. Jules Finot, Etude Historique sur les relations commerciales entre la Flandre & L'Espagne au Moyen Age, Paris, Alphonse Picard et Fils, Editeurs, 1898, passim.
 359. Guiard y Larrauri, Historia del Consulado, Vol. I, pp. XXIII-LX.
 360. Carrère, Barcelone, I, pp. 111-136, "La sauvegarde des intérêts marchands à l'étranger est assurée par plusieurs moyens dont la plupart se trouvent aux mains des Conseillers barcelonais, et qui s'échelonnent de la diplomatie proprement dite (envois d'ambassadeurs et échange de correspondance officielle avec les pouvoirs publics) à l'action permanente d'un représentant in loco." - p. 111.
- Amada López de Meneses, "Los Consulados catalanes de Alejandria y Damasco en el reinado de Pedro el Ceremonioso", Estudios de la Edad Media de la Corona de Aragon, Vol. 6, Zaragoza, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales: Estudios XXX, 1956, pp. 83-183.
- Luis Suárez Fernández, Navegación y Comercio en el Golfo de Vizcaya. Un estudio sobre la política marinera de la Casa de Trastámara, Madrid, Consejo Superior de Investigaciones Científicas, 1959, passim, and particularly the Apéndice Documental, pp. 127-239, for a good idea of that diplomatic activity, much of it in a sequential fashion.
- Carmelo Viñas y Mey, "De la Edad Media a la Moderna. El Cantábrico y el Estrecho de Gibraltar en la historia política española", Hispania, Tomo I, 1940-41, particularly II, pp. 53-79.

361. Capmany, Memorias, Volumen I, pp. 365-383, De los Consules Ultramarinos que nombraba la Ciudad de Barcelona. Volumen II, Primera Parte, Doc. num. 119, p. 178, Carta de los Magistrados Municipales de Barcelona a Simon Dusay su Embaxador Extraordinario cerca de la República de Genova...; Doc. num. 132 and 133, pp. 200-203, Traslado de algunos nombramientos de Consules ultramarinos, despachados por el Magistrado Municipal de Barcelona en tres diferentes siglos, según sus estilos y formularios, Para el Cónsul de Trapani en Sicilia - Doc. num. 132, Juramento del nuevo Cónsul - Doc. num. 134, both from 1332; Doc. num. 406, pp. 593-595, Para el Cónsul de Niza, in 1483; Doc. num. 448, pp. 654-657, Para el Cónsul de la Ciudad de Nápoles, in 1514; Doc. num. 466, pp. 679-681, Para el Cónsul de Alguer en Cerdeña, in 1549; Doc. num. 231, pp. 337-339, Capitulación ajustada entre el Consulado del Mar y el Cuerpo de Comerciantes de Barcelona de una parte, y el Cónsul electo en Damasco de la otra, sobre ciertas reglas y condiciones con que debia regirse aquel Consulado de la Syria, 1386; Doc. num. 276, 277, 295, 337, 347, and 350, communications from Consuls abroad. Volumen II, Segunda Parte, Apéndice num. 23, pp. 850-860, Catálogo de varios nombramientos de Consules Ultramarinos elegidos por la antigua Ciudad de Barcelona en diversos puertos y escalas del Mediterráneo para protección de sus mercaderías y navegantes en los siglos XIV; Apéndice 29, Noticia de las Prerrogativas, Preeminencias y Regalías que gozo por muchos siglos el antiguo Ayuntamiento de Barcelona, representado por sus Magistrados llamados Concelleres, VI, Los Diputados que embiaban los Concelleres a la Corte del Rey para tratar asuntos graves de gobierno, eran recibidos y tratados con el titulo y honores de Embaxadores: en virtud de privilegio de Don Fernando el Católico del año 1496. Igual calificación merecieron los que embiaban a Roma, Génova, Venecia, Flandes y otras partes... - p. 905.

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

362. Capmany, Memorias, Volumen I, p. 241, "Por los años 1250 la concurrencia de aquellos mercaderes a Egipto, con motivo del trato de la especería, era un objeto de tanta consideracion que el Rey Don Jayme I ajusto un tratado de comercio con el Soldan, por medio de dos experimentados navegantes de Barcelona, Ramon Ricart y Bernardo Porter, que anteriormente habian corrido aquellos mares con dos galeras suyas. En 1272 era ya Alejandria otro de los puertos de Levante donde tenian los Catalanes su consul nacional." Volumen II, Primera Parte Doc. num. 62-63, pp. 96-97, Cartas de creencia que el Rey de Aragon Don Jayme II da al Embaxador que envia al de Granada, Mahomad Aben Nacer, para ajustar paces, 1301; Doc. num. 89, pp. 129-132, Tratado de paz y amistad que ajusto por diez

años el Rey de Aragon, Jayme II con el de Tunez - through special Ambassador Honrat Guillem Ouolomar - Abu Jahia Zaccaria, sobre varias franquicias y derechos del comercio y navegacion de los Catalanos en Berberia, 1314.

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

363. Sainz Díaz, Notas Históricas, p. 492. "Soberana en el Mar durante los siglos XIII, XIV, y XV, todavia pueden verse en el Indice del Archivo General de Guipuzcoa escrituras de tregua y concordia correspondientes al periodo 1536 a 1543, establecidas entre 'diputados de Guipuzcoa, Vizcaya, Encartaciones y Cuatro Villas de la Costa del mar' de una parte, y 'los de Bayona, tierras de Labart, San Juan de Luz, Cabreton y Biarritz de la otra, estipulando comercio libre y satisfaccion mutua de daños recibidos, con promesa y seguridad de no interrumpir estas buenas relaciones durante la guerra entre España y Francia, a pesar de que ya para estas fechas se habia consolidado el poder contralizador de los reyes de España."
364. Capmany, Memorias, Volúmen I, p. 823.
365. Torres Fontes, Relaciones Comerciales, pp. 8-10, Commercial agreement and ad hoc taxes between Murcia and Mallorca agreed upon by delegates of merchants from both Kingdoms; Doc. IV, pp. 14-15, ratification by the King of Castille; Doc. V, pp. 15-16, ratification by the Regent of Majorca.
366. Capmany, Memorias, Volúmen II, Primera Parte, Doc. num. 106, 319, 321, 336, 342, 363, 364, 394; Doc. num. 438, pp. 635-636, Real Privilegio del Rey D. Fernando II, en que recibe baxo de su Real proteccion, fuero, e inmunidad, a los Consules del Mar de Barcelona, Defensores del Comercio, Consejeros, Colectores, Abogados, Oficiales y Ministros de aquel Tribunal y Casa de la Lonja, 1510.
367. Ibid., Volúmen II, Primera Parte, Doc. num. 20, 48, 49, 50, 53, 54, 60, 61, 62, 63, 74, 76, 78, 79, 85, 90, 92, 98, 102, 109, 111, 112, 114, 182, 188, 297, 346, 381, 382, 386, 387,

410, 460, the latter from the Viceroy of Cataluña to the King of France, in 1521.

368. *Ibid.*, Volumen II, Primera Parte, Doc. num. 80, 87, 179, Doc. num. 283, pp. 419-420, Carta del Soldan de Egipto a la Ciudad de Barcelona, exonerando el comercio de los Catalanos a representacion de su Consul, de ciertas gabelas que sufría contra el tenor de los tratados en el puerto de Alexandria, 1414; Doc. num. 316, p. 463, Carta del Soldan de Egipto al Ayuntamiento de Barcelona, en la cual declara, asegura y confirma a todos los Mercaderes Catalanos, la libre y pacífica contratación en sus dominios, sin lesión de sus privilegios y exenciones, conforme a los antiguos Tratados, 1437.
369. *Ibid.*, Volumen II, Primera Parte, Doc. num. 100, 115, 137, 138, 145, 153, 168, 172, 273, 275, 291, 294, 310, 315, 328, 329, 332, 333, 340, 345, 352, 353, 355, 356, 375, 380, 393. Doc. num. 145, pp. 218-219, Salvo Conducto concedido por el Rey de Inglaterra Eduardo III, a petición de las Ciudades de Gante, Ipre, y Brujas, a favor de las naves y mercaderes Castellanos, Catalanos, y Mallorquinos, que hagan el viaje de Flandes, 1340, is of singular importance for it suggests that already at that time merchants and shipping from Castille, Majorca and Catalonia were sufficiently important for those Flemish towns as to warrant diplomatic efforts on their behalf before the King of England. Doc. num 379, p. 557, Carta de los Magistrados Municipales de Barcelona al Dux de Venecia, recomendandole los mercaderes que fuesen a traficar en los Dominios de dicha Señoría, Barcelona, 9 Mayo 1459; and Doc. num 380, p. 558, Respuesta del Dux de Venecia a los Magistrados de Barcelona, sobre el asunto de la carta precedente, Venecia, 28 de Junio 1459, show a fairly typical epistolar diplomatic exchange; an interesting detail is the prompt reply, thirty days from the original letter, which suggest a good mail service and an agile bureaucracy.
- Finot, *Relations Commerciales*, pp. 317-320, Articles proposés aux échevins, jurés et communauté de la ville de Maubeuge, par les marchands d'Allemagne, de Castille, de Portugal, d'Aragon et de Plaisance pour la fabrication et le commerce de la draperie en la dite ville, vers 1355; pp. 320-322, Articles proposés et approuvés par la comtesse de Hainaut; pp. 322-324, Lettre des marchands d'Allemagne, de Castille, de Portugal, d'Aragon et de Plaisance en Lombardie, aux échevins et communauté de Maubeuge au sujet des privilèges qu'ils demandent à l'encontre des drapiers de la dite ville; pp. 324-327, Copie de la confirmation par Marguerite, comtesse de Hainaut, des privilèges accordés par les comtes, ses prédécesseurs, aux marchands d'Allemagne, de Castille, de Portugal, d'Aragon et de Plaisance en Lombardie.

370. Heyd, Histoire du Commerce, I and II, passim.
371. Schaube, Handelsgeschichte der Romanischen Völker, passim.
372. Finot, Relations Commerciales, pp. 31-32.
- Guiard y Larruari, Historia del Consulado, Tomo I, p. XXVIII.
- Wauters, Table Chorologique des Chartes, Tome VI, pp. 439 (1294), 561 (1297).
373. Capmany, Memorias, Volumen II, Primera Parte, Doc. num. 145, pp. 218-219, already commented in Ref. num. 369 of this Chapter.
374. Capmany, Memorias, Volumen II, Primera Parte, Doc. num. 43, pp. 66-67, Provision del Rey Don Alonso III de Aragon para que los corsarios que quieran armar den sus correspondientes fianzas en poder de los Jueces Reales, 1288; Doc. num. 164, p. 244, Cédula del Rey de Aragon Don Pedro IV, en que se impone a los Armadores de Mallorca, que antes de salir a corso aseguren en poder del Gobernador del Reyno de no molestar a las Naciones amigas o aliadas, y que de sus beneficios el Fisco Real cobre la décima, 1353; Doc. num. 171, pp. 254-257, Real Provision de Don Pedro IV, dirigida a los Gobernadores de todas sus Provincias maritimas, sobre las reglas y ordenanzas que deben guardar los Corsarios que debian armarse contra Genoveses y Moros, 1356, "(III) Item, lo senyor rey los dona de bona guerra tots janoveses e tots sotsmeses del senyor de Milla, e tots moros, salvant los moros del rey de Granada, e encara tos aquell(e) s qui faran o vendran contra la inhibicio general del senyor rey, en la forma que.s conte en aquella inhibicio." - p.255; Doc. num. 184, pp. 273-277, Capítulos ajustados entre Mateo Mercer, el Consejo del Rey Don Pedro IV residente en Valencia, y dicha Ciudad, y los Armadores de dos Galeras que se equipaban para hacer la guerra con las quatro galeras de Cataluña a los Genoveses y Castellanos, 1359; Doc. num. 239, pp. 351-358, Real Provision de Don Juan I de Aragon, a favor de los interesados en buque y cargamento de tres Naos Mallorquinas, que en el viage de Flandes fueron apresadas y robadas en 1373 por una esquadra Inglesa en el Canal de la Mancha, para que usen de represalias contra el Rey de Inglaterra y sus vasallos, hasta el resarcimiento total de los daños e intereses, 1392; Doc. num. 245, 253, 261, 264, 286, 403, 413, stress same points. For instance, Doc. num. 286, pp. 425-426, Carta del Rey D. Alfonso V de Aragon al Bayle General de Cataluña acerca de la caucion que habian de dar ciertos Armadores antes que saliesen a Corso, so as to "pervehir e dar loch e manera que.ls dits patrons o armades no fassen dan(y) sino a.n aquellas naus o persones, que sien

ab nos en guerra" - p. 426, 1420.

375. Ibid., Volumen II, Primera Parte, Doc. num. 82, pp. 119-121; Doc. num. 88, pp. 126-128; Doc. num. 113, pp. 167-171, this one between Jayme I King of Aragon and Miralmomenin, King of Tunis and Bougie.
376. Ibid., Volumen I, pp. 241, 248, 252.
377. Ibid., Volumen II, Primera Parte, Doc. num. 179, pp. 266-268.
378. Ibid., Doc. Num. 55, pp. 82-85.
379. Ibid., Doc. num. 27, pp. 42-43; Doc. num. 81, pp. 115-119; Doc. num. 179, pp. 266-268.
380. Ibid., Doc. num. 38, pp. 56-60; Doc. num. 80, pp. 114-115; Doc. num. 89, pp. 129-132.
381. Ibid., Volumen I, pp. 299-230. Volumen II, Primera Parte, Doc. Num. 379 and 380, pp. 557-558.
382. Guiard y Larrauri, Historia General, Tomo III, Apéndice num. I, pp. 583-584, letters from the Council of Bermeo, Don Alfonso, King of Castille, and the Council of Bayona, to the King of England, part of a diplomatic effort to re-establish normal commercial relations.

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

383. Finot, Relations Commerciales, pp. 97-105, "Désirant le profit commun de nos sujets et bonnes gens de notre pays de Flandre; considérant que par le fait de la marchandise qu'honorable hommes les amiraux, marchands, maîtres des nefes, marins et sujet du royaume et de la seigneurie de très puissant prince le roi de Castille, font de leurs biens et marchandises qu'ils mènent et font conduire en notre pays et font conduire et mener par terre et par mer en leur pays et ailleurs, grand profit et biens viennent à nos sujets

et à notre pays communaulment; pour le bien, profit, multipliement de notre dit pays et avancement de nos sujets, nous avons, à la révérence et sur les prières dudit roi de Castille et à la requête et supplication desdits amiraux, marchands, etc. du royaume de Castille et de nos sujets de Flandre, afin qu'ils puissent plus facilement faire leur dite marchandise, aller, demeurer et converser paisiblement par tout notre dit pays, donné, consenti et octroyé, donnons, consentons et octroyons auxdits amiraux et marchands, etc., les points et articles suivants." - pp. 97-98. Agreed to in 1367, extending the concessions granted in 1348, in terms which clearly reveal the mutual profit derived from it by both parties.

Guiard y Larrauri, Historia del Consulado, Tomo I, p. XXVIII, treaty of 1370, pp. LII-LVI, carta de privilegio in 1493.

384. Finot, Relations Commerciales, pp. 126-129, in 1389.

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

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

386. Philippe Dollinger, Die Hanse, Stuttgart, Alfred Kröner Verlag, 1966, pp. 503-504.

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

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

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

389. Guiard y Larrauri, Historia del Consulado, Vol. I, pp. XXXIII-XXXIV.

390. Cortes de los Antiguos Reinos, Tomo Cuarto, Cortes de Toledo de 1480, Petición III, pp. 185-186, "... por ende, a petición de los dichos procuradores, ordenamos e mandamos que todos los mantenimientos e bestias e ganados e otras mercaderías de qual quier qualidad que sean, que fasta aqui eran uedadas por las leyes e ordenanzas de Castilla e de Leon, e no se podían pasar a los dichos reynos de Aragón, que de aqui en adelante se puedan pasar e pasen libre e seguramente a los dichos reynos de Aragón, sin pena ni calunia alguna e sin embargo de uedamiento dellas, fecho por las dichas leyes e ordenanzas, con tanto, que siempre las tales cosas sean e

finquen dezmeras para nos e nuestros successores, e se pague dellas el diezmo e se escriua en las aduanas, segun se acostumbro en los tiempos pasados fasta aqui delas cosas uedadas..." - p. 185.

391. Torres Fontes, Relaciones Comerciales, pp. 8-10, 14-16.
392. Finot, Relations Commerciales, p. 288.
393. Guiard y Larrauri, Historia del Consulado, Tomo I, pp. XLIV-LII, LVI- LX, for greater details of the intense competition and rivalry between those groups, formed along the area of origin of the merchants.
394. Huvelin, Essai Historique, pp. 383-384.
395. Robert Sidney Smith, The Spanish Guild Merchant, p. 7.
396. Joseph de Veitia Linage, Norte de la Contratacion de las Indias Occidentales, Sevilla, 1672, Filmed from the Holdings and with the Permission of the University of London's Goldsmiths' Library, Category General, Item Num. 1998, Libro I, Capítulo 17, pp. 102-118, "Entre los otros privilegios que las Republicas bien gobernadas conceden a los mercaderes, refiere Don Juan de Solorzano, que es el mas considerable darles Iuezes particulares que salgan por suertes o por eleccion todos los años entre si mismos, los que llaman Prior, y Consules, y su Tribunal Consulado, porque se disputan para mirar, consultar, disponer, y componer todo lo que a la Universidad del Comercio entendieren que es conveniente, y siempre se ha juzgado que lo es, el que para semejantes Colegios, y Universidades se conceda jurisdiccion; no solo entre mercaderes, sino entre mareantes, con lo qual aconsejo Bobadilla a las justicias ordinarias que escusen competencias quanto pudieren..." - p. 102.
397. Capmany, Memorias, Volumen I, pp. 338-339, "... las causas del comercio, como dice un gran Politico, admiten pocas formalidades, porque son casos diarios a los quales han de suceder otros de igual naturaleza todos los dias; asi pues, conviene que puedan ser decididos tambien todos los dias. Son muy distintos de las acciones de la vida civil, que aunque influyan mucho para lo venidero, acontecen raras veces." - p. 338.
398. Huvelin, Essai Historique, p. 383, "La nécessité d'une procedure rapide, dégagée des lenteurs du droit commun, et plus conforme aux exigences du commerce, a des l'antiquité frappé les législateurs."

Robert Sidney Smith, The Spanish Guild Merchant, pp. 5-7, "Innumerable records furnish evidence that a fundamental motive of the Spanish Consulado was to secure the expeditious, economical, and equitable adjudication of disputes concerning maritime and mercantile contracts." - p. 6.

399. Suárez Fernández, Las Bases, p. 704.

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

401. Basas Fernández, El Consulado de Burgos, pp. 107-111.

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

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 228-235, 540-550, 563-571 - in particular 566-567.

Robert Sidney Smith, The Spanish Guild Merchant, pp. 26-27, 29, 132-133.

402. Siete Partidas, Tomo II, p. 769.

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

caderes sin dar luengas dilaciones ni plazos de abogados..." - Basas Fernández, El Consulado de Burgos, p. 109. The concept was reiterated in the Privilegio of 1460, granted by Alonso V to the Consulado and Lonja of Barcelona, which confirmed a long standing practice: "Item, que en la dels alcaldes de Barchinona, los fets maritims e de cambis, companyies e fets e negocis mercantivols sien decidits per juy de mercaders e homens de mar, e no per juristes..." - Capmany, Memorias, Volúmen II, Primera Parte, Doc. num. 383, p. 562. We can see it once more in the Pragmaticas, ordenanzas, ley y facultad pasadas por carta real de Doña Juana a la universidad de mercaderes de Bilbao y fiel y diputados de ella, in 1511: "... para que tengan jurisdiccion de poder conoscer y conozcan de las diferencias y debates que ovieren entre mercader y mercader y sus compañeros y factores sobre el traer de las mercaderias assi sobre compras y ventas y cambios y seguros y cuentas y compañías que ayan tenido y tengan sobre afletamientos de naos y sobre las fatorias que los dichos mercaderes ovieren dado a sus factores assi en muestors reynos como fuera dellos, assi para que puedan conoscer y conozcan de las diferencias, y debates y pleytos pendientes entre los susodichos como de las otras cosas que acescieren de aqui en adelante para que lo libren y determinen breve y sumariamente segun estilo de mercaderes sin dar lugar a luengas, ni dilaciones de malicia, ni plazos de abogados...", and again, for the appeal court, the two merchants selected by the Corregidor had to swear to adjudicate "... por estilo de entre mercaderes, sin libelos ni escritos de abogados, salvo solamente la verdad sabida, y la buena fe guardada como entre mercaderes sin dar lugar a luengas de malicias, ni a plazo, ni a dilaciones de abogados..." - Guiard y Larrauri, Historia del Consulado, Vol. I, p. 566. Along the same lines, "the consuls of Valencia were pledged to settle disputes 'according to the use and customs of the sea... briefly, summarily, and forthwith, without the noise or formality of a judgement, sola facti veritati attenta...', " according to the Manual de consells y establiments, 1327-1331 - Robert Sidney Smith, The Spanish Guild Merchant, pp. 21-22, and incidentally, as the author comments - ref. 24 - that was also the rule in the early English Admiralty Courts.

404. Siete Partidas, Tomo II, pp. 40-41.

405. Ibid., this was further clarified in the note (6) of that law: "Sed an Clericus, qui est de aliqua arte, seu professione, conveniri possit coram iudice saeculari illius artis, seu negotiationis, ut si est mercator coram Consule mercatorum..."

406. Ibid., with an additional clarification in note (8) of the same law: "Nam jurisdictio Ordinaria cohaeret territorio: & limites jurisdictionis sunt secundum limites territorii..."
407. Burriel, S.I., Memorias para la vida del Santo, Fuero de Sevilla, pp. 145-146.
408. Pérez-Embid, El Puerto de Sevilla, p. 92
409. Capmany, Memorias, Volumen I, pp. 832-834.
410. Robert Sidney Smith, The Spanish Guild Merchant, pp. 8-10.
411. This has probably affected the historical assessment of the period, for the long life of the Consulado and its successor, the present day Camara de Comercio, meant the survival and better preservation of records which in the case of Castille suffered considerable dispersion. The comparative dearth of documentary evidence from Castille may have well led to a relative underestimation of its economy up to the end of the XV century.
412. Capmany, Memorias, Volumen I, p. 834.
413. Robert Sidney Smith, The Spanish Guild Merchant, p. 10.
The matter is by no means settled. For an apt summary of view points vide Basas Fernández, El Consulado de Burgos, pp. 27-28.
414. Robert Sidney Smith, The Spanish Guild Merchant, p. 10.
415. Capmany, Memorias, Volumen I, p. 835.
Robert Sidney Smith, The Spanish Guild Merchant, p. 10.
416. Ibid., 11. Incidentally, the author considers the Consulado of Malta, founded in 1697, "an offshoot of the Aragonese institution."
417. Basas Fernández, El Consulado de Burgos, pp. 33-36.
418. Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 563-71.
419. Robert Sidney Smith, The Spanish Guild Merchant, p. 14.
420. Ibid., 8, this pattern and its evolution were by no means uniform. The likeness is expressed here in very general terms.
421. Basas Fernández, El Consulado de Burgos, pp. 33-34.

422. Capmany, Memorias, Volúmen I, pp. 348-350. Volúmen II, Documento Número 339, Real Privilegio de Don Alfonso V de Aragón en que declara que el conocimiento de todas las causas marítimas civiles pertenece a los Consules del Mar de Barcelona, y no al Almirante ni Vice-Almirante, 1444, pp. 490-493, clearly separated the Consulado from the sphere of the Admiral or Vice-Admiral.
423. Basas Fernández, El Consulado de Burgos, pp. 29-33.
424. Capmany, Libro del Consulado del Mar, Barcelona, Cámara Oficial de Comercio y Navegación, 1965, reedición del texto publicado en 1791, p. 687.
425. Ibid., 693.
426. Sainz Díaz, Notas Históricas, p. 537, "... 1593, en que se vuelve a hablar, intitulándolo traslado de una Ordenanza de las antiguas. Este trata sobre el gobierno peculiar del Gremio (Comunidad de pescadores de San Vicente de la Barquera), y jurisdicción privativa inmemorialmente del mayordomo en toda clase de pesquerías, y concluye extractando sustancialmente el Código marítimo mercantil de Oleron;" p. 537, "Este es un traslado verdaderamente sacado por Juan Sanchez de Cos, Mayordomo de los Mareantes y Común de Señor San Vicente en este presente año de mil quatrocientos noventa y tres, de una Ordenanza de las antiguas que esta Villa tiene, una ley al pie de ella, lo qual todo es de la manera que aqui se sigue. = Ordenanza Quinta = Por quanto en esta Villa, entre los vecinos mareantes de ella, que tratan la pesquería, ocurren pleytos, diferencias y contiendas sobre casos e cosas, e dudas de mar, e de sus pescas e navios, e si se hubiesen de ver y determinar por los Jueces por via ordinaria se recrecerian muchos gastos e danos; ordenamos e mandamos, pues de inmemorial tiempo aca el Mayordomo, que ha sido e es de la Cofradia de Señor San Vicente de esta Villa fue Juez de semejantes casos, como por la ley de la Partida le es mandado, e en ello no le impida el Juez Ordinario de la dicha Villa que asi se haga e guarde la dicha ley, so pena que el Juez que en ello le impidiere sea obligado a pagar los daptos, e costas e gastos, que en no se determinar conforme a la dicha ley a las partes se recrecieren: e la dicha ley mandamos poner al pie de esta Ordenanza, e su tenor es el siguiente: quinta Partida, titulo noveno, ley final."
427. Registered "vecino" and "avecinado" merchants could more or less automatically sue and be sued at these courts, often regardless of where the events leading to such action had taken place. So could, in some instances, those working on their behalf. One of the reasons invoked by the merchants of Burgos in their petition to the King to grant them a

Consulado was their inability to force their factors to come to Burgos to render their accounts, often by marrying and acquiring a domicile outside the jurisdiction of Burgos. They were granted the necessary powers to solve that in the Real Cédula of 1494 - Capmany, Libro del Consulado, pp. 684-685. The same reasons and a similar solution were given in the case of the Consulado of Bilbao - Guiard y Larrauri, Historia del Consulado, Vol. I. pp. 563-571; and also in that of Seville, only, for obvious reasons, with the longer period for the rendition of accounts demanded by the American trade - Capmany, Libro del Consulado, p. 692.

428. An exception could be the Confrérie de la Contractacion - vide ref. 389 in this chapter - but we have not seen the original treaty.
429. Armando Saporì, Studi di Storia Economica (Secoli XIII-XIV-XV), Firenze, G.C. Sansoni-Editore, 1955, Terza Edizione Accresciuta, Secondo Volume, "Arti e compagnie mercantile toscane del Due e del Trecento e il principio della pubblicità per registrazione," Statuto di Lucca del 1308, pp. 830-831.
430. Robert Sidney Smith, The Spanish Guild Merchant, p. 27.
431. Ibid., 27.
432. Ibid., 28.
433. Siete Partidas, Tomo II, Quinta Partida, Título VII, Ley V, pp. 725-726, particularly note (3) - p. 725, "... quia Clerici negotiatores, quantum pertinet ad eam negotiationem, jure laicorum communi uti debent..." Also Tercera Partida, Título IV, Ley I, pp. 40-41, vide reference num. 405 in this Chapter.
434. Robert Sidney Smith, The Spanish Guild Merchant, p. 30.
435. Finot, Relations Commerciales, passim, and Capmany, Memorias, Volumen II, Segunda Parte, pp. 850-860, give a good idea of the extent and every day operation of this practice. Heyd, Histoire du Commerce, passim, and Schaube, Handelsgeschichte der Romanishchen, passim, illustrate its antiquity as well as the widespread use of it.
436. González y González, Repartimiento de Sevilla, I, p. 332.
437. Carande y Thovar, Sevilla, pp. 72-79.
438. Pérez-Embid, El Puerto de Sevilla, p. 86

439. Capmany, Memorias, Volúmen II, Primera Parte, Doc. num 105, p. 155. Volúmen II, Segunda Parte, p. 859.
440. Viñas y Mey, De la Edad Media, II, p. 56, "Alfonso repuebla con gente cantábrica de Laredo, Santander, Bermeo, Castro Urdiales, San Vicente de la Barquera, a Cádiz, donde crea Colegio y Consulado y en igual forma a Rota, Sanlúcar de Barrameda y funda el Puerto de Santa María."
441. Guiard y Larrauri, Historia del Consulado, Vol. I, p. XV' "El gremio de mareantes del Señorío puesto en Cadiz para regir la navegacion por el poniente, con un consul, es mencionado ya en 1403. Los vascongados pusieron sus cónsules en los puertos de su trato a imitación de como lo practicaron otros pueblos mercantiles."
442. Basas Fernández, El Consulado de Burgos, pp. 32-33.
443. Capmany, Memorias, Volúmen II, Segunda Parte, Málaga (1490) and Almería (1492), p. 855, Málaga (1526), p. 858.
444. Ibid., Volumen I, pp. 843-845.
- Basas Fernández, El Consulado de Burgos, pp. 113-117.
- Guiard y Larrauri, Historia del Consulado, Vol. I, p. 316.
- Robert Sidney Smith, The Spanish Guild Merchant, p. 30.
445. Basas Fernández, El Consulado de Burgos, pp. 113-116.
- Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 47-53.
- Robert Sidney Smith, The Spanish Guild Merchant, pp. 29, 31-32.
446. Ibid., 30.
447. Basas Fernández, El Consulado de Burgos, pp. 116-117.
448. Ibid., 36-46.
449. Basas Fernández, El Consulado de Burgos, pp. 107-113.
- Capmany, Memorias, Volúmen II, Primera Parte, Doc. num 383, p. 562.
- , Libro del Consulado del Mar, Real Cédula para la nueva fundación del Consulado de Sevilla, p. 691, "... Prior y Consules, y que estos pudiesen conocer y determinar todos los negocios y causas que se ofreciesen entre los dichos

mercaderes y sus factores, y sobre todas y cualesquier cosas tocantes, dependientes, y concernientes a su trato y comercio, y segun y como lo hacian, y podian y debian hacer el Prior y Consules de la dicha ciudad de Burgos..."

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 228-235, 563-571.

450. Id est: exclusive.

Basas Fernández, El Consulado de Burgos, pp. 109-111, 114-115.

Capmany, Memorias, Volumen I, pp. 835-846. Volument II, Primera Parte, Doc. num. 213, 257, 263, 280, 291, 341, 370, 383.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 228-229.

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

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

Veitia Linage, Norte de la Contratacion, Libro I, Capitulo XVII, pp. 102-118, citing authority of Bobadilla, and Solorzano y Pereyra.

451. Capmany, Memorias, Volumen I, pp. 833-835.

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

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

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

compañía, entre los mercaderes de la Universidad de Burgos, solían también contener una cláusula final de sometimiento al Consulado..." - p. 127.

Capmany, Memorias, Volumen I, pp. 350-353, 836.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 230-235, 540-550.

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

453. This view is expressed by Robert Sidney Smith - The Spanish Guild Merchant, p. 29, "Jurisdictional disputes arose persistently throughout the long life of the institution, and examination of nearly a hundred questions of jurisdiction supports the conclusion that the conflict of jurisdiction was one of the major deficiencies of exceptional commercial courts." However, unless an unattainable perfection is expected, a lack of jurisdictional disputes would have been entirely incompatible with the process of creation and enforcement of Law Merchant. Quite to the contrary, it would have meant a sterile institution, a dormant law-making process, and, indeed, a very languid economic activity. As Smith points out, "doubtless in more than one instance disputes over jurisdiction arose because the consular judges had 'an exaggerated notion of their prerogative'." We would contend that this was more the symptom of a legal system intensely alive and in the process of formation than one palsied by the exaggerated self-importance of its courts.
454. Guiard y Larrauri, Historia del Consulado, Vol. I, p. 307, "Dichas y otras razones, consultadas a los juristas Barraicua, Ocariz, Zornoza, Mendiola, y Olaeta, fueron presentadas incontinente al monarca, y luego coadyuvaron a ellas los traficantes ingleses que en Bilbao residían..." a good example of legal argumentation by lawyers and merchants with regard to a jurisdictional matter. Incidentally, those merchants, who were English, were opposed to the naming of an English Consul, because the Consulado was competent "para todos los negocios mercantiles con plena potestad y jurisdicción para juzgar todas las causas de mercaderes y navegantes así naturales como extranjeros" - p. 307.
455. Carrère, Barcelone, Vol. I, pp. 47-49, "... c'est même celui qu'adoptent les consuls lorsque'ils se trouvent eux-même partie dans un litige. L'utilité de l'arbitrage privé était reconnue par tous." - p. 49. It is quite likely that private arbitrators played at the time a role more or less similar to that of the solicitors today. In all probability then, like nowadays, only a very small percentage of the disputes reached the courts. Generally, a settlement out of

court is deemed preferable in commercial law, but a condition sine qua non to get the parties to agree to a settlement is the presence of laws that can be enforced in court. This, combined with the possibility of delaying the outcome of a dispute for a long period of time, would have provided a powerful inducement to rest one's case in the hands of a private arbitrator.

456. Carrère, Barcelone, Vol. I, p. 44.

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

Carrère, Barcelone, Vol. I, pp. 40-47.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 230-233, Apéndice IV, Provision de Real aprobando y confirmando las ordenanzas que incluye hechas por el Consulado de Bilbao en razon de averias, 1518, pp. 575-579.

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

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

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

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

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

459. Robert Sidney Smith, The Spanish Guild Merchant, p. 116.

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

461. Capmany, Memorias, Volumen I, pp. 338-342, 832-836. —
 -----, Libro del Consulado del Mar, pp. 9-64.
 José María Font Rius, Capmany, Libro del Consulado del Mar, pp. IX-LV.
462. Manuel de la Plaza, Derecho Procesal Civil Español, Madrid, Editorial Revista de Derecho Privado, 1951, Tercera Edición, Vol. I, pp. 5-120.
 Robert Sidney Smith, The Spanish Guild Merchant, p. 22.
463. Valls i Taverner, Consolat de Mar, Volum II, pp. 37-61.
464. Ibid., Capítulo 30, 31 --pp. 54-55, 36 - pp. 58-59, and 41 - pp. 60-61.
465. Font Rius, Capmany, Libro del Consulado del Mar, pp. XLII-XLIII.
 The clause in question is the Capítulo 41. Com los consols e lo jutge donen lurs sentencies per les "Costumes de la mar" o per consell, reproduced by Font Rius and also in Valls i Taverner, Consolat de Mar, Volum II, pp. 60-61.
466. Font Rius, Capmany, Libro del Consulado del Mar, p. XLI.
 Robert Sidney Smith, The Spanish Guild Merchant, p. 22.
467. Ibid., 22, ref. num. 26.
468. Ibid., 22.
469. Valls i Taverner, Consolat de Mar, Volum II, pp. 63-99.
470. Capmany, Libro del Consulado del Mar, pp. 59-62, 683-689, Real Cédula para la jurisdicción Privativa del Prior y los Consules de la Universidad de Mercaderes de la Ciudad de Burgos, 1494.
471. Ibid., 63-64. Amongst the titles of general use, though adapted to Bilbao, Capmany selected, out of the Ordenanzas Generales of 1511: X, De las sociedades de Comercio, de sus calidades y circunstancias; XI de los contratos de comercio entre mercaderes; XIII, de las letras de cambio, sus aceptaciones, endosos, protestos y terminos; XIV, de los vales y libranzas de comercio, y cartas ordenes; de los atrasos, fallidas y quiebras; XVII, de los fletamentos de navios, y conocimientos; XX, de los seguros y sus polizas; XXIII, de los contratos del dinero o mercaderias que se dan a la

gruesa ventura o riesgo de nao; XXIV, de las obligaciones de los capitanes, maestros o patrones, pilotos, contramaestres y marineros.

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

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

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

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

Carrère, Barcelone, II, pp. 902-905.

Robert Sidney Smith, The Spanish Guild Merchant, pp. 52-53.

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

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

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

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

Capmany, Libro del Consulado del Mar, pp. 624-652, Ordenanzas para los Seguros Maritimos que formaron el Prior y Consules de la Universidad de Mercaderes de Burgos en el Ayuntamiento

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General que para esto tuvieron en la casa del Consulado en el año de 1537. It makes reference to the prior Ordenanzas whose text has been lost - p. 61.

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

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 579-582, Ordenanzas de Seguros, 1520.

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

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

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

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

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

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

480. R. Wagner, cited by Font Rius, Capmany, Libro del Consulado del Mar, p. XLV, "El propio Wagner ha apuntado que esta composición del Llibre sería llevada a cabo, sin duda, por algún Secretario del Consulado del Mar de Barcelona, con la finalidad práctica de reunir cómodamente en un solo libro o manual los diferentes textos normativos de más corriente utilización en el Consulado barcelonés y en los demás consulados mediterráneos."

