

«*Exceptis militibus et sanctis*»:
*Restrictions upon Ecclesiastical Ownership
of Land in the Foral Legislation of Medieval
Castile and Valencia*

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The late twelfth-century *fuero* of Cuenca, in discussing family relationships, states that, as matter of principle, «no one may disinherit his sons». If someone, for example, should decide to enter the religious life, he may retain only a fifth of his personal property. The remainder, and all of his real property, must as a matter of equity and justice be turned over to his heirs¹. While in general, Cuenca's municipal law code guarantees to property owners full power over their holdings, including the right of its disposal, the *fuero* specifically forbids the granting of any real property to monks or to those who have renounced the world. The rationale is that, because ecclesiastical persons cannot sell property, they should not be permitted to acquire it². Later on, in the section dealing with buying and selling, the *fuero* stipulates that sales and exchanges of property within the city are permitted, except when monks are involved³. These seemingly minor provisions in medieval property law are significant because they help us to understand the place that the Church occupied in the society of frontier Spain. On the one hand, and as numerous privileges demonstrate, priests and communities of religious were welcomed into frontier municipalities as settlers, and endowed with lands in the hope that these, by establishing a Christian presence in lands formerly Muslim, would assist in planting

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¹ *Fuero de Cuenca (Formas primitiva y sistemática: texto latino, texto castellano y adaptación del Fuero de Iznatoraf)*, ed. Rafael de Ureña y Smenjaud, Madrid, 1936, 10.3. (F.S.); 1.10.3 (C.V.).

² *FCuenca*, 2.2. (F.S.); 1.2.1. (C.V.).

³ *FCuenca*, 32.3. (F.S.); 4.1.3. (C.V.).

durable Christian societies. But, on the other hand, care had to be taken lest the Church gain too much property and thus reduce the amount of land available to lay settlers or the revenues from that land accruing to kings or municipal *concejos*. The existence of these two competing concerns produced a period of experimentation in which the law, foral and ultimately royal, attempted to balance the legitimate interests of clerics and settlers. This study, through an examination of this law and of the anecdotal charter evidence, will trace the evolution of that effort.

The policy of limiting ecclesiastical land acquisition appears in the foral legislation of late 12th century New Castile and Aragón, within the Cuenca-Teruel and Coria families of *fueros*, as well as in the legislation and customs of the Crown of Aragón. In the former, as suggested by the Cuenca example, the thrust aimed at limiting the ability of Christian settlers to transfer both real and personal property to the Church. In the eastern realms, a similar interest is evidenced by restrictions first apparent in ecclesiastical charters that forbade the alienation of particular classes of property either to aristocrats or to the clergy. While the custom admits a great deal of variation in its application, three separate intentions seem to have motivated its implementation: the promotion and protection of lay, Christian settlement; the preservation of the rights of heirs; and the maintenance of regalian or municipal revenues. Let us now examine each of these in turn.

In New Castile and the valley of the Guadalquivir, where few monasteries of the traditional kind would be founded and whose non-diocesan clergy sought alms more than lands, foral restrictions against ecclesiastical ownership were aimed particularly against the military orders. In Cuenca, furthermore, the diocesan church, still in its infancy, seems to have been relatively unaffected by these restraints. Alfonso VIII, for example, in a privilege of 1199 granted the bishop and his church complete freedom to acquire, through gift or through any other means, property anywhere in the diocese and to hold it with hereditary right⁴. The *fuero* of Cuenca itself aims its restrictions against those clergy unable to sell property. Individually this would refer to those under religious vows, the regular, not the diocesan clergy. With regard to the military orders, on the other hand, royal policy attempted to establish separate zones for urban colonizers and the orders⁵. While, in general outline, the military orders were granted lands not immediately suitable for colonization, there were exceptions to this rule in Cuenca and elsewhere that led to some conflict between the ambitions of the orders and the settlers. In 1191, for example, the *concejo* of Cuenca negotiated

⁴ GONZALEZ, J.: *El reino de Castilla en la época de Alfonso VIII*, Madrid, 1960, 3: 198, n.º 677. The same monarch, in a letter to the *concejo* of Toledo in 1220, exempts the cathedral church from the royal ban against the transfer of property to ecclesiastical corporations: *ibid.*, 3: 389, n.º 792.

