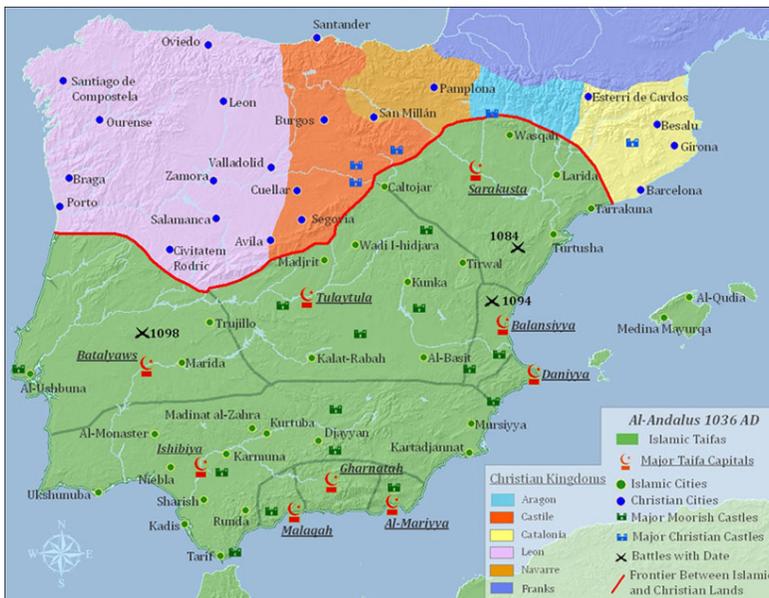


Chapter 5

New state systems

All politics is local

5.1 Spain



Between 711 and the end of the century, a combined Arab-Berber force conquered all of Spain up to the Pyrenees, and a little beyond,¹ except for a small sliver in the northern mountains of Asturias. Then began the gradual process of the *Reconquista* by Christians against Muslims until the fall of the Alhambra on January 2, 1492, when Spain started a new cycle toward overseas expansion.

At the turn of the millenium, the “New Frontier” traced roughly a line from Porto to Barcelona (see the adjacent figure). As in the North American continent in the 19th century, the “new territories” provided opportunities

for settlements. The nobility and the cavalry could wield the sword but not the plough. Working the land remained dangerous, subject to raids by the southern enemy. The settlement of the territories would require people from the north of the Pyrennees, people with a pioneering spirit and some sense of freedom, as in the 19th century Northern

¹Battle of Poitiers 732. During the retreat of Charlemagne, the rear guard was ambushed and annihilated near the pass of Roncevalles in the Pyrennees. This event is celebrated in the *Song of Roland* which, composed in the 11th century, is the oldest surviving major text in French literature.

America.

Militias and Fueros

James Powers (1988) writes:

The tenth and eleventh centuries constituted an important seminal age of foundation building for European civilization. The sub-continent pursued the quest for institutional stability, striving to rebuild after the devastation wrought by the triple shock waves of Scandinavian, Magyar and Muslim invaders. This quest often took the form of institutionalized personal relationships known as feudalism, which offered primitive but pragmatic solutions to the problems of government and military defense on which the future could build. The Iberian kingdoms endured many of these same difficulties and drew upon similar experiences. Nonetheless, while influenced by their neighbors to the north and east, Iberia constituted in many other respects a unique case. Its transitional Germanic monarchy, the Visigothic kingdom, had been virtually obliterated by the Muslim invasion of the eighth century, and the nuclei of the Christian principalities which withstood this assault in the northern Cantabrian and Pyrenean mountains were sufficiently isolated from European and Muslim influence to pursue individualized programs of state-building born of local needs and traditions.