481. Font Rius, Capmany, Libro del Consulado del Mar, pp. LII-LV.
482. Valls i Taverner, Consolat de Mar, Volum II, pp. 119-136.
483. Ibid., Volum III, pp. 127-160.
484. Ibid., Volum II, pp. 11-34.
485. Ibid., Volum III, pp. 123-124, concerning venture goods embarked on a ship on the private account of an individual.
486. Ibid., Volum III, Ordinacions de la ciutat de Barcelona sobre els Consolats de Sicilia i Alexandria, pp. 109-121, in the pertinent sections, are good examples. Others are the, Capitulos 38, 39, and 62 the Ordenanzas de la Cofradia de Pescadores del puerto de Bermeo dispuestas en 1353 - Labayru y Goicoechea, Historia General, Tomo II, Apéndice num. 27, pp. 829 and 834. Interesting in this case is that in spite of the distance, the concern with the sanctity of contracts, the security of employment, and the need to maintain the crew, was equally felt, and dealt in similar terms as those of the Libro del Consulado, though of course in greater detail here - Titulo III, pp. 116-173, in the Capmany version.
487. The fifth articles of the Establiments de fet de mar, the definitions of "Pelegrin" (Passenger), "Mercader" (Merchant-shipper) and "Mariner" (Sailor) in the Costums de Tortosa, and the Capitol del "Libre del Consolat de Mar" sobre esportades d'Alexandria - Valls i Taverner, Consolat de Mar, Volum II, pp. 93-105, and Volum III, pp. 132, 123-124 respectively - are, we think, particularly good examples of legal clarity. Font Rius - Capmany, Libro del Consulado del Mar, pp. XLIX-LII, considers the Llibre del Consolat del Mar a clear and equitable set of laws, and also a very thorough one, covering the entire spectrum of the then known mercantile maritime law as well as some related areas. We may add that it also allowed room for expansion ad infinitum through the incorporation of the procedural laws of Valencia, including the article XLI of that famous Orde Judiciari - vide ref. num. 463 in this Chapter.
488. If we are really serious about evaluating the performance of these, or any other courts of justice, we have to analyse not only the actual litigation in a significant number of cases, but also the circumstances and the position of the litigants in each of them. It is only then that we may begin to understand the rationale for the tactics employed by the litigants. The possibility of using delaying tactics, which, in many instances may well be part of the soundest strategy for a litigant, has been, and remains, a feature of any

legal system conscious or unconsciously striving for fairness. A law that says: "Mercader és aquel qui no dona loger o nòlit de la sua persona, mas de les mercaderies que porta o fa portar" - Costums de Tortosa, p. 132, in Valls i Taverner, Consolat de Mar, Volum III - is certainly clear and precise; but cannot provide an automatic answer to a legal question. A number of circumstances, peculiar to the case, may blur that picture. The public behaviour of a shipper may cause the captain of the ship to reasonably assume that their relationship is other than that of the simple, straightforward captain-shipper, and lead him to act in accordance to that assumption. It is the circumstances, the behaviour, the motives, and the intention of the actors that confer to a case its individual hues, what makes it unique and unlike any other case. And no law will ever provide an instant answer to the legal question it presents. The individual position of the litigant, the importance of the case in relation to his business or his values, are significant factors in determining his strategy in the litigation. Delaying its outcome may be the best, or, indeed, the only viable strategy. But, it may also be the only way of ensuring a just and equitable solution. Clearly, there should be limits to it, but surely they were difficult to set at the time in which an entirely specialised new branch of law was in the process of creation. It is on account of that, which is certainly not an apology for the performance of the maritime and mercantile courts, that the "pronouncement" of Robert Sidney Smith - The Spanish Guild Merchant, p. 29, also 114-116 - based on the "examination of nearly a hundred questions of jurisdiction" seems rather precipitous to us. This is so even after ignoring the fact that they concern an institution with a life span of over six centuries, and the many records lost, including the entire collection of a key tribunal such as Burgos, lost in the French sacking of that city - Basas Fernández, El Consulado de Burgos, p. 94.

489. Guiard y Larrauri, Historia del Consulado, Vol. I, p. 307.
490. Basas Fernández, El Consulado de Burgos, p. 118.
491. Ibid., 124-125.
492. Robert Sidney Smith, The Spanish Guild Merchant, p. 22.
493. Basas Fernández, El Consulado de Burgos, p. 116, ref. 26, "Porque hallará V.A. que los dichos Prior y Consules suelen y acostumbran juzgar contra sí mismos causas más graves y de más contidades como lo hicieron los años 71, 72, y 73 que montó en los desembolsos que mandaron pagar mas de 500.000 ducados y d'ellos tocó a los dichos Prior y Consules

mas de los 80.000 ducados."

494. Robert Sidney Smith, The Spanish Guild Merchant, pp. 117-118, ref. 11, "In 1598 Jaume Pou, a matriculated merchant, was convicted of fraudulent withdrawals from the Taula. The consuls interceded on his behalf, endeavouring to persuade the councilors to assent to the commutation of the death sentence 'Per levar la infamia gran que de la exequutio de la dita sententia havia de redundar a ell mateix, a sos' parents y amichs y a tot lo estament mercantivol.' The councilors declined, and Pou was hanged."
495. Capmany, Libro del Consulado del Mar, pp. 16-17, 42-47.
496. Ibid., Prologo, pp. XXIV-LII.
497. Valls i Taverner, Consolat de Mar, Volum I, p. 16, vide pp. 9-16 as well.
498. The Consules of Valencia had to adjudicate according to the iuxta Consuetudinem maris in the custom of Barcelona since the foundation of the Consulado in 1283 - Font Rius, Capmany, Libro del Consulado del Mar, XLII. Referring to this Code, Font Rius says: "Segun la version de las mismas, serian unos sayis homens que van per lo mon, es decir mercaderes y navegantes consumados, buenos conocedores de los usos y practicas de los distintos puertos, los que comunicaron o transmitieron als nostres antecessors - es decir, antecesores de los colectores del Consulado del Mar del siglo XIV, - que serian los prohombres del mar del puerto de Barcelona de mediados del siglo XIII, los cuales procederian a su redaccion en los libros de la savietat de les bones costums. - p. XXXVII. He adds: "Mas adelante es aludida de nueva esta readaccion primaria de las costumbres de mar, en el cap. 291 (290 en Capmany), cuando en ocasion de aclarar o desarrollar su prescripcion inicial se dice que 'aixi es e fo stablit e ordenat, e es sa costuma del començament que ls antichs començarem anar per lo mon e stabliren e ordenaren aixi com damunt es dit, aixi deu ésser seguit com antiguament fo ordenat!." - p. XXXVII.
499. Valls i Taverner, Consolat de Mar, Volum II, pp. 60-61, Com los consols e lo jutge donen lurs sentencies per le "Costumes de la mar" o per consell.
500. Capmany, Libro del Consulado del Mar, pp. 16-17, expresses this view, based primarily on this article XLI, and also in the articles XLIX, L, LVI, LXI, CXXI, CXLIII, CLVII, CLXVIII, CCXXXIV, and CCLXXI.
501. Moxó, Exenciones tributarias, pp. 176-177.

502. Carrère, Barcelone, Vol. I, pp. 22-25.
Gibert y Sánchez de la Vega, El Consejo de Madrid, p. 39.
503. Carrère, Barcelone, Vol. II, pp. 540-547.
504. Capmany, Memorias, Tomo I, p. 791 - merchants importing foodstuffs could export tax free for an equal amount; Tomo II, Primera Parte, Doc. num. 446 and 447, pp. 651-653; Tomo II, Segunda Parte, Apénd. 405, p. 1248.
- Carlé, Mercaderes, p. 312, "... derecho a extraer del reino, sin pago alguno, mercaderia por un valor igual al de la que antes se hubiera introducido, derecho de que gozaban los mercaderes nacionales y extranjeros, a partir de 1281, fecha, en que lo concediera Alfonso X."
- Francisco Layna Serrano, Historia de Guadalajara y sus Mendozas en los siglos XV y XVI, Madrid, Consejo Superior de Investigaciones Científicas, Instituto Jerónimo Zurita, Aldus, S.A., 1942, Tomo I, pp. 264-265, Privilegio rodado de Alfonso X eximiendo del pago de ciertos pechos a los vecinos de Guadalajara que poseyeran caballo y armas de fusta, así como concediendo escusado a los dueños de ganado en determinada cuantía. Sevilla, 1262.
505. Basas Fernández, El Consulado de Burgos, pp. 167-171, credit was usual for payment of "Averia" as well as the freight.
- Carrère, Barcelone, Vol. I, p. 67, "...Payés en Sicile au terme du voyage aller, et à Barcelone dans les quinze jours suivant le retour des neufs, ces nolis..."
- Guiard y Larrauri, Historia del Consulado, Volumen Primero, pp. 68-73.
506. Labayru y Goicoechea, Historia General, Tomo II, p. 781.
507. Capmany, Memorias, Tomo II, Segunda Parte, pp. 937.
- Basas Fernández, El Consulado de Burgos, p. 190, "Los mercaderes no solían pagar el diezmo de contado, sino que daban una obligación para pagar en feria."
508. Layna Serrano, Historia de Guadalajara, Tomo I, pp. 247, 310-314, Testamento de Doña Aldonza de Mendoza, duquesa de Arjona. Espinosa de Henares, 16 de Junio de 1435, "...Item, mando que todos los maestros e peones que han labrado en las mys casas de guadalfaira e en otras partes qualesquier en mys lavores, que sean pagados e satisfechos... e mando

que sean pagados a costança de Roys cherino e a sus fijos e al bachiller de Roys los mrvs. que se fallare por buena quenta que yo les deviere al tienpo de my finamyento... e mando que paguen a gonçalo garçia boticario vesino de guadalfaira lo que se fallare por buena quenta que le devo." - p. 312, "... e a la muger de mosé (Moisés) çidicaru mill e quinientos mrvs que dise que le so obligada de çiertas lavores que me fiso..." - p. 313; pp. 325-333, Codicilo que otorgo don Iñigo Lopez de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon. "... Mando otrosi, que por quanto este otro dia en Guadalfajara me fué mostrado una albala mia e conoscimyento de çiertos mrs de que yo era a cargo a un mercader ytaliano por mrs que creo que pueden seer fasta dies o dose myll, e yo le Respondi que los quisiere tomar en Thomas de Cordova el qual los devia a la marquesa mi muger que perdone dios de çierto çensal que ella le dio para faser algunas pieças de plata en Varçelona, que si por bentura no le an seydo pagados, que se le paguen." - p. 327.

509. As it may be expected there are wide fluctuations in the recorded rates of interest, reflecting time, place, circumstances and the solidity of the debtor amongst other risk factors. Carande y Thovar - Sevilla, pp. 183-185 - shows records of a 9% rate for some type of operations at a given time in Seville, whilst much higher rates are not unusual, such as the ones recorded by Mateo López - Memorias Históricas de Cuenca, p. 71, "... e el judio que diere a logro que non de mas de tres florines por quatro al cabo del año, a si mas los diere que peche el logro doblado." - id est 33%; p. 82, "En dicho libro Becerro se halla una avenencia que la Aljama de los judios de Cuenca hicieron con la ciudad para que puedan dar y tomar dineros a logro con los cristianos; qué es lo que los dichos judios han de ganar por lo que dieren, y establecen pueden llevar de interés un cuarenta por ciento al año, y no mas; y del plazo adelante, que ganen al coto del rey de tres por quatro al año, y, recibiendo prenda, que lleven un maravedi por una meaja a la semana, y que las prendas, no desempeñandolas a los dos años, que las puedan vender." This "avenencia" clearly suggest the habitual nature of those operations.
510. Capmany, Memorias, Tomo II, Primera Parte, Doc. num 186, p. 279, Moratoria que el Rey de Aragon Don Pedro IV concede a la ciudad de Barcelona para satisfacer a un banquero 10.000 Libras que tenia a cambio de ayuda de la Armada del Rey que se habia aprestado contra Castilla, 1359.

Carande y Thovar, Sevilla, pp. 180-207.

Collantes de Terán Sánchez, Puente de Viar, p. 117 (between years 1473-1479).

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

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

Carrère, Barcelone, I, pp. 67-69.

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

Baños Fernández, El Consulado de Burgos, pp. 152-154, "Empréstidos", for several examples.

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

513. García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, Documento num. 54, p. 477, Carta del Obispo de Burgos, Don Gonzalo, sobre el convenio con el Consejo burgalés para la construcción de un reloj, 1384.
514. Mut Remola, La vida económica, Doc. Anexo num. 55, pp. 323-329, Concordia celebrada entre la ciudad de Lérida y sus acreedores, 1469. A similar agreement was signed in 1479 - p. 329.

515. de Roover, Business, Banking, and Economic Thought, pp. 72-73, 183-259, 273-366.
516. Usher, The early history of deposit banking, pp. 137-138, 180, in particular; 135-432 for a general view.
517. What the Church opposed was usury or the charge of an "excessive" interest, a concept that was taken from Roman Law, and whose definition varied considerably over time, both in Rome itself and in the case of the Church. Examples of official views on usury at a given time are: Cortes de los Antiguos Reinos, Tomo II, pp. 544-554, XLV, Ordenamiento sobre judíos y usureros, otorgado en las Cortes de Valladolid del año de 1405.

Mut Remola, La vida económica, Doc. Anexo num. 44, p. 300, Privilegio de Jaime I - Faculta a los Paheres para perseguir la usura, 1255.

518. Ledesma Rubio, La Encomienda de Zaragoza, p. 112, "En estos años, paradójicamente, los frailes han vuelto las tornas a su antiguo oficio de prestamistas," and passim.
519. Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 226, pp. 333-334; Doc. num. 270, pp. 401-402.

Carande y Thovar, Sevilla, pp. 183-185.

Cortes de los Antiguos Reinos, Tomo III, Cortes de Ocaña de 1469, Peticion 20, pp. 802-803.

Layna Serrano, Historia de Guadalajara, pp. 305-306, Codicilo otorgado por don Diego Hurtado de Mendoza, almirante de Castilla, ante el escribano Fernando Perez de Villarreal, en Guadalajara a 5 de Mayo del año 1404, "... E atento a lo que yo he en muebles, en moneda e en debdas... Et en debdas contra ciertas personas..." - p. 305, the list that follows suggests that a good portion were secured loans or documented debts in favour of the testator, "Ytem, mando que los seys myll mrs que yo he en cada año de merçet por Juro de heradat en la martiniega de Madrit... Ytem, nado que los dies myll mrs que yo he por Juro de heradat en las Rentas e pechos e derechos de Madrit... Ytem, mando que den a Loys mendes mi mayordomo mayor dosientos florines de oro del cunio de Aragon, los çiento que dio por mi mandato a Pero ferrandes de melgosa, platero de Burgos, et los otro çiento que me dio a mi en la dha Burgos para dar a doña Leonor mi muger e çiertas personas." - p. 306; Testamento de doña Aldonza de Mendoza, duquesa de Arjona. Espinosa de Henares, 16 de junio de 1435, pp. 310-314, "... e mando que sea satisfecho bartolome sanches mi vasallo vesino de cogollado de los que my mayordomo dixier o el jurare que le devo e el me presto... Item mando que sean pagados e satisfechos cietos vasallos myos

vesinos de cogolludo e su tierra, de ciertos mrvs que me prestaron... Otrosi, por quando yo por mandado del señor duque mi marido, cuya anyma dis aya me obligue a diego lopes de astuñyga por dos mill florines quel ovo menester para yr a la coronacion del Rey de aragon (Fernando el de Antequera) e despues ovo libramyento del dho. señor duque fasta en quantia de cinquenta mill mrvs de los quales yo no se quantos se cobraron por lo qual non so tenuta a toda la obligacion mas a parte della..." - p. 312, "... e que paguen a ferrando de avyla veynt mill mrvs que le devo poco mas o menos los quales me presto mas cinco mill mrvs por el serviçio que me ha fecho (which could be genuine gratitude and affection or include an interest payment)... E item mando al dho pero manrique nuevecientas doblas e çient florines los quales me deve por prestido que dellos le fiss..." p. 313; pp. 316-324, "Testamento de don Iñigo Lopez de Mendoza, primer marques de Santillana, Guadalajara, 8 de Mayo de 1455, ante el escribano Pedro Lopez de Guadalajara, "... Otrosi, mando que ayan mas e Repartan entre los dhos myos hijos do yñigo e don loreço e don juan e don furtado los veynte myll mrs de Juro de heredad de los que fueron de la dha my muger, por ygualess partes, de los cuales a my me pertenesce la mytad de aquellos que ella conpro durante entre nosotros el matrimonyo... (this and prior examples show that the Juro had become a perpetual loan, and, incidentally, that the institution of "bienes gananciales" (property acquired during the marriage) remained unaltered from Roman Law, in fact until today) - p. 320; pp. 325-333, Codicilo que otorgo don Iñigo Lopez de Mendoza, primer marques de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon, "... Otrosi, mando que los veynte e un myll mrs que son la meytad de los quarenta e dos myll mrs que la marquesa my muger que dios aya tenia sytuados en la villa de Guadalfajara e do otra manera del Rey nuestro señor, la qual meytad me pertenesce, sean rrepartidos en esta guisa..." - p. 329.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num. 210, p. 378.

Eloy Benito Ruano, "Deudas y pagos del Maestre de Santiago Don Pelay Perez Correa", Hispania, Tomo XXII, num. LXXXV, 1962, Doc. num. 2, pp. 31-33, an extremely interesting collective loan made to Don Pelay probably in Lerida, in which we can see as creditors a number of merchants and artisans of the city, such as a "draperius", and "carnifex", a "pelliparius", a "menescallus", a "molinarius" and others; Doc. num. 3, pp. 33-34, Doc. num. 5, pp. 35-36.

520. Capmany, Memorias, Tomo I, p. 259, Miguel Ros, Catalan merchant, loaned 12,000 to the Order to Rhodes, payable

in Barcelona, in 1444. Tomo II, Primera Parte, Doc. num 226, pp. 334-335, Carta de credencia de la Magistratura de Barcelona a la de Montpellier para que haga satisfacer a un banquero de Barcelona los 6.000 Francos que habia prestado a dicha villa en sus urgentes necesidades.

Eloy Benito Ruano, Deudas y pagos, pp. 25-26, loans obtained by the Ordier in Lyon and Siena.

521. Capmany, Memorias, Tomo II, Primera Parte, Do. num. 404, pp. 591-592, Real Cédula del Gobernador General de Cataluña en que concede a la Lonja de Mar de Barcelona facultad de empeñar el Derecho de Periage para juntar la suma ofrecida en ayuda de la fabrica del muelle de dicha ciudad, 1483; Doc. num. 407, pp. 595-596, Real Cédula del Gobernador General de Cataluña en que concede a Barcelona la facultad de empeñar el Derecho del Periage, para juntar la suma necesaria para defender la casa de la Lonja de los embates del mar que amenazaba su ruina, 1484; Doc. num. 420, pp. 610-611, Real Cedula del Gobernador General de Cataluña en que concede a la Lonja de Mar de Barcelona facultad de empeñar el Derecho del Periage, para juntar la suma ofrecida en ayuda del armamento de una galera contra los piratas infieles, 1492.

Layna Serrano, Historia de Guadalajara, Tomo ~~IV~~ Codicilo que otorgo don Inigo Lopez de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon, pp. 325-333, "Ytem, mando que la casulla mya la cual yo dexé en Santa Clara de Guadalfajara por dies myll mrs..." - p. 330, "... y me los él presto sobre las trescientas e setenta e quatro perlas que Sancho de Herbas su camarero dio a Ortega criado de la marquesa my muger que perdone dios e las tiene a bueltas a otras cosas myas."

Ledesma Rubio, La Encomienda de Zaragoza, Apéndice I, Coleccion Documental, Doc. num. 19, pp. 211-212, Doc. num. 99, p. 276, Doc. num. 134, p. 308, Doc. num. 167, pp. 341-342, Doc. num. 251, pp. 435-436.

Mateo López, Memorias Históricas, p. 82, "... y, recibiendo prenda, que lleven un maravedí por una meaja a la semana, y que las prendas, no desempeñandolas a los dos años, que las puedan vender," 1364.

Mut Remola, La vida económica, Doc. Anexo num. 43, pp. 298-299, La ciudad de Lérida puede conceder préstamos con garantía prendaria, 1217.

Eloy Benito Ruano, Deudas y pagos, Doc. num. 4, pp. 34-35,

D. Pelay Pérez Correa pignora diversas joyas y paños a Da. Maria Fernandez, por la cantidad de 3.200 maravedis que reintegrara por el primero Arias Pérez de Ulucena, 1274.

522. Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 401, pp. 585-588 (1481).

Layna Serrano, Historia de Guadalajara, Tomo I, pp. 325-333, Codicilo que otorgo don Inigo Lopez de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon, "Otrosi mando que por quanto demas del empeñamiento que my primo Yñigo Lopez de Valdés me fiso de la villa de Veleña e su castillo e tierra por cierto preçio de la bendida que despues della me fizo mi primo Pedro Melendes de Valdés segund parescera por las escrituras que sobresta rrason pasaron las quales se fallaran en mis arcas..." - p. 326. Tomo II, p. 487, El Segundo Duque del Infantado obligo sus Villas de Cantoria y Catalobo para responder a un juro de 80.000 mrvs. perteneciente a la duquesa y que esta cedio a aquel para la compra de las casas del Cardenal Mendoza, Guadalajara, 27 de Marzo de 1495.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num 153, pp. 326-327, Los Hospitalarios de Zaragoza prestan a Guillermo de Alacala 2.045 sueldos. En virtud de este empréstito recibe la Orden en tenecia el castillo y villa de Lucena, hasta que sea pagada la deuda, 1256. A fine example, together with those of Layna Serrano, illustrating how the mortgagee took possession of the mortgaged property enjoying its use and usufruct until the repayment of the debt, which for centuries was characteristic of this transaction.

523. Basas Fernández, El Consulado de Burgos, pp. 186-187.

Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 157, p. 235, Real Provision para que a ningun Banquero o cambista se conceda licencia para exercer su oficio sin preceder informe y testimonio de su estado, condicion, suficiencia y fianzas.

García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, p. 432, "e si mas quisieren sacar que nos den buenos fiadores..."

Layna Serrano, Historia de Guadalajara, p. 237, "... don Inigo López de Mendoza le prestó la importante suma de 2.000 doblas, sirviendo como garantía de pago la villa de Beleña con su fortaleza..."; pp. 310-314, Testamento de

doña Aldonza de Mendoza, duquesa de Arjona, Espinosa de Henares, 16 de Junio de 1435, "... e otrosi por quanto el duque mi señor mi marido me ovo dado en arras quando con él me casé dose mill doblas de oro castellanas por las quales me obligo la villa de ponferrada e por non me las aver pagado a çierto plaso segun el contrato que entre nos paso yncurrio (en) ciertas penas por lo qual la dha villa se posee agora por mya..." - p. 311, presumably the legal form of this surety was a mortgage, as it was the prior case - vide ref. 522 ut supra.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num. 205,-- Don Domingo Miguel se reconoce fiador del cambio efectuado entre el Hospital y doña Felicia, obligandose a cumplir todo aquello a que estan obligados los fiadores, 1275, pp. 374-375.

524. Burriel, Memorias para la vida del Santo Rey Don Fernando III, pp. 436-437, Autoriza y sale fiador de la venta que hizo don Alvar Pérez a Doña Mencia Lopez, de la villa de Paredes, en el Reyno de Leon, 1237.
525. Layna Serrano, Historia de Guadalajara, pp. 276-281, Testamento de doña Elvira Martinez, viuda de Fernan Rodriguez Pecha, camarero de Alfonso XI, otorgado en Guadalajara a 9 de septiembre del año 1374, ante el escribano Martin Alfons, "... e mando a iohan garçia tres myll mrs e çinco cahises de trigo e que vean su quenta e si algo debo paguengelo... E mando a todos los que fallaren por Recaudos çiertos o por testimonyo de buenos omes o por quentas o por libros de mys mayordomos que les debo algo, que ge lo paguen de lo myo..." - p. 280; pp. 298-301, Testamento de don Diego Hurtado de Mendoza, almirante de Castilla, otorgado en El Espinar, aldea de Segovia, ante el escribano Gonzalo Martinez, el 2 de abril del año 1400, "... Otrosi, mando que todas las dehudas que yo deço escriptas en mi escripto e firmadas de mi nonbre que devo, e todas las otras dehudas que fueren parecidas que devo por Recaudos çiertos e a personas de buena fama que binieran jurando que les devo alguna cosa, mando que sean pagadas de mis bienes..." - p. 301; pp. 325-333, Codicilo que otorgo don Iñigo Lopez de Mendoza, primer marqués des Dantillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernandez de Leon, "... Mando otrosi que de qualesquier que se fallaren que yo debo a qualesquier persona, agora de conpras que yo aya fecho, agora de tierras, rraçiones, quitaciones e sueldo, sean pagadas a mas de aquellas de que yo en espeçial me Recuerdo e aqui seran espeçificadas, mostrandolo por escripturas o testigos que fagan fe." - p. 326, "... Ytem, mando que todos los mrs que fincaren e Restaren demas desto que yo mando, se rrepartan e se den a aquellas personas que en la villa de Guadalfajara

asy christianos como Judios o moros e en mis tierras se fallaren que especialmente me ayan prestado dineros... - p. 333.

526. Ibid., 303-304, Contrato o carta de obligación por la que Alfon Fernandez Pedrero se compromete a hacer varias columnas para las casas principales que edificaba don Diego Hurtado de Mendoza, el almirante. - Guadalajara, 22 marzo de 1404, a good example of the degree of development reached by this type of legal instrument. According to Layna Serrano it contained the usual sureties to guarantee its fulfillment, but they are not shown here.

Ibid., Tomo II, pp. 489-490, Contrato de obligación otorgado por los entalladores de Toledo Miguel Sanchez y Bartolomé Garcia comprometiéndose a labrar el friso del Salon de Linajes en el Palacio del Infantado, Guadalajara, 24 noviembre de 1495; pp. 491-492; Bartolomé Cherino vecino de Trijueque se compromete a decorar los muros y techos de una habitacion de la duquesa en el Palacio del Infantado, Guadalajara, 25 marzo de 1496; p. 493, Obligación subscripta por el entallador Jorge de Cordoba para labrar el friso del Salón de "salvajes" en el Palacio ducal, Guadalajara, 25 Mayo 1496; pp. 494-495, Maestro Ali Pullate contrata con el Segundo Duque del Infantado la conduccion de aguas desde la fuentes del Sotilla hasta palacio, Guadalajara, 7 junio año 1496; p. 496, Diego de Ribera y Pedro de Zamora se obligan con la duquesa a pintar la techumbre y friso de una sala del palacio, Guadalajara 9 de junio 1496; pp. 497-498, El alcaller Durrumaer, Moro vecino de Alcala de Henares, contrata con el Segundo Duque del Infantado la fabricacion de 2.812 azulejos moriscos para el palacio, Guadalajara, 25 noviembre 1496; p. 486, Lorenzo de Trillo se obliga con el Segundo Duque del Infantado de mocarabè y alfanje en su dormitorio, Guadalajara, 30 marzo 1495; p. 488, Obligacion de Lorenzo de Trillo para tallar diversos motivos ornamentales con destino al Palacio del Infantado, Guadalajara, 6 de junio de 1495.

527. Ledesma Rubio, La Ecomienda de Zaragoza, Apéndice, I. Colección Documental, pp. 199-504, Doc. num. 2, 5, 24, 25, 39, 47, 55 - a complex contract, pp. 240-242 - 57, 62, 69, 78, 95, 101, 113 - sale of a share in a mill, pp. 288-289-130, 171, 201, 241, 243, 246, 281, 282, 284, 287, 297, 299 - one of several sales of use and usufruct of a property given in emphyteusis by the Order, p. 499.

González y González, El Reino de Castilla, Tomo II, Doc. 486, Vende al prior y canónigos de Osma una serna por 500 maravedis, 1187 - pp. 839-840. Good example of an early sales contract in the form later compiled in the Siete Partidas.

Agustín Ubiedo Artieta, Documentos de Sigüenza, Valencia: Reproducido por Facsímil, 1972, (Textos Medievales, 32), Doc. 133, El Prior de San Jorge de Alfano vende al Monasterio de Sigüenza la villa de Bujaraloz, 1229 - pp. 197-199.

528. Rafael Gibert y Sánchez de la Vega, 'La 'complantatio' en el derecho medieval español', Anuario de Historia del Derecho español, XXIII, 1953, pp. 738-767.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num. 46, pp. 232-233, Doc. num. 155, p. 328, Doc. num. 156, pp. 328-329, Doc. num. 170, pp. 344-345.

529. Layna Serrano, Historia de Guadalajara, Tomo II, p. 302, Testimonio de la entrega hecha por micer Ventura Venzon a don Diego Hurtado de Mendoza, almirante de Castilla, del Regimiento, alcaldía, y alguacilazgo de Guadalajara que aquel usufructuaba por merced del Rey; escribano, Juan Sánchez. - Segovia, 16 de noviembre del año 1401.

Ledesma Rubio, La Encomienda de Zaragoza, Doc. num. 141, p. 314, Doc. num. 172, p. 346.

Eloy Benito Ruano, Deudas y Pagos, Doc. num. 6, 'El Maestre de Santiago D. Pedro Fernández concede a los judíos de Sevilla D. Mose y D. Vidal el usufructo de las propiedades de la Orden en Carmona durante cinco años, en pago de 8.350 maravedis y dos rocines que los Maestres antecesores D. Pelay Pérez Correa y D. Gonzalo Ruiz debían al padre del primero D. Abraham, 1287.'

530. Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 367, pp. 529-532, Real Confirmación del Establecimiento enfiteúutico que el Bayle General de Cataluña hizo a Pedro Félix Gallard del Consulado del Mar de la Villa de San Feliu de Guixols en el año 1443, en precio de 110 Sueldos y censo anual de 9 Sueldos de la misma moneda, 1450.

Labayru y Goicoechea, Historia General, Tomo II, pp. 672-675.

Ledesma Rubio, La Encomienda de Zaragoza, Apéndice, I. Colección Documental, pp. 199-504, Doc. num. 108, 126, 127, 129, 137, 151, 152, 165, 173, 175, 176, 177, 182, 183, 185, 186, 206, 209, 211, 212, 214, 216, 217, 218, 219, 221, 224, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 247, 250, 254, 255, 256, 257, 258, 259, 260, 261, 263, 264, 265, 266, 268, 269, 272, 275, 276, 277, 279, 286 - a quaint contract where the payment was to be 2 hens and 2 arrobas of wheat per annum, 289, 293, 294, 295, 296, 298, 302.

531. García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, pp. 369-370.

María del Carmen Melendreras Gimeno, "Gastos e ingresos del Consejo Murciano en 1459-60", Miscelanea Medieval Murciana, Murcia, Universidad de Murcia, 1973, pp. 151-155.

Mut Remola, La vida económica, p. 105

532. García Sainz de Baranda, La Ciudad de Burgos, Tomo Segundo, pp. 369-370.

Melendreras Gimeno, Gastos e ingresos, pp. 151-155.

533. Carande y Thovar, Sevilla, pp. 147-150.

534. Capmany, Memorias, Tomo I, p. 258, Castilleian vessel chartered by Pasqual Mercader and other Barcelona merchants to make a trip to Cyprus in 1393.

Carrère, Barcelone, Vol. I, pp. 232-243.

Suárez Fernández, Navegación y Comercio, Doc. num. VIII, pp. 149-150, 1387, junio 10, La Rochela. - Recibo por el flete de la nao "Santiago" de Bilbao, al servicio del Rey de Francia.

535. Carande y Thovar, Sevilla, pp. 147-150.

Felipe Mateu y Llopis, "Los contratos de arriendo de las Cecas Reales. El de Valencia de 1473.", Homenaje a Jaime Vicens Vives, Vol. I, pp. 551-557.

Mut Remola, La vida económica, Doc. Anexo num. 17, p. 245, Alfonso IV establece que las hierbas del termino de Lérida, las ha de arrendar la Ciudad, 1421.

Sainz Díaz, Notas Históricas, pp. 285-302, 309-316, rental of fishing rights.

536. Cortes de los Antiguos Reinos, Tomo II, Cortes de Toro de 1371, XV, Ordenamiento de Cancilleria, pp. 217-243, the receipts of the Cancilleria Real and of Public Notaries were rented out - p. 228.

Jose Goñi Gaztambide, "Los Obispos de Pamplona del Siglo XV y los Navarros en los Concilios de Constanza y Basilea. Alfonso Carrillo (1473-1491)", Estudios de la Edad Media de la Corona de Aragón, Vol. VIII, Zaragoza, Consejo Superior de Investigaciones Científicas, Escuela de Estudios Medievales,

Estudios: XXXIX, p. 272, Arriendo de todas las rentas del Arciprestazgo de Valdonsella por 8.000 Sueldos anuales.

537. Carande y Thovar, Seville, pp. 143-157.

Carrère, Barcelone, Vol. I, pp. 167-170.

Mercedes Gaibrois Riaño de Ballesteros, Historia del Reinado de Sancho IV de Castilla, Madrid, Tipografía de la "Revista de Archivos y Museos", 1922, Tomo I, Apéndice Documental, Arrendamiento de las Rentas Reales a Don Abraham el Barchinon, Burgos, lro. de Junio de 1287, pp. CLXXXVI-CLXXXIX.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 85-86.

Paulino Iradiel Murugarren, Evolución de la Industria Textil Castellana en los Siglos XIII-XVI. Factores de Desarrollo, Organización y Costes de la Producción Manufacturera en Cuenca, Salamanca, Acta Salmanticensia, Ivssu Senatvs Vniuersitas Edita, 1974, (Filosofía y Letras, 84), Apéndice Documental, Doc. I, Carta de Juan II a la ciudad de Cuenca sobre el arriendo de la alcabala de los paños, 1420 - pp. 251-253; Doc. II, Carta de Juan II a Cuenca sobre el mismo tema, 1420 - pp. 253-254; Doc. III, Ordenanzas o condiciones para el arriendo de la renta de "la correduría de lienzo, paños y ganados," Cuenca 1421 - pp. 263-266. These documents show clearly how institutionalised the rental of taxes really was, particularly Doc. I, where Juan II 'manda a su contador mayor, Alonso Gonzalez de Leon, para que arriende 'por menudo' (the alcabala sobre los paños) ya que en la subasta celebrada en la corte no se encontro quien diera por ellas un precio razonable."

Labayru y Goicoechea, Historia General, Tomo III, pp. 686-687.

Mut Remola, La vida económica, Doc. Anexo num. 16.

Usher, The early history, pp. 352-356.

Julio Valdeón Baroque, "Una ciudad Castellana en la segunda mitad del Siglo XVI: el ejemplo de Murcia", Cuadernos de Historia, Anexo de la Revista Hispania, num. 3, 1969, pp. 211-254.

538. González y González, El Reino de Castilla, Tomo II, Doc. 712, Cambia a don Armengol las villas de Formesta, Herrerueta, Rovecedo y otras heredades, por el castillo y villa de Frias, 1201 - p. 258; Doc. 713, Confirma el cambio de Mecina por Villar del Saz, hecho entre Rodrigo Perez y su hermano Gonzalo, 1202 - pp. 259-260; Doc. 725, Cambia con el monasterio de Oña la villa de Mesangos, situada en Castilla la Vieja, por

varias villas que el rey dio a la poblacion de Frias, 1202, - pp. 275-277; Doc. 1016, Da a la catedral de Segovia el alcazar a cambio de unas casas en la Almuzara, 1158 - pp. 749-750. It is interesting to compare this document with another one signed thirty years later, which describes a transaction of greater complexity - Tomo II, Doc. 505, Da al monasterio de Sahagún lo que tenía en Nogal y en Olmillos, a cambio de Villaesper y de 1.340 aureos, 1188 - pp. 868-870.

Layna Serrano, Historia de Guadalajara, Tomo I, pp. 235-236.

Ledesma Rubio, La Encomienda de Zaragoza, Apéndice, I. Colección Documental, pp. 199-504, Doc. num. 38, 54, 58, 61, 63, 66, 67, 71, 80, 82, 88, 92, 109, 110, 115, 136, 142, 143, 144, 148, 150, 157, 158, 159, 160, 161, 162, 163, 168, 188, 199, 204.

539. José María Madurell Marimón y Acadio García Sanz, Comendas Comerciales Barcelonesas de la Baja Edad Media, Barcelona, Colegio Notarial de Barcelona, Departamento de Estudios Medievales, Consejo Superior de Investigaciones Científicas, 1973, pp. 110-114; Doc. num. 3, 93, 191, 196, 206, 209, 210, 227, 235, 236, 243.

540. Basas Fernández, El Consulado de Burgos, pp. 146-152.

Capmany, Memorias, Tomo II, Primera Parte, Doc. num. 270, pp. 401-402, Doc. num. 404, pp. 591-592 (1483); Doc. num. 420, pp. 610-611 (1492).

Carrère, Barcelone, Vol. I, pp. 58-69.

Guiard y Larrauri, Historia del Consulado, Vol. I, pp. 102-112.

541. Capmany, Memorias, Tomo I, pp. 590-592, 655-664. Tomo II, Primera Parte, Doc. num 198, pp. 191-195, Convencion ajustada entre el Magistrado de Barcelona y trece ciudadanos sobre el armamento de una coca de tres puentes propiedad de la ciudad que se destinaba contra los genoveses con unos quinientos hombres cuya manutencion debia correr de cuenta de los trece armadores y la provision de los aparejos del buque y de los pertrechos de guerra de cuenta de la ciudad, 1331. Tomo II, Segunda Parte, pp. 997-1003.

Carande y Thovar, Sevilla, pp. 186, 191-192, 195-207.

Labayru y Goicoechea, Historia General, Tomo III, Suplemento num. 3, Cédula Real pidiendo a los consejos de Bilbao, Bermeo, Portugalete y Laredo artillería de las naos para la guerra con Portugal, 1475, p. 750.

Layna Serrano, Historia de Guadalajara, Tomo I, p. 241.

Molina Molina, La economía Consejo Murciana, pp. 123, 127-137.

Melendreras Gimeno, Gastos e Ingresos, pp. 151-155, 161-173.

Mut Remola, La vida económica, Doc. num. 22, pp. 255-256, Doc. num. 23, pp. 257-258, Doc. num. 24, pp. 259-261.

Sainz Díaz, Notas Históricas, pp. 177-208.

542. Carande y Thovar, Sevilla, p. 188, "La capacidad de las ciudades para la contratación de tan variados préstamos no fué entonces compartida por ninguna otra entidad de la vida pública."
 543. Mut Remola, La vida económica, p. 37, purchase of the Marquedado de Camarasa for 50,000 Florins, in 1396, and subsequent sale to the King in 1423.
 544. Bartolomé Bennassar, Valladolid au siècle d'or. Une ville de Castille et sa campagne au XVIe. siècle, Paris "La Haye, MCMXLVII, p. 30, an interesting detail is the method of arriving at a price used by the Crown for the sale of Santovenia and Herrera, which, as early as 1228 - 1229, was based on the average tax revenues of those towns in the five years prior to the purchase.
- González y González, El Reino de Castilla, Tomo III, Doc. 573, Vende al consejo de Valladolid la villa de Santovenia, situada en el alfoz de Cabezón, 1191 - pp. 24-25. This is probably the original sale of Santovenia to the Consejo de Valladolid. Brief and to the point the document is an excellent example of a sale contract in the form later incorporated to the Siete Partidas. It also illustrates how early the cities were involved in these transactions.
545. Nicolás Cabrillana, "Salamanca en el siglo XVI: nobles y campesinos", Cuadernos de Historia, Anexo de la Revista Hispania, num. 3, 1969, p. 282, Purchase of large "término", El Carpio, with a castle and four aldeas Carpio, Carpesuelo, Aldea de Yuso, and Valdesandiego, in 1420.

García Sainz de Baranda, La ciudad de Burgos, Tomo Segundo, Doc. num. 43, Escritura de venta del lugar de Mazuela otorgada por Gonzalo Ramirez en nombre de su hermana Doña Elvira al Consejo de Burgos, 1333, pp. 454-455.

Gibert y Sánchez de la Vega, El Consejo de Madrid, Tomo I, p. 77.