⁵ See the discussion in SEGURA, C.: «La formación del patrimonio de las Ordenes Militares en el alto valle del Guadalquivir (s. XIII)», *Anuario de Estudios Medievales* 11 (1981): 103-109.

a compromise with the Order of Santiago that recognized the brethren's possession of land in the Val de Manzano, but also forbade additional acquisitions in that locale and limited its settlement to ten colonizers who forbidden to work anywhere else within the *termino* of Cuenca⁶. Alfonso VIII arbitrated another dispute between these parties in 1201 that resulted in the partition of land between the Orden and the town; and in 1188 he also limited the Order's acquisitions in Huete to four yokes of land, a mill and a vineyard, specifying that it could acquire nothing more here without royal assent⁷. Huete's *concejo*, arguing that military orders ought not possess any lands within its district, attempted in 1234 to deprive the Order of Calatrava of certain properties, but this time was overruled by the king, Fernando III⁸. Two years later, however, the tables were turned when King Fernando ordered Calatrava to vacate certain properties in the new town of Andújar so that its *concejo* could assign them to settlers⁹. The *fuero* of Carmona, dated 1252, echoes this spirit of exclusion in forbidding the transfer of real property to any order¹⁰. In general, there seems to have been an effort to limit, not eliminate, the holdings of the orders in southern New Castile and Andalusia; there is ample precedent to suggest the necessity of a royal license for ecclesiastical corporations to extend their holdings¹¹. As with Cuenca, exceptions were made for the diocesan church¹², whose functions in promoting settlement were important, and for other ecclesiastical bodies that would aid in settlement, like ransoming hospices¹³.

In eastern Spain, and in the aftermanth of Jaume I's conquest of Mallorca and Valencia, a similar interest in preserving land for settlement by restricting ecclesiastical acquisitions surfaced. The king himself seems to have established acceptable parameters for ecclesiastical landholding when he addressed the bishop of Mallorca in 1235. While the church of Mallorca was herein conceded a license to acquire real

⁶ MARTIN, J. L.: *Orígenes de la Orden Militar de Santiago (1170-1195)*, Barcelona, 1974, 448-49, n.º 277; and IRADIEL MURUGARREN, P.: «Bases económicas del Hospital de Santiago en Cuenca: tendencias del desarrollo económico y estructura de la propiedad agraria», *Anuario de Estudios Medievales*, 11 (1981): 199.

⁷ GONZALEZ: *Alfonso VIII*, 3: 242, n.º 702; MARTIN: *Santiago*, 419, n.º 243.

⁸ GONZALEZ, J.: *Reinado y diplomas de Fernando III*, Córdoba, 1986, 3: 53, n.º 538.

⁹ *Ibid.*, 3: 96, n.º 576.

¹⁰ *Ibid.*, 3: 436, n.º 847.

¹¹ For examples of such licenses, see GONZALEZ: *Fernando III*, 2: 40, n.º 32 (May 23, 1218); 2: 62, n.º 51 (November 30, 1218); 3: 45, n.º 532 (August 18, 1234); 3: 250, n.º 701 (August 22, 1242).

¹² See, for example, the *fuero* of Córdoba (1241) that exempted the cathedral church of Santa María from its prohibition against the transfer of land to orders: *ibid.*, 3: 96, n.º 576.

¹³ Documents of 1234 and 1235 show the commander of Santiago's hospice in Cuenca purchasing property inside and outside of the town with no seeming restriction: IRADIEL: *Bases económicas*, 228-29, n.ºs 18, 20.

property on the island for its work and maintenance, Jaume I went on to say: «But if it seems to us that in time that the cathedral church acquires possessions on the island beyond that amount, then we can with our own authority revoke this license of acquisition»¹⁴. Furthermore, in the great mass of royal grants to settlers brought into the Balearics and the kingdom of Valencia, the king expressly forbade these populators to alienate their newly granted lands to nobles or churchmen; the limitation is expressed by the Latin phrase: *exceptis militibus et sanctis*¹⁵. Two actions on the king's part suggest that the intent of this limitation was the protection of lay settlement. First, the king saw no need to place this restriction in grants directed toward the church¹⁶. Second, in at least some cases, the king ruled that royal grants subsequently alienated to clergy would be revoked¹⁷. In other instances, the king forbade grantees to alienate their land to anyone for at least ten years¹⁸. Ultimately, the *Furs de Valencia* made the custom a rule of law: «... nor let any resident sell or otherwise alienate anything of the aforesaid [i. e., houses, gardens, vineyards, property and whatsoever kind of possessions and places and villages and castles] to knights, clerics or religious persons»¹⁹.