Iberian urban settlements, while lacking the strong commercial base and merchant classes that Pirenne would have required for status as towns, were sufficiently diversified agglomerations of peoples with assorted agrarian, pastoral and ecclesiastical functions to have been rather more than rural villages. Certainly Oviedo (the Asturian royal city), Catalan Barcelona and Santiago de Compostela in Galicia all merit consideration as towns, *per se*. As the Asturian monarchy encroached upon the central plateau to the south in the tenth century after consolidating its grip on Galicia to the west and Castile to the east, additional opportunities opened to both political and urban expansion. In this regard, the settlements which grew up to service the great pilgrimage route feeding travelers to Saint James's shrine at Compostela developed more rapidly than the other Leonese-Castilian towns as limited commercial enterprises. But to achieve this expansion against the great Muslim caliphate based at Córdoba and its successor Taifa Kingdoms of the eleventh century required special policies dictated by a frontier situation. The lightly populated zone north of the Duero made walled settlements

crucial to the populating and holding of lands still well within Muslim raiding and conquering capabilities. It was in this context that municipal militia service was formed.

The military service requirement for villagers and townsmen was forged from the policies of southern expansion undertaken by the Asturian monarchs in the late ninth and early tenth centuries. Ordoño I (850-66) and Alfonso III (866-911) advanced upon the upper Meseta, pressing into the lightly populated lands north of the Duero River.² The most important step in this process was the resettling and rebuilding of the town of Leon, which was to become the center of the Asturo-Leonese realm. The monarchy thus abandoned the comparative security of mountainous Asturias for a project of large-scale territorial aggrandizement. By 920 the Navarrese state under Sancho Garcs I advanced into the upper Ebro Basin to seize Najera, Calahorra and Viguera. Spanish historians occasionally define this as the beginning of the Reconquest. Such activity could take the form of major battles, aiding rebellious segments of Muslim towns, or the individual resettlement of open or lightly-populated lands. In its most precise form, the Reconquest involved the forced seizure of populated territories and towns under Muslim control. The Umayyad caliphs in Cordoba, especially c Abd ar-Rahmân III (912-61) responded with vigor to this challenge. As a result the lands north and just south of the Duero as well as the Rioja district of the upper Ebro became increasingly a battleground where villages and towns were taken and retaken by either side.

Both Muslim and Christian principalities also contended with separatist forces within their respective realms. The caliphs struggled with the ever troublesome division between nativist Muslims and North African Berbers as well as tribal and clannic consolidations. Meanwhile the Christian kingdoms competed with each other and could not prevent the development of a new principality, the independent County of Castile, between the Asturo-Leonese and Navarrese states. When the Caliphate of Córdoba slipped into the control of the general al-Mansúr and his son Abd al-Malik from 976 to 1008, the Christian armies of Leon, Castile, Navarre and Catalonia suffered an unprecedented string of defeats at Córdoba's hands, climaxed by the sacking of Barcelona in 985, the sacking of Leon and the destruction of its walls in 988, the sacking of Santiago and the leveling of its basilica in 997, and the sacking of Pamplona in 999. These were merely the most spectacular

²The river from Caltojar to Porto on the map at the beginning of the chapter.

assaults. When even the bells of Santiago's church were brought to Córdoba and upended to provide braziers for the mosque there, the Christian monarchs might well have pondered their future hopes of territorial expansion to the south.

Fortunately for Christian Iberia, these disasters simply indicated a temporary superiority of Muslim armies and generalship which passed with the death of Abd al-Malik. The Muslims did not possess the resources necessary to resettle Leon, Pamplona or Barcelona even at their crest of power. By 1031, the Caliphate itself ended, to be replaced by a number of petty Taifa states centered on the major cities of Muslim Spain. But this dramatic shift of power in the Muslim south could not have been envisioned by the Christian kings, who doubtless believed that they required new methods to strengthen their grip on the northern Meseta, the Duero and upper Ebro. Placing populations within walled towns was insufficient to the task at hand. These settlers had to take an active part by doubling both as populators and as warriors. In all likelihood the resettling of Leon provided the opportunity to achieve such an end.