- González y González, El Reino de Castilla, Tomo III, Doc. 706, Vende an consejo de Valladolid toda la heredad que tenia en la Guardo, junto a Castromonte, por 1.000 maravedis, 1201 - pp. 249-250. Doc. 714, Confirma al consejo de Cuenca la compra de Tragacete, hecha a la condesa doña Mafalda, viuda del conde don Pedro (Nuñez), por 4.000 maravedis, reservandose las salinas del mismo lugar, 1202 - pp. 260-261; Doc. 1028, Vende al consejo y canonigos de Palencia sus montes de Dueñas por 2.100 aureos, dejando a salvo el antiguo derecho del cabildo palentino (dos mestelas diarias de leña) y reservando tambien el derecho a los montaneros del consejo y cabildo (tres panes y tres cossolis de vino semanales, y tres cuartas de carnero y dos suelas al ano)., 1191 - pp. 765-766.
546. Mut Remola, La vida económica, pp. 83-90, Doc. Anexo num. 13, pp. 237-238, Pedro I confirma y loa la compra de la acequia de Segria vendida a la ciudad por Ramon Cavasequia, 1213.
547. Ibid., Doc. Anexo num. 3, Pedro III incorpora la villa y termino de Almacellas a la ciudad de Lérida. La villa de Almacellas, por dicha incorporación y unión paga al Rey 23.000 Sueldos barceloneses, 1347, pp. 221-223.
548. Carande, Sevilla, pp. 181-189. As an instrument of credit the "Barata" was basically a short term loan guaranteed by a personal surety. The first one found by Carande dates from 1371, and the guarantors were bankers and other private individuals, who, on that occasion, charged a 9% interest to the city. The ultimate guaranty was, of course, the city's revenue.
549. Carrère, Barcelone, Vol. I, pp. 167-171.
Usher, The early history, pp. 344-409.
550. María de la Mercedes Borrero Fernández, "Un Consejo de la 'Tierra' de Sevilla: Fregenal de la Sierra (Siglos XIII-XV)", Archivo Hispalense, Tomo LX, num. 183, 1977, 2da. Epoca, p. 19, "El 3 de Junio de 1444, se firman dos cartas por parte de los comprometidos en el empeño - that of Fregenal de la sierra as a guaranty for a debt of one million maravedis. Una de ellas hace constar que Sevilla entrega al Maestre de Alcantara la villa de Fregenal con su castillo, fortaleza y termino, por 'que mejor e mas seguro seades que los dichos maravedis vos seran pagados.' La entrega de la villa se hace por plazo de un año, quedando al cumplirse este los frutos y rentas de la villa en manos de la Orden, si durante el no se hubiesen pagado los maravedis que se debian. La otra carta es la 'obligacion y juramento' que el citado Maestre hace a Sevilla, de devolverle la villa cuando se le pague

el 'cuento' de maravedis."

551. Ladero Quesada, Donadíos en Sevilla, p. 39.
 Cabrillana, Salamanca en el Siglo XVI, p. 283, 'El Rey - Juan II in 1450 - mandaba se amojonasen los lugares yermos para evitar apoderase de tierra 'por paso del tiempo',"
 which suggest that the use of adverse possession by private individuals and the local public powers to enlarge their landholdings was rather widespread.
552. José María Lacarra y de Miguel, Aragón en el Pasado, Madrid, Espasa-Calpe, S.A., 1972, (Colección Austral), No. 1435, p. 159.
553. Ibid.
554. Suárez Fernández, Navegación y Comercio, pp. 16-17; Doc. num. I, Privilegios otorgados por Carlos V de Francia a los mercaderes castellanos en su reino, 1364, Doc. num. II, Ratificación por Carlos V de Francia de los privilegios otorgados a los mercaderes castellanos, 1371, pp. 127-141.
555. Finot, Relations Commerciales, pp. 97-105.
556. Ibid., 14-15, the length of the concession of free trade and fishing in English waters - twenty years - obtained from England in 1350 was very unusual at the time - p. 14.
557. Dollinger, Die Hanse, pp. 503-504.
558. Capmany, Antiguos Tratados de Pacés y Alianzas entre algunos Reyes de Aragón y diferentes Principes Infieles de Asia y Africa, desde el Siglo XIII hasta el XV, Indices por José Hinojosa Montalvo, Madrid, En la Imprenta Real, M.DCC.LXXXVI, Reimpresión facsímil en Valencia, 1974, pp. 39-52, Tratado de paz y treguas, ajustado y firmado por quince años entre el Rey de Aragon D. Pedro III, y el Rey de Tunez por medio de sus Plenipotenciarios, 1285 - its article XXXIX, p. 50, was specially favourable to the Catalans: "Item: Dicho Miralmomenin concederá á los Catalanes, con preferencia á otra Nacion, la gabela de Tunez á un precio regular."; pp. 60-61, Carta del Rey de Tunez al Rey de Aragón, participándole haber aprobado y firmado la renovación de la Paz por diez años, 1308; pp. 62-70, Tratado de Paz y Treguas, Ajustado y firmado por diez años en la Ciudad de Tunez entre aquel Rye, y el de Aragon, Don Jayme III por medio de su Plenipotenciario, en el año del Señor 1313 - its article XVII, p. 68, also seems particularly favourable to the Catalans: "Quando á alguno de los mercaderes se les encontraren algunas mercancías sin denunciar, no se exigirá

mas que el derecho acostumbrado del diezmo: ni seran ellos molestados ni registrados sus almacenes por ese motivo. También en la venta de sus mercaderias se quitará el peso del derecho del Rotulo acostumbrado en Minuar."

559. Ibid., 78-95, Tratado de Paz y Treguas, Ajustado por quatro años entre el Rey de Bugia y de Tunez por medio de sus Plenipotenciarios, de una parte, y D. Jayme II Rey de Aragon, de la otra. Firmado en Barcelona á primero de Mayo del año del Señor 1323; Artículo VI: "El Señor Rey de Aragon tendrá en Túnez y en Bugia Cónsules, y las Lonjas que sus subditos han acostumbrado tener; y tambien aquellas franquicias que gozaron antiguamente. Y si las hubiere mejores, como las de Genoveses, o de otra Nacion, de aquellos podran disfrutar..." - p. 83.

560. Viñas y Mey, De la Edad Media a la Moderna, II, p. 75.

561. Adrien Jules Finot, Etude Historique sur les Relations Commerciales entre la Flandre et la République de Gènes au Moyen Age, Paris, A. Picard, 1906, pp. 157-170.

562. Ibid., 168-170.

563. Capmany, Memorias, Tomo I, p. 389.

In fact, the argument of Capmany gains considerable strength when one sees the banking laws arrayed in their order of succession. Usher examines them in that fashion, pointing out to their comprehensiveness - The early history, pp. 238-242. The increased complexity of the banking laws and the increased sureties required for the bonding of bankers would suggest an expanding banking and economic activity.

564. Friedrich A. von Hayek, The Road to Serfdom, London, George Routledge & Sons Ltd., 1945, First Published 1944, especially p. 56.

565. Hans Grossmann-Doerth, Selbstgeschaffenes Recht der Wirtschaft und staatliches Recht, Freiburg im Breisgau, Fr. Wagner'sche Universitatbuchhandlung, 1933, passim.

566. We are, of course, referring here to a long term trend, which is what we have endeavored to establish in this chapter. Obviously, this attitude must have known many ups and downs over time, but the expressed motives of legal acts as far apart as the approval of the naming of Consules from Valencia, Barcelona, Lérida, Montpellier and Barcelona to the fairs of Champagne in 1254, to promote the export trade of cordovan from those cities, and the Pragmatica of 1494, which authorised the erection of the Consulado of Burgos, are remarkably similar in substance - Capmany, Memorias, Tomo I, pp. 798-799,

Tomo II, Primera Parte, Doc. num. 15, p. 31; and Capmany
Libro del Consulado del Mar, pp. 683-689, respectively.

CHAPTER III
THE STATUS OF TRADE AND MERCHANTS
IN THE EYES OF THE CHURCH

Summary

Here we shall examine the decidedly favourable views of Bishop Francesc Eiximenis with regard to merchants and trade and project them against the mainstream of Scholastic thinking in order to test their validity. Our inquiry - carried, we believe, for the first time in this fashion - will extend to other Peninsular Doctors, whose ideas about some key factors for the existence of an active economy shall be reviewed as part of the Scholastic body of thought in those matters.

A measure of the importance attached to those ideas, ergo, of their value as a social mirror, is the fact that the Doctors were often requested to express them by individual merchants, "universitas", and authorities at all levels of the administration.

On the whole, it will be seen that the Scholastics, contrary to many widespread legends, fully shared with jurists and the civil authorities in the conviction that trade and merchants made an important contribution to the ~~general~~ welfare of society - and were most likely the inspirators of such ideas.

(For the most part, they all shared as well a similar mistrust of the professional "universitas" because of their monopolistic tendencies - an attitude probably inspired by the Doctors. An examination of pertinent clauses in the statutes of several Peninsular and European "universitas", and a number of concrete cases, will show that that mistrust was by no means unfounded. They will reveal quite clearly that, contrary to many common generalisations, the Scholastics, the jurists and the civil authorities were far from considering the professional "universitas" as "ideal" organisations.

The direct participation of the Church in the economic life, and her contribution to the development of fields as diverse as agriculture, animal husbandry, mining, industry, banking will be briefly touched upon as well. So will be her contribution to management in general, and the actual support given to trade and merchants by individual members of the Church on a fairly consistent basis from a time perspective point of view.

THE STATUS OF TRADE AND MERCHANTS
IN THE EYES OF THE CHURCH

The generally favourable disposition towards trade and merchants evident in the Siete Partidas, the Fueros, and other documents studied in the preceding Chapter, as well as the attitude of the authorities as revealed by them, would appear to be, prima facie, incompatible with a society that regarded trade poorly or relegated merchants to an inferior position. Bearing in mind, however, that many of those laws evolved in relative isolation through commercial custom or, like many administrative decisions, were the product of petitions from the interested parties, it would seem proper to gather other opinions and to establish whether in general terms these tend to confirm the evidence offered in Chapter II.

Whilst the determination of the social climate that surrounds trade and merchants is of critical importance to assess them and the economy of any period, the selection of a social barometer is never an easy task. During the period under consideration, the Church would appear to be the obvious choice. The Church, the civil authorities, and the society at large shared an identical religious faith, and, with it, a similar belief in the

transcendental destiny of man, his basic needs for this life, and those that would ensure for him the rewards of the just in the Real Life, after death. The Church was, of course, not only the custodian of tradition and the arbiter of morality, but it was here to make sure that man fulfilled his divine destiny. The views of the Church, which she had the power to enforce, can thus provide us with a very valuable insight into the circumstances in which trade took place, and how merchants lived and carried out their profession. They can also contribute some relevant indication as to why certain ways of doing business developed in preference to others.

Obviously we cannot dream of summarising in toto the views of the Church. In this Chapter, our endeavours will be limited to examining Churchmen's and major Scholastics' ideas on merchants and some key aspects of trade, in the Peninsula and elsewhere. Following the development of those concepts and comparing them, we will attempt to draw some general conclusions about the status of trade and merchants in the eyes of the Church - thus about the social climate that surrounded them, and whether in this respect, there were significant differences between the Peninsula and other European areas.

For Juan Ruiz, the author of the inimitable Arcipreste de Hita, wealth was primarily urban and mercantile, derived from industry and commerce, according to Luis García de Valdeavellano

y Arcimis.¹ This may be a contentious conclusion, but the
 picquant and ever delightful words of the Arcipreste are
 unequivocal when he compares the qualities of several prospective
 suitors for "your beloved daughters":

"Las vuestras fijas amadas
 veadelas bien casadas
 con maridos cavalleros
 e con onrrados pecheros,
 con mercadores corteses,
 e con rricos burgeses."²

Certainly, there can be little doubt that in the eyes of this
 rather earthy, yet pious priest, the desirability of those
 candidates was closely matched. Therefore, it is possible to
 infer from it that their social status was roughly comparable
 as well, though we say this tentatively, keeping in mind the
 caution with which social commentaries should be treated, even if
 they come from an acute observer of men and society, as the famous
 Arcipreste, who was, apparently, imbued with the popular
 philosophy of his time.

At a later date,³ and outside the restricted geographical
 area of Castille reflected in El Libro del Buen Amor, so well
 surveyed by Manuel Criado del Val,⁴ Bishop Francesc Eiximenis
 was much more explicit in his views. Born in Gerona, graduated
 in Theology in Toulouse, well acquainted with Cologne, Paris,
 Oxford, Avignon, and Rome, resident in Barcelona, Lérida, and
 Valencia, Bishop Eiximenis was not only a well educated man, but
 one with an impressive first hand knowledge of some of the

most important centres of the world of his time.⁵ This adds weight and interest to the views expressed in his Regiment de la Cosa Publica, written with a very practical purpose in mind,⁶ a solid cognisance of the economy of Valencia,⁷ and the support of learned sources, sometimes to the point of overabundance, as noted in the critical remarks of Father Daniel de Molins de Rei⁸ - but, nevertheless, an apt summary of them for our purpose.

He resolutely endorsed the notion that trade contributed to the general welfare:

"... que entre los altres oficis que posen la cosa pública en bon estament son los mercaders, car terra on mercaderia corre e abunda, tostemps és plena, e fèrtil e en bon estament."

Naturally, his opinions about merchants, reminiscent - like the prior one - of those expressed over one hundred years earlier in the Siete Partidas,¹⁰ was consonant with his idea of trade, and definitely encomiastic:

"Per tal, los mercaders diu que deuen ésser favorits sobre tota gent seglar del món, car diu que los mercaders son vida de la terra on son, e son tressor de la cosa pública, e son menjar dels pobres, e son braç de tot bon negoci, de tots afers compliment. Sens mercaders les comunitats caen, los prínceps tornen tirans, los jóvens se perden, los pobres se'n ploren."¹¹

The risks run by merchants, the losses, and the many perils and uncertainties that they had to face in the course of their

activities, weighed heavily in the thinking of the Franciscan

Father:

"E creu sens dubte que nostre Senyor Déu los fa misericordia especial, en mort e en vida, per lo gran profit que fan a la cosa publica, e per los grans treballos que sofiren en mar e en terra, e per les grans pèrdues que sofiren sovint, le quals passen mills que altra gent per tal com ho han ja veat; e per los grans ànsies en què tostemp viuen. E per raó de açò, diu aquest doctor que tota la cosa publica deuria fer oració tostemp especial per los mercaders."¹²

It was on account of that, and by virtue of the very significant contribution made by merchants to the welfare of the community, that special privileges should be bestowed upon them, according to Bishop Eiximenis. The Prince should protect and defend the merchants, and avoid overtaxing them, whether they were subjects or aliens:

"Per raó de açò, en favor dels mercaders, consella aquest doctor als prínceps, que els defenen per mar e per terra e que sobiranament se guarden de agreujar-los per lleudes o per peatges o per qualsevols càrrecs; ans los deuen acullir en llur terra així com a fills, sens tota molèstia, mas ab molta amor, car de llur venguda tostemp los prínceps n'han gran guany així mateix, e llurs subdits. Consella encara aquest, que en favor de la mercaderia los sien fet privilegis e gràcies especials e honors majors que a les altres gents, e jamás no sien rebutjats ne empatxas d'on que vinguen, si es vol de terra de enemics, si es vol de amics."¹³

Having been born into a merchant family, it could be argued that filial love may have influenced somewhat Bishop Eiximenis's

prospect on this matter - even though he was quoting authoritative sources;¹⁴ but, on the other hand, it may have provided him with an intimate knowledge and an added perspective in the life of merchants,¹⁵ and so it may have enhanced his ability to consider their role in society. At any rate, his ideas about merchants and trade, by no means original, were congruent with an organic conception of society, along the lines of the Pauline idea of the Church,¹⁶ in which the different though equally important members formed a community, the "cosa publica cristiana."¹⁷

The interdependence of that organic whole, with an obvious influence from Saint Thomas Aquinas,¹⁸ was thus expressed:

"Item, per experiencia apar que havem mester moltes e diverses coses, aixi com menjar, beure, vestir e calçar, e aixi de les altres coses, le quals no pot, cascu fer per si mateix. E per tal, en la cosa publica la un ajuda a l'altre venent-li que menjar, e l'altre que vestir e l'altre que calçar. E aixi la u ajuda a l'altre, e en aquesta manera persevera la cosa publica bastada com la un ajuda a l'altre."¹⁹

This interdependence amongst men, rooted in their different skills,²⁰ and highly beneficial to them all, had led Saint Thomas Aquinas to explain "international" trade on the basis of the different endowments of the "Republicae,"²¹ and to consider it equally beneficial, according to the interpretations of Victor Brants,²² Amintore Fanfani,²³ and Raymond de Roover.²⁴ Although no direct links to Saint Thomas Aquinas are acknowledged in this section, the logic of that conclusion is unlikely to have

escaped a well seasoned reasoner such as Bishop Eiximenis, and was probably a factor behind his enthusiastic endorsement of trade and merchants. Clearly, in a world so conceived, they fulfilled a pivotal role, providing a vital connection between producers and consumers, and the means to satisfy the different needs of men.

The views of Bishop Eiximenis regarding lawyers,²⁵ notaries,²⁶ and medical doctors,²⁷ three frequent targets of malign comments,²⁸ show "die allgemeine Bildung" of this writer and his equanimity. He neither ranks them nor compares them to other professions, but stresses the moral standards required from lawyers and especially from notaries,²⁹ and underlines the need for lawyers and notaries to be few in number and good in quality.³⁰ In all this, Bishop Eiximenis displays a clear understanding of the beauty and great precision with which legal acts can determine the results of human interactions; a vital point, since he, like all Scholastic thinkers, saw economic exchanges from the view point of the law of contracts.³¹ He appears aware of the basic fact that a contract arises from the gulf of needs, as a means of bridging the chasm of differences.³² Hence, his preoccupation with the men formalising and interpreting them. That they should be worthy of confidence was just as important as was the need that the parties entering into a contract did so freely and fully aware of its implications, another concern shared by the Doctors.³³

The centrality given by Bishop Eiximenis to merchants in the "res publicae" would appear to be a good indication of their relative importance in the life of the community. As a priest, the future Patriarch of Jerusalem and Bishop of Elna³⁴ must have been rightly worried about the dangers for Salvation in the Real or Eternal Life to which merchants were particularly exposed by the nature of their work and their frequent absences from home, even though as individuals they were just as unlikely to be all evil as the non-merchants were of being all saints. San Bernardino de Siena³⁵ and Sant'Antonino de Firenze³⁶ were to show a very similar concern later in the XV Century. Their yardstick was the traditional one of the Sacra Doctrina of the Church, who, as Father Thomas Gilby states, always considered man as he lives and acts in this world rather than as a contrived hypothetical figure living in an imaginary world.³⁷

It is precisely that characteristic preoccupation with current events, with man as an individual and under the present circumstances - also underlined by Joseph A. Schumpeter,³⁸ - aside from the very practical purpose expressed by Bishop Eiximenis in the dedication of his book to the Jurats of Valencia³⁹ that makes his work so suggestive of an active economic life in his contemporary Aragon. Glauco Tozzi detects a similar awareness of the economic reality of this time in the thinking of Saint Thomas Aquinas, resulting in an adaptation of economic theory to economic fact and a reciprocal influence of one over the

other.⁴⁰ The outstanding contribution to economic thinking of San Bernardino and Sant'Antonino has been similarly linked to the better known economic conditions of Siena and Florence at their time.⁴¹ And, correspondingly, the brilliant enrichment of economics and international law carried out by Francisco de Vitoria⁴² and his followers of the School of Salamanca,⁴³ as well as by the Jesuit School,⁴⁴ is considered largely the result of the incorporation of America, and the increase in economic activity, the legal questions and problems brought about by that event.

Bishop Eiximenis makes no reference to the Guilds. This silence is hardly surprising for despite the sporadic exaltation of the Guilds as a model of Christian Life from the late XIX Century onwards,⁴⁵ they were far from being regarded as an ideal by the Church Doctors, as Gino Barbieri,⁴⁶ Amintore Fanfani,⁴⁷ Joseph, Cardinal Höffner of Köln (Cologne),⁴⁸ and Raymond de Roover⁴⁹ have clearly shown. Basically, they were suspected of colluding to restrain free trade, which, at the time meant trade that was not restricted by deceit or fraudulent means. Monopoly, a word of very old origins according to Cardinal Höffner,⁵⁰ alluded to in a number of ways and used in a wider, less specific sense than in modern economics, fell squarely into that, as the Cardinal, Wilhelm Endemann,⁵¹ and Raymond de Roover⁵² have demonstrated.

The potential for monopolistic practices becomes readily apparent upon the examination of any Guild charter, be that of the fishermen of Bermeo,⁵³ the cloth-makers of Durango,⁵⁴ the tailors of Milan,⁵⁵ or those of Pisa.⁵⁶ In fact, as Victor Brants⁵⁷ and Amintore Fanfani⁵⁸ affirm, the Guilds showed a consistent tendency toward them.

This monopolistic proneness of the Guilds, already evident during their probable Byzantine beginnings⁵⁹ - and not unexpectedly so, since Byzantium was apparently a "monopolistic paradise" -⁶⁰ has been demonstrated by Gunnar Mickwitz in an exhaustive comparative study.⁶¹ This Finish author established that the victims of such practices were as varied as workshop landlords,⁶² buyers,⁶³ entrepreneurs,⁶⁴ sellers of raw materials,⁶⁵ and workers.⁶⁶ Not only did the Guilds fix minimal prices,⁶⁷ and limited supply,⁶⁸ but they often attempted to do so by curtailing imports⁶⁹ and an assorted number of restrictive measures.⁷⁰

These manoeuvres were often resisted by the local authorities, particularly in the patrician run cities or where the Guilds did not control the local government, according to Mickwitz.⁷¹ The perceived need of counteracting the monopolistic activities of the Guilds gave rise to the enactment of special laws, as shown by Amintore Fanfani,⁷² Joseph, Cardinal Hoffner,⁷³ Gunnar Mickwitz,⁷⁴ Raymond de Roover,⁷⁵ and Armando Saponi;⁷⁶ which, sometimes, appear to have effectively thwarted them.⁷⁷

Monopolistic practices were already condemned by the early Scholastics. In so doing, they followed older examples, such as Pope Julius I (337-352),⁷⁸ Emperor Zeno (483),⁷⁹ and Gratianus, Professor of Theology in Bologna (1139-1142), whose famous Decretum Magistri were often quoted by the Doctors.⁸⁰ San Ramón de Peñafort (1180-1275) a Catalan born Dominican Friar, Father Confessor to King Jaime I of Aragon, and the first codifier of Canon Law,⁸¹ regarded "engrossers" as "abominable monsters."⁸² Whilst allowing agreements for a just cause, the renowned Heinrich von Segusia (+ 1271), Archbishop of Ostia,⁸³ was strongly opposed to monopolies,⁸⁴ and so were Monaldus von Capodistria,⁸⁵ and Johannes von Freiburg.⁸⁶

Albert von Bollstaedt, better known as Albertus Magnus (1206-1280)⁸⁷ considered monopoly to be contrary to the common good,⁸⁸ and his most famous disciple, Saint Thomas Aquinas (1225-1274),⁸⁹ without mentioning it expressly, appears to have left the judgement on monopoly to be determined by the "circostanze particolari" of each case, according to the interpretation of Glauco Tozzi.⁹⁰ The renowned jurist Baldus (1327-1400)⁹² defined monopoly as a conspiracy against the liberty of trade or work.⁹¹ For San Bernardino de Siena (1380-1444)⁹² it was a fraudulent pact by which it was agreed to sell at a price that would increase the benefits of the seller or decrease market prices, if the monopoly was formed to purchase rather than sell goods.⁹³ Sant'Antonino da Firenze (1389-1459)⁹⁴ limited himself to denounce

engrossers and forestallers for very similar reasons to those put forward by San Bernardino.⁹⁵ Thomas de Vio, Cardinal Cajetan (1468-1534)⁹⁶ argued that monopoly forced prices above the level that they would have reached in a competitive market.⁹⁷

As Cardinal Höffner makes clear, the fact that the early Scholastics rejected monopolies does not mean that they were against commerce,⁹⁸ a view that was shared on much more theoretical terms by later Scholastics.⁹⁹ Commerce was considered necessary, but merchants had to be wary of committing fraud and deceit - which together with the asking of an unjust price were likened to monopoly, and they had to give their endeavours an honorable goal.¹⁰⁰ The repudiation of monopoly by the Church Doctors was based primarily upon its conflict with the doctrine of just price. In this, they were by no means alone, for they enjoyed the support of jurists, both romanists and canonists.¹⁰¹

The Doctors never reached a consensus on just price, which, together with the evolution of the concept, illustrates quite clearly that the thinking of the Church was neither monolithic nor static. In fact, the manifest diversity of opinions, and the constant honing and perfecting of the idea of just price show a dynamic process of adaptation to new needs and changing circumstances, as Ovidio Capitani affirms unhesitatingly.¹⁰² This process can be seen in perspective in the works of Cardinal

Höffner,¹⁰³ Raymond de Roover,¹⁰⁴ and, as Glauco Tozzi demonstrates, it is also perceptible within the thinking of one man: Saint Thomas Aquinas,¹⁰⁵ the prince of the Scholastics.

This dynamic process and the multiplicity of individual opinions that Joseph Schumpeter considers characteristic of the Scholastic thinkers¹⁰⁶ becomes readily apparent when we follow the development of the notion of just price and the closely related one of value. For Albertus Magnus¹⁰⁷ and Saint Thomas Aquinas¹⁰⁸ just price was the equivalent of the market price, which was consonant with an idea of value shared with Aristotle¹⁰⁹ and Saint Augustine,¹¹⁰ based on the utility of the thing and its ability to satisfy a personal need.¹¹¹

Just price was the free market price, unadulterated by fraud or interferences.¹¹² Neither static nor easy to determine, the "iustum pretium" consisted of a certain estimate - "in quadam aestimatione" - that tended to oscillate. As far as the seller was concerned, it was arrived at by adding the labour costs plus all other expenses, and it would seem to have been quite clear in the minds of Saint Thomas Aquinas and most Scholastics that unless they were met in the selling price the goods would quickly disappear from the market.¹¹³ Not only was the Angelical Doctor, as we have already seen, very insistent upon establishing the circumstances of each case prior to passing judgement on it, but, aside from recognising as normal seasonal and other price

fluctuations, he was exceedingly pragmatic in his estimation of just price, often more so than the authorities from whom he borrowed examples.¹¹⁴

Father Pietro di Giovanni Olivi (1248-1298),¹¹⁵ roughly a contemporary of Saint Thomas Aquinas, rescued from oblivion by Father Dionisio Pacetti,¹¹⁶ had a more elaborate conception of value. He added to the notion of Utilitas (utility and ability to satisfy a given need) that of Raritas (rarity) - in itself of old Roman ancestry as noted by Paul Thomas¹¹⁷ and that of Complacibilitas (to suit well or to be pleasing), a subjective element - apparently unknown to the Romans¹¹⁸ - that as de Roover suggests, denotes the existence of desires of preferences of varying degrees amongst individuals.¹¹⁹ San Bernardino de Siena adopted the definition of value of Father Olivi, his fellow Franciscan, without alterations.¹²⁰ Sant'Antonino da Firenze, a more practical, less abstract thinker than San Bernardino, and extremely well acquainted with the business world of contemporary Florence,¹²¹ concurred with San Bernardino's concept of value,¹²² and agreed with him that just price should be the market price, provided that it was not tampered with by fraud or collusion.¹²³

In general terms, it may be said that the identification of just price with the market price enjoyed a wide currency amongst the Scholastics, even though their definitions varied; and, in

some cases, notably that of John Duns Scotus (1274-1308)¹²⁴ they incorporated subtly differentiating elements in them.¹²⁵

Parallel to that, the Doctors recognised the power of the civil authorities to fix prices if the common good so demanded.¹²⁶

That power was based on a law text from late antiquity often cited in the Decretum of Pope Gregory IX (1227-1241) incorporated into the Corpus Juris Canonici by San Ramón de Peñafort.¹²⁷

Another source was the Corpus Juris Civilis. In this Roman text, the Bishop was mentioned together with the Prefect as having the authority to fix prices, but the Scholastics, Cardinal Höffner stresses,¹²⁸ did not conclude from that that they were entrusted to care for fixing prices as the ultimate authority. Sant'Antonino, who mentioned the Church only as a second best alternative to the civil authority to fix prices, confirms that viewpoint.¹²⁹

The idea that the civil authorities had the power and the duty to fix prices so as to ensure the common good was carried to extremes by Heinrich Heimbucher von Langenstein (1325-1397).¹³⁰ Whilst accepting that value was not in the thing itself, but in the need one may have of it,¹³¹ Heinrich von Langenstein considered the duty of the local government to fix the prices of foodstuffs and other necessities of life. He recognised the difficulty of doing this, but thought that with intelligence and diligence a proper price could be arrived at, and that to let supply and demand set the level of prices was the sign of a poor government, too lazy and corrupt to carry out its duties.¹³²

Cardinal Hoffner¹³³ and Raymond de Roover¹³⁴ contend that the notions of Heinrich von Langenstein had been inordinately promoted to "represent" the views of the Church on the matter of just price. In fact, when the ideas of von Langenstein are compared to others of the Nominalist¹³⁵ group, of which he was the chief exponent, the diversity and individuality of the Scholastics' thinking becomes readily discernible. Heinrich Totting von Oyta (+ 1397) completely ignored price regulation and sided with the conventional teachers on the subject of price and business ethics.¹³⁶ Johannes Buridanus (+ 1358),¹³⁷ a disciple of William of Ockam (+ around 1349)¹³⁸ also passed over price regulation.¹³⁹ Cardinal Hoffner finds certain tones of Heinrich von Langenstein in Jean de Gerson (1363-1429).¹⁴⁰ He mentioned the difficulty of arriving at a just price due to man's corruption, but his views on price regulation by the authorities are indeed very subdued.¹⁴¹ As far as Nikolaus von Oresme (1363-1429)¹⁴² is concerned, who Cardinal Hoffner thinks could only with reservations be included amongst the Nominalists, given the originality of his thinking, never mentioned price regulation in his writings.¹⁴³

The Nominalists were, however, unanimously opposed to monopoly, in accordance with the teaching of just price, whether that was understood to be the free market price or fixed by the authorities.¹⁴⁴ Heinrich von Langenstein was as emphatic in this pursuit as he was in his argument in favour of government intervention to assure a just price and to promote trade to keep the city well supplied

of goods and raw materials.¹⁴⁵ He condemned the monopolistic practices of merchants and those in which "carpenters, masons, and grape harvesters" were in the habit of indulging when the demand for their services was at its peak.¹⁴⁶ Nikolaus von Oresme was equally adamant in his antimonopolistic position, including those government monopolies created "under the guise of serving the common good,"¹⁴⁷ and the monopoly of money, whose devaluation should only be decided by the Prince and the assembly of the people.¹⁴⁸ His sharp words against the government monopolies are to be understood and evaluated, Cardinal Höffner cautions, as an accusation against the bad monetary and fiscal policies of John II and Charles V of France¹⁴⁹ - a good example of the influence of local conditions on the Scholastic's thinking.¹⁵⁰

In spite of their effect upon later Scholastics and the ethics of business¹⁵¹ and their success, particularly in the universities of Germany, Bohemia and Poland, the Nominalists remained a minority in the Scholastic world,¹⁵² and were by no means able to push aside the views of Saint Thomas Aquinas.¹⁵³ Already in the XIV Century they were postulated amongst others by Herveus Natalis (+ 1323), Giovanni de Napoli (+ around 1336) and Petrus de Palude (+ 1342).¹⁵⁴ Towards the end of that century the teachings of Saint Thomas Aquinas were accepted to a growing extent and in the XV Century they had three great exponents in the Dominicans Johannes Nider (1380-1438)¹⁵⁵ and Sant'Antonino de Firenze, and in Konrad Summenhart, from Calw, Württemberg (born

between (1450-1460).¹⁵⁶ These are to be found as well in the many Confessionary Guides repeating the teachings of the XIII and XIV Centuries.¹⁵⁷ We shall consider in some detail the ideas of Konrad Summenhart for they illustrate how the followers of Saint Thomas Aquinas took up the heritage of the XIII and XIV Century and enlarged upon it, partly as a result of the Nominalist influence and partly as a consequence of the changes in the economic reality.¹⁵⁸

Summenhart - who was considered a great authority by all the XVI Century Doctors and was cited often as Conradus¹⁵⁹ had a rather elaborate idea of price formation in the free market. Cost was, of course, a major constituent factor, and included the purchase price plus the cost of labour,¹⁶⁰ transport and storage,¹⁶¹ compensation for work during transport, storage, and manufacture of the goods,¹⁶² and a clear differentiation of the inherent expenses of wholesaling and retailing.¹⁶³ Supply and demand, which occupy a very prominent role in the formation of price, are mentioned in connection with the purchase price,¹⁶⁴ as a product of specific circumstances, such as horses during the harvest or in times of war,¹⁶⁵ of the rarity of goods - the rarer a commodity the greater its value would be -¹⁶⁶ and, most noticeably, in the case of a special demand for a particular good. The selling price would be low when the demand was low and progressively higher as the demand increased.¹⁶⁷

Another important factor in the formation of price in the free market was a special compensation for the necessary care during transport, storage, and manufacture of the goods,¹⁶⁸ for the diligent endeavours to find, to transport and to store goods, because the diligent merchant looks into the smallest details and where he can buy the best and the cheapest goods,¹⁶⁹ and for the value added to a good, as for instance when somebody makes a knife out of iron.¹⁷⁰ Risk was also the subject of a special compensation - as it had been for John Duns Scotus in the XIII Century¹⁷¹ and San Bernardino da Siena¹⁷² and Sant'Antonino da Firenze¹⁷³ in the early XV Century. Summenhart thought that risk was worth a price since some people would pay a gross sum of money to be insured.¹⁷⁴ He rejected, however, that the social position of the seller should be taken into consideration - as Scotus and the Nominalists, - particularly Heinrich von Langenstein - postulated,¹⁷⁵ sustaining that a higher payment to a person of a higher rank was only justified when higher personal attributes had been shown.¹⁷⁶ Thus, in this matter¹⁷⁷ as in the question of considering a monetary compensation to the vendor for the loss of use of the article sold as a constituent element of the price, Summenhart followed the basic teaching of Saint Thomas Aquinas.¹⁷⁸

Although Summenhart placed by far a greater emphasis on factors pertaining to the free market price formation, he also contemplated price regulation by the authorities whenever it was

reasonable and justified, as it could be, for instance, in the case of bread, cloth, or rents in a university town or where a Concilio was held.¹⁷⁹ Summenhart maintained that the regulatory responsibility of the government was greater in times of distress.¹⁸⁰ However, he stressed that the characteristics of the goods had to be reckoned with by the regulator. Profits, according to Summenhart, should be higher for goods that are necessary than for luxury items or for such things that do harm to the community, such as gambling, since the seller of useful goods performs a greater service to the community than the others. He adds further that if the state were to pay a salary to merchants, the sellers of necessities should be paid a higher salary.¹⁸¹

On the subject of price regulation, Summenhart was greatly influenced by Heinrich von Langenstein, whom he often quoted,¹⁸² probably, as Cardinal Hoffner ventures, through the influence of his fellow professor at the University of Tübingen, the late Nominalist Gabriel Biel.¹⁸³ Finally, Summenhart offered a third option when neither the free market nor the regulated prices rendered satisfactory results. He concluded that the advice of a wise man should be taken into consideration when all the other reasons cited were totally or partially inapplicable.¹⁸⁴

Starting from the basis of the traditional scholastic teaching on just price, which considered value as existing not in the thing itself but in its utility and in man's preference as

expressed in the free market evaluation, Summenhart considered the general market trend a good point of reference for the assessment of just price.¹⁸⁵ Accordingly, he considered the firm price of annuity bonds as a good sign that their price was just, for if it were too high the rich would not buy them because they were not under pressure to do so, and if it were too low they would not sell them.¹⁸⁶

The old proverb that "a good is worth as much as one can get from it"¹⁸⁷ was accepted by Johannes Nider¹⁸⁸ and also by Summenhart, but he thought that its true sense was "that the value of the good would be justly assessed through the general evaluation and the strength of the demand."¹⁸⁹ Two decades later, Summenhart's interpretation was picked up by Sylvester Prierias O.P. (1456-1523).¹⁹⁰ In his Summa Sylvestrina he confirmed that the adage was true as far as he could determine from the writings of the Doctors, when three conditions were met: first, there must not be any fraud in the lowering or increase of the price; second, coercion or pressure upon vendor or purchaser must be excluded, one should not be forced to buy from this one or sell to that one; and thirdly, ignorance of those who are contracting must be excluded, so that both know what they are doing.¹⁹¹

Summenhart pointed out that this general evaluation did not signal a mathematically precise answer to the price of a good,

such as the needle of a scale would point to, but it was rather a "guesstimate" of it.¹⁹² This, as we have seen, went as far back as Saint Thomas Aquinas.¹⁹³ He added, though, that the price of a commodity could be exactly assessed by the regulator, were it not for the fact that the human element involved conferred some uncertainty to it¹⁹⁴ - a lament that was common to some Nominalists as well.¹⁹⁵ Cardinal Höffner attributed to Sant'Antonino the beginning of the hunt for the most just point, the price of a given commodity, which he sees reflected in the writings of Summenhart. Sant'Antonino was the first to divide the price range of a commodity into three categories from low to high: a lower or benevolent one, a medium or discreet one, and a high or sharp price. Even though Cardinal Höffner thinks that Sant'Antonino did not wish to produce that result, these categories were used by all Scholastics after him, thinking that somewhere there it was possible to find the precise just price.¹⁹⁶

For the merchants, Summenhart had warm words of praise. Since nobody could be self-sufficient, one has to do this and another something else, and because of the division of labour amongst people, there have to be merchants as middlemen, who will trade with other areas, store the goods, protect them from spoilage, and keep them ready for sale. As all these operations cause costs and worries and the merchants run risks in every one of them, it was necessary to grant them their profits. Otherwise, should one prohibit commercial profits, the merchant class would simply

disappear.¹⁹⁷ Johannes Nider held a similar view in this matter,¹⁹⁸ which, as we have seen, had already been foreseen by Albertus Magnus.¹⁹⁹

Summenhart added that one should not condemn the merchants and commerce because sins would be committed, for those were the sins of the individuals who do not practice their profession properly.²⁰⁰ He mentions such sins as an exaggerated greed for profits in order to amass great riches, and unfair competition.²⁰¹ Monopoly was classified as a special kind of unfair competition.²⁰²

To an obvious empirical knowledge about monopolistic practices, Summenhart incorporates the examples and opinions of other XV Century writers such as Johannes Nider,²⁰³ the Blessed Angelus Carletti da Chiavasso, the Vicar-General of the Franciscan Order (+ 1495),²⁰⁴ and Christoph Kuppener (1466-1511), a jurist from Leipzig and member of the pewter handlers company.²⁰⁵ They all censured the restriction of supply and other sharp monopolistic actions of merchants and storekeepers, who were guided by their own selfish interest detrimental to the common good.²⁰⁶

Summenhart was a harsh critic of the agreements to sell at a price within a justifiable range, but on the upper limit and not cheaper.²⁰⁷ He also condemned the price agreements amongst barbers and practical surgeons,²⁰⁸ the common practice of tradesmen of reducing competition by limiting the number of apprentices

accepted for training, often reserved only for the sons, nephews or nieces of the Guild's members,²⁰⁹ and those tradesmen who refused to continue the work started by others.²¹⁰

Monopoly, thus, continued to be mentioned mostly in connection with storekeepers, workers, and tradesmen, for as Cardinal Höffner stresses, the great days of the foreign trade monopolies were to start only late in the XVI Century.²¹¹ Also, as we have already mentioned, it continued to involve for the most part an element of conspiracy, and described not only what we know today as monopoly proper, but also oligopoly, monopsony, and restricted labour practices.²¹² For Summenhart, the illicitness of monopoly stemmed from the laws of the state and from "natural common sense."²¹³ He, like Kuppener,²¹⁴ mentioned the heavy penalties prescribed for monopolists in the Justinian Code,²¹⁵ reflecting, perhaps, the considerable inroads that the romanists had made by that time in the Scholastic thinking.²¹⁶ Summenhart stressed that the free market and competition were the best guarantors of just price. According to him, the one in competition has less possibilities and is unlikely to have the impudence of asking exaggerated prices for this goods. People would, quite simply, go to the one who sells them cheaper.²¹⁷

Summenhart - unlike Heinrich von Langenstein²¹⁸ - divided the bulk purchases during the harvest and grape collection time into monopolistic and non-monopolistic ones. Amongst the latter,

considered beneficial for the common good, he enumerated the gathering of provision in times of need, those purchases that allowed the farmers to concentrate on the harvest by shortening their stay at the market place, the wholesale acquisitions of small merchants, and the buying and selling operations of middlemen.²¹⁹

In comparison with Summenhart, Sant'Antonino da Firenza, a generation earlier, had a much milder opinion on certain private price agreements that for Cardinal Höffner had an obvious monopolistic character. Citing the authority of Ostiensis (Heinrich von Segusia, Archbishop of Ostia) he thought that it was permissible for merchants with the consent of the Bishop to set a common price that was of course a just price.²²⁰ However, the private monopolies agreed upon by merchants, even those resulting in a just price, were considered illicit by Sant'Antonino.²²¹ At the same time, those merchants were supposed to obey the prices fixed by the Bishop and municipal authorities for necessities.²²²

Cardinal Höffner finds remarkable that Sant'Antonino detected a certain similarity between price regulation by the authorities and a private monopoly system, to which he attributes the tendency of Sant'Antonino to allow certain private monopolies.²²³ His position on this matter seems to have been an isolated one. In the Summa Roselle de casibus conscientiae it was stated that

whilst any private monopoly must be forbidden, price regulation could be sometimes necessary for the common good.²²⁴ Father Prierias in his Summa Sylvestrina agreed with that, adding that private monopolies were fraudulent increases or decreases of prices.²²⁵

The works of Hans von Platea (+ 1460),²²⁶ the Confessionary Guide of his fellow Franciscan Bartholomaeus de Chaimis (+ 1496)²²⁷ and the usury treatises of the jurists Laurentius de Ridolfis²²⁸ and Antonius de Rosellis,²²⁹ generally followed closely the ideas of Konrad Summenhart and the other mentioned XV Century theologians, and, according to Cardinal Höffner, they added nothing new to their views on just price, value, and monopoly.²³⁰ As far as the late Nominalists are concerned, the two most outstanding figures in that century were Gabriel Biel (1425-1495)²³¹ and John Major or Mayr (1469-1550).²³²

Gabriel Biel, a Southern German like Summenhart, who also taught with him at the University of Tübingen between 1484 and 1491, was influenced by William of Ockam, Heinrich von Langenstein, and Jean de Gerson, particularly the latter, whom he repeated verbatim in his assertion that nobody was wiser than the law maker in his estimation of just price.²³³ He tempered that view, though, by adding that the regulator has to consider the demand and supply or undersupply of the goods, the number of the needy, the utility and necessity of the goods, the difficulty of

procuring them, and the required labour - in other words, one has to have due regard for the market factors, and, 'when the law maker wisely reflects on this, he can find and fix the just price of goods.'²³⁴

Biel supplemented that with the pertinent observation that when the market rather than the law giver sets the price of a commodity, the level of it depended on the strength of the demand, and therefore an increase in demand would mean an increase of the price. The demand will be more pressing when the stock of available goods that the people demand decreases, when the number of those demanding these goods increases, and when it is difficult to obtain the goods.²³⁵ Whether Biel was influenced by the views of his colleague Summenhart, or whether his ideas of the influence of supply and demand upon the market price were the result of empirical observation - something the Nominalists tended to emphasise,²³⁶ - we don't really know.