The second principal motivation given for limiting ecclesiastical property was related to the first, i. e., an interest in preserving the interests of heirs, the next generation of settlers. While the *fueros* generally differentiated two types of cases (those involving entrants into the religious life and those arising out of testamentary bequests), the two were treated in similar fashion since an entrant into the religious life ceased to be a legal person²⁰. With regard to the former, Cuenca and Teruel ruled

¹⁴ *Documentos de Jaime I de Aragón*, ed. Ambrosio Huici Miranda and María Desamparados Cabanes Pécourt, Saragossa, 1976-88, 1: 371, n.º 223. Almost a year later, on October 28, 1236, Jaume issued a similar privilege to the Church of Valencia: *Ibid.*, 1: 388-89, n.º 239.

¹⁵ For example, see *ibid.*, 1: 248-54, n.ºs 135-37, 139. Robert I. Burns, S. J., discusses this phrase and in variants in Jaume's charters: *militibus clericis sanctis et personis religiosis; militibus sanctis clericis et personis religiosis; exceptis militibus, clericis et locis religiosis; sanctis, militibus et personis religiosis; militibus, et sanctis clericis, et personis religiosis*, etc. He believes that the *sanctis* refers not to «holy men» but to «holy places». But it is also clear from the variants that clergy and members of religious orders are included in the ban. See his *Society and Documentation in Crusader Valencia*, Princeton, 1985, 141-43.

¹⁶ For example, it is absent in grants made to the military orders: *ibid.*, 1: 304, n.º 173; 1: 315-17, n.ºs 183, 185.

¹⁷ See BURNS, R. I.: *The Crusader Kingdom of Valencia: Reconstruction on a Thirteenth-Century Frontier*, Cambridge, Mass., 1967, 2: 374, n.º 30.

¹⁸ See *Llibre del Repartiment de València*, ed. Antoni Ferrando i Francés, Valencia, 1979, 280-81, n.º 2.989; see also n.ºs 2.290, 2.291, 2.293, 2.295-96.

¹⁹ *Furs de València*, ed. G. Colón and A. García, Barcelona, 1974-90, 4: 163-64, 4.19.8; 4: 253, 4.23.48.

²⁰ The *Fuero real. Especulo* and the *Siete Partidas* state that professed members of religious communities cannot own property or make wills [*Fuero real*, ed. Gonzalo Martínez Díez *et al.*, Avila,

that all their real and 80% of their personal property must go to heirs; only 20% of movable goods could be taken into the religious life²¹. Brihuega and Fuentes de la Alcarria, the probable sources of the Cuencan tradition, were more elaborate and added to this 20% the entrant's horse, arms and clothing, while Cáceres-Usagre more liberally permitted the postulant to keep a half of his personal property²². With regard to those in the second category, testamentary bequests, Cuenca states that the property of those who die with heirs but intestate will be divided between the parish, which will receive a fifth of their livestock, not including horses or saddled animals, and those heirs²³; Coria, Cáceres and Usagre specifically reserved arms and horses for the surviving eldest son²⁴. Baeza broadened the parochial share to include a fifth of all personal property, but Alcaraz eliminated this parochial fifth for those killed by Muslims²⁵. Coria, in treating religious professions and wills equally, permitted those with wills to give away up to half of the personal property to non-relatives (which would include the Church), but for those who died intestate the portion reserved for the parish fell to a fifth²⁶. Teruel permitted bequests not only of personal property but also of real estate on the condition that the gift was only for one's soul and that the donor's sons, if any, gave their consent. Another provision in the Teruel *fuero*, however, limited the impact of this concession by stipulating that only the income from such property could be transferred, not full rights of ownership²⁷. The *Fuero real* of Alfonso X more broadly ruled that those with sons or grandsons were free to donate only up to a fifth of their property²⁸. But only a little later, however, the *Siete Partidas* reduced the portion due heirs by establishing as the legitimate share owed to the children of those who die intestate an amount between a third and

1988, 3.12.5; *Especulo*, ed. Gonzalo Martínez Díez and José Manuel Ruiz Asencio, Avila, 1985, 5.8.21; *Las Siete Partidas del rey don Alfonso el Sabio*, ed. Real Academia de la Historia, Madrid, 1807, 6.1.17]. The *fueros* of Cáceres and Usagre state those who enter the religious life cannot keep any inheritance but rather that it must be divided among his relations as if he were dead: GARCIA ULECIA, A.: *Los factores de diferenciación entre las personas en los Fueros de la Extremadura Castellano-Aragonesa*, Seville, 1975, 173. The *fuero* of Soria states that all bequests made by monks later than a year after their entry into de monastery are null and void: *ibíd.*, 180. This interval presumably coincided with the period of noviciate before the taking of vows.