In the period 1017-20, Alfonso V of Leon awarded a fuero to the town of Leon with the first clear statement of a military obligation. This charter included the obligation for residents to participate in the royal *fossatum* (a obligation to serve in the military) with the king or his representative, and for settlers in the general region of the town to gather in Leon in times of war so as to assist in the defense of its wall. They were, moreover, exempted from paying the *fosataria*, the tax paid when no military service was rendered to the king. This probably indicates that they were free of the military tax in times of peace, but were expected to render *fossatum* and wall defense in war without exception. While doubt has been cast upon the authenticity of some of the contents of the Fuero de León because of the possibility of interpolations in the thirteenth-century copy which we possess, the military provisions were not unknown for other eleventh-century towns awarded charters within a few years after Leon, and no question has been raised concerning their appropriateness for the time. Indeed, logic suggests that Leon with its political importance and strategic location would be the very place to lay down a policy containing such precedents. If the policy proved serviceable in Leon, it could be extended steadily as the Duero frontier came back into the control of the Leonese monarchy. In fact, new options for expansion were now on the horizon.

The Eleventh Century

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Christian Hispania underwent its own shift in the balance of power in the early eleventh century. The aggressive and able king of Navarre, Sancho III Garcs the Great (1000-35), absorbed the old Carolingian marcher counties of Aragon, Sobrarbe and Ribagorza to the east and then seized Castile from Vermudo III of Leon to the west. His son Fernando I inherited Castile and completed the conquest of the Kingdom of Leon, thereby creating the largest Christian territorial state in Iberia, one which reached from Galicia and northern Portugal across northern Spain to the Rioja. Fernando gave much of his reign over to securing all of this land and attempting the conquest of his brothers' kingdoms of Navarre and Aragon. This Navarrese-Castilian interaction may have led to some blending of legal and municipal traditions. For example, Sancho III Garcs gave the first Navarrese indication of a military interest in the municipalities by assessing a *fonsadera* in the charter of Villanueva de Pampaneto in 1032. Fernando I, while exempting Villafra from *fossato* in 1039 and Santa Cristina from the same in 1062, required that service from Canales de la Sierra in 1054 and imposed *apelido* defensive service on five northern Portuguese towns between 1055 and 1065. Meanwhile, Garca III Snchez imposed the first *fosato* requirement on a Navarrese town at Cuevacardiel in 1052. The Portuguese *forais* (population charters) were contemporary with Fernando's thrust into the Portuguese frontier south of Galicia which secured the towns of Lamego, Viseu and Coimbra. Coimbra was taken in 1064, and marked the beginning of standard siege practice for Christian kings. Residents of a town under siege who surrendered promptly could remain with full freedoms after the conquest. If the Muslims surrendered after having been under siege for some time, they could leave with only those goods they could carry. Waiting for the town to fall by force, they faced death or enslavement.⁽¹³⁾ A large population of Muslims remaining behind after the conquest could create complications in the writing of the *fuero*, but it was not until the conquest of Toledo later in the century that substantial numbers of such minorities had to be confronted by the Leonese-Castilian monarchs.

Fernando's initiatives were substantially expanded by his son Alfonso VI, both in his pressure on the Trans-Duero and in his military exploitation of municipal populations. But the region which witnessed the most vital creative force in Castilian military law lay not south but to the east in the Rioja, where an opportunity of major importance opened the gateway to

a new line of municipal development in 1076. In Navarre, King Sancho IV Garcés was thrown from a precipice by his brother Ramn, who was in turn driven out of his country for this murderous act. The vacant throne was soon claimed by Alfonso VI and Sancho I Ramirez of Aragon, both being grandsons of Sancho the Great and cousins of the deceased monarch. Moving more rapidly, Sancho I seized Pamplona and took effective control of the greater part of Navarre. Alfonso VI did manage to occupy a portion of the Rioja in southwestern Navarre, bolstering his claim by giving an important fuero there to the town of Nájera in 1076. In the same year he granted a charter with similar military laws to Sepúlveda in southern Castile, while at about the same time Sancho Ramirez issued a highly significant fuero to the royal Aragonese town of Jaca. The military law in these three documents is remarkably similar in language and scope, despite the fact that they survive only in later copies, suggesting that these fueros were indeed contemporary as well as closely related to each other. Emphasis was placed on personal participation by the king in the required military expedition, which could be called only in anticipation of combat in the field. Nájera and Sepúlveda dealt with the contribution of baggage animals to the fonsado and... Sepúlveda added helmet and armor contributions as well. Jacans were required to bring a food supply for three days in the field, and all three towns required service from both mounted and unmounted citizens.