John Mayr, a Scotsman from Haddington, who studied at Oxford, Cambridge, and Paris, where he was a professor from 1505 until 1550, also supported price regulation by the authorities. He pointed out quite rightly, however, that it could only be easily carried out with similar goods, such as grain. This task, became considerably more difficult with commodities such as wine or beer, with which different qualities had to be taken into account, and it was thus impossible to fix a general, uniform price for them.²³⁷

As far as the merchant's compensation was concerned, the late Nominalists seem to have followed the "Good Rule" of John Duns Scotus, that a merchant could take as much as a good and just law giver would pay to an employee of the state if trade was carried out through this employee.²³⁸ John Mayr also stressed the risks run by merchants for the common good.²³⁹ He and Biel considered the formation of monopolies as a stain and injurious to the merchants as a group. Monopoly contravened the doctrine of just price, whether it was the monopoly of one big merchant, a price agreement, or a Guild monopoly.²⁴⁰

Throughout the XV Century, the Scholastics saw a clear connection between the doctrine of just price and monopoly. The latter destroyed the freedom of the market and adulterated some of the most important elements of price formation, namely the number of available goods, the number of buyers and sellers, and, in place of a just price, it produced an artificial one arrived at for purely selfish reasons.²⁴¹ Cardinal Hoffner stresses that Konrad Summenhart saw that connection with special clarity and underlined the price regulation function of competition.²⁴²

Cardinal Hoffner remarks that on the whole, it may be said that the Nominalists displayed a tendency to prefer authoritarian regulation of prices rather than letting them find their own level in the free market. "It would appear that in these matters they had more in common with John Duns Scotus than with Saint

Thomas Aquinas."²⁴³ Yet, as we have seen, Konrad Summenhart, the most prominent amongst the XV Century followers of the Doctor Angelicus, accepted price regulation under certain circumstances. So, Cardinal Höffner concludes, the Scholastics in the XV Century, like the present day economists, were divided "zwischen Freiheit und Bindung" - between freedom and control.²⁴⁴

Between those two extremes, there were, as we hope to have made clear, a great variety of hues and fine distinctions, as well as very personal positions on specific issues. The case of the Blessed Angelus Carletti da Chiavasso, a follower of John Duns Scotus, who accepted the Thomistic "communem Aestimationem" of the market as the criteria of just price²⁴⁵ just as Johannes Nider, a leading Thomist did,²⁴⁶ illustrates that point and the difficulty of grouping the Doctors into generalised schools of thought.

Raymond de Roover²⁴⁷ and Cardinal Höffner²⁴⁸ affirm that Scholastic thinking reached its loftiest peak in the XVI Century. It flourished in the first two decades, according to Cardinal Höffner, who detects a period of ascent up to and through the Council of Trent (1545-1563) culminating in the decades that followed that event, in which Scholasticism achieved its highest intellectual level.²⁴⁹ This development - partly attributable to the easier spread of ideas brought about by the printing press²⁵⁰ - had its major impetus in the Iberian Peninsula, where it was led by the Universities of Salamanca, Alcalá, and Coimbra.²⁵¹

The influence of the Spanish Theologians amongst the Scholastics and in the Catholic world at large was very significant during the entire period. This great influence of the Spanish Theologians was not only the product of their presence and input in the Council of Trent, where they had the opportunity of influencing directly the Bishops and fellow Theologians, but also from the fact that they were called to University chairs in places as far apart as Rome, Ingolstadt, Prag, and Paris.²⁵² In the case of Father Martín de Azpilcueta, the famous Doctor Navarrus, author of a new and highly successful teaching method at the University of Salamanca,²⁵³ that call had a wider repercussion for he was asked to help reorganise the University of Coimbra.²⁵⁴

By and large, the scientific basis of their teachings went back to Saint Thomas Aquinas.²⁵⁵ Francisco de Vitoria, the founder of the School of Salamanca, introduced the *Summa Theologiae* of Saint Thomas Aquinas as a textbook instead of Lombardus, and even though his own *Comentarios* to the *Summa* were only published in 1932, the Thomistic influence on his students was by no means lost.²⁵⁶ The most respected sources besides Saint Thomas were Sant'Antonino da Firenze, Konrad Summenhart, Gabriel Biel, and John Mayr.²⁵⁷

Although Francisco de Vitoria had a great interest in Moral Theology, he focused upon areas other than business ethics, to which he added nothing new.²⁵⁸ The three most outstanding

Scholastics dealing with business ethics in the earlier part of the XVI Century were the Dominican Domingo de Soto (1494-1560),²⁵⁹ one of the most gifted disciples of Vitoria, whom he succeeded in the chair of Theology at Salamanca, the Franciscan Juan de Medina (1490-1546)²⁶⁰ a professor in Alcalá from 1526 until his death in 1546, and the Dominican Cardinal Tommaso de Vio, the famous Cardinal Cajetan (1468-1534)²⁶² who taught in Rome and whose wide travels enhanced his acquaintance with changing economic circumstances and gave him a first hand knowledge of commercial practices.

The formation of price and the question of just price remained amongst their main concerns.²⁶³ To arrive at the formation of price, Domingo de Soto classified the sixteen price factors of Konrad Summenhart²⁶⁴ into three groups. Firstly, one had to take into account the pressing needs, the existence and level of stocks, the degree of scarcity of the goods, the merchant's work, worries, diligence, and risks. Secondly, one had to consider whether value had been added to the goods; and thirdly, the number of buyers and sellers in the market. Cardinal Höffner finds de Soto's grouping of cost and competition factors much better organised than the original of Summenhart, but lacking on any comments about their relationship in the formation of price.²⁶⁵ This, and particularly the regulatory function of competition, had been perceived with greater clarity by Summenhart.²⁶⁶

With regard to the notion of just price during this period, Father James Brodrick affirms - quoting Juan, Cardinal de Lugo (1583-1660)²⁶⁷ - that "is either the price fixed by law or else 'quod communem hominum aestimationem et iudicium constitutum est, non ex unius vel alterius privato affectu!'"²⁶⁸ This division was, however, far from being a clear cut one.

To arrive at the just price, Juan de Medina, probably influenced by Gabriel Biel, considered firstly the government price regulation; secondly, the appraisal of the market; and thirdly, the price that resulted from adding the merchant's work, risks, and expenditures, as well as the scarcity and necessity of the goods.²⁶⁹ Juan de Medina had some misgivings about all these methods of determining the just price.

As elements to be taken into account against the regulation of prices by the authorities, he considered the possibility of bribes, the likelihood that inexperience could make the government officials in charge of regulation arrive at unrealistic prices, and the fact that expenditures, risks, work, and the number of goods could change, "as it often happens, right under our eyes."²⁷⁰ In spite of these apprehensions, Medina thought that one had to view the fixed price as the just price for as long as the price regulator was not bribed or made an error, or the necessity for change became apparent.²⁷¹

Domingo de Soto also voiced some concerns about price fixing by the authorities, which he estimated to be practically impossible. Yet, from a theological rather than a factual point of view, price fixing appeared safer to him than the market price when one considers the conscience of the merchant - and the dangers for his soul - and the common good.²⁷² To the question of whether it would be better to have the government involved directly in trade and conducting it through government employees, the answer of de Soto was that in that case not all the goods would be available.²⁷³ In connection with this assertion, it is interesting to notice the considerable personal experience of de Soto, who on several occasions was in charge of buying grain in bulk to keep Salamanca supplied and the students fed, as well as negotiating other contracts for the University, sometimes together with Vitoria.^{273 bis}

Martín de Azpilcueta was more explicit in his apprehensions about price regulation. He expressed them in the much quoted lines: "I believe that very rarely a price should be fixed. Firstly, it gives an opportunity for the spoilt and very nearly useless goods to be sold at the same price than the good ones. Furthermore, in times of great need nobody adheres to the fixed price and in good times it is hardly necessary. Also in times of oversupply of goods none of the rich merchants will give credit or will sell price regulated goods on credit except at the higher fixed prices calculated for times of need. In addition to that,

the regulation of prices causes countless serious contraventions since there are a thousand ways of circumventing it. So, for instance, some refuse to sell a price fixed good, such as grain, unless at the same time another unregulated good, say wine, will be bought at two or four times its actual value."²⁷⁴

The views of Azpilcueta were not only abundantly quoted throughout the XVI Century but also were applied to practical situations and elaborated further. The Dominican Luis López (+ 1595)²⁷⁵ attributed his sharp words to the fact that price regulation was such a difficult thing.²⁷⁶ Fernandus Rebellus underlined Azpilcueta's misgivings saying that "often it is better for the common good of a city when one does not order fixed prices, as it is in the case of Lisbon. This city will totally collapse if one would introduce fixed prices for grain. If all goods had fixed prices it would cause an unnecessary and great confusion in the state. Besides, the grain imports from foreign countries are exempted from price regulation and not only out of pure good will for the foreign merchants, but because otherwise imports would altogether cease."²⁷⁷

The Jesuit Luis de Molina (1535-1600),²⁷⁸ an original thinker with many important contributions to economics,²⁷⁹ was opposed to any price fixing, including the just price regulation by the authorities.²⁸⁰ He explains his position in detail by referring specifically to Portugal, where it would appear that the price

of locally produced grain was regulated whilst that of the imported grain, necessary to keep that Kingdom supplied, was not.

He thought that it was difficult to arrive at a just price through the authorities, because different circumstances had to be taken into consideration.²⁸¹ Even in the same state, the same price factors, for instance goods and money,²⁸² are not equal everywhere.²⁸³ This rendered very difficult to adjust the fixed price to the different conditions, but this had to be done if the fixed price is to be and remain a just price. Therefore, the authorities could not follow the principle that laws should be changed as little as possible.²⁸⁴

According to Molina the price fixing of home grown grain in Portugal caused problems. Often, foreigners would purchase home grown grain and then sell it as imported grain, at the much higher price obtainable for that ~~commodity~~.²⁸⁵ Local producers followed suit, and the Lisbon grain merchants assisted them by offering higher prices voluntarily.²⁸⁶

Therefore, fixed prices led to countless transgressions of God's law, such as lying and perjury. Confessors and theologians, who were asked daily for advice, were well aware of it. A fortiori, since the sale contracts were not finalised publicly, but in private houses and without witnesses, the grain laws tempted people into trans-

gressions. Consequently, Molina vehemently confirmed his opposition to the regulation of prices by the authorities, stating that "a ruler who is aware of his responsibilities should not pass a law that he expects to be transgressed."²⁸⁷

With regard to the second rule that the just price be derived from the market trend, Juan de Medina says that this rule seems to be more dependable than the price fixing by the authorities because every change of the cost and market conditions would show immediately their influence upon the market price. However, one has to ask oneself who caused this general market trend. If it were the "merchant", one would have to expect an exaggerated price, since the vendor, as shown by experience, would like to earn as much as possible. The non-merchants are in this without experience. Yet, Medina says, the general market trend does not depend entirely on willfulness since it happens that the merchant often has to sell at a loss.²⁸⁸ "This is the fate of the merchants, they have to count not only on gain but also on loss."²⁸⁹

Cajetan added pertinently to this notion of the market price that one should not regard it too generally as being the price in the land at large, but which is now and here, under particular purchase and selling conditions, and from which any fraud and duress are excluded.²⁹⁰ Luis Saravia de la Calle also stressed the place, time, and manner of the sale, as well as the abundance or scarcity of goods, merchants, and money.²⁹¹

Juan de Medina had also certain doubts about the third rule that the just price is arrived at through costs. Not all merchants had the same costs. One bought favourably, the other unfavourably. One acted wisely, the other unwisely. Should therefore, the same goods, in the same place, at the same time be sold more expensively than the others? That was absurd to him. Consequently, he concluded that this third rule was applicable only when there was neither an authorised or fixed price nor a usual market price. Therefore, that happened when unknown goods had been offered for the first time. In this case, the merchant could demand a price which assured him next to the recovery of his costs a reasonable trade profit.²⁹²

Domingo de Soto shared the misgivings of Medina with regard to this rule. He specifically attacked the notion of John Duns Scotus that the just price was the equivalent of the manufacturing and other costs, including a compensation for risks and a reasonable profit,²⁹³ stating that that would tend to favour the merchants lacking foresight and incapable of reducing costs.²⁹⁴ He added that "the art of commerce is largely dependent upon chance, and merchants should learn to bow to misfortune and wait for better times to come..."²⁹⁵

Rejecting altogether the idea that the natural price was determined by the judgement of the individual merchant,²⁹⁶ Domingo de Soto was also opposed to the opinion that merchants,

because of their position, should be allowed to sell at higher prices the same goods, in the same place, at the same time. He, like Konrad Summenhart,²⁹⁷ considered that the just price does not take into consideration the status of the persons involved in trade, but it is arrived at entirely on its own merit.²⁹⁸ He allowed a certain latitude within the range of just price for the uncontrolled goods, which, unlike those subjected to a legal price, could be sold at "rigid", "moderate" or "merciful" price,²⁹⁹ reminiscent of the old distinction of Sant'Antonino.³⁰⁰

Luis Saravia de la Calle also argued against the determination of the just price purely on the basis of costs. For him, the just price arose from the abundance or scarcity of goods, merchants and money, and not from costs, labour, and risks. "If we had to consider labour and risk in order to assess the just price, no merchant would ever suffer loss, nor would abundance or scarcity of goods and money enter into the question. Prices are not commonly fixed on the basis of costs. Why should a bale of linen brought overland from Brittany at great expense be worth more than one which is transported cheaply by sea?"³⁰¹

When one adheres to these rules, Cardinal Höffner reasons, one can justifiably say that "a good is worth as much as one can get for it," which is not to say that one can drive the price up at will against natural, divine, and human law.³⁰² Domingo de Soto adopted the philosophy already known in the XV Century,³⁰³

stating that the famous adage 'was correct when force, fraud, and deceit were excluded, for they would deny the purchaser the formation of a free opinion.'³⁰⁴ He added that "an extensive commerce shows that people have progressed from the incomplete to the complete - alluding to a stage closer to an ideal situation of satisfaction of all human needs - even though it can all be turned around by greed."³⁰⁵

For Saint Thomas Aquinas, trade was, in itself, as indifferent as eating. The drive for profit, strangely characteristic of trade, had a certain ugliness in it. "I do not know - he said - where it comes from, that trade in contrast to all other occupations, causes an unquenchable thirst for profit."³⁰⁶ Whilst, farmers and tradesmen lived contented in their occupations, merchants, 'like gamblers, are driven by a greater greed for profit'.³⁰⁷

After attempting to find where that unquenchable thirst or greed for profit lay, Juan de Medina expanded on the necessity for trade. "Take trade away - he reasoned - and then people would have to rob foreigners in order to survive or they would have to die of hunger, nakedness, and other needs."³⁰⁸ The merchants, therefore, should be allowed to profit because one could justifiably strive for profits when one through endeavours, costs, and risks, provides for others, namely, for the needs of the community.³⁰⁹

Medina made very clear, however, that one should not make the earning of money the ultimate goal in life. Even though one is allowed to earn the riches which were God given, one is not permitted to desire them as if they were in themselves desirable. In this, he is in full agreement with Saint Thomas Aquinas.³¹⁰ Cajetan concurred with Medina, and also thought that the finance business should be allowed under certain circumstances and for a reasonable profit.³¹¹

Next to greed, monopolistic practices were deemed to be most injurious to the soul. They violated commerce. Domingo de Soto cited the case of the merchant who buys all the goods in order to reduce supply and drive the price up.³¹² He also placed in the same category those merchants who conspired to forestall their competitors and forced the public to deal with them, and those who agreed not to sell below a certain price.³¹³ Domingo de Soto's condemnation of monopoly was not reserved purely for sellers. It was proscribed for the buyers too.³¹⁴ The buyers were allowed only to resort to measures sufficient to counteract a seller's monopoly, thereby extending the principle of the legitimate use of force against force.³¹⁵

Juan de Medina was also against monopoly because the buyer was forced to pay the price demanded by the monopolists. In his opinion the monopolist was more noxious to the state than a bad harvest or the locust, regardless of whether the monopolists were

(merchants, tradesmen, or surgeons, who agree that their special craft or medicine would be passed on only to their sons or nephews.³¹⁶

He saw the state-granted monopoly in a different light. It was allowed when it was demanded for the common good and when the just price was fixed by the authorities; for instance, when nobody would otherwise undertake a necessary trade such as printing or keeping a restaurant. However, Medina insisted that the government should not grant monopoly privileges for articles of first necessity, because their price would be higher than if there were many merchants around, even if the prices were fixed by the authorities. There was also the danger of the scarcity of the goods, since nobody but the monopolist is allowed to sell those goods.³¹⁷

Domingo de Soto considered shameful that a merchant could obtain, by purchasing a privilege from the prince, a monopoly for particular goods, "because due to the limited number of sellers the price would rise."³¹⁸ Cardinal Cajetan, whose opposition to monopoly we have already mentioned,³¹⁹ called it a transgression of freedom,³²⁰ and condemned to restitution those who granted the monopoly as well as those who profited from it.³²¹ The French jurist Charles Dumoulin (Carolus Molinaeus, 1500-1566), was strongly opposed to all monopolies, and even considered the argument of their necessity for the common good as

a pretense³²² to put down the population into slavery and contravene a free and true state.³²³ The jurist Benvenutus Stracha, a professor of Law in Ancona was equally critical and very much against monopolies and the manipulation of prices.³²⁴

Summarising the first half of the XVI Century, Cardinal Höffner underlines the efforts of the Doctors to systematise and critically examine the Scholastic legacy on the formation and rules of price, particularly those of Juan de Medina. The Scholastics of this period recognised that the merchants could decently acquire "the greatest fortunes," as Medina himself asserted,³²⁵ provided that the drive for profit was not their ultimate goal. Price regulation, which was not considered as intensely as in the XV Century, elicited some strong objections. So did monopolies, which were condemned for destroying price justice and were considered as shameful to the merchant profession. Attacks against the freedom of the market - into which all types of monopoly fell - were pointed out, and even official monopolies were not accepted without criticism.³²⁶

Cardinal Höffner, therefore, concludes that the doctrines of Saint Thomas Aquinas had pretty well succeeded by the XVI Century.³²⁷ His conclusion is shared by Raymond de Roover,³²⁸ and the work of Marjorie Grice Hutchinson corroborates their views.³²⁹ The fact that Johannes Niders's De contractibus mercatorum was published as an appendix to the treatise of Benvenutus

Stracha³³⁰ is strongly suggestive of that Thomistic influence,³³¹ an influence that is also discernible in the solutions put forward to some specific cases.³³² This influence was strengthened by the fact that Pope Saint Pious V³³³ declared him a Doctor of the Church and had his complete works meticulously compiled and published.³³⁴ Nominalism, on the other hand, became forgotten, and Scotus was rarely mentioned outside the Franciscan Order.³³⁵

In the Peninsula, the followers of Saint Ignatius Loyola became very active. The members of the Society of Jesus investigated the opinions bequeathed to them, extending and adjusting them to the conditions of the time - as can be seen - for instance, in the idea of value of Juan, Cardinal de Lugo,³³⁶ or in the final decision of the special commission of theologians dealing with the Contractus Germanicus.³³⁷ Cardinal Hoffner affirms that basically the Jesuits followed the handed-down Thomistic doctrine, though interpreting freely the ideas of Saint Thomas. Remarkable, he adds, is their strong accent on the freedom of the market³³⁸ - thus stressing once more the continuity of this principle throughout Scholastic thinking.

Returning now to Bishop Eiximenis, after this long though necessary detour, we find that his views about the freedom of the market were not at variance with those of the Doctors at large. They are clearly expressed in his interesting distinction between

the licit and illicit storage of goods:

"Deus ací saber que los regaters e revenedors, si es volen cobrir en los llurs mals dient que ells compren en gros, sí fan los mercaders, qui compraren a vegades alguna fusta qui portarà virtualles e si es descarregava e es venia per botiguers, la comunitat hauria millor mercat, e per tal com ells la compren en gros la vitualla no baixa. Mas a aquest argument responen los doctors dient que en aitals compres jutja hom per presumpcions. Car si lo gra és hui en València a covinent for per ajuda dels mercaders qui han ajudat a portarlo, e estant lo blat en covinent for ve una fusta carregada de gra, la qual si es descarregava, lo forment baixaria tant que los mercaders perdrien molt en lo gra que venen a covinent for, dien ací los doctors que la comunitat ab bona consciència pot consentir als mercaders de comprar la dita fusta e de estojar lo gra, car més val a la cosa publica que lo gra cost quecom més e que aquells que el porten sien suportats e ajudats, que no si per algun poc de temps lo mercat era major e que los mercaders romanien desfets; per què los mercaders, si ³³⁹ per aital intenció lo compren, no pequen."

In dealing with this problem, Bishop Eiximenis reflects - without acknowledgement - the pragmatic approach of Saint Thomas Aquinas, who, as we have seen, in advancing a solution to a closely related example, exhibited a much greater flexibility than the Roman jurist from whom the case had been taken.³⁴⁰

Like the Angelical Doctor, Bishop Eiximenis places a great deal of emphasis upon the circumstances surrounding the specific case in question; and nowhere is this more evident than when he stresses the need to do away with presumptions.³⁴¹

Of further interest in this particular instance is, from a

purely theological and legal point of view, the importance attached to the intentions behind any given act, and the problem chosen by Bishop Eiximenis to make his commentaries. In an imperfect market with the characteristics of Medieval Valencia, it is obvious that a shipload of grain could have had a very significant impact of the sort described by Bishop Eiximenis: a temporary price bonanza for the buyers, a number of bankrupt businessmen, a reluctance to invest in future consignments, leading to a scarcity of grain once the present stocks were consumed.³⁴² This outcome would have certainly run counter to a rationally perceived public good.³⁴³ Although it would probably amount to a considerable stretching of Bishop Eiximenis's thinking to say that he had anticipated what modern economists call the social value of speculation, his problem choice and his answer to it reveals a scholarly priest concerned about the Salvation and the welfare of his fellow man who at the same time had a good grasp of the complex economic realities that he had to face and for which there were no ready-made solutions. Sant'Antonino, at a later day, was to justify an "honest" speculation for similar reasons.³⁴⁴

Bishop Eiximenis's enthusiastic support of merchants and trade turned into an equally energetic and unequivocal condemnation of "regaters" (regraters, engrossers, monopolists):

"Tot així com lo mercader deu ésser favorejat
per lo gran bé que fa a la cosa pública, així
lo regater deu ésser perseguit e foragit de

la comunitat així com a capital enemic de la cosa pública. Car lo regater tostemps desija mal temps e carestia, e compra en gros per esperança d'ençarir la terra, e de tots punts es contrari a bon mercader, ne null temps cerca ne cessa de trafegar o de baratar sinó a son profit. E per raó de açò los confon Déu per les malediccions que lo poble justament los dona, per l'aflicció que els procura." ³⁴⁵

Usuary, along with deceit or fraud in commercial matters, aroused a similarly strong reprobation from Bishop Eiximenis:

"Ultra los damunt dits mals oficis, consella Gorgias, gran filòsof, que de la comunitat sien foragitats tractadors de usures, de mogubells e de tota trafegueria, per tal que la gent no es carreg de deutes ne la comunitat per res. Car dix Filemon Romanus que les baraters se'n porten los diners, e els trafeguers son mort dels mercaders. Car bon mercader tostemps va clar a tot hom." ³⁴⁶

Bishop Eiximenis does not elaborate any further on the concept of usury, but it might be safely inferred from his attitude towards "regaters" and the storage of goods that, having expressed the dangers posed by usury to the soul and to the common good, he felt that the determination of whether an act was usurious or not should be made after a careful examination of it. This would appear to have been something about which the Scholastics were in full agreement. They were all opposed to usury, ³⁴⁷ like the jurists, both Romanists and Canonists ³⁴⁸ and, as G. Le Bras affirms, the religious laws of the Jews ³⁴⁹ and the Moslems. ³⁵⁰ However, Doctors and jurists alike differed considerably in their definitions of usury, ³⁵¹ as well as in their judgements when it

came to a particular case.³⁵²

Unfortunately we are barred from pursuing any further consideration of usury, or, for that matter, other important aspects of the economic thinking within the Church. Our objective was limited to examining the main ideas of the Doctors with regard to trade and merchants, in order to test the views of Bishop Eiximenis. In conclusion, his conception does not appear to have developed in isolation, nor was it very original, nor, indeed, was it in disagreement with what we may call the "general trend" of the mainstream of Scholastic thinking.³⁵³

We refer to a "general trend" in a very literal sense and with all due circumspection. It would be highly inaccurate to elevate the views of any of the Doctors to the level of representing "the idea" of the Church on any given subject, economic or otherwise. Such a thing never existed, aside, of course, from the Church's articles of faith and matters pertaining to its organisation and institutional life. The accent on things other than those was on individuality.

The reasons for this distinctive feature of the Scholastic thinking are varied. The Church was - and remains, of course - a living organism, and, as such, even though it influenced the life of its followers, it could hardly fail to be, in turn, influenced by their lives. The Church was a Universal Institution,

and, quite naturally, the needs of the flock varied considerably according to place, time, and circumstances; and with them varied the best ways of tendering to those needs. The Church was a vast organisation with a large number of highly specialised branches. The secular clergy and every one of the Orders were bound to see the world with a perceptual bias derived from the specific objectives pursued by them, and can, therefore, be expected to have emphasised certain issues at the expense of others.³⁵⁴ If we add to all that a certain amount of introspection and reassessment proper of any organisation, the vast process of examination, assimilation, and utilisation of the ideas of antiquity carried out by the Medieval Doctors³⁵⁵ "with an extensive freedom of opinion,"³⁵⁶ and that the division of those opinions was considered to be a normal fact - even within the Orders³⁵⁷ then the dynamic changes that we have observed in fundamental concepts such as value and just price can hardly come as a surprise.

There were further factors that tended to enhance the individual tones of the Scholastics in economic matters. Economics was neither a separate branch of knowledge with general rules and an abstract objective of its own nor the narrow domain of specialists studying it in isolation.³⁵⁸ Although there were works dealing exclusively with economic topics, such as the treatises on money of Oresme³⁵⁹ and Copernicus,³⁶⁰ - their number increased from the end of the XV Century³⁶¹ they were

written by men with a universal field of interest and an all encompassing idea of knowledge and the world. Many of them made outstanding contributions to subjects as diverse as mathematics and astronomy - as in the well known cases of Oresme³⁶² and Copernicus-³⁶³ law,³⁶⁴ politics,³⁶⁵ and, of course, ethics, philosophy, and theology.³⁶⁶

In fact, much of what we call the economic ideas of the Scholastics, have been extrapolated at a later day from larger general works, sermons, and Confessionary Guides. A notable example is Saint Thomas Aquinas,³⁶⁷ but it was also the case with Sant'Antonino da Firenze,³⁶⁸ San Bernardino da Siena,³⁶⁹ and most of the Doctors before the XVI Century.³⁷⁰ The empirical emphasis was noticeable in all of them,³⁷¹ very much in keeping with the Aristotelean tradition;³⁷² methodologically, therefore, their approach was radically different from that of the modern economist.³⁷³ It is precisely this preoccupation with practical problems that makes an upsurge of interest in economic phenomena so suggestive of an increase in the level of economic activity,³⁷⁴ and may account for the close association of economic fact and economic theory detected in some instances.³⁷⁵

Economics was an integral part of a coherent philosophical system.³⁷⁶ Analysed from the point of view of the law of contracts,³⁷⁷ the stress was squarely on ethics: on what was just or unjust, licit or illicit.³⁷⁸ As Joseph Schumpeter notes, even though man's actions were judged by supra-individual canons

of justice, they were derived from a moral scheme at the centre of which was man as an individual and as an end in himself.³⁷⁹ The central idea of that scheme and the prime concern of the Church was the Salvation of his soul.³⁸⁰

Man had to sanctify his daily life, using the circumstances and work of each day to draw closer to his God and Creator. However surprising it may seem to many to think of men working, eating, resting, and having fun - and at the same time trying to seek God in all these normal activities - that was a fundamental element of man's quest of Salvation.³⁸¹ Hence the importance attached to the examination made of the individual's intention and the circumstances of the case - which included the consideration of the local laws and custom -³⁸² to determine whether it was permissible or not. Since reality is in the eye of the beholder and depends not on definition but on perception, it is obvious that the ideas of the Doctors could have neither been uniform nor immutable, and that the dividing line between licit and illicit acts varied in accordance to them.³⁸³

Individual enquiries searching the Church's opinion on the legality of some transactions were an obvious corollary to that. Private consultation was the origin of a large number of pronouncements and of much casuistry. In spite of the derisive connotation of the term today, even R.H. Tawney admits that at the time it simply meant the application of general

principles to a particular case.³⁸⁴ The soundness of this interpretation has been documented by E. Dublanchy.³⁸⁵ Examples of it can be found in the "Comentario Resolutorio de Cambios" of Martín de Azpilcueta -³⁸⁶ indeed consultations were the basic reason for his writing of the manual -³⁸⁷ in remarks of Cardinal Cajetan³⁸⁸ and Luis de Molina, who said that confessors and theologians "were asked daily for advise,"³⁸⁹ and in documentary evidence presented by J.A. Goris.³⁹⁰ Answers and the interpretation of them varied considerably, as the controversy between Dominicans and Franciscans over the Monte di Pietà,³⁹¹ the protracted disputation over Cambium³⁹² and the fulminations of Fathers Domingo de Soto,³⁹³ Marco Palescandolo,³⁹⁴ and Francisco de Vitoria,³⁹⁵ three of the innumerable ones related to that question, clearly indicate.

However, neither internal disputation nor changes over time were an obstacle for the words of the Church to be taken seriously. The effect produced on the civil authorities of Genoa by a series of sermons preached by Diego Laynez would suffice to dispel any doubt about it.³⁹⁶ But the Church had means other than eloquence to ensure that the flock adhered to its pronouncements: it could do so in foro interno and in foro externo. It should also be stressed, as Raymond de Roover does, that business and religion were not divorced even in the XVII Century³⁹⁷ - let alone before that - and that the distinction between theology and ethics on the one hand, and law and politics on the other, had not yet

slipped into a separation during the period under consideration, as can be gathered from the careful analysis of Father Thomas Gilby.³⁹⁸

In foro interno, the Church had a powerful instrument of enforcement in the Sacrament of Confession - which, in turn, must have also been instrumental to a multitude of interpretations of its own ideas, given the discretionary powers enjoyed by the Father Confessor.³⁹⁹ At the confessional - and much of the economic thinking of the Scholastics appeared in Confessional Guides written for the purpose of teaching the confessors -⁴⁰⁰ absolution could be withheld until proper restitution had taken place. There are, of course, no records left, due to the secrecy of the Sacrament,⁴⁰¹ but an examination of some last wills will reveal the frequent appearance of restitution⁴⁰² - the prescribed penance for usury,⁴⁰³ fraud⁴⁰⁴ and a host of reasons leading to the unjust possession of something or the need to compensate for tort or breach of contract-⁴⁰⁵ and thus confirm the assertions of Amintore Fanfani,⁴⁰⁶ Raymond de Roover,⁴⁰⁷ and Armando Sapori,⁴⁰⁸ regarding the effectiveness of the confessional as a means of enforcement. The well documented study of Florence Edler de Roover⁴⁰⁹ further confirms those views. So does the fact that Simón Ruiz, a leading merchant of Medina del Campo at the time of Felipe II, flatly refused to enter into illicit contracts,⁴¹⁰ evidence from other contracts,⁴¹¹ or, for that matter, the well known way in which other Church laws, such as

those on charity, were enforced.⁴¹²

In foro externo, enforcement could be carried out by the secular justice or, in a more circuitous way, through the enormous influence exerted by the Church in the law making process and in administrative matters. In the first case, it should be noted that offenses such as usury⁴¹³ and monopoly,⁴¹⁴ for example, were crimes as well as sins, which placed them automatically in the jurisdiction of the ordinary courts. The efficiency of the secular justice in dealing with these matters has not been fully assessed.⁴¹⁵ Although in some other instances there is evidence of swift and Draconian action,⁴¹⁶ the performance of the secular justice probably varied a great deal, in accordance with time and circumstances. In theory, however, the interest of the authorities to at least reduce those crimes to tolerable levels was probably just as intense as that of the Church, particularly at times when it was politically feasible.⁴¹⁷

In addition to that, the Church commanded a direct influence over the civil authorities. Partly it was effected through the regular contacts of the individual administrators with their Father Confessors, and partly via special consultations. Many of the famous Scholastics mentioned in this Chapter, such as San Ramón de Peñafort⁴¹⁸ and Domingo de Soto⁴¹⁹ were Confessors to the King, the ultimate judge and arbitrator, whilst others, like Diego de Covarrubias y Leiva⁴²⁰ and Martín de Azpilcueta,⁴²¹

occupied high administrative office themselves or undertook special missions at the King's command. In any of those cases, it seems fairly obvious that their ability to affect certain decisions was rather considerable. Special consultations, on the other hand, were invariably made to the regular confessors, to a Church Doctor in his area of specialty,⁴²² or to the Church authorities'⁴²³ opinions. The effectiveness of these avenues to influence legislative and administrative acts, very clear in some cases,⁴²⁴ is, on the whole, very difficult to measure. Yet, when we bear in mind that the Church, the civil authorities, and the society at large shared the same religion and similar moral standards, the existence of a basic desire to comply with the teachings of their custodian has, to some extent, to be taken for granted. Besides that, the Church had many ways of dealing with deviations from her teachings, whether it was a reprimand of Pope Innocent III to the King of Aragon - as we learn from Albertus Magnus,⁴²⁵ or any of a number of sanctions,⁴²⁶ the power of which cannot possibly be underestimated.