²¹ *FCuenca*, 10.3 (F.S.), 1.10.3 (C.V.); *El fuero latino de Teruel*, ed. Jaime Caruana Gómez de Barreda, Teruel, 1974, 315.

²² GARCIA: *Factores de diferenciación*, 174-75.

²³ *FCuenca*, 9.9 (F.S.); 1.9.3 (C.V.).

²⁴ GARCIA: *Factores de diferenciación*, 180.

²⁵ *Ibíd.*, 180, nn. 506-7.

²⁶ *Ibíd.*, 180, n. 515.

²⁷ *FTeruel*, 289, 3372-78.

²⁸ *Fuero real*, 3.12.7.

a half of the estate²⁹. On the other hand, the *fueros* generally permitted those who died without any heirs to bequeath all their property to the Church for their souls³⁰.

The evidence that we have of actual property divisions generally follow the spirit of these laws, but not always their letter. The rights of heirs were maintained, unless specifically waived³¹ but the character and proportion of the property guaranteed them varied. An agreement between Santiago's house at Cuenca and Paula Martínez, the daughter of a deceased member of that house, demonstrates the 80%-20% division between the heirs and the Church, but in this instance, when Santiago agreed to forgo its 20% share for Paula's lifetime, she agreed to bequeath the Order 50% of the entire estate at her death³². A fifty-fifty division of both real and personal property between the Order of Santiago and a wife is mandated in a 1182 of Nuño Núñez, but perhaps this was influenced by Nuño's status as a brother of Santiago³³. Another similar division takes place in 1186 between Santiago and the widow Jimena Isidora, partitioning the deceased Pedro Ordóñez's estate between the two parties³⁴. An Aragonese will of 1133-34 contains a variation on this theme. Don Lope Garcés Peregrino divides his personal property between his wife and three military orders; his real property is similarly divided but his spouse is to receive this income in its entirety until her death³⁵. A confraternal contract of 1190 between Santiago and the widow of Vidal de Palomber also divides real and personal property evenly between relatives and the Order³⁶. But there are also instances of the 80-20 division mandated by the *fueros*, as in Miguel Ibáñez's burial contract with Santiago (1209-11)³⁷. Thus, the practice admitted greater variations than those implied by the law, particularly when the testator had been a married member of a religious order like Santiago or else was entering into a confraternal arrangement prior to death.

²⁹ 6.4.11.

³⁰ «Si vero ille qui pro sua anima hereditatem ut dictum est dare voluerit filios non habuerit, det illam iusta suam propriam voluntatem»: *FTeruel*, 289, 3382: 85; GARCIA: *Factores de diferenciación*, 176.

³¹ For example, Doña María, widow of Gómez Vermúdez, in 1228 gave «with the pleasure of my sons» the Order of Santiago property that had belonged to her husband; IRADIEL: «Bases económicas», p. 226, n.º 15, Ca. 1145, Don Otardo, who entered the Order of the Temple with all his lands and property in Saragossa, did so with the consent of his brother, Raóí: LACARRA, J. M.: *Documentos para el estudio de la reconquista y repoblación del valle del Ebro*, Saragossa, 1982-85, 2: 16, n.º 332.

³² IRADIEL: *Bases económicas*, 240-42, n.º 36.

³³ MARTIN: *Origenes*, 336-37, n.º 152.

³⁴ *Ibid.*, 383-84, n.º 202.

³⁵ LACARRA: *Documentos del Ebro*, 1: 232-33, n.º 230.

³⁶ MARTIN, 433-34, n.º 261.

³⁷ RIVERA GARRETAS, M.: *La encomienda, el Priorato y la villa de Ucles en la Edad Media (1174-1310)*, Madrid and Barcelona, 1985. 283-84, n.º 70.