These fueros indicate a force probably more influential than the wars with Islam in the history of municipal military evolution, namely the territorial competition among the Christian kings of the Peninsula. At this point the Castilian-Navarrese-Aragonese frontier became the intense focus of this competition, which manifested itself in the remarkable development of municipal law during the next century as this frontier became extended through mutual conquest down the Iberian Cordillera in the direction of Valencia and Murcia.

Part of this mutual aggressiveness took the form of militarized towns which bristled along the edges of Castilian and Aragonese territorial extensions, towns which were prepared to fight either Christian or Muslim opponents. In this tripartite conflict, the Rioja was the initial bone of contention.

The Magna Carta of Spain (1077) and the fueros

In order to attract people from France, he issued a decree (*carta*) that granted property rights to the residents of the city. Residents belonged in two main categories. The first included nobility (*caballeros*), burghers and merchants. The second, peasants, jews and saracens. It is remarkable but not surprising that burghers and merchants were on an equal footing with the nobility³. They were the most needed for the growth of the town.

The *carta* of 1063 was confirmed in 1077 by the famous chart of Jaca (*fuero de Jaca*). That chart set a muster for charts that were written in the next centuries for other towns throughout the kingdom of Aragón. The year before, Sancho Ramírez had granted a *fuero* with independent rights to the town of Ujué in Navarra that had supported him in his war against a rival⁴.

More on the evolution of the fueros, Zaragoza, Teruel (see Lalinde), Leon?

Note that the fueros preceded the Cortes

A new representation: the Cortes of Leon (1188, 1202, 1208)

The particular context of Northern Spain that was a fertile ground for the numerous *fueros*, led to the first assemblies of representatives of the main orders of society. These assemblies started the process that evolved in modern parliaments. At that time, society was organized in three orders, the Church, the nobility (sometimes in two classes) and the Third Estate, which at the time meant the upper layer of the rest of the population, especially merchants.⁵ In the 11th and the 12th century, kings in Northern Spain were advised by members of the first two orders. These councils are not parliamentary assemblies.

The critical step is the participation of the commoners as a group. Commoners were not included for the consideration of “human rights”, but because they contributed to the revenues of the sovereign.⁶ The representation of what can be called the merchant class is a breakthrough⁷ in the organization of government. The first documented instance an

³Lalinde Abadia (1978).

⁴Marichalar (1868-21)

⁵Sieyes wrote just before the French Revolution his famous pamphlet, *What is the Tiers-Etat?*

⁶In many 19th century countries, including many states in the US, voting rights depended on personal wealth, that is the capacity to contribute to revenues.

⁷Nothing comparable existed before. In Athens, the “direct democracy” included 6000 citizens but excluded all others and merchants were despised.

assembly that included representatives from cities is the *Cortes* of León in 1188 about which O'Callaghan writes⁸

There were three principal reasons why the kings of León and Castile summoned representatives of the towns to the royal court. First, by virtue of their control of vast expanses of territory equivalent in size to the counties of France or the shires of England, the towns were major elements in the administrative structure. Second, the king had need of the urban militias for the conquest and defense of lands beyond the Tagus river in the twelfth century and beyond the Guadalquivir in the thirteenth. Once the frontier was stabilized, these contingents were still needed to guard against the threat of Granada and Morocco in the late thirteenth and fourteenth centuries. Third, as ordinary royal revenues no longer sufficed to meet the needs of both war and civil administration, the crown discovered that the growing wealth of the towns, derived in part from booty taken in war, was a valuable resource that could be tapped.