Special consultations were also common procedure within the Church itself. High Church officials⁴²⁷ and even future Saints⁴²⁸ made frequent use of them, and sometimes those consultations involved the formation of special commissions⁴²⁹ or requests to the Pope for his opinion, be it as a private theologian⁴³⁰ or in his official capacity.⁴³¹ The frequency of these special consultations regarding economic matters, the names and place of

office of those consulted and the problems discussed reveal a number of facts: 1) the true universal nature of the Church; 2) the considerable interpretative latitude allowed to its individual members; 3) the common nature of many of those problems and an infinite variety of ever changing circumstances; 4) the thoroughness and extreme complexity of their analysis; and 5) the impossibility of finding a single answer to them in spite of an expressed⁴³² and logical desire to do so.

This was in fact prescribed by the Church. As late as 1581, an ad hoc commission of theologians studying a special case of *Contractus Germanicus* submitted to the Pope by the Duke of Bavaria, was unanimous in its conclusion that a general knowledge of the methods employed in contracts was insufficient to approve or condemn them, reiterating the old Thomistic rule that demanded the examination of the particular circumstances of each case before any decision could be taken.⁴³³ It is thus obvious that even this basic tenet of the Church's philosophy, aside from all other factors, would have been sufficient to prevent the formation of a strictly normative "doctrine" of the Church with regard to trade and merchants. The famous dictum of Saint Augustine, which says that "to fornicate is always illicit, but to trade is sometimes licit and sometimes illicit," incorporated into Canon Law,⁴³⁴ summarises the views of the Church with considerable eloquence.

These views, particularly the central core of broad general

(principles, always subject to scrutiny, and adapted to the circumstances, recognised that trade was a legitimate and rational pursuit, and that merchants made a very significant contribution to the welfare of the society. They indicate that the Doctors understood what trade was trying to 'accomplish, and respected it. On the whole, therefore, we may say that by and large the attitude of the Church was favourable to trade and merchants, provided that neither of them fell into her interdictions.⁴³⁵

That attitude was reflected into the only thing that resembles or may be called an economic "policy" during the Middle Ages and early Modern times: the policy of abundance.⁴³⁶ Nothing, perhaps, reflects that criterium with greater intensity than the characteristic name of Ufficio dell'Abbondanza given to the municipal office in charge of maintaining Florence well supplied with essential goods,⁴³⁷ aside from being the declared intention of many professional⁴³⁸ and municipal⁴³⁹ statutes. The defense of the freedom of the market was inherent in the policy of abundance, but governments, as they have been at any one point in history, were not entirely consistent on this point. As Raymond de Roover affirms, they pursued the defense of the free market or not, in accordance with the circumstances and the political possibilities,⁴⁴⁰ a fact that can be seen with striking clarity even in the case of Geneva, a city whose Prince was a Bishop. There, Antony Babel shows examples of factual monopolies being authorised,⁴⁴¹ presumably as the only viable alternative to keep

(the city well supplied with goods and services. This, as we have seen,⁴⁴² was acceptable to some Doctors.

This flexibility in the attitude of the Church compares favourably with the Mohammedan one. Much milder in its anti-usury laws as noted by Paul Einzig,⁴⁴³ it was also far less cumbersome, if the association laws discussed by S.M. Imamuddin⁴⁴⁴ constitute a fair sample of Moslem legislation. By contrast, the considerable room for manoeuvring allowed by the Church's economic views rather than bring a great deal of uncertainty to trade, as Wilhelm Endemann affirmed⁴⁴⁵ and Armando Saponi denied,⁴⁴⁶ may have rendered easier the exploitation of new business opportunities and the adaptation to new economic realities.

To be sure, the thinking of the Church may have made more than a fair contribution towards the shaping of some of those economic realities. The concept of work as a universal duty and its elevation to a position of great dignity⁴⁴⁷ would have alone bestowed a vital impulse upon the economic life. The association of profit with risks, and the subsequent encouragement of direct investment into business ventures, which given the risk involved allowed the earning of profits without contravening the usury laws⁴⁴⁸ - another point on which theologians and jurists were in full agreement -⁴⁴⁹ must have certainly been another important contributing factor to the increase in the volume of trade and the ensuing change of those economic realities; particularly,

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when one takes into account that it affected a broad category of contracts, including the sea-loan and other forms of insurance.⁴⁵⁰ Similarly, the popularity of lending to the public authorities,⁴⁵¹ which generated a great deal of economic activity,⁴⁵² may be linked to its approval by the Church.⁴⁵³ The development of banking along a certain path is also attributed to the ideas of the Church by Paul Einzig,⁴⁵⁴ and Raymond de Roover⁴⁵⁵ - though in general terms this is denied by Ovidio Capitani.⁴⁵⁶

The attitude of the Church towards the acquisition of wealth was, no doubt, very significant for the development of the economy. In general terms, the Church found no fault with it, provided that it took place by lawful means, that it did not constitute an end in itself, and that the duties of man to his fellow man were not forgotten.⁴⁵⁷ So was the defense of private property, on grounds of efficiency, and in accordance to natural law,⁴⁵⁸ although its regulation was left to the local laws and customs,⁴⁵⁹ in the traditional way of the Church, who always displayed a preference for leaving to the lex loci all aspects of positive law.⁴⁶⁰ Money was sometimes compared to a seed for its ability to fructify. This was acknowledged by Saint Thomas Aquinas,⁴⁶¹ and San Bernardino da Siena said that money acquired "a seminal quality by being invested in a business venture and becoming capital,"⁴⁶² a quality that was implicitly recognised on some occasions.⁴⁶³ On the whole, however, the thinking of the Church on this matter does not appear to have been a very

clear one.⁴⁶⁴ This is rather unfortunate, given the possible repercussions that a generalised recognition of the productive powers of money could have had in the economic ideas of the Doctors. It certainly complicated their analysis, but, as it was the case with other issues, the Scholastics differed in their basic reasons for the prohibition of usury,⁴⁶⁵ and their interdiction of it was neither immutable nor absolute. The concept changed over time,⁴⁶⁶ and the number of recognised valid titles to interest - including various types of rents-⁴⁶⁷ increased in response to new economic circumstances.⁴⁶⁸ In some instances, as stated in Pontifical letters of authorisation, they merely confirmed an already established practice.⁴⁶⁹ Worthy of careful consideration is the effect that a change in those economic circumstances and new opportunities for investment produced upon the arguments used by the Scholastics called upon to study and judge them from a moral standpoint.⁴⁷⁰ Of course, as Joseph Schumpeter observes, the "Doctors did not much more agree on the theory of interest than do we,"⁴⁷¹ and there is also a great deal of disagreement as to the possible impact of their ideas.⁴⁷² However, it seems worth mentioning that whilst rightly insisting that money in itself was not productive, Sant'Antonino explained that money capital was so because command of it was a condition for embarking upon business.⁴⁷³ A little over a century later, Luis de Molina coined the significant phrase that money was "the merchant's tool."⁴⁷⁴

The Church was not only a mere observer and arbiter of the economic world. It was also an actor and an innovator in it, and one of considerable importance at that. The Teutonic Order, who lived under the Augustinian rule,⁴⁷⁵ is said by Armando Saponi to have put as much zeal into their converting activities as in their business pursuits.⁴⁷⁶ The Templars and the Order of the Hospital quickly discovered, says Paul Einzig, that it was cheaper, safer, and faster, to make remittances and settlements via simple paper transfers than in bullion or specie, and this, Einzig emphasises, made a significant contribution to the development of business paper.⁴⁷⁷ Victor Brants concurs with him,⁴⁷⁸ and although in this, as in other cases, theory followed practice and custom,⁴⁷⁹ it is interesting to know that already Guillaume Durand, Bishop of Mende (1230-1297), a disciple of Hostiensis, provided samples of promissory notes and other commercial paper in his Speculum Juris.⁴⁸⁰

In a society with a large number of currencies, money ex-changers played a necessarily important social and economic role.⁴⁸¹ Hence, the early acceptance by the Church that they should profit from their work and service,⁴⁸² and the public regulation of that profession.⁴⁸³ The Templars and other Religious Orders fulfilled that function to some extent, and, more importantly, that of depositors: receiving money for safe-keeping, holding it in recorded accounts, and making payments on behalf of the owners;⁴⁸⁴ as well as giving credit

to princes and prelates.⁴⁸⁵ Thus, to a very considerable degree, they were instrumental to the developing of banking,⁴⁸⁶ which was further stimulated by the Church's increasing use of private bankers, some of whom were officially appointed by the Holy See.⁴⁸⁷ The effect of the 'Monts-de-Piété',⁴⁸⁸ on the evolution of banking should also be taken into consideration, aside from the fact that they gave an opportunity for relatively safe investment to private individuals.⁴⁸⁹

Other branches of the Church pioneered improvements in agriculture and animal husbandry,⁴⁹⁰ as well as in the production of iron⁴⁹¹ and manufacturing industries.⁴⁹² An often neglected aspect of the Church as an economic actor are the challenges that were brought upon management itself. Aside from the expertise required to manage the bureaucratic structure of the Church, by far the largest of its time and the only truly "international" in nature, the collection of Church duties and the payment of expenses and subsidies meant exceedingly complex economic transactions⁴⁹³ - many with a high multiplier effect on the economy-⁴⁹⁴ that demanded strict methods of control⁴⁹⁵ and some form of market forecasting.⁴⁹⁶ These managerial duties seem to have been performed with imagination and seriousness, and, at least, without insoluble problems. But beyond that, an analysis of the economic activities of the Encomienda de Zaragoza of the Orden de San Juan de Jerusalén, reveals a very clear managerial policy, taken in awareness of its impact;⁴⁹⁷ equally

evident, much later in Rome's able commercialisation of its alum from Tolfa.⁴⁹⁸ Though unfortunately, as far as we know, there is no comprehensive study of the managerial practices of the Church, an area that certainly deserves a thorough search, there is no want of further examples of imaginative and resourceful management. Many, of course, concern the generation of revenues from assorted assets to maintain hospitals and a vast array of charitable undertakings, and to discharge military obligations.⁴⁹⁹ An interesting instance in this regard is the rental of books on a yearly basis by means of a public auction, an able way of increasing the cash flow by satisfying the demand for scarce books.⁵⁰⁰

To what extent those activities were well known or were an inspirational source outside the Church circles is, of course, difficult to establish in a precise fashion, but it should be taken into account that they could not have been carried out entirely in a vacuum, and in many instances they could not have even existed without multiple contacts with the outside world - without men responding positively to economic incentives and producing at least partially for the market in order to buy from the market. Although in all probability the economic activities of the Church increased the overall volume of the economy, the degree of influence that they exerted upon the economic thinking of the Scholastics is also hard to assess, aside from very specific circumstances.⁵⁰¹ It should be borne in mind, however, that whenever the Church

performed economic actions it must have done so according to the economic principle, regardless of the ultimate aim of those actions. "The head of a monastery may well have no notions of aiming at the maximum profit and act entirely in the service of humanity, but in cultivating his fields, using raw materials, buying goods, and spending charitable gifts, he will be planning and acting in accordance with the economic principle. That is, he will be trying to fulfil a particular purpose with the minimum possible expenditure, in order to maximise the welfare from his fields, raw materials," and other means used to that end.⁵⁰² This common characteristic to all human action based on reason,⁵⁰³ is unlikely to have escaped the notice of the Scholastics, close as they were by virtue of their method to economic reality and to man as he is. This perception, therefore, along with the practical experience of many Doctors in high government and Church offices - or business, as in the case of Fra Santi (Pandolfo) Rucellai (1437-1497)-⁵⁰⁴ is likely to have contributed to the Scholastic's understanding and characteristic grasp of the economic conditions of their time, and also to the perceived applicability of many of their ideas.⁵⁰⁵

It is thus possible to conclude this Chapter by stating quite categorically that the Church, as much as the civil authorities, appear to have been far from being antagonistic to trade and merchants. The perceived role of both in the welfare of the community clearly precluded that; even though, on occasions,

their ideas and their actions may have restricted trade and merchants, particularly when we analyse them on purely economic grounds and by today's standards. On balance, however, these restrictions on trade and merchants should perhaps be weighed against the ones that were actively sought by groups of merchants and other professional "universitas", opposed in theory by the Church, and not infrequently challenged in praxis at her behest. The seemingly popular views with regard to merchants reflected by the Arcipreste de Hita, and the ideas of Bishop Eiximenis and the other Peninsular Doctors examined in this Chapter, do not appear to have been at variance with those of their contemporary Churchmen and Scholastics in other areas of Christendom; therefore, to the extent that they mirrored the social climate in which trade and merchants existed, it may be said that the status of trade and merchants in the Peninsula did not differ significantly from that of other areas of Europe. On the whole, it hardly seems to have been an inhibiting factor for the presence of merchants or a society actively involved in trade and other economic endeavours.

The generally favourable status of trade and merchants in the eyes of the Church can also be corroborated by evidence of the factual support they received from the Church, encompassing as wide a time span as the development of the main ideas examined here. As early as 1074, a Pope of the stature of Gregory VII had no compunctions about defending in public a group of merchants and menacing the King of France with excommunication unless he

returned the goods he had unjustly taken from those merchants.⁵⁰⁶

In the Peninsula, the meeting of the stern challenge created by the re-population, an endeavour at which the Church herself was highly successful,⁵⁰⁷ is hard to imagine without the endorsement of trade and merchants by the Church. This approval is clearly discernible in Sahagún, "ciudad abadesa," where towards the end of the XI Century "ayuntaronse de todas las partes Burgeses de muchos é diversos officios. E otro si personas de diversas é estrañas provincias é reynos, Gascones, Bretones, Alemanes, Ingleses, Borgoñeses, Provinciales, Lombardos, é otros muchos negociadores é estraños lenguaxes."⁵⁰⁸ In 1099, fourteen years after the foundation of this town the chronicler could write with pride that "por quanto los burgeses de Sant Fagum usavan pacificamente de sus mercadurias é negociaban en gran tranquilidad por esso venian é traian de todas las partes mercadurias assi de oro como de plata, é aun de muchas vestiduras de diversas faciones, en manera que los dichos burgeses e moradores eran mucho ricos é de muchos deleites abastados."⁵⁰⁹

In the XIII - XIV Century, Don García Martínez, Bishop of Murcia between 1279 and 1301, a great administrator and organiser, did much to favour the economy of that city.⁵¹⁰ In the XV Century we see that a Bishop of the ecclesiastical and political calibre of Don Lope Barrientos, Bishop of Cuenca from 1444 to 1469, was as enthusiastic and tireless in promoting the commercial interests of the "vesinos y naturales" of Cuenca in the fairs of Medina,⁵¹¹

as the contemporary "Consejos" of many Castilian cities in defending their economic privileges⁵¹² or advertising their fairs.⁵¹³ In his last will the Bishop Don Lope Barrientos stated that "gracias a sus buenos oficios, se le había concedido mercado franco a Cuenca, hecha franca de pedidos y monedas y dispuestos ciertos capítulos y ordenanzas para el buen gobierno de la ciudad."⁵¹⁴ It is obvious from his words that he considered equally valuable the good government and the economic advantages that he had obtained for the city, and that he was proud of his achievements. His satisfaction with the economic accomplishments attained during his time of office echoes that expressed by Abbot Vitulo⁵¹⁵ and Bishop Juan de Valpuesta⁵¹⁶ seven centuries before him, in the early days of Castille.

Indeed, without a clear understanding of homo oeconomicus by the Church and her members, and their consistent and unambiguous support of merchants, trade and economic activities in general, it is difficult to visualise how that great Kingdom could have come into being. Of course this general attitude of the Church must have experienced differences of degree over time. Personalities and circumstances can be counted on having had that effect. By and large, however, we have found little in the basic position of the Church examined in this Chapter that can be regarded as a deliberate obstacle for the presence and manifestation of entrepreneurial spirit or the development of an active economy in the Peninsula.

CHAPTER III

THE STATUS OF TRADE AND MERCHANTS

IN THE EYES OF THE CHURCH

Notes and References

1. Luis García de Valdeavellano y Arcimis, Sobre los Burgos y los Burgueses de la España Medieval, Madrid, Real Academia de la Historia, 1960, p. 158.
2. Juan Ruiz, Arcipreste de Hita, Libro del buen amor, II, p. 292, quoted in García de Valdeavellano, Sobre los Burgos, p. 158.
3. Around 1384.
4. Manuel Criado del Val, Teoría de Castilla la Nueva. La calidad castellana en los orígenes del español, Madrid, Editorial Gredos, 1960, p. 135.
5. Padre Daniel de Molins de Rei, O.M.Cap., Introduction to Francesc Eiximenis, Regiment de la Cosa Publica, Barcelona, Els Nostres Classics, 1927, pp. 7-12.

Jill Webster, edit., Francesc Eiximenis. La Societat Catalana al Segle XIV, a cura de Jill Webster, Barcelona, Edicions 62, 1967, pp. 5-6.
6. Eiximenis, Regiment, La lletra que l'actor del llibre tramet, endreçant aquell, als Jurats de la Ciutat de València, pp. 15-22; Conclusió de la dita lletra, pp. 35-39.
7. Ibid., Les especials belleses de la Ciutat de València, pp. 22-35.
8. Ibid., Introducció (P. Daniel de Molines de Rei), p. 10.
9. Ibid., Capítol XXXIII, Com los mercaders son vida de la cosa pública, p. 168.
10. Las Siete Partidas del Sabio Rey Don Alonso El Nono, glosadas por el Licenciado Gregorio López, del Consejo Real de Indias de S.M., Madrid, En la Oficina de Benito Cano, Año de MDCCCLXXXIX, Tomo II, Quinta Partida, Título VII, Ley IV, pp. 723-724, "Las tierras e los lugares, en que vsan los mercadores a leuar sus mercadurias, son porende mas ricas,

e mas abundadas, e mejor pobladas: e por esta razon deue plazer a todos con ellos..."

11. Eiximenis, Regiment, p. 168.
12. Ibid., 169.
- 13.. Ibid., Capítol XXXIV, Com los mercaders deuen esser afavorits, pp. 169-170.
14. Ibid., in this case he mentions Filogolus - p. 168, l.7, an author that the commentator of this edition, Father Molins de Rei, has not been able to identify - Notes, p. 201.
15. This is quite noticeable in his awareness of the labours and, above all, the risks and losses to which the merchants were exposed. They are, of course, inherent elements of any normal business activity, but, unfortunately, far too often overlooked by commentators, whether they happen to be old or contemporary ones.
16. Luciano Pereña, edit., Francisco de Vitoria, Escritos Políticos, Buenos Aires, Ediciones Depalma, 1967, (El Pensamiento Político Hispanoamericano, Directores: Guillermo A. Lousteau Heguy y Salvador M. Lozada, Vol. 2), p. 93 (379) "Se insiste: la república cristiana, aún en orden a lo espiritual, es un cuerpo, como dice San Pablo a los Romanos (Rom., 12,4.) y a los Corintios (1 Cor., 12,12.); y en el cuerpo natural, lo que conviene a una parte tan principal y primeramente, conviene también al todo." This shows that this conception of society had common currency even amongst the XVI Century Scholastics, of whom Vitoria, the founder of the School of Salamanca, was an outstanding figure.

St. Thomas Aquinas, Summa Theologiae, Volume 28, Law and Political Theory (Ia2ae. 90-97), Latin text, English translation, Introduction, Notes, Appendices & Glossary, Thomas Gilby, O.P., Cambridge, Blackfriars, 1966, p. 172, "The Pauline comparison of the Church to a physical body made up of diverse members - I Corinthians 12, 12-26, Ephesians 4, 6-16 formed a favourite allegory to medieval social philosophers, yet in the Summa the State is never regarded as a real person or organism, and the Church is called a mystical body only by metaphor."
17. Eiximenis, Regiment, p. 41, "La quarta és que la cosa pública es composta sumariament de tres estaments de persones, co és, de menors, mijanes e majors. E aquesta composició aital és així com un cos humanal compost de diversos membres; e així ho diu sant Pau (Ad Romanos, XII): Sicut in uno corpore multa

membra habemus, omnia autem membra non eundem actum habent, ita multi unum corpus sumus in Christo; e vol dir que així com diverses membres fan un cos qui han diversos oficis en l'hom, així diverses persones e oficis ajustats fan un cos e una comunitat, la qual és apel·lada la cosa pública crestiana."

18. Saint Thomas Aquinas, Commentary on the Nichomachean Ethics, Translated by C.I. Litzinger, O.P., Chicago, Henry Regnery Company, (Library of Living Catholic Thought), Vol. I, Lib. I, Lectio I: C 4, p. 7.

19. Eiximenis, Regiment, p. 40

20. Ibid., 40-41, "La terça és que tots los hòmens de la comunitat no poden ésser eguals. Apar aquesta proposició per la segona, car puix la un ajuda a l'altre segons son estament, així com diu la segona, com les dites diverses necessitats dels hòmens requerem ajudes de oficis no eguals, apar que los hòmens no són eguals de oficis en llur estament."

Victor Brants, L'Economie politique au Moyen-Age, Esquisse des Théories Economique professées par les écrivains des XIIIe. et XIVe. siècles, New York, Burt Franklin, 1970, Originally published by Peeters, Louvain, 1895, pp. 76-77; "De même que dans la société des abeilles, les fonctions se trouvent réparties entre les membres de la tribu, de même doit-il en être dans les cités des hommes. Les besoins en effet sont multiples; un seul homme ne pourrait suffire à y satisfaire. Il faut de toute nécessité que les membres de l'humanité se divisent entre les travaux divers... Cette distribution des hommes entre les carrières diverses se fait conformément à la vocation et aux aptitudes de chacun, sous l'action de la Providence divine." - p. 77.

Glauco Tozzi, I fondamenti dell'economia in Tommaso d'Aquino, Milano, U. Mursia & Co., 1970, pp. 175-176; "Questa distinzione dei diversi compiti tra persone diverse è opera della divina provvidenza, a seconda che alcuni siano più adatti ad un compito ed altri ad altri (secundum quod quidam magis inclinatur ad hoc officium quam ad alia)" - p. 176.

21. "Republicae" is used here in the Medieval sense of jurisdictional units, regardless of their nature. "International" is, therefore, used with a wider connotation than the current usage.
22. Brants, L'Economie Politique, p. 210 "Mais il est difficile de trouver un pays qui ait tout en lui même, et qui n'ait pas besoin d'importation. Toute société bien constituée a donc

besoin d'un certain commerce. Ses propres productions d'ailleurs, finiraient par lui être nuisibles par leur surabondance s'il n'y avait des marchands pour les transporter sur d'autres marchés."; "On remarquera cependant qu'il en apprécie exactement la raison d'utilité et l'avantage d'une importation comme d'une exportation des produits pour le pays." - p. 210.

23. Aminore Fanfani, Storia delle Dottrine Economiche. Il Volontarismo, Milano-Messina, Casa Editrice Giuseppe Principato, Terza Edizione, 1942, p. 112, "Infatti si nota che difficilmente si può trovare un luogo così abbondante di tutto che non abbia bisogno di nulla dal di fuori" (S. Thom., De reg. princ., I.II,c. III)'."
24. Raymond de Roover, San Bernardino of Siena and Sant'Antonino of Florence. The Two Great Economic Thinkers of the Middle Ages, Publication Number 19 of The Kress Library of Business and Economics, Editor: James P. Baughman, Cambridge, Massachusetts, Harvard University Printing Office, 1967, p. 10, "Saint Thomas Aquinas had already shown the way by stating that merchants perform a useful function in providing the commonwealth with indispensable commodities from abroad provided they do not seek gain for the sake of gain but as a just reward for their exertion." (Thomas Aquinas, Summa Theologica, II- , qu. 77, art. 4, resp. (Parma ed., III, 279)).
25. Eiximenis, Regiment, Capítol XXVIII, pp. 152-156.
26. Ibid., Capítol XXIX, pp. 156-158.
27. Webster, Francesc Eiximenis, Els metges, pp. 52-53.
28. José-Luís Martín, "La Sociedad Media e Inferior de los Reinos Hispánicos", Anuario de Estudios Medievales, 7, Barcelona, 1970-1971, p. 575.
29. Eiximenis, Regiment, Capítol XXIX, pp. 156-158.
30. Ibid., Capítol XXX, pp. 158-161.
31. Raymond de Roover, La Pensée Economique des Scholastiques. Doctrines et Méthodes, Conférence Albert-Le-Grand 1970, Montréal, Institut d'Etudes Médiévales/Paris, Librairie J. Vrin, 1971, pp. 16-17.
St. Thomas Aquinas, Commentary on the Nicomachean Ethics, Volume I, V.L. IV: C 928-929, pp. 400-401.
32. Ibid., Lecture IX, V.L. IX, "That human demand connects

everything as by a kind of measure is evident because when men are so mutually situated that both or at least one is not in need, they do not exchange their goods. But they engage in exchange when one needs what the other has, e.g., wine, and they give grain for it. An equation then must be made of these goods" -(985), p. 424; also V.L. IX: C 978-991, pp. 425-428.

33. Ibid., V.L. IV: C 927-937, V.L.V.: C 38-946, V.L. VI: C 947-955, V.L. VII: C 956-964, V.L. VIII: C 965-977, V.L. IX: C 978-981, pp. 398-428.
 34. Webster, Francesc Eiximenis, p. 6.
 35. De Roover, San Bernardino, p. 13
 36. Ibid., --. 14-16.
 37. St. Thomas Aquinas, Summa Theologiae, pp. 166-169.
 38. Joseph A. Schumpeter, History of Economic Analysis, Edited from manuscript by Elizabeth Boody Schumpeter, New York, Oxford University Press, 1961, First Printing 1954, pp. 84-87, "Scholastic sociology and economics, in particular, are strictly individualist, if we understand this to mean that the doctors, so far as they aimed at description and explanation of economic facts, started invariably from the individual's tastes and behavior." - pp. 86-87.
 39. Eiximenis, Regiment, La lletra que l'actor del llibre tramet, endreçant aquell, als Jurats de la Ciutat de València, pp. 15-39.
 40. Glauco Tozzi, "S. Tommaso: Sul commercio e sul credito", Studi in onore di Amintore Fanfani, Milano, Dott. A. Giuffrè - Editore, 1962, Vol. II, p. 710, "... è evidente, di nuovo, che teoria e fatti economici si trovano anche qui in perfetto parallelismo e reciprocità di influsso."
 41. Gino Barbieri, "Le Dottrine Economiche Medioevali", Città Mercanti Dottrine nell'Economia Europea dal IV all XVIII Secolo. Saggi in Memoria di Gino Luzzatto. Raccolti e presentati da Amintore Fanfani, Milano, Dott. A. Giuffrè Editore, 1964, pp. 51-53.
- Amintore Fanfani, Le origine dello spirito capitalistico in Italia, Milano, Società Editrice "Vita e Pensiero", MCMXXIII, pp. 106-119.
- de Roover, San Bernardino, pp. 10-16.

42. Marjorie Grice-Hutchinson, The School of Salamanca. Readings in Spanish monetary Theory 1544-1605, Oxford, At the Clarendon Press, 1952, pp. 39-40, 42-43, 46, 53-54.

Joseph Höffner, Wirtschaftsethik und Monopole im fünfzehnten und sechzehnten Jahrhundert, Jena, Verlag Gustav Fischer, 1941, (Freiburger Staatswissenschaftliche Schriften, Heft 2), pp. 101-102.

J.-G. Menéndez-Rigada, "Vitoria, Francois de.", Dictionnaire de Théologie Catholique, Tome Quinzième, Deuxième Partie, Paris, Librairie Letouzey, 1950, pp. 3117-3144.

43. Grice-Hutchinson, The School of Salamanca, passim.

Höffner, Wirtschaftsethik, pp. 102-110.

44. Ibid., 111-146.

45. de Roover, La Pensée Economique, pp. 63-65.

The Encyclical Letter Rerum Novarum, of Pope Leo XIII (May 15, 1891), has been considered by many as a forerunner of that current of thought, perhaps, we think, with insufficient regard for the very careful wording of this justly famous document and the particular historical circumstances at the time of its writing. Vide text in: Rev. John J. Wynne, S.J., edit., The Great Encyclical Letters of Pope Leo XIII, New York/Cincinnati/Chicago, Benziger Brothers, 1903, pp. 208-248, particularly pp. 238-239.

46. Barbieri, Le Dottrine, passim, and p. 53 especially.

47. Fanfani, Le origine, passim, and especially p. 62.

-----, Storia del Lavoro in Italia dalla fine del Secolo XV agli inizi del XVIII, Milano, Dott. A. Giuffrè Editore, 1959, Seconda Edizione Accresciuta ed Illustrata, pp. 212-215.

48. Höffner, Wirtschaftsethik und Monopole, Passim, particularly pp. 82, 92-94.

49. de Roover, "La Doctrine Scolastique en Matière de Monopole et son application a la Politique Economique des Communes Italiennes.", Studi in Onore di Amintore Fanfani, Milano, Dott. A. Giuffrè, Editore, 1962, Vol. I, pp. 160-179.

-----, La Pensée Economique, pp. 24-25, 72, 74-75.

-----, San Bernardino, p. 42

50. Hoffner, Wirtschaftsethik und Monopole, pp. 8-9, "Das Wort 'Monopol' ist schon seit über zwei Jahrtausenden im Abendland bekannt. Soviel ich sehe, gebraucht es Aristoteles als erster." p. 8.
51. Dr. Wilhelm Endemann, Studien in der Romanisch-Kanonistischen Wirthschafts-und Rechtslehre bis gegen Ende des Siebenzehnten Jahrhunderts, Berlin, Verlag von J. Guttentag (D. Collin), 1874, Zweiter Band, 1883, p. 59.
52. de Roover, La Doctrine Scolastique, p. 161, 165.
53. Estanislao J. de Labayru y Goicoechea, Historia general del Señorío de Bizcaya, Bilbao, Biblioteca de la gran Enciclopedia Vasca, 1968, Segunda Edición, facsímil de la primera, 1899, Tomo II, Apéndice Num. 27, Ordenanzas de la cofradía de pescadores del Puerto de Bermeo dispuestas en 1353, pp. 820-838. Vide for instance Capítulo 5 - p. 821, Capítulo 32 - p. 827, Capítulo 67 - p. 835, Capítulo 71 - p. 836, Capítulo 81 - p. 838.
54. Ibid., Tomo III, Apéndice Numero 39 (segundo), Ordenanzas de los pañeros de Durango (1496), pp. 724-730. Vide for instance "Capítulo de los que hacen vetas e Rauetas de la lana besinos desta villa no seyendo oficiales de esta cofradia," p. 728.
55. Giulia Bologna, "La corporazione dei sarti a Milano (dal secolo XIV al secolo XVIII)", Studi in onore di Amintore Fanfani, II, Doc. num. 2, pp. 206-224.
56. Cinzio Violante, "L'Organizzazione di Mestiere dei Sarti nei Secoli XIII-XV", Studi in Onore di Armando Saporì, Milano, Istituto Editoriale Cisalpino, 1957, Vol. I, pp. 433-466, especially p. 457.
57. Brants, L'Economie Politique, pp. 114-115.
58. Fanfani, Storia del Lavoro, pp. 213-215.
59. Gunnar Mickwitz, "Die Kartellfunktionen der Zünfte und ihre Bedeutung bei Entstehung des Zunftwesens. Eine Studie in spätantiker und mittelalterlicher Wirtschaftsgeschichte.", Societas Scientiarum Fennica. Commentationes Humanarum Litterarum, VIII, 3, Helsingfors, 1936, pp. 234-235.
"Vorsichtig ausgedrückt, haben wir oben Materialien vorgelegt, nach denen es als möglich betrachtet werden muss, dass sowohl die Handwerker von Pavia, wie hundertfünfzig Jahre später die Schmiede von Pisa, ihre Ideen aus Konstantinopel empfangen. Es wäre dies auf dem wirtschaftlichen Gebiet eine natürliche Parallele zu der allgemein anerkannten Abhängigkeit Italiens von Byzanz in seiner Malerei, in der Wissenschaft und in der

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kunstgewerblichen Technik. Ich persönlich halte sogar eine solche Beeinflussung für wahrscheinlich; mehr lässt sich leider nicht sagen."- p. 234. The very careful wording and tentative nature of this statement should be taken into account.

60. Höffner, Wirtschaftsethik und Monopole, p. 76, ref. 2, "Ostrom war bekanntlich ein 'Paradies der Monopole und Privilegien'."
61. Mickwitz, Die Kartellfunktionen, pp. 1-250.
62. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen Vermieter: Ferrara 1112 (S.38), Bologna c. 1250 (S.46), Verona um 1260 (S.23), Siena 1262 (S.60), Basel 1271 (S.133)."
63. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Käufer: Pistoia 1177(S.22), Verona 1209-28 (S.20), Parma vor 1233 (S.47), Padua 1236 (S.24), Bologna 1248 (S.45), Genua 1280 (S.59), Pisa 1286 (S.61), Ferrara 1287 (S.40), Florenz 1290 (S.59), Montpellier 1204 (S.71), Avignon 1243 (S.69), Poitiers 1247 (S.75), Chartres 1249 (S.79), Douai 1250 (S.97), Marseille 1255 (S.69), Tüln (S.79), Köln 1258 (S.130), St. Pölten 1260 (131), London 1262 (?), 1321 (S.149ff.)."
64. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Unternehmer: Piacenza v. 1250 (S.52), Bologna 1288 (S.44), Paris 1268 (?), (S.88), Saint-Omer v. 1281 (S.101), London 1201 (?) (S.139), Leicester 1265 (S.143f.), London c. 1290 (S.144ff.)."
65. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Rohstoffverkäufer : Bologna 1259 (S.46), Genua 1280 (S.46), Pisa 1286 (S.61), Ferrara 1287 (S.40), Marseille 1255 (S.69)."
66. Ibid., 161, "Belege für kartellähnlichen Zusammenschluss gegen die Arbeiter: Ferrara 1112 (S.98), Bologna c. 1250 (S.46), Verona um 1260 (S.22), Basel 1226 (S.133), London 1261 (S.151)."
67. Ibid., 20.
- Höffner, Wirtschaftsethik und Monopole, pp. 81, 92-94.
68. Mickwitz, Die Kartellfunktionen, p. 21.
- Ibid., 21.
69. Enrique Mut Remola, La Vida Económica en Lérida, de 1150 a 1500, Lérida, Instituto de Estudios Ilerdenses, 1953, p. 250.

70. Antonio de Capmany y de Montpalau, Memorias Históricas sobre la Marina, Comercio y Artes de la antigua ciudad de Barcelona, Barcelona, Cámara Oficial de Comercio y Navegación, 1961, Reedición Anotada, versión original Madrid, MDCCLXXIX, Volumen II, Primera Parte, pp. 25-30, 554-557, 611-12, 630-31.
Höffner, Wirtschaftsethik und Monopole, pp. 81, 92-94.
Mickwitz, Die Kartellfunktionen, p. 21.
71. Ibid., p. 21, ref. 1, "Bei jedem einzelnen Monopol waren die Leidenden den Gewinnenden gegenüber in der Mehrzahl. So kann man es verstehen, dass die Stadt gegen Massnahmen eingriff, die jeder Bürger in seinem eigenen Gewerbe sicherlich billigte. Die Patrizier waren wohl immer Gegner der Monopole."
72. Fanfani, Le Origini, pp. 56-58.
73. Höffner, Wirtschaftsethik und Monopole, pp. 76, 82.
74. Mickwitz, Die Kartellfunktionen, pp. 20, 21, 25-35, 49, 59-60, 63.
75. de Roover, La Doctrine Scolastique, pp. 167-179.
76. Armando Saporì, "Il giusto prezzo nella dottrina di San Tommaso e nella pratica del suo tempo", Studi di Storia Economica (Secoli XIII-XIV-XV), Firenze, G.C. Sansoni - Editore, Terza edizione accresciuta, Primo Volume, XIII, pp. 287-303.
77. Fanfani, Storia del Lavoro, p. 215.
Mut Remola, La vida económica, pp. 251-252, Documento Anexo num. 20, Jaime II revokes - 1315 - privilege of shoemakers of Lérida to prohibit the sale of shoes made outside, at the request of the City Council.
78. Höffner, Wirtschaftsethik und Monopole, pp. 75-76.
79. Ibid., 76.
80. Ibid., 76.
81. Brants, L'Economie Politique, p. 18.
Höffner, Wirtschaftsethik und Monopole, p. 76.
A. Teetaert, "Raymond de Penyafort (Saint), Dictionnaire de Théologie Catholique, Tome Treizième, Deuxième Partie, pp. 1806-1823.

82. Brants, L'Economie Politique, p. 205.
de Roover, La Doctrine Scolastique, p. 162
83. Hence, known and much quoted under the name Hostiensis.
84. Höffner, Wirtschaftsethik und Monopole, p. 76
85. Ibid., 77.
86. Ibid., 77.
87. P. Mandonnet, "Albert Le Grand", Dictionnaire de Théologie Catholique, Tome Premier, pp. 666-675.
88. de Roover, La Doctrine Scolastique, p. 161.
89. P.A. Walz, P.M.R. Gagnebet, R. Garrigou-La Grange, L.B. Guillon, C. Spicq. G. Greenen, "Thomas d'Aquin (Saint)", Dictionnaire de Théologie Catholique, Tome Quinzième, Première Partie, pp. 618-761.
90. Tozzi, I fondamenti, pp. 189-190.
91. de Roover, La Doctrine Scolastique, p. 161.
92. de Roover, San Bernardino, passim.
F. Vernet, "Bernardin de Sienne (Saint)", Dictionnaire de Théologie Catholique, Tome Deuxième, pp. 787-791
93. de Roover, La Doctrine Scolastique, pp. 161-162.
94. de Roover, San Bernardino, passim.
P. Mandonnet, "Antonin (Saint)", Dictionnaire de Théologie Catholique, Tome Premier, Deuxième Partie, pp. 1450-1454.
95. de Roover, La Doctrine Scolastique, p. 162.
96. P. Mandonnet, "Cajétan (Thomas de Vio, dit)", Dictionnaire de Théologie Catholique, Tome Deuxième, Deuxième Partie, pp. 1313-1329.
97. Fanfani, Le Origini, p. 123.
98. Höffner, Wirtschaftsethik und Monopole, p. 77, "Kennzeichnen wir noch einmal kurz die wesentlichen Lehren der Hochscholastik. Bei der Ablehnung der Monopole beruft man sich nicht auf die „Idee der Nahrung“; man lehnt sie auch nicht deshalb ab, weil

man etwa dem Handel als solchem feindlich gesinnt wäre; man stellt vielmehr die Monopole dem Betrug, der Forderung ungerechter Preise gleich, wobei die Preisgerechtigkeit nicht aus der „Nahrung“, Sondern, letztlich und praktisch, aus der „allgemeinen Marktschätzung“ abgeleitet wird (Albert und Thomas).“

99. Ibid., 77-78, "Freilich ist die Ablehnung der Monopole noch nicht ausdrücklich als Folgerung aus der Preislehre gezogen worden, wie es die späteren Scholastiker tun. Überhaupt werden die Monopole fast nur in den für die Praxis bestimmten „Beichtsummen“ erwähnt, während die Theoretiker sie entweder gar nicht nennen (Duns Scotus) oder nur nebenbei darauf hinweisen (Albert und Thomas).“
100. Ibid., 78, "Dem Handel, den die Hochscholastik trotz aller Bedenken für nützlich und notwendig hält, werden zwei Schranken gesetzt. Der Kaufmann muss sich vor Lug und Betrug, wozu auch die Monopolbildungen gehören, hüten; er muss ferner seiner Tätigkeit ein ehrenhaftes Ziel geben: Unterhalt der Familie, Unterstützung der Armen, Dienst an der Gesamtheit.“
101. Ibid., 92-94.
de Roover, La Doctrine Scolastique, p. 151.
102. Ovidio Capitani, "Sulla questione dell'usura nel Medio Evo", L'etica economica medievale, Testi a cura di Ovidio Capitani, Bologna, Società editrice il Mulino, 1974, p. 46.
103. Höffner, Wirtschaftsethik und Monopole, passim.
104. de Roover, La Doctrine Scolastique, pp. 149-166.
-----, La Pensée Economique, passim.
-----, San Bernardino, passim.
105. Tozzi, I fondamenti, XVI - L'atti di scambio (E casi di monopolio), pp. 183-200.
106. Schumpeter, History of Economic Analysis, p. 86, "Therefore, the reader should not be shocked to learn that the individualist streak in medieval thought also was much stronger than is commonly supposed. This is true, both in the sense that opinion was much more differentiated individually and in the sense that the individual phenomenon and (in speculations about society) the individual man was much more carefully attended to than we are apt to think."
107. Höffner, Wirtschaftsethik und Monopole, pp. 72-75.