The third general area of legislative activity seeks to forbid property transfers to those who would claim exemption from municipal or royal dues, rights and exactions. The foral legislation itself is mute, but there is ample charter evidence illustrating this concern. Jaume I, for example, stated bluntly in a letter of August 28, 1238 «... that quite obviously a loss to our patrimony is the ultimate outcome, when our subjects transfer estates to knights or religious groups»³⁸. Only four months earlier, on April 26, King Fernando III of León-Castile wrote to the *concejo* of Madrid instructing that no one in the town be permitted to sell any property to a religious order or to Jews or Moors because the *concejo* would lose taxes and the king his rights³⁹. The same intention seems to have motivated Alfonso VIII's ban in 1207 against the sale or gift of any property in Toledo to religious orders; here the penalty for violation of the rule is severe. Not only is the transfer to be nullified, but the seller (or donor) was not to regain its possession. Instead such property would be granted to his relatives who not only would owe whatever was due on the property but who would presumably be less inclined to repeat their kinsman's malefaction⁴⁰. Indeed, these charters seem to reflect an already well-established tradition of royal law that dates back in the kingdom of Castile to curial pronouncements in 1184 at Nájera when Alfonso VIII forbade the alienation of land to monasteries. Alfonso IX of León issued a similar ban at his curia of León in 1188, which he repeated at Benavente in 1228⁴¹.

Fiscal considerations, albeit of a different sort, appear to have been at the root of this custom within the Crown of Aragón. Here, the tradition of identifying property as ecclesiastical or seigneurial dates to the early twelfth century. The earliest approximation of the thirteenth-century phrase, *exceptis militibus et sanctis*, that I have found is in Ramón Berenguer IV's *carta puebla* of Saragossa (1138) where tenants are identified as holding property *de sanctis* or *de infançonibus*⁴². The next group of texts that I have found with this phrase pertains to the Templars: the *carta puebla* of Añesa ratified by the Order in 1157, and charters from their house of Tortosa where the brothers forbade tenants to sell or mortgage their holdings *militibus et sanctis*⁴³. This prohibition evidently had a more general character, as

³⁸ BURNS: *Crusader Kingdom*, 2: 374, n. 30.

³⁹ GONZALEZ: *Fernando III*, 3: 155, n.º 622.

⁴⁰ GONZALEZ: *Alfonso VIII*, 3: 389, n.º 792 (February 3, 1207).

⁴¹ The *acta* of the Nájera curia (1184) and that of Benavente (1228) are known only through later or indirect references; for a discussion, see O'CALLAGHAN, J.: «The Ecclesiastical Estate in the Cortes of León-Castile, 1252-1350», *The Catholic Historical Review*, 67 (1981): 188-90; and his «Una nota sobre las llamadas Cortes de Benavente», *Archivo Leoneses*, 73 (1983): 98.

⁴² LACARRA: *Documentos del Ebro*, 1: 280-81, n.º 281.

⁴³ LACARRA: *Documentos del Ebro*, 2: 64-65, n.º 386; see also the leases of November 12, 1163;

reflected in a judicial decision rendered by the young Jaume I in 1220. In response to a petition from various *milites* and *infançones* of Mallén seeking royal permission for them to acquire property from the tenants of the Knights of St. John without the latter's permission, the king observed that: «... according to the *fuero* of our kingdom and the constitutions observed by our ancestors, no knight or *infanzon* may have in our kingdom of Aragón any properties or possessions from the men and subjects of the house of the Hospital or of any other religious... without the assent and agreement of the master and brothers...; nor similarly may any religious man have any properties or possessions from men and subjects of any knight or *infanzon*, without the assent of those knights and *infanzones*»⁴⁴. What was the purpose of this custom? The *carta puebla* of Añesa of 1157, in upholding such a prohibition, cites the payment of rents to the Templars as the principal concern in any transfer to ecclesiastical or knightly control⁴⁵. An almost contemporary agricultural lease negotiated by the monks of San Cugat with Pons Bernat and his wife has so such exclusion, but does not need one since the holdings, according to the charter, can be transferred only to another worker who could fulfill all of the stated obligations to the monastery⁴⁶. Thus, in the twelfth century, knights and clerics were loathe to accept each other as tenants lest the privileges of their rank interfere with the fulfillment of any fiscal obligations.