Roman law provided a theoretical justification for the convocation of the municipalities and the practical means to bring such a convocation about. The Reception of Roman law in the Iberian peninsula effected profound changes in the concepts of the state and justice, in the manner in which justice was administered, and in the very substance of the law. Roman law became a subject of study in the universities of Palencia and Salamanca, established respectively by Alfonso VIII of Castile and Alfonso IX of Len. At first, Italian scholars familiarized peninsular students with the principles of Roman law, but later the Spaniards also made significant scholarly contributions.

References in twelfth- and early thirteenth-century charters to the “status regni” or *utilitas regni* (status of the kingdom, purpose of the kingdom) reflect the influence of Roman law on the development of the concept of the state as an abstract entity distinct from the king and the territory of the kingdom. In the late thirteenth and early fourteenth centuries, these terms appear as “estado de la tierra,” “pro de la tierra,” “buen paramiento de la tierra,” and “fecho de la tierra.” Ulpian’s classic definition of justice as a “constant and perpetual desire to render to each man his due” (Digest, 1.1.10) was cited in twelfth-century charters, while Roman legal procedures such as inquests and appeals became an integral part of the judicial system.

The principle of Roman private law, *quod omnes tangit, ab omnibus debet approbari*

In the Roman empire, the senate played a minor role.

⁸See O'Callaghan, Joseph F. *The Cortes of Castile-León*

(what touches all must be approved by all), when applied to public law, encouraged the crown to take counsel with all those who might be affected by any major decision, but how to consult with the thousands living in the municipalities who might be so affected was a serious problem. The solution was the idea of a corporation, a body of individuals who by reason of their common interests could be treated as a single juridical entity. The corporation could act as a legal person in the marketplace, in courts of law, and in public assemblies. It did so through a duly appointed representative or procurator, who received letters of procuracy conferring upon him *plena potestas*, or full power, whereby his constituents agreed in advance to be bound by the decisions that he might make.

Turning now to the participation of bishops, nobles, and townsmen in the extraordinary curia or cortes, we must establish at what point the townsmen were clearly present, which towns they represented, what powers they bore, and what business they transacted.

In three assemblies convened by Alfonso IX of León in 1188, 1202, and 1208, the presence of townsmen was explicitly recorded. Faced with the problem of establishing his authority on a firm basis and correcting his fathers prodigality, he convoked a curia at León in April 1188. Together with the archbishop of Compostela and other bishops and magnates, the “elected citizens of each city” were in attendance. This is the earliest unequivocal attestation of the participation of townsmen in an extraordinary meeting of the royal court. Several years later, in March 1202, the king convened a *plena curia* at Benavente, attended by bishops, royal vassals, “and many men from each town of my kingdom.” In February 1208, he summoned to an assembly at León bishops, barons, the chief men of the realm, and “a multitude of citizens from each city.” For the rest of his reign the evidence is uncertain, but it is possible that townsmen attended a *plena curia* held at Zamora in 1221 and the curia of Benavente in 1228.

A reference to the new territories in the US

The propensity of new territories for some self-determination by the settlers has also been observed in the US. Engerman and Sokoloff (2005) write

“Also striking is that of the states formed of the originally settled areas, it was those that were sparsely settled and on the fringe (Vermont, New Hampshire, and Georgia) that seem to have taken the lead in doing away with all economic-based qualifications for the franchise.”

John Adams, second US president, who travelled through Northern Spain in the winter of 1780, on his way from Boston to Paris, made interesting **remarks** about the relations between the geography of the region, the character of the people and their sense of freedom.

Numerous charters, called *fueros* were granted by the nobility to towns and cities and provided them with some independent jurisdiction and self-government. In the kingdom of Aragon, a small enclave tucked against the Pyrenees, the main urban concentration was the town of Jaca. In 1063, at the death of the first king of Aragon, his twenty year old son, Sancho Ramírez, knew that he had to increase the strength of his main town.

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