- de Roover, La Doctrine Scolastique, p. 153.
 -----, La Pensée Economique, p. 57.
108. Höffner, Wirtschaftsethik und Monopole, pp. 72-75.
 de Roover, La Doctrine Scolastique, p. 153.
 -----, La Pensée Economique, pp. 57-59.
- Sapori, Il giusto prezzo, pp. 265-303, and particularly 280-281, 286.
- Tozzi, I fondamenti, pp. 180-181, 187-200.
- Barbieri, Le dottrine economiche, p. 47.
109. de Roover, La Doctrine Scolastique, p. 152.
 Schumpeter, History of Economic Analysis, pp. 60-62, 93.
 Tozzi, I fondamenti, p. 180.
110. Höffner, Wirtschaftsethik und Monopole, p. 72.
 de Roover, La Doctrine Scolastique, p. 152.
111. Ibid.,
112. Ibid., 153.
 Brants, L'Economie Politique, pp. 198-199.
- Fanfanì, Le Origini, p. 11, "Per Aegidius Lessinus - a disciple and commentator of Saint Thomas - tantum res aestimatur juste, quantum ad utilitatem possidentis refertur, et tantum juste valet, quantum sine fraude vendi potest."
- de Roover, La Pensée Economique, pp. 58-59; "C'est aussi l'opinion du Cardinal Cajetan, le commentateur le plus autorisé de la Somme de théologie, que définit le juste prix 'celui couramment obtainable des acheteurs en pré-supposant qu'ils soient bien informés et en l'absence de tout dol et de toute contrainte'." - p. 59.
- Sapori, Il giusto prezzo, pp. 280, 284-286.
- Tozzi, Il fondamenti, pp. 184-197, particularly pp. 184 and 197.
113. Brants, L'Economie Politique, pp. 69-74, 197-198.

Fanfani, Le Origini, pp. 12-14; "E la communis aestimatio che è regola al giusto prezzo, il quale appunto perché dipende da quella - non facilmente determinabile - non è fissabile puntualmente." -p. 13.

Höfner, Wirtschaftsethik und Monopole, p. 74, "Der Kaufmann darf seine Kosten im Preise veranschlagen, z.B. die Arbeit an den Waren und die Transportauslagen."

de Roover, La Pensée Economique, pp. 59-61.

Sapori, Il Giusto Prezzo, p. 277, "...perché lo stesso Aquinate esclude la possibilità di una determinazione esatta del giusto prezzo quando dice che l' 'iustum pretium', da stabilirsi in base a stima, non è esattamente precisabile, e che è lecita la vendita il cui prezzo oscilli non troppo al di sopra o al di sotto di quel giusto: 'quod ideo dico, quod iustum pretium rerum non est punctualiter determinatum, sed magis in quadam aestimatione consistit; ita quod modica additio, vel minutio non videtur tollere aequalitatem iustitiae'."

Tozzi, Il fondamenti, p. 188.

114. Fanfani, Le Origini, pp. 13-14.

de Roover, La Pensée Economique, pp. 57-59.

Sapori, Il Giusto Prezzo, pp. 278-287.

Tozzi, Il fondamenti, pp. 189-190, 200-219, particularly pp. 206 and 214.

115. Father Dominic and the Father Superior of the St. Joseph Franciscan Convent of Montreal were exceedingly helpful in obtaining data and explaining to us the life and work of Father Olivi.

P.F. Callaey, "Olieu ou Olivi (Pierre de Jean)", Dictionnaire de Théologie Catholique, Tome Onzième, Première Partie, pp. 982-991.

116. Dionisio Pacetti, O.F.M., "Un Trattato sulle usure e le restituzioni di Pietro di Giovanni Olivi falsamente attribuito a Fr. Gerardo da Siena", Archivum Franciscanum Historicum, Annus et Tomus XLVI, Ad Claras Aquas, Florentiae, 1953, pp. 448-457.

117. Paul Thomas, Essai sur quelques théories économiques dans le Corpus Juris Civilis. (De la Richesse - De la Valeur - De la Circulation des Biens - Du Crédit). New York, Burt

Franklin, Reprinted in 1970, Originally Published in 1899, pp. 40-41.

118. Ibid., 40-43.
119. de Roover, San Bernardino, pp. 18-20.
120. Ibid., 19-20.
de Roover, La Doctrine Scolastique, pp. 156-157.
121. Barbieri, Le Dottrine Economiche, pp. 52-53.
de Roover, San Bernardino, pp. 14-16.
-----, La Doctrine Scolastique, p. 158.
122. Brants, L'Economie Politique, pp. 72-73, "Cette valeur usuelle dépend de trois facteurs essentiels: Virtuositas, c'est l'utilité directe, c'est ainsi qu'un bon pain de froment vaut plus qu'un pain de seigle. Raritas, qui est la difficulté de se procurer la chose et c'est ainsi que le blé devient plus cher en temps de disette et que les quatre éléments, l'air, l'eau, etc., sont partout estimés moins que l'or bien qu'ils soient plus utiles à la vie. Placibilitas, l'idée qu'on a de l'avantage d'une chose, c'est ainsi qu'un ornement est plus estimé qu'un autre..." - (Summ. theol. vol. 2, tit. 1, cap. 16).

Höffner, Wirtschaftsethik und Monopole, p. 86, "... Antonin von Florenz drei Preisbestimmungsgründe aufgezählt: Zunächst die Nützlichkeit einer Ware; nicht alle Güter erfüllen ja in gleicher Weise unsere Bedürfnisse. Sodann die Seltenheit, die in der Knappheit des Vorkommens und in der Schwierigkeit der Beschaffung einer Ware besteht. Dazu gehören auch die „Arbeiten, Mühen und Auslagen.“ An dritter Stelle hatte Antonin noch das besondere Wohlgefallen an gewissen Waren, z.B. an Pferden und Schmuckstücken, genannt, woraus sich „ein nicht geringer Teil des Wertes“ ergebe." (Secunda pars totius summe majoris, Tit. I, cap 16, @ 2-3.)
123. de Roover, San Bernardino, pp. 22-23.
124. P. Raymond, "Duns Scot", Dictionnaire de Théologie Catholique, Tome Quatrième, Deuxième Partie, pp. 1865-1947.

de Roover, La Pensée Economique, pp. 61-62, "Partant du principe que le marchand remplit une fonction utile à la société, Jean Duns Scot exprime l'avis qu'il peut vendre sa marchandise à un prix suffisant pour lui permettre de subvenir à ses propres besoins et à ceux de sa famille."

(Quaestiones in Librum IV Sententiarum. dist. XV. qu. 2, num. 22; Opera Omnia, XVIII, pp. 317-318).

125. de Roover, La Pensée Economique, pp. 61-62.
126. Höffner, Wirtschaftsethik und Monopole, p. 77, "Auch dieser Hinweis auf die behördliche Preisregelung ist wohl nicht bloss durch die damaligen städtischen Preistaxen, sondern in dieser Form wiederum durch einige Gesetzestexte der Spätantike veranlasst worden."
- de Roover, La Doctrine Scolastique, p. 176, ref. 125, "Un des premiers juristes à justifier la fixation des prix par les pouvoirs publics est Alberto Gandino dont la view active s'étend de 1281 à 1305." This shows, once more, how the thinking of the Doctors and that of the Jurists tended to concur in these matters.
127. Höffner, Wirtschaftsethik und Monopole, p. 77.
128. Loc. Cit., "Wenn in diesen spätromischen Texten neben den Stadtpräfekten auch die Bischöfe mit der Preisregelung betraut werden, so ist das geschichtlich zu verstehen. Die Scholastik hat keineswegs, wie wir noch sehen werden, daraus den Schluss gezogen, dass die Kirche, wie WILHELM ENDEMANN behauptet, „in allwaltender Fürsorge“ die Preise festzusetzen habe."
129. de Roover, San Bernardino, p. 23.
130. Höffner, Wirtschaftsethik und Monopole, pp. 79-82.
131. Ibid., 79.
132. Ibid., 80.
133. Höffner, Statik und Dynamik in der scholastischen Wirtschaftsethik, Arbeitsgemeinschaft für Forschung des Landes Nordrhein - Westfalen, num. 38, Köln, 1955, pp. 17-23.
134. de Roover, La Doctrine Scolastique, p. 151.
-----, Le Pensée Economique, pp. 63-65.
135. P. Vignaux, "Nominalisme", Dictionnaire de Théologie Catholique, Tome Onzième, Première Partie, pp. 717-784. In fact, as the author points out, the differences of opinion amongst the "Nominalists" were not confined to their economic ideas: "Qu'il y ait un ou plusieurs nominalismes dédiés il s'agit toujours de la constitution d'espèces philosophiques et théologiques distinctes: problème qui paraît d'une extrême difficulté à l'histoire doctrinale, de plus en plus défiante des généralisations et préoccupée de sauver la singularité des

doctrines." - p. 717.

136. Höffner, Wirtschaftsethik und Monopole, p. 82.
 137. Brants, L'Economie politique, pp. 69-71; and de Roover, La Pensée Economique, pp. 46-48, consider Buridanus one of the most lucid exponents of the doctrine of value. Raymond de Roover sustains that his analysis of value was unsurpassed by any of the predecessors of Adam Smith, and that it was considerably superior to that of Adam Smith himself - p. 48.
 138. E. Amman, "Occam (Guillaume d')", Dictionnaire de Théologie Catholique, Tome Onzième, Première Partie, pp. 864-904.
 139. Ibid.
 140. Ibid., 82, "Gewisse Anklänge an HEINRICH VON LANGENSTEIN finden wir in den Schriften des Kanzlers der Pariser Universität JOHANNES GERSON (geboren 1363, gestorben 1429); er studierte seit 1377 zu Paris, also noch zur Zeit, da LANGENSTEIN dort lehrte."
- L. Salembier, "Gerson (Jean le Chârlier de)", Dictionnaire de Théologie Catholique, Tome Sixième, Deuxième Partie, pp. 1313-1330.
141. Ibid., 82-83, "„Wegen der verschiedenartigen und verderbten Strebungen der Menschen", so schreibt er, lasse sich der gerechte Preis nur schwer finden. Der „Weise" solle ihn festsetzen: „Keiner aber darf für weiser gehalten werden als der Gesetzgeber; deshalb ist es vor allem seine Aufgabe, den gerechten Preis, soweit nur möglich, zu bestimmen." „Möchten doch die Preise," so fährt er fort, „wie wir es bei Brot und Wein sehen, für alle Waren behördlich bestimmt werden; dann würde das nicht bloss nutzlose, sondern verlogene und gottlose Feilschen aufhören, das wir täglich zwischen Käufern und Verkäufern beobachten.... Es ist schwer, das geben wir zu, aber es liesse sich bei Menschen guten Willens in heilsamer Weise durchführen: ihnen zum Frieden und Gott zur Ehre". (Tractatus et libri Johannis gerson, Colonie 1484, Bd. IV., Tractatus de contractibus, Consid. 19, fol. 258 b.)

After the careful analysis of Cardinal Höffner, the interpretation of Raymond de Roover appears to be a little too strong - La Doctrine Scolastique, p. 155, particularly ref. num. 17.

142. E. Amman, "Oresme, Nicole" Dictionnaire de Théologie Catholique, Tome Onzième, Deuxième Partie, pp. 1405-1410.

Brants, L'Economie Politique, pp. 186-193, "Le traité de Nicole Oresme... c'est un des premiers qui soit consacré ex professo à un sujet économique... (L'invention des monnoies)"- p. 190.

143. Höffner, Wirtschaftsethik und Monopole, p. 83.

144. Ibid., 84, "Auch die Nominalisten lehnten die Monopole auf Grund der Lehre vom gerechten Preis ab, mag dieser nun der freie Marktpreis oder der behördlich festgesetzte Preis sein."

145. Ibid., 80.

146. Ibid., 81.

147. Ibid., 84.

148. Ibid., 83.

149. Ibid., 84.

In this, as well as in other aspects regarding the views of Oresme, the analysis of Cardinal Höffner concurs with that of Victor Brants - L'Economie Politique, pp. 183-193.

150. Amman, Oresme, pp. 1405-1406, Oresme was the Bishop of Lisieux and a King's Councillor, and before that he was the "Grand-Maître" of the famous Collège de Navarre, at the University of Paris.

Brants, L'Economie Politique, pp. 186-187, attributes to the writings of Buridanus, Oresme, Philippe de Maizières, Jacques Coeur, and many others, which were inspired by those calamitous economic policies, a very salutary influence upon the French public finances.

151. Höffner, Wirtschaftsethik und Monopole, pp. 84-101; "Bemerkenswert ist vor allem der empiristische Zug dieser Richtung. Er wurde auch von der späteren Scholastik übernommen und hat sich dort bei der Behandlung wirtschaftsethischer Fragen entsprechend ausgewirkt." p. 84. (Here, he refers specifically to XIV C. Nominalists.)

152. de Roover, La Doctrine Scolastique, pp. 155-156.

153. Höffner, Wirtschaftsethik und Monopole, p. 84, "Es gelang dem Nominalismus nicht, die thomistische Scholastik zu verdrängen."

154. Ibid.

155. M.-M. Gorge, "Nyder our Nider our Nieder Jean", Dictionnaire de Théologie Catholique, Tome Onzième, Première Partie, pp. 851-854.
156. Höffner, Wirtschaftsethik und Monopole, p. 85.
157. Ibid.
158. Ibid.
159. Ibid., 86.
160. Ibid., 86-87, (1). With characteristic perspicuity Summenhart excluded the excess portion paid for idiocy, error, or too much largesse of the merchant, when the market price sunk below the purchase price.
161. Ibid., 87, (2).
162. Ibid., (3).
163. Ibid., (7), "Die Verkaufsart; denn, wer eine Ware im Kleinhandel verkauft, darf einen höheren Preis fordern als der Grosshändler; hat er doch mehr Arbeit, längere Lagerhaltung usw."
164. Ibid., 86-87, (1).
165. Ibid., 87-88, (11), "Die Grösse des Bedarfs is also der Masstab, mit dem man die Grosse des Gebrauchswertes einer Ware misst". A greater demand, thus, measures the utility value of a good.
166. Ibid., 88, (14), "Die Seltenheit einer Ware"; denn durch die Seltenheit steige die Wertschätzung.
167. Ibid., 88-89, (15), "Das „allgemeine besondere Gefallen“; an bestimmten Waren. Wie man nämlich bei geringer Nachfrage billiger verkaufen müsse, so dürfe man auch eine Ware „desto teurer verkaufen, je mehr sie von den Leuten nachgefragt werde“."
168. Ibid., 87, (4), "Die vernünftige Sorgfalt und Achtsamkeit" beim Transport, bei der Lagerung und Herstellung der Waren; „denn diese Sorge ist bitter und schwer“."
169. Ibid., (5), "Die fleissigen Überlegungen beim Ausfindigmachen, beim Transport und „bei der Lagerung“ der Waren; „denn ein eifriger Kaufmann überlegt bis ins kleinste, wo man die Waren billig einkaufen könne“."

170. Ibid., (10).
171. de Roover, La Doctrine Scolastique, p. 154.
172. Ibid., 157.
173. Brants, L'Economie Politique, p. 108.
174. Höffner, Wirtschaftsethik und Monopole, p. 87, (6), "Das Risiko; denn das Risiko „ist eines Preises wert; mancher würde oft eine grosse Summe Geldes zahlen, um versichert zu sein..."."
175. de Roover, La Doctrine Scolastique, p. 156.
-----, La Pensée Economique, p. 65.
176. Höffner, Wirtschaftsethik und Monopole, p. 87, (9), "Hierzu bemerkt Summenhart, der angeführte Grund gelte nur, wenn die höhere Bezahlung durch besondere persönliche Eigenschaften gerechtfertigt sei."
177. de Roover, La Pensée Economique, pp. 56, 66, "...sed in justitia non variatur medium secundum diversas personae conditiones sed attenditur solum ad quantitatem rei. Qui enim emit rem aliquam, debet tantum solvere quantum valet, sive a divite emat." - (Quodlibet 6, art. 10) - p. 56, ref. 89. Amongst the early Scholastics, Albertus Magnus was even more explicit than his disciple on this point - vide p. 66, text in ref. 118.
178. Brants, L'Economie Politique, p. 197, "Des circonstances particulières peuvent également, dit le saint docteur, justifier un curcroît de prix. Tel serait le cas du dommage causé au vendeur par la privation de la chose, qu'il consenterait à céder pour satisfaire au désir de l'acheteur."
Höffner, Wirtschaftsethik und Monopole, p. 88, (12), "Der „entgangene Gewinn"; wer nämlich eine Ware, die er selbst nutzbringend verwenden kann, auf dringende Bitten hin verkauft, darf den entgangenen Gewinn im Preise veranschlagen, jedoch nicht den besonderen überdurchschnittlichen Nutzen, den der Käufer aus der Ware zieht."
179. Ibid., (13)
de Roover, La Pensée Economique, p. 71.
180. Höffner, Wirtschaftsethik und Monopole, p. 88, (13).
181. Ibid., 87, (8); 88, (13).

182. Ibid., 88-89, Cardinal Höffner thinks that due to the fact that Summenhart always cites Heinrich von Langenstein on the subject of price regulation by the authorities, because he was the one who wrote more about it, one feels that that was an area of special influence of the Nominalists over the followers of Saint Thomas Aquinas - p. 89.
183. Ibid., 101.
184. Ibid., 89, (16), "„Der Rat eines zuverlässigen und weisen Mannes", an den man sich halten solle, wenn die fünfzehn anderen Bestimmungsgründe ganz oder zum Teil unanwendbar seien.
185. Ibid., 86.
186. Ibid., ref. 3.
187. Ibid., 89.
188. Ibid., 89-90.
189. Ibid., 90.
190. Ibid.
191. Ibid.

This interpretation appears to be in agreement with the much earlier ones of Saint Thomas Aquinas and Henri de Gant, according to Victor Brants, - L'Economie Politique, pp. 198-199, "Le principe: Res tanti valet quanti vendi potest, peut être exact en fait, ce n'est pas un droit et on ne peut abuser de la situation de la acheteur ni du vendeur." - p. 199.

192. Höffner, Wirtschaftsethik und Monopole, p. 90.
193. Vide Ref. num. 113 in this Chapter.
194. Höffner, Wirtschaftsethik und Monopole, p. 90.
195. Vide Ref. num. 141 in this Chapter.
196. Höffner, Wirtschaftsethik und Monopole, p. 91.

The notion of a *Justum pretium summum, medium et infimum*, current amongst the canonists, is linked by Victor Brants to the difficulty of defining - already admitted by Saint Thomas Aquinas - with any degree of precision what "in quadam aestimatione" really meant with regard to the price of a product. since it did not provide an absolute, exact, final answer. -

L'Economie Politique, p. 74.

197. Höffner, Wirtschaftsethik und Monopole, p. 91. Summenhart's support, however, was not unqualified. An analysis of his thoughts about merchants and commerce reveals that he considered trade to be a profit and loss system, and that it was very much up to the individuals taking part in it, to their personal qualifications and diligence, to make, on the average, a success of it. - Vide Ref. num. 160, 168, and 169 in this Chapter.
198. Ibid.
199. Vide Ref. 113 - de Roover - in this Chapter.
200. Höffner, Wirtschaftsethik und Monopole, p. 91, "den Stand oder Beruf der Kaufleute und die Handelsgeschäfte nicht deshalb verteilen, weil dabei Sünden geschehen; denn das sind keine Laster des Berufes oder Geschäftes, sondern der Menschen, die diesen Beruf nicht richtig ausüben".
201. Ibid.
202. Ibid.
203. Ibid., 92, Tractatus de contractibus Mercatorum, fol. 7a.
204. Ibid., 92-93, Summa Angelica de casibus conscientiae, Venetiis, 1504. Verbo: restitutio, fol. 443.
205. Ibid., 93.
206. Ibid., 92-93, (1); (2), Summenhart and Kuppener denounce price agreements amongst merchants for their exclusive benefit.
207. Ibid., 93, (3).
208. Ibid., (5).
209. Ibid., (4).

Factual evidence of the Guild's nepotism can be seen in Raymond de Roover, The Rise and the Decline of the Medici Bank, 1397-1494, Cambridge, Massachusetts, Harvard University Press, 1963, (Harvard Studies in Business History, edit. by Henrietta M. Larson, XXI), p. 20.
210. Höffner, Wirtschaftsethik und Monopole, p. 94, (6).
211. Ibid., 84.

212. Vide Ref. num. 50, 51, and 52, in this Chapter.
213. Höffner, Wirtschaftsethik und Monopole, p. 94, "Die Unerlaubtheit der Monopole, so fährt Summahart fort, ergibt sich aus der staatlichen Gesetzgebung und „aus der natürlichen Vernunft“."
214. Ibid., 93, (2).
215. Ibid., 94.
216. Thomas Gilby, O.P., "Natural Law", St. Thomas Aquinas, Summa Theologiae, Volume 28, Appendix 3, p. 169 in particular.
217. Höffner, Wirtschaftsethik und Monopole, p. 94.
218. Ibid., 81, he considered the profits arising from such bulk purchases a damnable gain - "„einen schändlichen Gewinn zu machen“."
219. Ibid., 94-95.
220. Ibid., 95.
221. Ibid.
222. Ibid.
223. Ibid., "Es ist bemerkenswert, dass Antonin eine gewisse Ähnlichkeit zwischen behördlicher Preisregelung und privater Monopolbildung erkannt hat. Bedenklich ist es freilich, dass er auf Grund dieser Ähnlichkeit auch private Preismonopole zulässt."
224. Ibid., Summa Roselle de casibus conscientiae, verbo: emptio et venditio, num. 23, fol. 76.
225. Ibid., 95-96, Summa Sylvestrina, verbo: emptio, num. 7 and 19.
226. Ibid., 96, Tractatus restitutionum, usurarum et excommunicationum, s. I. 1489. Verbo: Usuro.
227. Ibid., Interrogatorium sive Confessionale, s. 1. (probably abridged around 1485), De statibus, cap. XI.
228. Ibid., De Usuris. Piscie 1490. Quaero XLIII.
229. Ibid., De usuris, s.1. Cap. : Quibus sit prohibitum mercari.
230. Ibid.

231. Ibid.

C. Ruch, "Biel, Garbriel", Dictionnaire de Théologie Catholique, Tome Deuxième, Première Partie, pp. 814-825.

232. E. Amann, "Mair ou Major, John", Dictionnaire de Théologie Catholique, Tome Neuvième, Deuxième Partie, pp. 1661-1662.

233. Höffner, Wirtschaftsethik und Monopole, p. 97; Vide ref. num. 141 in this Chapter.

234. Ibid., "„Wenn der Gesetzgeber das alles klug überlegt, kann er den gerechten Preis der Waren abschätzen und festlegen"."

235. Ibid., "„die Nachfrage wird aber dringender, wenn die Menge der Waren, nach denen die Leute verlangen, sich verringert, wenn die Zahl der Nachfragenden wächst und es schwer ist, die Waren zu beschaffen"."

236. Ibid., 86.

237. Ibid., 97, "„bei Wein und Bier ist es nicht so wegen der verschiedenen Güte des Weines; hier kann keine allgemeine Vorschrift erlassen werden"."

238. Ibid., 98.

239. Ibid.

240. Ibid., 99.

241. Ibid., 100.

242. Ibid., "Besonders KONRAD SUMMENHART hat diese Zusammenhänge klar durchschaut und die preisregelnde Funktion des Wettbewerbs unterstrichen."

243. Ibid., 100-101.

244. Ibid., 101.

245. de Roover, La Pensée Economique, p. 62. Summa Angelica (éd. italienne, Venise, 1594), Venditione, 85.

246. Ibid., 57. De contractibus mercatorum, ch. 2, num. 1, "Ad hoc respondent quidam quod secundum communem aestimationem vel cursum debet vendere rem suam."

247. Ibid., 31-37.

248. Höffner, Wirtschaftsethik und Monopole, pp. 101-146.

249. Ibid., 101-102.
250. Ibid., 101.
251. Ibid. Cardinal Höffner links this leading rôle to the final demise of the Moorish foreign regime in 1492 - fall of Granada - which produced a re-inforcement of the Catholic self-awareness of the Peninsulars and made them look with great interest to the religious events taking place in Germany, and to what Cardinal Höffner calls the "Nominalist legacy" of emphasising practical problems, which made them reflect upon the new questions on business ethics brought about by the incorporation of America and the consequent great increase in the level of economic activity in the Peninsula, as well as the legal, political and social questions that also arose with that event. (Raymond de Roover, La Pensée Economique, pp. 32-34; and Marjorie Grice-Hutchinson, The School of Salamanca, passim, and particularly pp. IX-4, 46-47; are in agreement with Cardinal Höffner on the stimulous of events and changes brought about by the incorporation of America). We may add those emanated from the fact that the German Empire and other possessions of the House of Hapsburg were then united with the Crown of Castille - Aragon, thus creating a wider economic theatre, politically under the same ultimate rulers.
252. Höffner, Wirtschaftsethik und Monopole, pp. 102, 109-113.
Grice-Hutchinson, The School of Salamanca, pp. 40-47.
de Roover, La Pensée Economique, pp. 32-34.
253. Martín de Azpilcueta, Comentario Resolutorio de Cambios, Introducción y texto crítico por Alberto Ullastres, José María Pérez Prendes y Luciano Pereña, Madrid, Consejo Superior de Investigaciones Científicas, 1965, p. XVI, "Martín de Azpilcueta introdujo un nuevo método de enseñanza, simultaneando el Derecho Civil con la ley eclesiástica informada por la teología moral."
254. Ibid., 102.
255. Höffner, Wirtschaftsethik und Monopole, p. 101.
Grice-Hutchinson, The School of Salamanca, pp. 40-42.
256. Höffner, Wirtschaftsethik und Monopole, pp. 101-103.
257. Ibid., 102.
258. Ibid.

- Grice-Hutchinson, The School of Salamanca, p. 43.
- Pereña, Francisco de Vitoria, Escritos Políticos, pp. IX-XXIII.
- Teófilo Urdanoz, O.P., Edit., Obras de Francisco de Vitoria. Relecciones Teológicas, Madrid, La Editorial Católica, S.A., MCMXX, (Biblioteca de Autores Cristianos), pp. 1-148, particularly pp. 76-84.
259. Grice-Hutchinson, The School of Salamanca, pp. 43-45.
- Höffner, Wirtschaftsethik und Monopole, pp. 103, 110.
260. Ibid., 103.
261. Vide ref. num. 96 in this Chapter.
262. Höffner, Wirtschaftsethik und Monopole, p. 103.
263. Monopoly was, of course, also of great concern. Aside from the theory of value, they developed a quantity theory of money and the purchasing-power parity of exchange. Outside these main contributions to economics, they excelled in Natural Law and in the development of the Law of Nations.
264. Vide ref. num. 166 to 179 in this Chapter. It should be noted that these 16 points were the result of a laborious gathering effort by Cardinal Höffner, rather than a systematic classification by Konrad Summenhart himself.
265. Höffner, Wirtschaftsethik und Monopole, pp. 103-104.
266. Vide ref. num. 242 in this Chapter.
267. P. Bernard, "Lugo (Jean de)", Dictionnaire de Théologie Catholique, Tome Neuvième, Première Partie, pp. 1071-1072, "... parmi les théologiens du XVIe. et du XVIIe siècle, Lugo tient une place hors de pair, à côté, sinon au-dessus de Suárez." "Après Saint Thomas, a écrit Saint Alphonse de Liguori, il n'y a rien d'exagéré à le mettre au premier rang parmi tous les autres théologiens..." - p. 1072.
268. James Brodrick, S.J., The Economic Morals of the Jesuits, London, Oxford University Press, Humphrey Milford, 1934, pp. 9-10.

The Spanish Jesuit, however, agreed with Summenhart, Soto, Juan de Medina, Luis de Molina, and Diego de Covarrubias y Leiva, that price fluctuates "not because of the intrinsic and substantial perfection of the articles - since mice are more perfect than corn, and yet worth less - but on account

of their utility in respect of human need, and then only on account of estimation..." - Grice-Hutchinson, The School of Salamanca, p. 72.

269. Höffner, Wirtschaftsethik und Monopole, p. 104

270. Ibid.

271. Ibid.

272. Ibid.

Grice-Hutchinson, The School of Salamanca, p. 85.

273. Höffner, Wirtschaftsethik und Monopole, p. 107.

273. Urdanoz, Obras de Francisco de Vitoria, pp. 36-37. In (bis) 1528, 1539-1540, and again in 1544, locust and bad weather ruined the wheat crop of Salamanca and Castille in general, and De Soto was appointed not only to organise the purchase of wheat wherever it was available but also the supply of flour to the bakeries and the distribution of bread to the students, certainly a good opportunity to analyse the behaviour of the market, and the effect of supply and demand on market prices. Francisco de Vitoria collaborated with him, and together they also negotiated the installation of a printer and a printing press in Salamanca.

274. Höffner, Wirtschaftsethik und Monopole, pp. 130-131.

275. Ibid., 110.

276. Ibid., 132, "... die Taxierung sei „eine so schwierige Sache“, dass Navarrus diese scharfen Worte „gewagt“ habe." (Literally, it translates "dared to speak...").

277. Ibid.

278. E. Vansteenberghe, "Molina, Louis", "Molinisme", Dictionnaire de Théologie Catholique, Tome Dixième, Deuxième Partie, pp. 2090-2092, and 2094-2187 respectively.

279. Amongst others to the quantity theory of money and the theory of foreign exchange. Vide Grice-Hutchinson, The School of Salamanca, pp. 57-58, 112-115, 121-122; Höffner, Wirtschaftsethik und Monopole, pp. 111-131.

280. Höffner, Wirtschaftsethik und Monopole, p. 130.

281. Ibid., 131, (1).

282. Grice-Hutchinson, The School of Salamanca, pp. 112-113.
"There are two ways in which a given money may be more valuable in one place than in another. Firstly, by virtue of public law or accepted custom, the value of a money in terms of other moneys may vary from place to place." "But there is another way in which money may be worth more in one place than in another: namely, because it is scarcer there than elsewhere. Other things being equal, wherever money is most abundant, there will it be least valuable for the purpose of buying goods and comparing things other than money. Just as an abundance of goods causes prices to fall (the quantity of money and number of merchants being equal), so does an abundance of money cause them to rise (the quantity of goods and number of merchants being equal)." - p. 113. Also on page 113 there are practical examples of the different values of money, even within the Crown of Castille-Aragon, which contribute to make this point clear.
283. Höffner, Wirtschaftsethik und Monopole, p. 131, (2).
284. Ibid., (3).
285. Ibid., (4).
286. Ibid., (5).
287. Ibid., (6), "... Ein verantwortungsbewusster Fürst soll überhaupt kein Gesetz erlassen, von dem er voraussieht, dass es fast allgemein übertreten wird."
288. Ibid., 104-105.
289. Ibid., 105, "... Das ist nämlich das Los der Kaufleute, dass sie nicht bloss mit dem Gewinn, sondern auch mit dem Verlust rechnen müssen".
290. Ibid., "... der „jetzt und hier und bei einer ganz bestimmten Verkaufs und Einkaufsart gemeinhin" sich finde, wobei „jeder Betrug und Zwang" ausgeschlossen sein müsse."
291. Grice-Hutchinson, The School of Salamanca, pp. 79-81, Instrucción de Mercaderes, Medina del Campo, 1544, Chapter 2, pp. xxvii-xxviii, "Excluding all deceit and malice, the just price of a thing is the price which it commonly fetches at the time and place of the deal, in cash, and bearing in mind the particular circumstances and manner of the sale, the abundance of goods and money, the number of buyers and sellers, the difficulty of procuring the goods, and the benefit to be enjoyed by their use, according to the judgement of an honest man."

292. Höffner, Wirtschaftsethik und Monopole, p. 105.
293. de Roover, La Pensée Economique, pp. 61-62.
-----, La Doctrine Scolastique, p. 154.
294. Ibid., 159.
295. Grice-Hutchinson, The School of Salamanca, p. 86.
296. Ibid., "The natural price is not determined by the judgement of the individual merchant, but by the opinion of prudent and fair-minded men. It would be a most fallacious rule if, whenever a merchant bought an article, he added on to its price the value of his labour and risk, and then expected to sell it at this increased value. In fact, if a merchant ignorantly buys some article at more than the proper price, or if he suffers illfortune (for instance, if the goods he has bought unexpectedly become abundant) he cannot justly extort the costs which he has incurred."
297. Vide ref. num. 176 in this Chapter.
298. Höffner, Wirtschaftsethik und Monopole, p. 107, "... der gerechte Preis „keine Rücksicht auf die Personen nimmt, sondern in sich absolut bestimmt wird"."
299. Grice-Hutchinson, The School of Salamanca, pp. 85-86, Domingo de Soto, De Justitia et Jure, Salamanca, 1553, Lib. VI, Q.2, Art. III, pp. 549-549.
300. Vide ref. num. 196 in this Chapter.
301. Grice-Hutchinson, The School of Salamanca, p. 82.
302. Höffner, Wirtschaftsethik und Monopole, p. 105.
303. Vide ref. num. 188, 189, and particularly 191 in this Chapter.
304. Höffner, Wirtschaftsethik und Monopole, p. 105.
Grice-Hutchinson, The School of Salamanca, pp. 87-88.
305. Höffner, Wirtschaftsethik und Monopole, p. 105.

Domingo de Soto appears to have been fascinated by the expansion of trade. According to Marjorie Grice-Hutchinson - The School of Salamanca, p. 44 - "the moral problems created by the contemporary expansion of commerce, a subject which (as he tells us) was so peculiarly interesting to him that it alone had led him to take up the burden of writing his

great treatise." The work alluded was De justitia et jure, based on a series of lectures that de Soto gave in Salamanca in 1540-1541, first published in 1553, and reprinted no less than twenty-seven times before 1600.

306. Höffner, Wirtschaftsethik und Monopole, p. 106.

307. Ibid.

308. Ibid.

309. Ibid., "Die Kaufleute dürfen also Gewinne machen; „denn man darf berechtigterweise nach Gewinn streben, wenn man durch seine Mühen und Auslagen und durch sein Risiko für die Gesamtheit, also für andere, tätig ist"."

310. Ibid.

For the position of Saint Thomas Aquinas on this matter, vide Fanfani, Storia delle Dottrine Economiche, p. 126.

de Roover, La Doctrine Scolastique, pp. 153-154.

Tozzi, I fondamenti, p. 216.

311. Fanfani, Le Origini, p. 123.

Höffner, Wirtschaftsethik und Monopole, pp. 106-107.

This was accepted to a large extent with regard to the public debt in the XIV and XV Century, according to de Roover - San Bernardino, pp. 38-40. He affirms that it was due to the fact that "the theologians themselves were eventually forced to open their eyes and to recognise the fact that the public debt would never be redeemed and was not really a loan, of which the principal was repayable sooner or later." - p. 40. "Even the rigorous Angelo da Chiavasso (d. 1495) O.F.M., takes this position and assimilates the claims of the Florentine Monte Comune to a census, or perpetual rent." - p. 40, ref. num. 211

312. Höffner, Wirtschaftsethik und Monopole, p. 107.

313. Grice-Hutchinson, The School of Salamanca, p. 87.

314. Ibid., "And a monopoly of buyers who combine to reduce prices is equally unjust..."

Höffner, Wirtschaftsethik und Monopole, p. 107.

315. Ibid., "Nur zur Abwehr eines Verkäufermonopols können sie,

„gleichsam Gewalt mit Gewalt zurückweisend," sich derselben Waffe bedienen."

316. Ibid.

317. Ibid.

318. Ibid., 108.

Grice-Hutchinson, The School of Salamanca, p. 87. This was based on the assumption that "prices rise when buyers are numerous and fall when they are scarce. Likewise, prices fall when sellers are numerous and rise when they are scarce." -pp. 86-87.

319. Vide ref. num. 97 in this Chapter.

320. Höffner, Wirtschaftsethik und Monopole, p. 107

321. Ibid., 108, "... er verpflichtet „die Herren die das Monopol verliehen haben, und die übrigen, die bei dieser ungerechten Bereicherung mitgewirkt haben", zum Schadenersatz."

322. Thus reminiscent of the position of Nikolaus von Oresme - vide ref. num. 147 in this Chapter.

323. Höffner, Wirtschaftsethik und Monopole, p. 108.

324. Ibid., ref. num. 5.

325. Ibid., 109.

326. Ibid.

de Roover, La Doctrine Scolastique, p. 163, is in full agreement with regard to monopoly. The indictment of Jean Bodin (1520-1596), from which he quotes a section condemning the Guilds, appears to be as emphatic in his opposition to monopoly and price manipulations as those of Milinaeus or Stracha.