In the thirteenth century, particularly with the development of the custom of *fatica*⁴⁷, such prohibitions were of less a concern to ecclesiastical and aristocratic lords. On the other hand, and probably within the context of the new acquisitions of formerly Muslim territories, the kings of León-Castile and Aragón embraced and transformer the usage to protect their particular interests. One obvious example concerns the transfer of fortresses, where the monarch would properly insist that new holders be loyal, and capable of rendering military service⁴⁸. Another concern was

February 24, 1174 and November 30, 1180: PAGAROLAS, L.: *La Comanda de Tortosa: primer període (1148-1213)*, Tortosa, 1984: 190, n.º 190; 221, n.º 53; 243, n.º 73.

⁴⁴ HUICI: *Documentos de Jaime I*, 1: 58-59, n.º 22. The principle cited by the king also appears in the *Furs de Valencia*, 4: 163-64, 4.19.8.

⁴⁵ LACARRA: *Documentos del Ebro*, 2: 64-65, n.º 386.

⁴⁶ *Cartulario de San Cugat del Vallés*, ed. Jose Rius, Barcelona, 1955-57, 3: 184, n.º 1.013 (May 20, 1157).

⁴⁷ By the last decade of the twelfth century, Templar leases in Tortosa no longer place restrictions on the alienation of the Order's property to others, but instead specify periods of 30 or 32 days within which the brethren can reclaim the property for themselves at the same price. This is the custom of *fatica*; for examples, see PAGAROLAS: *Comanda de Tortosa*, 280-81, n.º 100 (April 6, 1193); 283, n.º 102 (September 15, 1193); 298-99, n.º 113 (August 5, 1197); 323-24, n.º 129 (October 15, 1208). For general comments on the custom, see BURNS, R. I.: *Medieval Colonialism: Postcrusade Exploitation of Islamic Valencia* (Princeton, 1975), 199-200.

⁴⁸ Thus, in entrusting the castles of Torres and Collar to the Order of Calatrava, King Sancho IV

that expressed by Jaume I and Fernando III in 1238, the preservation of revenue. The appearance of the ecclesiastical exclusion in royal land grants of this era seems no accident at a time when the king had abundant land to grant. While lands given to secular settlers would produce revenue for the monarch⁴⁹ ecclesiastical lords and their tenants were frequently exempt from such payments⁵⁰. The *Siete Partidas* in fact laid down the general principle that the Church should not pay taxes on lands given for its support, especially on property donated by kings and emperors⁵¹. Thus, because, a subsequent transfer of royally granted land to ecclesiastical or aristocratic lords might place the king's regalian rights in jeopardy, such grants, particularly those emanating from postconquest Mallorca and Valencia, contained provisions forbidding their subsequent alienation *militibus et sanctis*⁵². By the mid-13th century, Jaume I was placing the restrictions in *cartas pueblas*⁵³. Significantly, the restriction is absent from ecclesiastical land grants⁵⁴, because the clergy's exemption from regalian taxes was already implied, and from grants whose provenance is outside the frontier provinces⁵⁵. Thus, its application in this context was clearly intended to protect royal revenues against ecclesiastical exemptions.

The effort to prohibit the transfer of property, particularly to ecclesiastical corporations, was probably unrealistic given society's attitude toward death and atonement. Indeed, Alfonso VIII's very prohibition of 1207 against such transfers within Toledo contains within the same charter exemptions for two individuals⁵⁶. By

of León-Castile stipulated that «... you cannot sell or give or entrust them to a church or to any person of religion or to others outside of our service»: SEGURA: *Patrimonio de las Ordenes Militares*, 113.

⁴⁹ A list of the usual regalian rights (*questia, toltia, forcia, prestito, servicio, usatico, bovatico, monetatico, succurse*) is included in a charter of Pedro II of 1209: *Cartulario de San Cugat*, 3: 394, n.º 1275; Jaume I in 1228 lists «*peyta, toltia, questia, forcia, prestito, precaria, cena, pedido, monetatico et succurse...*»: *Documentos de Jaime I*, 1: 200, n.º 106.

⁵⁰ For example, see Jaume I's privileges of December 23, 1221 and September 1, 1222 exempting the tenants of the knights of the Hospital and the Monastery of Poblet from certain of these payments: *ibid.*, 1: 73-75, n.º 32; 1: 90-91, n.º 37.

⁵¹ See 1.6.55.

⁵² For examples, see *Documentos de Jaime I*, 1: 248-249, n.º 135, Mallorca, 1230; 1: 249-50, n.º 136, Mallorca, 1230; 2: 15, n.º 245, Valencia, 1237; and 2: 28, n.º 261, Valencia, 1238.

⁵³ See those of Borriol (*ibid.*, 2: 333-34) and Morella (*ibid.*, 2: 334-36).

⁵⁴ For example, see the grants to the Templars: *ibid.*, 1: 304, 315 and 317, n.ºs 173, 183, 185. Likewise, it is also absent from the following grants to the bishops of Barcelona and Huesca and the monastery of Sijena: 2: 24-28, n.ºs 256, 258, 260.

⁵⁵ Presumably it was unnecessary here because land was expensive and less likely to be donated to ecclesiastical corporations. For example, see my comparison of the landed patrimony of the 13th century Order of Merced in frontier Valencia and in old Catalunya: *Ransoming Captives in Crusader Spain: The Order of Merced on the Christian-Islamic Frontier*, Philadelphia, 1986, 77-82.

⁵⁶ GONZALEZ: *Alfonso VIII*, 3: 389, n.º 792.

mid-century, the law begins to recognize this. In the Crown of Aragón, a specific exception to this rule for the Order of Merced appears in 1254 that permitted the brothers to acquire whatever property they wished in return for payment of any regalian taxes customary for those lands⁵⁷. Such a privilege, however, was not soon extended to all the clergy. For example, Jaume I in 1269, and again Alfons IV in 1329, relaxed the prohibition against the alienation of lands within the royal domain (*realengo*) for the aristocracy of Valencia, but on penalty of confiscation maintained the ban against its transfer to «ecclesiastical or religious persons»⁵⁸. And royal permission for Franciscan tertiaries to purchase land in the amount of 4,000 *solidi* of Valencia on June 12, 1346 was explicitly a dispensation from the *Furs*⁵⁹. Only in 1403 did Martí I remove the restriction *exceptis clericis atque sanctis* for those clergy willing to acknowledge their tax obligations to the king⁶⁰.

In León-Castile, the evolution of the rule is more complex. On the one hand, the *acta* of the Cortes well into the fourteenth century continued to reiterate the prohibitions of Nájera (1184) and Benavente (1228). For example, the towns demanded at the cortes of Valladolid (1298 and 1299) and Zamora (1301) that royal lands not be permitted to pass to ecclesiastical control and that all royal lands obtained by clerics since the Cortes of Haro (1298) be restored to *realengo*; and at Valladolid in 1307 the towns went farther and insisted that all the royal domain acquired by the Church since Nájera and Benavente should be recovered⁶¹. The royal response to these municipal demands was shaped by the politics of the era. Alfonso X, for example, attempted to strike a balance between the legitimate needs of ecclesiastical corporations for adequate endowments and those of towns and the royal fisc for revenue. Thus, in the *Siete Partidas*, he echoed Jaume's sentiments of 1235-36⁶², by distinguishing between land donated and used for a church's support and additional land purchased, presumably with surplus funds. Exemption from taxes is maintained for the former, but for the latter the church owed all taxes and contributions that the former owners had paid the king⁶³. Fernando IV, at the Cortes of Burgos in 1301, reiterated this requirement that the Church pay taxes on newly acquired lands⁶⁴, but it is clear from the continued disputes between the prelates and

⁵⁷ See BRODMAN: *Ransoming Captives*, 100-101.

⁵⁸ For Jaume's edict of June 29, 1269, see BURNS: *Society and Documentation*, 143; for Alfons IV, see *Furs de Valencia*, 4: 166-67, 4.19.12.

⁵⁹ See Arxiu de Corona d'Aragó, RC 1310, f. 131v.

⁶⁰ *Ibid.*, 4: 172-74, 4.19.15-16.

⁶¹ O'CALLAGHAN: *Ecclesiastical Estate*, 201.

⁶² See above, n. 14.

⁶³ 1.6.55.

⁶⁴ *Cortes de los antiguos reinos de León y de Castilla*, ed. Real Academia de Historia, Madrid, 1861, 1: 147, n.º 6.

the towns that the former never acknowledged their obligation to pay taxes. Indeed, the ecclesiastical support that Sancho IV received in his conflicts with Alfonso X, and their willingness to grant his successors occasional subsidies, seems to have given the Church a certain immunity from municipal pressures. Thus, in response to town requests in 1307 that *realengo* alienated since Nájera and Benavente be recovered, Fernando IV temporized by promising to investigate the issue; there is no evidence that he ever did so. The regents of Alfonso XI in 1316, and the king himself in 1326, similarly put aside municipal demands on this issue in return for ecclesiastical subsidies⁶⁵.