327. Höffner, Wirtschaftsethik und Monopole, p. 109.

328. de Roover, La Pensée Economique, pp. 68-69.

329. Grice-Hutchinson, The School of Salamanca, *passim*.

330. de Roover, La Pensée Economique, p. 30, ref. 34.

331. Given that he was one of the main XV Century followers of Saint Thomas Aquinas. Vide ref. num. 155, 188, 203, 246 in this Chapter.

332. Azpilcueta, Comentario, XIII, Dinero presente y dinero ausente, 62-67, pp. 87-92. To Azpilcueta, one of the factors affecting the relative value of money is its presence or absence - from a spatial point of view, not in terms of time - so that absent money is worth less than present money. He explains this difference in the value of money in the same fashion that any ordinary merchandise that purchased far away from the point of the transaction or consumption requires expenses and work, measurables in terms of money, before it can be put at the disposal of the buyer. This would appear to have been based on the Thomistic notion of "improvement" of the good, which justified an increase of its value - Tozzi, I fondamenti, p. 216, for the basic idea of Saint Thomas Aquinas. Similarly, an implicit expansion of the basic idea of Saint Thomas that the one who receives something on loan and benefits from it owes a similar compensation "come debito di giustizia" - Tozzi, I fondamenti, pp. 266-267, together with a subtle interpretation of Saint Thomas's dictum that a reason other than time was required for money to increase or decrease in value - Azpilcueta, Comentario, XI, Cambio por compra, trueco o contrato innominado, 47, ref. 219, p. 68, moved Azpilcueta to accept, against most prior opinions, that if somebody lent money, and its value increased by Royal Decree or custom before the receiver of the loan could use it, the latter was forced to return the original amount plus the increase, unless otherwise stipulated - Azpilcueta, Comentario, XI, 48-50, pp. 69-71.
333. R. Hedde et E. Amann, "Pie V (Saint)", Dictionnaire de Théologie Catholique, Tome Douzième, Deuxième Partie, pp. 1647-1653.
334. Ibid., 1650.
Höffner, Wirtschaftsethik und Monopole, p. 109.
335. Ibid.
336. Brodrick, The Economic Morals, p. 10.
Grice-Hutchinson, The School of Salamanca, p. 72.
337. Brodrick, The Economic Morals, pp. 148-149. Here, the whole Thomistic idea of the need to share the risks in order to justify a share of the profits - Tozzi, S. Tommaso: Sul Commercio e sul Credito, pp. 639-710, is very much alive. So is the insistence of Saint Thomas Aquinas on the examination of the particular circumstances of each case - Vide ref. num. 90 in this Chapter.

(338. Höffner, Wirtschaftsethik und Monopole, p. 109.

339. Eiximenis, Regiment, pp. 171-172.

340. Vide Reference num. 112 in this Chapter.

341. Eiximenis, Regiment, p. 172.

342. Fanfani, Le Origini, p. 29.

This was probably true everywhere at the time, in varying degrees, in accordance to the nature of the goods involved. For descriptions of market conditions vide: de Roover, La Doctrine Scolastique, p. 149.

Sapori, Il Giusto Prezzo, p. 270.

343. Schumpeter, History of Economic Analysis, pp. 92-97, for notion of public good.

344. Fanfani, Le Origini, p. 129, "Antonino tratta, da par suo, del nuovo argomento della speculazione e giunge, concessione questa notevolissima, a giustificarla qualora ne sia movente un fine onesto, chè se movente è la cupidigia non poteva mancare, e non è mancata, la condanna."

345. Eiximenis, Regiment, p. 171, further comments throughout pp. 172-173.

346. Ibid., 173-174.

347. Martín de Azpilcueta, Comentario Resolutorio de Cambios, Introducción y texto crítico por Alberto Ullastres, José M. Pérez Prendes y Luciano Pereña, Madrid, Consejo Superior de Investigaciones Científicas, 1965, passim, and particularly Apéndice I, De Usura Circa Cambia, pp. 109-127; Apéndice II, De los Pecados de Usura que se Cometen en los Cambios, pp. 129-133; Apéndice III, Consilia Circa Cambia, pp. 135-156.

Brants, L'Economie Politique, pp. 143-156.

A. Bernard - G. Le Bras, "Usure", Dictionnaire de Théologie Catholique, Tome Quinzième, Deuxième Partie, pp. 2316-2372.

Barbieri, Le Dottrine Economiche, passim.

Capitani, Sulla Questione dell'Usura, pp. 23-46.

(Giovanni Cassandro, Un Trattato Inedito e la Dottrina dei Cambi ne Cinquecento, Napoli, Edizioni Scientifiche Italiane, 1962, passim, for the actual text of the XVI Century treatise

of Father Marco Palescandolo, summarising many views, and partly written as a polemic answer to Father Domingo de Soto, vide pp. 113-167.

Endemann, Studien, Erster Band, pp. 9-40.

Fanfani, Storia dell Dottrine, pp. 104-107.

Benjamin N. Nelson, "L'universalismo medie e il duplice comandamento deuteronomico", In Ovidio Capitani, L'Etica Economica, pp. 47-68. It is a translation of Chapter I of Nelson's The Idea of Usury. From Tribal Brotherhood to Universal Otherhood, Princeton, Princeton University Press, 1949, pp. 3-28, which is not a historical analysis, but includes a very good bibliography.

de Roover, La Pensée Economique, pp. 76-90.

-----, San Bernardino, pp. 27-40, especially pp. 27-33.

-----, L'Evolution de la Lettre de Change, XIVe.-XVIIIe. siècles, Paris, Librairie Armand Colin, 1953, pp. 19-21, 68-74, 122-129.

Sapori, "L'Usura nel Dugento a Pistoia", Studi, Primo Volume, pp. 181-189.

-----, "L'Interesse del Denaro a Firenze nel Trecento. (Dal Testamento di un Usuraio)", Studi, Primo Volume, pp. 223-243.

Tozzi, S. Tommaso: Sul Commercio e sul Credito, passim.

348. Brants, L'Economie Politique, p. 139.

Bernard-Le Bras, Usure, passim.

Fanfani, Le Origini, p. 16.

Endemann, Studien, Erster Band, pp. 9-40.

T.P. McLaughlin, G.S.B., "The Teachings of the Canonists on Usury (XII, XIII, and XIV Centuries)", Medieval Studies, I (1939), pp. 81-147; II, (1940), pp. 1-22.

de Roover, La Pensée Economique, p. 83, ref. 159.

Sapori, L'Interesse del Denaro, pp. 228-229.

349. G. Le Bras, Usure, p. 2354.

350. Ibid.

S.M. Imamuddin, The Economic History of Spain (Under the Umayyads, 711-1031 A.C.), Dacca, Asiatic Society of Pakistan, Publication Number 11, 1963, p. 293, "Ahmad says: The Muslims should associate himself in trade with persons of religion and integrity, but not with one who practices RIBA (usury)..."

351. Barbieri, Le Dottrine Economiche, pp. 50-51, "... il fiorentino Lorenzo de Ridolfis (a jurist), che nel Tractatus de usuris tentò spesso di giustificare varie usanze in materia societaria e assicurativa, difendendo con vivace spirito mercantile la libertà contrattuale..."

G. Le Bras, Usure, passim, for a typical example vide: Ratio incertitudines, pp. 2364-2365.

de Roover, La Pensée, pp. 76-78.

-----, San Bernardino, pp. 30-31.

352. Azpilcueta, Comentario, pp. 4-156.

Cassandro, Un Trattato, pp. 113-167, especially Capitolo 29, Non è sicura l'opinione d'alcuni dottori, i quali vogliono, che il cambio sia contratto di permutatione, pp. 140-142; Capitolo 31, Si rifiuta l'opinione di Domenico di Soto e di Martin Navarro la qual è contra e quel ch'è detto, pp. 143-145.

Le Bras, Usure, passim.

de Roover, La Pensée Economique, pp. 76-90.

-----, San Bernardino, pp. 27-40.

353. The absence of Nominalist influence in the writings of Bishop Eiximenis, who was after all a Franciscan, would tend to confirm the restricted appeal of this movement. (Vide ref. 132-134, 151-153 in this Chapter).

354. Schumpeter, History of Economic Analysis, p. 84, ref. 3, perhaps overstates the rivalry amongst the Orders, which was, nevertheless, very real, and no doubt derived from their different goals and outlook.
For the purpose of comparison vide:
J. Besse, "Cisterciens", Dictionnaire de Théologie Catholique, Tome Deuxième, Deuxième Partie, pp. 2532-2550.

-----, "Benoit de Nursie (Saint)", Dictionnaire de Théologie Catholique, Tome Deuxième, Première Partie, pp. 709-717.

B. Heurtebize, "Bénédictins (Travaux des)", Ibid., pp. 602-628.

Erich Maschke, Der deutsche Orden und die Preussen. Bekehrung und Unterwerfung in der preussisch-baltischen Mission des 13. Jahrhunderts. Vaduz, Kraus Reprint Ltd., 1965, Nachdruck mit Genehmigung vom Matthiesen Verlag, Lübeck, originally printed in Berlin, Verlag Dr. Emil Ebering, 1928, passim, particularly pp. 1-14.

355. G. Fritz et A. Michel, "Scolastique", Dictionnaire de Théologie Catholique, Tome Quatorzième, Deuxième Partie, pp. 1691-1728, particularly pp. 1691-1722.

P. Mandonnet, "Aristotelisme de la Scolastique", Dictionnaire de Théologie Catholique, Tome Premier, Deuxième Partie, pp. 1869-1888.

Schumpeter, History of Economic Analysis, pp. 87-92; "The reader will observe that I do not assign to the recovery of Aristotle's writings the role of chief cause of thirteenth century developments. Such developments are never induced solely by an influence from outside. Aristotle came in, as a powerful ally, to help and to provide implements. But perception of the task and the will to rush forward were, of course, there independently of him." - p. 88, an element in that movement which is far too often altogether ignored.

356. Ibid., 74-78, "I am far from wishing to belittle the importance of Christian ideals and precepts per se. But we need not invoke them in order to realise that monastic subordination to authority in matters of faith and discipline was compatible with extensive freedom of opinion in all other matters. We must go even further. Not only did the monk's sociological location - outside, as it were, of the class structure - make for an attitude of detached criticism of many things; there also was a power behind them that was in a position to protect that freedom. So far as treatment of political and economic problems is concerned, the clerical intellectual of that age was not more but less exposed to interference from political authority and from 'pressure groups' than was the lay intellectual of later ages." - pp. 76-77.

The freedom of opinion and independence of the Scholastics so categorically asserted by Schumpeter can be supported by other sources. The mere title of the "Relección" (solemn conference that the holder of a chair was obliged

to give once a year to the University body -Urdanoz, Obras de Francisco de Vitoria, pp. 78-79) pronounced in 1528 by Martin de Azpilcueta in the presence of the Emperor Carlos V and a large part of the Spanish high nobility, would certainly corroborate Schumpeter's views: "El reino no es del rey, sino de la comunidad, y la misma potestad, por derecho natural, es de la comunidad y no del rey; por esta causa no puede la comunidad abdicar totalmente de su poder." - Azpilcueta, Comentario Resolutorio, p. XVI. (A similar philosophical view point was presented on Christmas of the same year and also in Salamanca in the "Relección" of Francisco de Vitoria: "Sobre la potestad civil" (De Potestate civili) -Urdanoz, Obras de Francisco de Vitoria, pp. 108-195. The same idea of the foundation of the State was shared by other Scholastics such as Soto, Menchaca, Covarrubias, San Belarmino, Molina, Suarez, and many others. Vitoria expanded directly the views of the Nominalist I. Almain, making also reference to the very old Scholastic tradition on this matter, above all to Saint Thomas Aquinas - pp. 120-121, which certainly is not in agreement with an onnipotent royal power.)

Brodrick, The Economic Morals, pp. 6-8, presents documentary evidence that would also support Schumpeter's argument, the actors in this case being Diego Laynez, the General of the Jesuits, and another well known Jesuit, Saint Peter Canisius, both of them concerning the whole question of interest.

Grice-Hutchinson, The School of Salamanca, p. 40, "The work of the theologians and jurists who brought fame to the Spanish universities is thoroughly scholastic in form. The full panoply of Questions, Articles, Objections, Distinctions, Solutions and Conclusions is unsparingly displayed. Every utterance is checked against Aristotle and Saint Thomas, and every page encrusted with quotations from their works. Too rigid a straitjacket, it might be supposed, to contain the great expanding world of the sixteenth century. Yet the writings of the Spanish theologians convey no sense of restraint. For all their stiff, unbending style, our writers were flexible of mind, attentive to new facts and doctrines, and respectful of the honestly held opinions of the ordinary man."

357. Brodrick, The Economic Morals, p. 143.

358. de Roover, La Pensée Economique, pp. 10-21.

Schumpeter, History of Economic Analysis, pp. 82-83.

359. "De Origine, natura, jure et mutationibus monetarum", vide ref. num. 142 and 148 in this Chapter. E. Amman - "Oresme,

Nicole" - comments these works, its many translations, and its actual success in obtaining a change of monetary policy in France on pp. 1408-1409.

360. Höffner, Wirtschaftsethik und Monopole, p. 118, "Monetecudende ratio."
 361. Grice-Hutchinson, The School of Salamanca, passim.
Höffner, Wirtschaftsethik und Monopole, pp. 101 et seq.
 362. Amann, Oresme, passim.
 363. Schumpeter, History of Economic Analysis, pp. 81, 101 - ref. 27.
 364. Bishop Diego de Covarrubias y Leyva, the author of De Mutatione Monetarium is a good example. A full professor of Canon Law at Salamanca at age 21, he was a brilliant jurist, a great expert on Roman Law, known as the "Spanish Bartolus", a historian and linguist, a distinguished theologian as well as a diplomat and administrator. Vide: Grice-Hutchinson, The School of Salamanca, p. 45; T. Otolan, "Covarrubias y Leyva (Diégue) ou Covarruvias", Dictionnaire de Théologie Catholique, Tome Troisième, Deuxième Partie, pp. 2006-2007.
 365. Azpilcueta, Comentario Resolutorio, pp. IX-X, XV-LV, for commentaries on political and other works.
 366. Domingo de Soto, author of "Deliberatio in causa pauperum", in fact included his most important economic contribution in a theological work, "De Justitia et jure". He was amongst other things an outstanding theologian and philosopher. Vide: V. Beltrán de Heredia, "Soto (Dominique de)", Dictionnaire de Théologie Catholique, Tome Quatorzième, Deuxième Partie, pp. 2423-2431; Vicente Beltrán de Heredia, Tratados Espirituales, Madrid, La Editorial Católica, MCMLXII, (Biblioteca de Autores Cristianos), pp. 75-186, Domingo de Soto, Tratado del Amor de Dios; Grice-Hutchinson, The School of Salamanca, pp. 83-88.
- Luis de Molina, who wrote the well known "Disputationes de Contractibus", was one of the great Jesuit theologians and philosophers, a theoretician of law, and also excelled in logic and metaphysics. Grice-Hutchinson, The School of Salamanca, pp. 112-115; E. Vansteenbergue, "Molina, Louis", and "Molinisme", Dictionnaire de Théologie Catholique, Tome Dixième, Deuxième Partie, pp. 2090-2092, and 2094-2187, respectively.
- Urdanoz, Obras de Francisco de Vitoria, pp. 74-84, Obras de Vitoria, illustrates the vast field of interest of this famous Scholastic.

367. Tozzi, I fondamenti, passim.
368. Höffner, Wirtschaftsethik und Monopole, p. 92, ref. 1, Sant'Antonino dealt with fraud, for instance, not together with the doctrine of price but in the Chapter on Treason.
- de Roover, San Bernardino, p. 2.
369. Ibid., 3-4.
370. Höffner, Wirtschaftsethik und Monopole, pp. 77-101, for a number of examples.
371. Ibid., 85, 91-96, 101; "Diese Geschichten von den „Gewürzbriefen" werden von den späteren Scholastikern häufig wiederholt. Erfunden sind sie nicht." - p. 92. Ergo, even some of the examples used were originally true facts.
- Fanfani, Storia delle Dottrine, p. 94.
- de Roover, La Pensée Economique, p. 15.
372. Schumpeter, History of Economic Analysis, p. 90, "... Francis Bacon, in spousing the cause of "inductive" science, contrasted it with both scholastic and Aristotelean speculation. All this was unfair to the scholastic doctors. But it was still more unfair to the old sage. For if there is any general message at all that speaks to us from his pages, it is surely the message of empirical research." Vide also pp. 57-60, 82-107.
373. de Roover, La Pensée Economique, pp. 12-15. "Au fond, les économistes modernes sont des logiciens dont les propositions sont obtenues par déduction de vérités premières ou de postulats (assumptions) soigneusement choisis et délimités. L'analyse économique consiste le plus souvent à considérer isolément un seul des facteurs, en supposant que par ailleurs tout le reste demeure égal (ceteris paribus). L'économie politique est ainsi devenue une science spéculative, l'observation des faits n'y tenant que peu de place, comme on peut s'en rendre compte en feuilletant l'American Economic Review ou même La revue d'économie politique." - p. 15.
374. Barbieri, Le Dottrine Economiche, p. 43.
- Höffner, Wirtschaftsethik und Monopole, p. 85.
375. Tozzi, S. Tommaso: Sul commercio e sul credito, p. 710 - vide ref. 40 in this chapter for quotation.
376. de Roover, La Pensée Economique, pp. 16-19, especially p. 18.

-----, San Bernardino, p. 2, "Moral Theology", of which (economics) was an integral part.

377. de Roover, San Bernardino, pp. 1, 8.

378. Ibid., 8. "According to the Scholastics, economics belonged within the sphere of justice of which there were two kinds: distributive justice, which comprised the distribution of wealth or income, and commutative justice, which dealt with commutations or the exchange of goods and services by means of voluntary contracts. While the criteria of distributive justice was not rigidly predetermined and varied from one society to another according to customs and institutions, commutative justice rested on the principle of equality between what was given and what was received and did not permit any violation of this rule. Commutative justice, therefore, was based on an absolute principle - there are degrees of inequality but none of equality - which is the same in all times and in all places. It follows that the rules which governed commutations are of universal validity and do not suffer any deviation from the norm."

Fanfani, Storia delle Dottrine, p. 84.

379. Schumpeter, History of Economic Analysis, p. 87.

Fanfani, Le Dottrine Economiche, p. 117, "Le varie istituzioni sociali hanno una funzione necessaria, anche se di natura integrativa. Vivono per il bene dell'individuo, senza con questo divenire ciechi strumenti nelle sue mani.... L'amore d'una inumana razionalità non stringe l'individuo in una morsa inesorabile, perchè il fine di tutto l'ordine sociale è l'esaltazione della persona."

380. Fanfani, Storia dell Dottrine, pp. 81, 91

Schumpeter, History of Economic Analysis, p. 87.

Urdanoz, Obras de Francisco de Vitoria, pp. 114-115. "En consecuencia, el orden jurídico, y con él todas las estructuras sociales y políticas, forma parte integrante del orden moral y teológico como conjunto de medios que conducen a los hombres hacia su fin o apartan de él." - p. 114; "Sólo el hombre en la naturaleza se comporta moviéndose por sí mismo, de una manera consciente y libre, por un fin. Por eso el finalismo penetra y dirige de una manera especial y formal toda la esfera de la vida moral, jurídica, y social del hombre."- p. 115.

381. And of course, it remains so in the Catholic faith.

382. Saint Thomas Aquinas, Summa Theologiae, Ia 2ae. Q.95, 2,

p. 107, (3) "Owing to the great variety of human affairs the common principles of natural law do not apply stiffly to every case. One outcome is the diversity of positive laws among different people."; Ia 2ae. Q.95, 3, p. 111, "The other conditions he (Isidore on the qualities of positive law) afterwards enumerates all come back to these three. For when he speaks of law being 'honourable' he refers to its 'accord with religion', and when he goes on to add that it is 'fair, possible, according to nature and the custom of the country, and befitting place and time' he is implying its 'accord with good discipline'."; Ia 2ae. Q.97, 3, p. 149, "All law proceeds from the reason and will of the lawgiver; divine and natural law from the intelligent will of God, human law from the will of man regulated by reason. Man's reason and will in matters of practice are manifested by what he says, and by what he does as well; each carries into execution what he has chosen because to him it seems good." These excerpts clearly indicate the independent and local character of human law. At Saint Thomas's time most laws were mainly the declaration of custom. "The Church, which was the guarantor of customary liberties, would on occasion act against a government which attacked them." - pp. 146-147, ref. a. So it would do in the case of statutes that did likewise, but in general the attitude was one of respect and non-interference. Laws could be altered, but, following the dictum of the jurist Ulpian "In establishing new laws the benefit to be gained by departing from what for ages has been looked upon as equitable should be evident." - Ia 2ae. Q.97, 2, p. 147. The commentaries of Father Gilby - pp. 157-185 - add a valuable insight to this question.

Brants, *L'Economie Politique*, pp. 52-59, shows that although private property was considered a right given to humanity by natural law, the details of its organisation and distribution were left to the local law and custom. Therefore, they should be taken into consideration when analysing a man's behaviour.

Urdanoz, *Obras de Francisco de Vitoria, De la Potestad Civil*, p. 194, "Ha de advertirse que, como la familia forma parte de la sociedad, las leyes de ésta pueden determinar en que casos los hijos estan obligados a obedecer a los padres y en que casos no conviene eso, asi como determinaron hasta qué edad obligaba dicha obediencia." This clearly indicates how much alive was the traditional respect for the independence of the local law and custom in the XVI Century.

383. Azpilcueta, *Comentario Resolutorio*, p. XXI, "Este contacto continuo con la realidad le obligó a cambiar algunos aspectos de su teoría 'transformando su criterio restrictivo inicial en otro de mayor comprension que procura ensanchar el campo

lícito de operaciones.' Como un siglo antes San Antonino de Florencia, representa el espíritu conciliador de las exigencias morales y la vida real." In fact even Azpilcueta's Manual de Confesores, in whose chapter 17 was treated the doctrine of "Cambios", was constantly revised to accommodate it to the new economic circumstances, so that the confessors could give adequate advice in matters of conscience - p. XX. This clearly indicates that at least on some occasions those changes were rather rapid indeed.

384. R.H. Tawney, Religion and the rise of capitalism, London, John Murray, 1964, First Edition 1926, p. 100, "... which is involved in any living system of jurisprudence, whether ecclesiastical or secular."
385. E. Dublanchy, "Casuistique", Dictionnaire de Théologie Catholique, Tome Deuxième, Deuxième Partie, pp. 1859-1877.
386. Azpilcueta, Comentario Resolutorio, Consilia Circa Cambia, pp. 135-156.
387. Ibid., XX-XXI.
388. Höffner, Wirtschaftsethik und Monopole, pp. 106-107.
389. Ibid., 131, (6), "Die Festpreise führen zu unzähligen Gesetzesübertretungen Lügen, Meineiden usw. Darüber wissen die Beichtväter und Theologieprofessoren, die täglich in diesen Angelegenheiten um Rat gefragt werden" Bescheid."
390. J.A. Goris, Etude sur les colonies marchandes méridionales (Portugais, Espagnols, Italiens) à Anvers de 1488 à 1567. Contribution à l'histoire de débuts du capitalisme moderne. New York, Burt Franklin, Reprinted 1971, Originally published in 1925, pp. 510-545.
391. Brants, L'Economie Politique, pp. 157-164, particularly 163-164.

Endemann, Studien, Erster Band, pp. 460-471, particularly pp. 465-469. Nikolaus Barianus, of the Order of the Augustinian Hermits was the one who coined the name of Montes Profani, used by those opposed to the Montes Pietatis - p. 465.

Sapori, "Medioevo e Rinascimento: Proposta di una nuova Periodizzazione", Studi Di Stori, Terzo Volume, pp. 436-437. An interesting detail in this controversy is that Fra Girolamo Savonarola, unlike his fellow Dominicans, favoured the Monte di Pietà as an instrument to combat usury - Fanfani, Le Origine, p. 123, which underlines the independence

of mind of the members of the Orders - Vide ref. num. 357 in this Chapter. Of further interest is to know that the Dominican Cardinal Cajetan, who as we have seen accepted the finance business under certain circumstances - Vide ref. num. 311 in this Chapter - was opposed to the Monte di Pietà because he considered the payment of charges designed to cover the administrative costs as a form of interest - Fanfani, Le Origine, n. 123. This illustrates once more the difficulty of grouping the Doctors into generalised schools of thought - for some other instances vide ref. 243-246 in this Chapter.

392. Endemann, Studien, Erster Band, II., Der Wechsel, pp. 75-340.
de Roover, San Bernardino, pp. 33-38.
-----, La Pensée Economique, pp. 82-85.
393. de Roover, San Bernardino, p. 34 " 'This matter of exchange although it is already sufficiently abstruse by itself, becomes even more intricate because of the subterfuges invented by the merchants and more obscure because of the contradictory opinions of the Doctors.' "
394. Cassandro, Un Trattato Inedito, Capitolo 29, Non è sicura l'opinione d'alcuni dottori, i quali vogliono, che il cambio sia contratto di permutazione - pp. 140-141; Capitolo 31, Si rifiuta l'opinione di Domenico di Soto e di Martin Navarro la qual è contra a quel ch'è detto, pp. 143-145; Capitolo 38, I doi predetti modi di cambio non sono somiglianti a frutti, che prendono l'usurarii dalla cosa, che non è come stima Domenico di Soto, ma non bene, pp. 159-160.
395. Pereña, Francisco de Vitoria, Escritos Políticos, Mayores disensiones del Reverendo Padre Maestro Fray Francisco de Vitoria sobre ciertos tratos de mercaderes, 1580-1600, pp. 331-337, vide especially 1586, p. 333.
396. Brodrick, The Economic Morals, p. 6, 'When in 1553-4, Laynez found himself in Genoa, the great Mecca of traders and company promoters, he felt it was his duty to preach a course of sermons on the very lively topics of contracts and financial dealings. Such an impression did he make that the civil authorities published an edict ordering all merchants to submit their books and contracts for theological revision.'

At the time Laynez was preaching in Genoa, the Archbishop of the city, Gerolamo Saulo, had commissioned a group of theologians and canonists to study a specific type of Cambium, known as the Lyon or Bescaçon exchange. One of its

outcomes was a Tractatus de Cambiis, written by one of those consulted, frate Fabiano, of the Order of Augustinean Hermits - Cassandro, Un Tratatto Inedito, pp. 31-35. This illustrates the enormous preoccupation of the Church, as well as of individual theologians and jurists, with these matters. The commercial activity of Genoa must have contributed to that - "Genuensis ergo mercator! E si potrebbe dire ergo campsor," says Cassandro - op. cit., p. 30 - to underline that. Father Palescandolo was, incidently, very well acquainted with Genoa and its business world - Cassandro, op. cit., p. 31, and the central focus of his treatise was also on the "cambi detti di Lione o di Bisenzone."

397. de Roover, San Bernardino, p. 14.
398. Saint Thomas Aquinas, Summa Theologiae, Vol. 28, Appendix 6, Human Law and the Art of Politics (Ia 2ae. 95, 2), pp. 177-179, especially 179.
399. P. Bernard, B. Dolhagaray, E. Mangelot, T. Ortolan, E. Vacandard, "Confession", Dictionnaire de Théologie Catholique, Tome Troisième, Première Partie, pp. 828-926, 942-974. For some specific details of the power and jurisdiction of the confessor vide pp. 894-898.
400. Azpilcueta, Comentario Resolutorio, p. XX. His Manual de Confesores was written for that specific purpose.

Höfner, Wirtschaftsethik und Monopole, pp. 76, 78, 96.

de Roover, San Bernardino, p. 5. Sant'Antonino da Firenze's Summa moralis ou Summa theologiae, and all such treatises on moral theology had that purpose.

It should be noted that the confessor is under the strict obligation of improving his knowledge of moral theology until the end of his life, according to the Church rules. "L'expérience ne supplée pas a la science, mais seulement la complète, quand elle existe." - Bernard, Dolhagaray, Mangelot, Ortolan, Vacandard, Confession, pp. 945-946.

401. Bernard, Dolhagaray, Mangelot, Ortolan, Vacandard, Confession, pp. 890-894, 920-926, 959-974. The strictest secrecy includes the circumstances surrounding any confessed sin - pp. 921-922.
402. Francisco Layna Serrano, Historia de Guadalajara y sus Mendozas en los Siglos XV y XVI, Madrid, Aldus, S.A., 1942, Tomo I, pp. 310-314, Testamento de doña Aldonza de Mendoza, duquesa de Arjona, Espinosa de Henares, 16 de junio de 1435, "...e mando que sean pagadas a diego de mendoza my primo fasta quatroçientas fanegas de trigo e çevada poco

mas o menos... las quales yo mande tomar del pan quel tenya en alperpe (?) quando yo estava en coveña..." - p. 312, "... e mando que dén al maestro fray pedro gonçales my confesor çinco mill mrs para dar en los lugares onde él sabe que so obligada..." - p. 313; pp. 325-333, Codicilo que otorgo don Iñigo López de Mendoza, primer marqués de Santillana en Jaén, a 5 de junio de 1455, ante el escribano Diego Fernández de Leon, "-Mando al monesterio de sant Françisco de Alcalá de Henares cinquenta myll mrs para la obra dél por algunos çargos que yo tenia al señor arçobispo de Toledo mi primo don Alonso Carrillo por lo que yo tomé de los bienes de don Joan de Cerezuela su antecesor, no obstante que por me faser graçia me fizo Remision de todo ello sin ningun preçio porque pertenesçian a él e yo los Reçebi en presençia de fray Rodrigo de Oña e del doctor Pero Diaz de Toledo." - p. 331, "- Mando que sean dados a Joan Camargo que perdone dios o a sus herederos, quatro myll mrs por un cavallo que yo compré estando en esta çibdad de Jahen por Capitan despues quél murio, lo save fray Alonso de Portillo my confesor e Gonçalo Fernandes de Sebillá, alcayde de la my villa de Veleña." - p. 332. Other payments in both wills strongly suggest restitution since no debts or recognition of services are mentioned, but none appear to be as clearly so as the above mentioned.

403. Azpilcueta, Comentario Resolutorio, pp. 122-123, "Et consequenter, qui cambiens dat pecuniam minoris valoris pro pecunia maioris valoris solvenda alio loco ei, qui nec realiter, nec credito eam ibi habet, peccat mortaliter, et tenetur ad restitutionem, quia virtualiter usuram committit."

Le Bras, Usure, pp. 2365-2372. It should be noted that restitution was just one of the prescribed penalties for usury, which was both a crime and a sin, and that all those connected with it were held responsible in solidum, including, to a large extent, the borrower.

Fanfani, Le Origine, pp. 18-19.

404. Pacetti, Un trattato sulle usure e le restituzioni, Fol 299 d 300 b - Rubr. questio 7. Inc. Septimo Queritur: An rebus suis venalibus falsas mixturas aut commixtiones occulte addentes sicut plerumque venditores vini qui aquam vino vendendo commiscent... peccent mortaliter et teneantur ad restitutionem precii defraudati."

405. N. Iung, "Restitution", Dictionnaire de Théologie Catholique, Tome Treizième, Deuxième Partie, pp. 2466-2501. The responsibility was extended to all those connected by commission or omission in accordance to their degree of co-operation in the damnable action - pp. 2480-2489. The

confessors were, and remain, of course, obliged to compensate the penitent for any error or malice in his judgement and administration of the Sacrament of Penitence - Bernard, Dolhagaray, Mangelot, Ortolan, Vacandard, Confession, pp. 951-953.

406. Fanfani, Le Origine, pp. 18-19, 48-52.
 -----, Le Dottrine Economiche, pp. 131-132.
407. de Roover, La Doctrine Scolastique, p. 177.
408. Saponi, "L'Interesse del Denaro a Firenze nel Trecento. (Dal Testamento di un Usuraio)", Studi di Storia, Primo Volume, XI, pp. 223-243.
 -----, "Una Compagnia di Prestatori Fiorentini ad Avignone nella Prima Metà del Trecento", Studi di Storia, Terzo Volume, VII, p. 108.
 -----, Le Marchand Italien au Moyen Age, Paris, Librairie Armand Colin, 1952, (Affaires et Gens d'Affaires, I), pp. XIX-XXI.
409. Florence Edler de Roover, "Restitution in Renaissance Florence", Studi in Onore di Armando Saponi, Milano, Istituto Editoriale Cisalpino, II, pp. 773-789.
410. Henri Lapeyre, Une famille de marchands, les Ruiz, contribution à l'étude du commerce entre la France et l'Espagne au temps de Philippe II, Paris, S.E.V.P.E.N., 1955, (Affaires et gens d'affaires, VI), pp. 133-134.
411. de Roover, The Rise and Decline of the Medici Bank, 1397-1494, Cambridge, Massachusetts, Harvard University Press, 1963. (Harvard Studies in Business History, XXI), p. 203, "The contract, however, clarifies one point by stating that the purpose of the partnership is 'to traffic and deal in exchange at the Court of Rome as it may please God and as is customary in this kind of banking business, above all staying within the bounds of fair and licit contracts.' The emphasis is consequently on banking and exchange with the understanding that heed be paid to the usury doctrine of the Church by making only permissible contracts and no patently usurious loans."; "This is further evidence that the usury doctrine had practical consequences." - ref. 44 (to the prior paragraph), p. 449. Vide also pp. 11-14, 102, 104-105.
412. Fanfani, Storia delle Dottrine, p. 138.
 -----, Le Origine, pp. 42-45, 115-116.

de Roover, The Rise and Decline, p. 260, "After deducting 3 percent for charities (per l'amor di Dio), profits were to be divided..."

Sapori, Una Compagnia di Calimala ai primi del Trecento, Firenze, Leo S. Olschki - Editore, 1932, p. 109, "La commissione di dirigenti di Calimala stabilì che la cifra del 'vero costo' fosse così costituita: 'primo costo'; tintura e assetto nel posto di acquisto; 'danaro di Dio'..."

-----, "La Beneficenze delle Compagnie Mercantile del Trecento", Studi di Storia, Secondo Volume, XXXI, pp. 839-858.

-----, "Una Compagnia della Prima Metà del Trecento Specializzata nelle Operazioni di Cambio a Distanza: I Covoni di Firenze", Studi di Storia, Terzo Volume, pp. 99-100, VI. Il conto dei poveri o di Messer Domineddio.

-----, Le Marchand Italien, pp. XVII-XIX, "Appelé en France 'denier a Dieu', en Allemagne Gottespfennig, en Italie Denaro di Dio, cet argent était toujours une aumone, qui jouait le rôle des arrhes, mais était destine aux ouvres pieuses et non au vendeur." - p. XIX. In fact, "Messer Domineddio" ceased being a partner in case of failure and became a privileged creditor. Any rescued monies were sent to the Archbishop or directly to charities - pp. XVIII-XIX, which underlines the importance attached to this concept.

-----, Il Giusto Prezzo, pp. 273-274.

413. G. Le Bras - H. du Passage, Usure, pp. 2336-2377, particularly pp. 2342-2350, 2372-2377.

Fanfani, Le Origine, pp. 58-59, 100-101.

Sapori, Il Giusto Prezzo, p. 293.

414. Fanfani, Le Origine, pp. 56-58.

de Roover, La Doctrine Scolastique, pp. 173, 177.

415. Marvin Becker, "La esecuzione della legislatura contro le pratiche monopolistiche delle arti fiorentini alla metà del secolo quattordicesimo", Archivio Storico Italiano, CXVII, 1959, pp. 8-28.

de Roover, La Doctrine Scolastique, p. 177.

416. Carmen Batlle y Gallart, "Una Familia Barcelonesa: Los Deztorrent", Anuario de Estudios Medievales, I, Barcelona, 1964, p. 480.

-----, "Notas sobre la Familia Llobera, Mercaderes Barceloneses

del Siglo XV", Anuario de Estudios Medievales, VI, Barcelona, 1969, p. 548.

Abbot Payson Usher, The Early History of Deposit Banking in Mediterranean Europe, Cambridge, Massachusetts, Harvard University, 1943, p. 242, in connection with bankrupt money changers.

417. This is the way we would interpret the alleged "licensing" of pawnbrokers in Florence - de Roover, The Rise and Decline, p. 14, given the realistic attitude of Sant'Antonino da Firenze, who aptly compared licensed pawnbrokers to houses of prostitution (prostibula), which were also tolerated as the lesser of two evils - de Roover, San Bernardino, p. 32. San Bernardino de Siena, on the contrary, constantly objected to the practice of tolerating pawnbrokers - loc. cit., a prohibition that should have been fully granted, it would have probably only succeeded in driving them underground and out of control. For some of the political aspects of this problem vide Gunnar Mickwitz - ref. 71 in this Chapter, as well as ref. 71-77 in this Chapter for further examples. In fact, a degree of tolerance was contemplated in the general principles or could be inferred from them, and, as Victor Brants has proven - L'Economie Politique, pp. 157-164, it was accepted even amongst orthodox Scholastics. The very concept of the nature of man, his imperfection and inability to control circumstances demanded that tolerance. "La loi civile, dit S. Thomas d'Aquin, ne peut interdire tous les péchés, à cause de l'imperfection des hommes, car bien des utilités seraient entravées par une trop grande rigueur. C'est par ce principe que la loi humaine a toléré l'usure, non pas qu'elle approuve en justice, mais pour ne pas nuire aux intérêts d'un grand nombre." - Brants, L'Economie Politique, p. 157. "On distinguait donc la question de conscience et de législation canonique, de la question pratique et de législation civile. L'opportunité de la tolérance était toute la question. Or, celles-ci dépendait des circonstances. Il ne faut pas, dit Buridan, formuler une interdiction d'où un grand mal pourrait résulter. En est-il ainsi de la prohibition de l'usure? Cela dépend des circonstances de temps, de lieux et de personnes. Il faut donc qu'en cette matière la loi soit l'œuvre d'hommes sages et prévoyants, ayant l'intuition des choses pratiques." - Ibid., p. 158. As the author stresses in his analysis of the excerpt from Buridanus - Quaest. super libr. politic. lib. 1, q. XIII - "C'est le point de vue politique, de législation civile que domine ici." - loc. cit., ref. 3.
418. Vide ref. num. 81 in this Chapter. It should be noted that San Ramon de Peñafort was one of the most rigorous Scholastics condemning usury. "L'analyse subtile avec laquelle il

démêle toutes les ruses des usuriers, dans sa *Somme pastorale* (*Libellus pastoralis de cura et officio archidiaconi*) est restée célèbre dans l'histoire économique." - Brants, *L'Economie Politique*, p. 149. We have not seen the text, but it would suggest a great deal of practical knowledge of the economic life of his time.

419. Grice-Hutchinson, *The School of Salamanca*, p. 44.

Höffner, *Wirtschaftsethik und Monopole*, p. 106.

420. Grice-Hutchinson, *The School of Salamanca*, p. 45, was the President of the Consejo de Castilla.

421. Azpilcueta, *Comentario Resolutorio*, pp. XLVI-LV.

422. *Ibid.*, XVIII-XXV, LII-LIII. In fact, the revision and translation of his Manual was carried by the author at the request of the Consejo de Castilla - p. XX.

Pereña, Francisco de Vitoria, *Escritos Políticos*, III, "Informes y Cartas", pp. 325-341.

- 423.- Brodrick, *The Economic Morals*, p. 148, Consultation of the Duke of Bavaria to His Holiness, the Pope.

Cassandro, *Un Trattato Inedito*, pp. 161-162, Consultation of the Kingdom of Sicily to the Archbishop of Palermo, and in turn, to His Holiness, Pope Gregory XIII and the College of Cardinals.

424. One such cases is the monetary reform and the policy of monetary stability carried out by King Saint Louis IX (1226-1270) and followed by his son, King Philip the Bold (1270-1285) according to Victor Brants - *L'Economie Politique*, pp. 183-184. Unfortunately, those policies were not continued by their successors Louis the Fair and Charles IV, whose disastrous policies, as we have seen, were the cause of much criticism from many Scholastics, particularly from Nicholas von Oresme, which eventually led to new reforms and the policy of sound currency of Charles V (1364-1380) - advised by Oresme himself - and Charles VII - Vide ref. num. 148-150 in this Chapter.

Azpilcueta, *Comentario Resolutorio*, Cap. VII, pp. 46-47. (30).

Paul Einzig, *The History of Foreign Exchange*, London, MacMillan & Co. Ltd., 1962, confirms those views and also emphasises the influence of the advice from Oresme in the monetary policy of Charles V.

de Roover, *La Doctrine Scolastique*, pp. 173-174, points out

that anti-monopolistic clauses were inserted in many Guild Charters, sometimes as a condition sine qua non for their final approval by the authorities - p. 174.

Further examples of similar provisions can be seen in : Labayru y Goicoechea, Historia General, Tomo III, Apéndice Número 39 (Segundo), Ordenanzas de los pañeros de la Villa de Durango, pp. 724-730; and Valentín Sainz Díaz, Notas Históricas sobre la Villa de San Vicente de la Barquera, Santander, Consejo Superior de Investigaciones Científicas, 1973, Ordenanzas de la Cofradía de Mareantes y Pescadores de San Vicente de la Barquera, pp. 509-539. Vide for instance p. 533: "Otrosí: Pusieron e ordenaron, que por quanto algunos Cofrades, con codicia y cargo de conciencia, e caso de usura..."

425. Brants, L'Economie Politique, p. 183.

426. B. Dolhagaray, "Contumace", Dictionnaire de Théologie Catholique, Tome Troisième, Deuxième Partie, pp. 1747-1756.

E. Valton, "Excommunication", Dictionnaire de Théologie Catholique, Tome Cinquième, Deuxième Partie, pp. 1734-1744. Aside from the total exclusion from the Church, excommunication, the severest of all ecclesiastical censures, meant a complete ostracism from society and even the family. All communication with an excommunicated person, including epistolar and simple greetings were forbidden, and so were cohabitation, contracts, and any form of association or co-operation.

427. Azpilcueta, Comentario Resolutorio, p. XX, was consulted by Cardinal "Infante" (Royal Prince) Don Enrique, "Inquisitor Mayor, de los Reynos del Rey nuestro Señor, su hermano..."

428. Brodrick, The Economic Morals, pp. 127-132, frequent consultations of Saint Peter Canisius; p. 132, from San Francisco de Borja (Borgia).

429. Ibid., 144-150, especially 148-150.

Brants, L'Economie Politique, p. 132. Usury, for instance, was the reason to convene a number of special Councils.

Cassandro, Un Trattato Inedito, pp. 31-32.

Urdanoz, Obras de Francisco de Vitoria, p. 33.

430. Brodrick, The Economic Morals, p. 132.

431. Ibid., 133, In 1569 Pope Saint Pious V issued the Bull Cum Onus on the subject of rent-charges, a rigorous piece of legislation forbidding certain developments in the theory of rents which

assimilated them to the Triple Contract.

du Passage, Usure, p. 2375, "En 1515, Léon X avait, on le sait, terminé la controverse à leur sujet (Monts-de-Piété), et déclare que la somme modique, demandée aux emprunteurs, ne constituait pas un intérêt, mais correspondait seulement aux ~~frais~~ de l'administration."

Endemann, Studien, Erster Band, p. 466, a prior concession for the Monts-de-Piété had been granted in 1486 by Pope Innocenz VIII.

432. Brodrick, The Economic Morals, p. 6.

433. Ibid. 149.

This should be seen in conjunction with another basic tenet: "The confessor cannot follow the opinion of two or three doctors... when the common opinion is against it. The probability of an opinion, it should be said, does not depend on a counting of heads, for or against it. It is to be deduced primarily from internal reasons and by speculative argument. The intrinsic soundness of those reasons and the cogency of the argument are what constitute a doctor's authority in the matter." - Brodrick, The Economic Morals, p. 136. Furthermore, as Vitoria put it in 1539: "if an educated man considers two opinions to be probable, then, no matter which of the two he follows, he does not sin." - Ibid., p. 137; and, more extremely by Bartolomé de Medina, who "taught explicitly that 'if an opinion is probable, it is lawful to follow it, even though the opposite opinion be more probable'." - loc. cit.

Father Diego de Laynez, the General of the Society of Jesus, replying to a request for advice on usury from Father Elderen, the companion of Saint Peter Canisius in Augsburg, illustrated further the attitude that the confessor should follow when confronting different opinions. He ended his advice saying: " ' Finally, by whatever means it can be done, let no the penitents be reduced to despair nor alienated from Confession. In this matter one should not use the severest opinions, but those commonly held by theologians'." - Brodrick, The Economic Morals, pp. 128-129.

434. de Roover, San Bernardino, p. 10. "Corpus Juris Canonici, Decretum: canon Fornicari, Dist. LXXXVIII, c.10. As used here the verb fornicari has a strictly theological meaning and refers to any sexual intercourse outside the bonds of marriage. - ref. 34, pp. 10-11.

Tozzi, I fondamenti, pp. 206-207, stresses the Augustinean distinction between the vices of trade and trade itself.

435. Brodrick, The Economic Morals, pp. 130-132. The ceaseless attacks of Saint Peter Canisius and Father William Elderen were against every form of commercial malpractice, not against commerce. Incidentally, it seems worth commenting that Ursula and Georg Fugger, of the great merchant and banking family, were amongst the closest friends of Saint Peter Canisius, and that his sermons raised the most serious scruples in their minds - pp. 7-8.

Urdanoz, Obras de Francisco de Vitoria, pp. 602-603. "Bajo cualquier aspecto, Vitoria proclama una amplia y generosa libertad de comercio internacional, como un derecho de gentes natural. Las condiciones que debe reunir son tres: a) es recíproco y en bien de las dos partes; 'los españoles llevarán a los indios las mercancías de que carecen y exportarán oro, plata y otras riquezas que allí abundan'; b) Siendo un derecho natural, está por encima de la voluntad de los Estados: ni los príncipes indios pueden impedir a sus súbditos comerciar con los españoles ni los soberanos de España impedir a los suyos aquel tráfico; c) la única limitación es que se ejerza sin perjuicio de los naturales y en régimen de común utilidad. No sera lícito a los príncipes impedir este comercio, de igual modo que no se puede impedir entre naciones cristianas cuando no redunde en daño de alguna parte." At a later date Luis de Molina was to grant to the authorities the power to restrict the freedom of trade with foreigners - p. 603 - and jurists such as Zouch, Wolf, and Emeric de Vattel were to follow his thesis. The position of Vitoria was maintained by his disciples and such jurists as Hugo Grotius and Alberico Gentilis.

436. Barbieri, Le Doctrine Economiche, p. 53.

Brants, L'Economie Politique, p. 210.

Höffner, Wirtschaftsethik und Monopole, pp. 78-84, „Idee der Nahrung."

de Roover, La Doctrine Scolastique, p. 167.

Sapori, Il Giusto Prezzo, pp. 294-294.

Tozzi, I fondamenti, pp. 40-41. Amongst the Thomistic precepts of good government it was clearly stated the following obligations: "Provvedere i beni materiali necessari alla società stessa" "Mantener la buona vita dei sudditi, così ottenuta, difendendola contro la limitatezza delle vita umana," and "Far progredire tale buona vita." - p. 40.

437. de Roover, La Doctrine Scolastique, p. 167.

438. Saponi, Il Giusto Prezzo, p. 294, Statuto degli oliandoli fiorentini, rubr. 56 e 93, expressed thus that intention: " ' ad hoc ut maior copia victualium in civitate habeatur'."
439. de Roover, La Doctrine Scolastique, p. 167, ref. 75, Municipal Statutes of Forlì.

Saponi, Il Giusto Prezzo, pp. 293-294, Statutes of Florence, Parma, and Paris.

This declared intention was, as we have seen in detail, in the preceding Chapter, often seen in Fueros and other privileges, laws, and many legislative and administrative acts. The "raison d'être" for the protection of trade and merchants was also directly linked with the policy of abundance.

440. de Roover, La Doctrine Scolastique, pp. 166-167.
441. Antony Babel, Histoire Economique de Genève. Des Origines au début du XVIe. Siècle, Genève, Alexandre Jullien, Editeur, 1963, Tome Premier, pp. 663-665. Notable were those of the butchers - p. 664, who were apparently a troublesome group everywhere, according to de Roover - La Doctrine Scolastique, p. 169, ref. 84.
- de Roover, Money, Banking and Credit in Medieval Bruges. Italian Merchant-Bankers and Money-Changers. A Study in the Origins of Banking, Cambridge, Massachusetts, The Medieval Academy of America, 1948, Publication Number 51, p. 182, sees the compensatory obligations of the Money-Changers Guild of Bruges for the granting of a monopoly as a way in which the authorities of the city sought to discharge their duty to protect the public.
442. Vide ref. num. 220, 223, and 317 in this Chapter.
443. Einzig, The History of Foreign Exchange, pp. 69-70. "Under Mohammedan law coins of the same metal were not allowed to be exchanged except on the basis of strict equivalence. Any discrepancy between value given and received was condemned as usury." - pp. 69-70; the relevant text quote added: "... nor sell anything present for that which is absent." - p. 70.
444. Imamuddin, The Economic History of Spain, pp. 293-294. "According to the theologians trade - in a partnership - was permitted if one invested one-third and another two-thirds or one-quarter and another three-quarters, provided each of the two partners worked in proportion to his share." - p. 294.

445. Endemann, Studien, Zweiter Band, pp. 72-74.

446. Saponi, Il Giusto Prezzo, pp. 301-302.

447. Barbieri, Le Dottrine Economiche, pp. 38, 43, 47.

Brants, L'Economie Politique, pp. 75-80. "Le travail est un devoir de l'humanité. La loi a été bien des fois formulée: In sudore vultus tui vesteris pane - Genèse III, 19. Labores manuum tuarum manducabis - Psaume 127,2. Enfin la parole de l'apôtre: Si quis non vult operari, nec manducet - Saint Paul, 2e. ep. ad Thessalon. III, 10. Le travail est donc un précepte de la loi divine imposé à l'humanité." - p. 75. All men had the obligation to work, manually, intellectually or spiritually, in accordance to their capacity and state in life.

Eiximenis, Regiment, Capítol XXII, En lo qual llargament se tracta com cascú en la comunitat deu ésser ocupat, gran o poc, dret o contret, hom o fembra, pp. 128-132.

Fanfani, Le Origine, pp. 7-9, 121.

448. Barbieri, Le Dottrine, p. 52.

Brants, L'Economie Politique, pp. 167-168, 171-173.

Fanfani, Le Origine, p. 19.

Tozzi, S. Tommaso, p. 710.

-----, I fondamenti, pp. 267-270.

449. Brants, L'Economie Politique, p. 167, ref. 2, "... Au témoignage d'Hostiensis et de Baldus. 'Ubi non est periculi communicatio, ibi non est societas.'..."

450. Fanfani, Le Origine, pp. 80-85.

Usher, The Early History, pp. 64-65.

451. Vide ref. num. 542-551 in our Chapter II.

Sometimes it was compulsory - de Roover, The Rise and Decline, pp. 22-23.

452. This, as we have seen in the prior Chapter, was chiefly in the way of public works and defense expenditures.

453. de Roover, San Bernardino, pp. 38-40

454. Einzig, History of Foreign Exchange, pp. 65-69.

455. de Roover, San Bernardino, pp. 33-38.
 -----, The Rise and Fall, pp. 10-14.
456. Capitani, Sulla Questione dell'Usura, pp. 44-46. He is also specifically opposed to the Church's ideas of usury encouraged direct investment into business ventures with responsibility of the investor - p. 44.
457. Azpilcueta, Comentario Resolutorio, pp. 22-23.
 Barbieri, Le Dottrine, p. 50.
 Brants, L'Economie Politique, pp. 28-48, 242-254.
 Eiximenis, Regiment, Capítol XXI, Com los inútils deuen ésser gitats, e hī deuen ésser sostenguts los pobres mendicantes qui són vers indigents, pp. 124-127. He expressed with poignant wit the importance of charity for Salvation: "Pensar poden los ricos hòmens que si salvarse volen, que queucom han a fer algun notable per amor de nostre Senyor Déu. Pus doncs dien que no poden fer penitència ne afflicció, ne grans oracions, resta que han a retornar e a recórrer a l'almoína."- p. 126.
 Fanfani, Storia delle Dottrine, pp. 118-139.
 -----, Le Origine, pp. 1-10, 20-25, 42-45, 105-150.
 Tozzi, I fondamenti, pp. 79-124, 151-162.
458. Brants, L'Economie Politique, pp. 49-67.
 Fanfani, Storia delle Dottrine, pp. 118-120.
 -----, Le Origine, p. 4. Vide especially ref. 2, argument of Saint Thomas Aquinas in favour of private property, Summa Theol. 2,2,q.66, art. 2.
 Pereña, Francisco de Vitoria, Escritos Políticos, Concepto: 807, 845, 847, 852; Derecho de Propiedad: 804, 806, 814, 841, 844, 857-859, 863, 980, 981, 990; Origen de la Propiedad: 809, 816, 1487; Fundamento de la Propiedad: 845-856; Títulos de Propiedad: 808, 811, 812, 822-830, 844, 915, 1004; Confiscación de Propiedades: 830-839.
 Schumpeter, History of Economic Analysis, p. 92.
 Tozzi, I fondamenti, pp. 125-150.
 de Roover, San Bernardino, pp. 8-9.

459. Brants, L'Economie Politique, pp. 52-53, 59-63.
 de Roover, San Bernardino, p. 9.
 Tozzi, I fondamenti, pp. 137-141.
460. St. Thomas Aquinas, Summa Theologiae, Volume 28, Ia2ae. 95, I to Ia2ae. 97, 4, pp. 98-155; also appendix by Father Thomas Gilby, pp. 157-185. Vide ref. 382 and 398 in this Chapter.
461. de Roover, La Pensée Economique, pp. 80-81
462. Ibid., 81.

According to Ovidio Capitani, it appears that San Bernardino was the first prominent Scholastic to use the word capitale - of common usage before him - in the precise sense of money accumulated for a business enterprise - Sulla Questione dell'Usura, p. 38, ref. 10.

This is shown quite clearly by Brants, L'Economie Politique, pp. 134-135, 'Bernardin de Sienne... est beaucoup plus explicite, il perçoit une sorte de capital virtuel et énonce comme suit la nature du capital: 'Pecunia... non solum habet rationem simplicis pecuniae vel rei, sed etiam ultra hoc quandam seminalem rationem lucrosi, quam communiter capitale vocamus'." - he cites here F.X. Funk, Zinsgesetzgebung in Mittelalter, in Tübinger Universitätschriften, 1876, pp. 146-149. Brants affirms that the productivity of money, through work, was well understood by the Doctors. Gilles de Rome, for instance, "admettait que l'usage de l'argent pût produire une pensio, bien que l'état naturel de l'argent dans sa substance fût évidemment improductif." - pp. 135-136. Saint Thomas Aquinas, having affirmed that it was possible de pecunia lucrari (Summ. theol. 2a. 2ae. q. 78, art. 2 ad 5) and that mercatores de pecunia sua lucrari soliti, together with other sources, also admitted the productivity of the merchant capital, according to Brants, p. 136.

463. Brodrick, The Economic Morals, p. 149, "... their author, (Father Haywood) was mistaken 'in thinking that every contract of 5% with insurance of the capital and the income is unlawful; for it is not unlawful unless it is in the form of a pure loan, which need not be the case if the contract is made with a merchant or other person of notable industry'." - final decision of the special Commission of theologians studying the Contractus Germanicus.
464. In fact, both Saint Thomas Aquinas and San Bernardino contradicted themselves by affirming elsewhere that money was barren - aside from conferring to it a seminal character,

vide ref. 461 and 462 ut supra, according to Raymond de Roover, La Pensée Economique, p. 80, and San Bernardino, p. 29.

465. Fanfani, Le Origine, pp. 15-16. "Tutte le condanne scolastiche contro l'usura trovano la loro formale giustificazione nel versetto 'mutuum date, nihil inde sperantes' (Vangelo secc. S. Luca, IV, 35) - p. 15; "Secondo il Cairoli gli scholastiche non capirono la proibizione fatta da Cristo dell'usura. Direi piuttosto che essi vollero trovarne una ragione scientifica e la spigarono con il principio aristotelico della sterilità della moneta..." - p. 15, ref. 3; "Un discepolo di Scoto, Franciscus de Mayronis, peraltro non giustificava la proibizione dell'usura che per motivi religiosi..." - p. 16, ref. 3.

466. Capitani, Sulla questione dell'usura, pp. 33-44.

Fanfani, Le Origine, pp. 15-16.

Le Bras - Du Passage, Usure, pp. 2353-2365, 2372-2377.

467. Brants, L'Economie Politique, pp. 164-166.

Endemann, Studien, Zweiter Band, pp. 103-157.

Le Bras - Du Passage, Usure, pp. 2362-2364, which included the rents on land (5), accepted at least since the XIII Century; the public rents (6); and the interest paid to the investors by the Monts-de-Piété, fixed at 10% in 1484 and approved by the Pope in 1486 (7) and in 1515 (p. 2375). An old exception was made in favour of orphans, who were entitled to perceive an interest for their administered properties; and also the administrator for his work - pp. 2355-2356 (5) and 2360 (5); and also in the case of a dowry, when a father short of cash was authorised to mortgage a fruitful property, and the son-in-law to collect the proceeds - p. 2360 (4).

de Roover, La Pensée Economique, pp. 82-84.

-----, San Bernardino, pp. 38-40.

468. Azpilcueta, Comentarrio Resolutorio, pp. 5-156.

Cassandro, Un Trattato Inedito, pp. 113-167.

Le Bras - Du Passage, Usure, pp. 2359-2365, 2372-2377.

de Roover, La Pensée Economique, pp. 88-90

-----, San Bernardino, pp. 27-40.

469. Le Bras, Usure, p. 2362 (5).
470. Schumpeter, History of Economic Analysis, pp. 102-106, "... if the opportunity of gain contingent on the possession of money is quite general or, in other words, if there is a money market, then everyone, even if not in business himself, may accept the interest determined by the market mechanism. This proposition had to be handled with care, for it evidently opened the door to all sort of evasions. But it is no more than a special case of the principle that everyone may, in justice, pay and ask the current price for everything, and it was not invented ad hoc: if it is not in evidence in the thirteenth century and much in evidence in the sixteenth, this is merely due to the fact that money markets had been uncommon in the former century and became quite common in the latter. Observe that whenever alternative opportunities of gain are normally available to everyone, the argument for gain foregone will coincide with the argument from 'privation': foregoing gain is in this case precisely what the privation consists in. Observe further that in all the cases mentioned justification rests on circumstances that, however frequently or even generally they may prevail in a given environment, are logically accidental to the pure loan contract (mutuum) which in itself was never held to justify interest. And, observe finally, that justification was never, or hardly ever, based upon the advantages that the borrower might reap from the loan; it was exclusively based on the disadvantages that lending brought to the lender." - p. 104. (This was of course based in the old Thomastic argument of the loss of utility for the vendor, Tozzi, I fondamenti, p. 189.
471. Schumpeter, History of Economic Analysis, p. 104.
472. Amongst those who think that the economic ideas of the Scholastics were no obstacle at all for economic development we find Fanfani - Le Origine, p. 19, Brants - L'Economie Politique, pp. 255-256, Barbieri, Le Dottrine, pp. 53-54, Tozzi, I fondamenti, pp. 315-316, and S. Tommaso, p. 710, and Saporì, Il Giusto Prezzo, pp. 301-303. Raymond de Roover thinks that in some instances the usury laws may have contributed to increase costs and risks. - The Rise and Decline of the Medici, p. 13, San Bernardino, p. 38, and The Medici Bank. Its Organisation, Management, Operations, and Decline, New York/London, New York University Press/Geoffrey Cumberlege. Oxford University Press, 1948, p. 58. Paul Einzig, The History of Foreign Exchange, pp. 69-70, concurs with de Roover. Ovidio Capitani maintains that it was indifferent, given that it was a moral theory and could only have affected reality in the measure that it coincided with it - Sulla questione dell'usura, pp. 44-46.

473. Brants, L'Economie Politique, pp. 134, 143. "S. Antonin de Florence exprime très clairement la productivité du capital,...: 'Pecunia ex se sola minime est lucrosa, nec valet se ipsam multiplicare, sed ex industria mercantium fit per eorum mercationes lucrosa'." - p. 134, ref. 1, quoting again F.X. Funk, Zinsgesetzgebung in Mittelalter, pp. 146-149.

Schumpeter, History of Economic Analysis, p. 105.

474. Ibid.

475. E. Amann, 'Militaires (Ordres)', Dictionnaire de Théologie Catholique, Tome Dixième, Deuxième Partie, pp. 1758-1760.

J. Besse, "Augustin (Règle de Saint)", Dictionnaire de Théologie Catholique, Tome Premier, Deuxième Partie, pp. 2472-2483.

de Roover, San Bernardino, p. 11, ref. 35, "St. Augustine was more favourable to the merchant than the other Church Fathers."

476. Saporì, Il Giusto Prezzo, p. 268.

477. Einzig, The History of Foreign Exchange, pp. 65-67.

478. Brants, L'Economie Politique, p. 220.

479. Ibid., 215.

The slowness of that process is underlined by Endemann, Studien, Erster Band, pp. 76-94, particularly pp. 85-86.

480. Brants, L'Economie Politique, p. 224.

Einzig, The History of Foreign Exchange, p. 66.

481. Brants, L'Economie Politique, p. 215.

This was still very much the case at Azpilcueta's time - Comentario Resolutorio, Chapters IV to VI, pp. 25-38

482. Ibid., Chapter V, pp. 29-34, VI, pp. 35-38, and VII, pp. 39-47.

Brants, L'Economie Politique, p. 216.

Endemann, Studien, Erster Band, p. 86, "... erst am Ende des 15. Jahrhunderts Thomas de Vio (Cardinal Cajetanus) gewagt hat, die Kaufgeschäftsqualität des Wechsels zu begründen."

483. Brants, L'Economie Politique, p. 217.
Usher, The Early History, pp. 243-250.
484. Brants, L'Economie Politique, pp. 226-227.
Einzig, The History of Foreign Exchange, p. 65.
485. Saporì, Il Giusto Prezzo, pp. 268-269.
486. Brants, L'Economie Politique, pp. 226-227. In France, the Templars fulfilled the function of an accounting office and bank for the Royal Treasury and for important private individuals.
487. Ibid., 227-228.
Einzig, The History of Foreign Exchange, pp. 68-69.
de Roover, The Rise and Decline of the Medici, pp. 194-224. Incidentally, it appears that ecclesiastics were considered to be more reliable debtors than laymen - p. 213, probably for fear of excommunication, which could be inflicted for defaulting; or, in the case of annates or common services, when a papal banker complained of being unable to collect - p. 201.
488. Brants, L'Economie Politique, pp. 157-164.
Endemann, Studien, Erster Band, pp. 460-471.
489. Le Bras, Usure, p. 2363.
490. Ramón Carande y Thovar, Carlos V y sus Banqueros. La Vida Económica en Castilla (1516-1556), Madrid, Sociedad de Estudios y Publicaciones, MCMXLV, Segunda Edición corregida y aumentada, Tomo II, p. 35.
Ildebrando Imberciatori, "L'idea di San Benedetto nella storia della Bonifica", Studi in Onore di Amintore Fanfani, pp. 427-449. "Ad ogni modo, Filippo Carli, storico del mercato medievale, scrisse: 'I monaci Benedettini Cistercensi crearono un modello di organizzazione agronomica, basato sul principio dell'industrializzazione della terrae, in dipendenza dell'affermarsi dell'economia monetaria, applicarono all'impresa agraria il capitale in modo sistematico'." - p. 447.
491. Rolf Sprandel, Das Eisengewerbe im Mittelalter, Stuttgart, Anton Hiersemann, 1968, pp. 45-52.

492. Barbieri, Le Dottrine Economiche, p. 42.
493. Einzig, The History of Foreign Exchange, pp. 68-69, "Part of the funds received by the Papal Chamber in Avignon or in Rome were used for international purposes, such as covering the expenses of Papal Nuncios, subsidising crusades, supporting Christian colonies in the Near East, or financing princes engaged in wars approved by the Pope. Such transactions, too, were carried out by Italian bankers, so that the international movements of funds in connection with the Papal financial transactions and the operations in bills of exchange resulting from them were by no means unilateral."

de Roover, The Rise and Decline of de Medici, pp. 194-203.

Subsidies were often paid to foreign princes who had difficulties with the Turks or with heretics. Papal subsidies to Mathias Corvinus, King of Hungary (1458-1490) whose dominions were menaced by the Turks, were paid through the Medici - pp. 201-202. The supply of wheat to the Armenians by Pope Benedict XII, in 1336, involved also a very complex series of operations - Saponi, Le Marchand, p. XXXIX.

494. de Roover, The Rise and Decline of the Medici, pp. 194-195.

Greenland, for instance, sent remittances in whale bones - ref. 3, p. 447 - and Poland in furs and other commodities - ref. 5, p. 447, which were sold in Bruges for the benefit of the Apostolic Chamber. The economic activity generated by such transactions is obvious.

495. Ibid., 199-201, "All precautions were consequently taken to prevent any misuse of papal funds, and the procedure followed, if somewhat cumbersome, insured maximum safety from the point of view of the Apostolic Chamber." - p. 200. (The Apostolic Chamber administered the Pope's temporalities, and amongst other functions it was responsible for the government of papal states and it managed the Pope's finances both as a spiritual and as a temporal ruler. - p. 197)

496. Einzig, The History of Foreign Exchange, pp. 68-69, "In some contracts with these and other bankers the exchange rates were fixed in advance for a whole year. By this arrangement the Papal Chamber safeguarded itself against losses through exchange depreciation - an interesting early instance of Forward Exchange transactions, even though the amounts to be transferred and the dates of the transfers could not be fixed in advance." - p. 68.

A very good idea of the volatility and speculative character of exchange dealings can be gathered from Raymond de Roover,

Gresham on Foreign Exchange, An essay on early English Mercantilism with the text of Sir Thomas Gresham's Memorandum for the Understanding of the Exchange, Cambridge, Mass./London, Harvard University Press/Geoffrey Cumberlege, Oxford University Press, 1949, Appendix, pp. 313-317. One of the best in the selection is the succinct explanation of Father Luca Paciolo, O.F.M. - "De cambiis seu cambitionibus", *Summa de arithmetica*, (Venice, 1494), *distictio nona, tractatus quartus*, fol 168r.: "Perchè havendo io bisogno qui in Vinegia de ducati 100, io li prendo da te, banchieri, in questo di per pregio e costo che di qua a mesi 6 o altro termine che per Londra o Brugis corrisse; del qual corso ne tu ne io non ha certezza alcuna, e po cosi dannificare el datore como el preditore et è converso."

The technical and mechanical aspects of exchange transactions can be seen in de Roover, The Medici Bank. Its Organisation, Management, Operations, and Decline, New York/London, New York University Press, 1948, pp. 31-40; for a practical example vide pp. 35-36. The common saying amongst bankers operating in the money market - "Changes et vents changen souvent" - illustrates the uncertainty that characterised it - p. 37. Clearly, accurate forecasting was impossible - and still is, if we think in terms of an exact outcome - but those in charge of handling long term forward exchange transactions for the Papal Chamber required a sound knowledge of the "world" market and somewhat assess its likely conditions in the future if they were to minimise the average losses.

Further details about the vicissitudes of international finance can be seen in de Roover, Money, Banking, and Credit in Medieval Bruges, pp. 76-91.

497. María Luisa Ledesma Rubio, La Encomienda de Zaragoza de la Orden de San Juan de Jerusalén en los siglos XII y XIII, Caesaravgvstant-Theses, Zaragoza, Universidad de Zaragoza, 1967, passim. The overwhelming majority of the contracts giving land in *emphyteusis* - 68 contracts - rather than in "ad plantandum" contracts - 4 contracts - and the concentration of the holdings worked directly by the Order would seem to indicate a clear policy of simplifying the control aspect of management, reducing costs - for instance those of supervision, movement and transportation between the different units, and, above all, cheating, and thus making the whole enterprise more profitable. An arguable point, of course, is the possible effect of monetary depreciation on fixed canons, but it should be noted that the rates were often stipulated in kind rather than in a monetary figure - vide for instance Doc. num. 286 - and that should have taken care of that problem to some extent - providing that prices were not fixed by the authorities with the old value of the currency in mind, in which case there was still the alternative of consuming the

product - themselves or their patients - or bartering it. (The list of documents for "ad plantandum" contracts can be seen in ref. num. 528 in our Chapter II and those of emphyteusis in ref. num. 530 of the same Chapter).

498. Jean Delumeau, L'Alun de Rome. XV^e - XIX^e. Siècle, Paris S.E.V.P.E.N., 1962, pp. 97-122.

de Roover, The Medici Bank, pp. 46-52.

499. Robert I. Burns, S.J., "Los Hospitales del Reino de Valencia en el Siglo XIII", Anuario de Estudios Medievales, II, 1965, pp. 135-154.

-----, "Un Monasterio-Hospital del Siglo XIII: San Vicente de Valencia", Anuario de Estudios Medievales, IV, 1967, pp. 75-108.

J. Lestocquoy, Aux Origines de la Bourgeoisie: Les Villes de Flandre et d'Italie sous le Gouvernement des Patriciens (XI^e - XV^e. Siècles), Paris, Presses Universitaires de France, 1952, p. 23.

Anthony Luttrell, "Los Hospitalarios en Aragón y la Peste Negra", Anuario de Estudios Medievales, III, 1966, pp. 499-509.

500. Jesús Domínguez Bordona, Edit., Fernán Pérez de Guzmán, Generaciones y Semblanzas, Madrid, Espasa-Calpe S.A., 1965, (Clásicos Castellanos, 61), p. XI, ref. 1. Sureties were demanded from those renting the books.

501. Azpilcueta, Comentario Resolutorio, Cap. V, Cambio por Oficio, pp. 29-34, shows very clearly the influence of the Montes de Piedad in the thinking of the author and Domingo de Soto, when they consider the "Cambiador por oficio y trabajo de prestar." This is clearly apparent in (17) pp. 32-33, and explicitly acknowledged in: "Lo otro, que las razones y autoridad de la Sede Apostolica, con que en otro comentario concluymos ser licitos, sanctos, y dignos de loor los montes de piedad, concluyen tambien ser licito esto. Lo otro, (segun se dira luego) licitamente se puede ordenar que aya quien tenga cargo del, y lleve salario por el o de la republica, o de lo que de aquel cargo se aprovecharen, conforme al provecho que dello sacaren, como se haze, por la mesma razon sera licito lo susdicho."

502. Walter Eucken, The Foundations of Economics. History and Theory in the Analysis of Economic Reality, translated by T.W. Hutchison, London/Edinburgh/Glasgow, William Hodge and Company Limited, 1950, p. 345, Note 61, and pp. 274-294.

503. Ibid., 274-294.

Otto von Zwiedineck-Südenhorst, Weltanschauung und Wirtschaft. Kritisches und Positives zu Müller - Armacks Genealogie der Wirtschaftsstile, München, Bayerische Akademie der Wissenschaften, C.H. Beck in Kommission, 1942, passim.

-----, Allgemeine Volkswirtschaftslehre, Berlin, Springer Verlag, 1948, 2 Neu bearbeitete Auflage, passim.

504. de Roover, The Rise and Decline of the Medici, p. 12.

-----, "Il trattato di fra Santi Rucellai sul cambio, il monte comune e il monti delle doti", Archivio Storico Italiano, lli, 1953, pp. 3-41. He was the son of a banker and a businessman himself before entering the Dominican Order.

505. Brants, L'Economie Politique, pp. 138, 156, 255-256.

Fanfani, Storia delle Dottrine, pp. 139-141.

-----, Le Origine, p. 19.

de Roover, San Bernardino, p. 7.

Sapori, Il Giusto Prezzo, p. 302.

Tozzi, S. Tommaso: Sul Commercio e sul Credito, p. 710.

506. Lestocquoy, Aux Origines de la Bourgeoisie, pp. 195-196.

507. Carande y Thovar, Carlos V, Tomo II, p. 35.

José María Ramos Loscertales, "La formación del dominio y los privilegios del monasterio de San Juan de la Peña entre 1035 y 1094", Anuario de Historia del Derecho Español, VI, 1929, pp. 5-107.

Fray Justo Pérez de Urbel, El Condado de Castilla. Los 300 Años en que se hizo Castilla, Madrid, Editorial Siglo Ilustrado S.A., 1969, 3 Vols., passim.

-----, Los Monjes Españoles en la Edad Media, Madrid, Ediciones Ancla, 1945, (Segunda Edición, Primera Edición 1934), 2 Vols., passim.

Ramón Prieto Bances, La explotación rural del dominio de San Vicente de Oviedo en los siglos X al XIII. Notas para su estudio, Coimbra, Separata del Boletino da Faculdade de Direito de Coimbra, 1940, passim.

The endorsement of economic activities, trade and merchants by the Church is also clearly discernible in cities like Valladolid - vide Federico Wattenberg, Valladolid. Desarrollo del núcleo urbano de la ciudad desde su fundación hasta el fallecimiento de Felipe II, Valladolid, Ayuntamiento de Valladolid, 1975, pp. 33, 47 - and in the promotion of the economy by laymen well known for their strong religious feelings, such as the members of the House of Haro, Señores of Vizcaya. For the latter vide Antonio de Capmany y de Montpalau, Museo Histórico que comprende los principales sucesos de España y el extranjero como asimismo toda la parte artística y monumental de los principales países, Madrid, Imprenta de Cristóbal González, 1862, (Segunda Edición), Tomo I, pp. 531-534. For the religious attitude of the House of Haro vide Presbítero Dr. Estanislao Jaime de Labairu y Goicoechea, Historia General del Señorío de Bizcaya, Bilbao, Biblioteca de la Gran Enclopedia Vasca, 1968, Segunda Edición facsímil de la primera, Bilbao/Madrid, 1897, Tomo III, p. 263. Throughout Tomos II and III there are many references to both the religious attitude and the promotion of the economy by the Señores de Haro, many specifically mentioned in our Chapters II and IV.

508. Julio Puyol y Alonso, El Abadengo de Sahagún, Madrid, Real Academia de la Historia, 1915, p. 25. The settlement with foreign immigrants was common at the time, and not to disturb them was even a condition of some donations, including one of the Infantas Doña Urraca y Doña Elvira to the Church of Oca. - pp. 25-26, ref. 1.
509. Ibid., 28-29.
510. Juan Torres Fontes, "El Obispado de Murcia en el Siglo XIII", Hispania, Tomo XIII, Num. LII, 1953, pp. 339-401; Num. LIII, pp. 515-580.
511. Paulino Iradiel Murugarren, Evolución de la Industria Textil Castellana en los Siglos XIII-XVI. Factores de Desarrollo, Organización y Costes de la Producción Manufacturera en Cuenca, Salamanca, Acta Salmanticensia, Ivssv Senatvs Universitatis Edita, 1974, p. 243.
512. Ibid., 244.
513. Ibid., 239.
514. Ibid., Apén. Doc. 17, p. 326.
515. Pérez de Urbel, El Condado de Castilla, pp. 95-98.
516. Ibid., 98-102.

AFTERWORD

We have examined the position of the Peninsular entrepreneur in the political and legal system and revealed his ability to influence major administrative decisions at all levels of government, including those concerning commercial relations with foreign powers. The participation of entrepreneurs in the development of substantive and procedural law was seen to be significant, which together with the leadership enjoyed by Castille-Aragon in the fields of banking, maritime, and insurance law cannot be explained in the absence of a continuous business experience and a wide entrepreneurial endowment.

The good disposition of the civil authorities and the Church towards merchants, trade, and economic activities, both in theory and in practice, has been documented ex abundantia. We concluded that to the extent that they reflected society at large, their disposition suggests a generally favourable climate of business in Castille-Aragon during the period under consideration.

Clearly, this merely provides us with a conceptual framework to proceed with the analysis and evaluation of the Peninsular entrepreneurial spirit. As expressed in the introduction a number of constraints determined that we should

(limit ourselves to this objective for the purpose of this thesis, even though we have made significant progress in a more ambitious endeavour, which will be the subject of a Doctoral dissertation already in an advanced stage of completion.

Before testing the manifestations of entrepreneurial spirit and the actual performance of the Peninsular entrepreneurs we shall look there at the views of society on trade, merchants, and economic activities in general from yet another angle. The opinions and the actual practices of Scholastics and other Church members, political and military leaders, "caballeros", and literary figures will be examined. A major concern of this examination will be to establish whether trade and economic activities were confined to a specific sector of the social body or were, in re, widespread throughout the population.

The focus of our enquiry will then turn to the manifestations of entrepreneurial spirit. We shall concentrate on these manifestations in a number of specific sectors, including the infrastructure and the ancillary industries indispensable for their existence. We will afterwards examine, analyse and compare Peninsular and European entrepreneurship on the stage of "le grand commerce international".

(The latter was the outward expression of the high level

(of economic interdependence, and, consequently, the significant degree of specialisation and division of labour attained by the European economy towards the end of the Middle Ages and early Modern Times. This, contrary to many common assumptions and grand generalisations was to some extent, and could only have been, the result of the wide currency and acceptance of the idea that trade and merchants made an important contribution to the common good and the general welfare of society.

END

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