Does the failure of Castilian towns to revive the prohibitions of Nájera and Benavente then herald a new age of ecclesiastical land acquisition that threatened municipal interests? It would seem not. Joseph O'Callaghan, for example, argues that during the period 1252-1350 the Church was relatively docile and challenged the king only sporadically, when he was relatively weak and under attack by the other estates⁶⁶. Furthermore, evidence seems to suggest that ecclesiastical acquisition of property was principally the product of the frontier era, i. e., the period before 1250, and that afterwards grants to the Church fell off sharply. Let a few examples suffice. Fernando III, in the *Repartimiento* of Seville made property grants to 30% of the episcopacy of León-Castile and Alfonso X, for the first ten years of this reign, continued to give bishops gifts or real property and of revenues. José Manuel Nieto Soria then notes a significant falling off in royal largesse, a factor that he cites in explaining episcopal defections from Alfonso to Sancho IV in 1272. By the reign of Alfonso XI, economic difficulties and a desire to protect *realengo* had virtually eliminated all royal grants to the episcopacy⁶⁷. Milagros Rivera Garretas' study of the *priorato* and *encomienda* of Uclés, the chief seat of the Order of Santiago, shows that virtually all donations of property, whether from the king, nobles or smaller holders, were made before 1250; similarly 32 of the 33 land purchases made by the Order here were concluded by the mid-century mark⁶⁸. Finally, the acquisitions made by the *Hospital del Rey*, founded at Burgos in 1214, peaked during the years 1230-50, and reached their nadir between 1310 and 1330⁶⁹. A. J. Forey, in reaching similar conclusions from his study of the Templar Order in the Crown of Aragón, argues that

⁶⁵ O'CALLAGHAN: *Ecclesiastical Estate*, 198-206.

⁶⁶ *Ibid.*, 210-212.

⁶⁷ See his *Iglesia y poder real en Castilla. El episcopado, 1250-1350*, Madrid, 1988, 96-102.

⁶⁸ See her *La encomienda, el priorato y la villa de Uclés en la Edad Media (1174-1310). Formación de un señorío de la Orden de Santiago*, Madrid and Barcelona, 1985, 92, 94, 120, 127, 154, 161.

⁶⁹ MARTINEZ GARCIA, L.: *El Hospital del Rey de Burgos: Un señorío medieval en la expansión y en la crisis (siglos XIII y XIV)*, Burgos, 1986, 408.

this falling off in property acquisitions was typical of ecclesiastical corporations because these generally gained the majority of their endowments within a century of their foundation. Besides, he concludes, the great period of monastic endowment in Spain, and elsewhere, was over by the mid-thirteenth century⁷⁰. Indeed, David Herlihy in his general study of ecclesiastical property holdings in western Europe has concluded that Church property declines in the thirteenth century as a percentage of total land holdings⁷¹.

If there was this decline in new ecclesiastical land acquisition after 1250, why did Castilian towns remain so sensitive about the issue? There were undoubtedly several factors behind this seeming intransigence. Certainly dioceses and ecclesiastical corporations continued to acquire property, albeit at a slower pace, and these, because of the acquisitions of the previous century, still had substantial holdings within municipal *terminos*. The Church's continued resistance to any payment of taxes on these properties, furthermore, at a time when the *realengo* continued to be dissipated⁷², meant added fiscal burdens for the *vecinos* of towns. But it should also be remembered that the towns were directing their ire not just against the Church, but also against the aristocracy⁷³. Prelates too complained to the king about the nobility's seizure of *abadengo* or of aristocratic attempts to impose tribute upon Church land⁷⁴. Thus it is probable that aristocrats were the principal culprits, making inroads into both municipal and ecclesiastical property, and that townsmen, already resentful of ecclesiastical wealth, claims of juridical exemptions and privileges, and the threat of Church censure, were simply not discriminating in attacking those who threatened their interests.

The limitations upon ecclesiastical property acquisition that we have been discussing were clearly the product of the unique environment of the Spanish frontier. The customs arose during the period of expansion and settlement of the later twelfth and earlier thirteenth century. By the end of the latter century, they were being phased out as no longer necessary. Their purpose, in so far as the Church was concerned, was clearly not to limit its legitimate functions as determined by Crown and town. The diocesan church and clergy were generally free of restriction; most closely regulated were the religious orders. The latter, with their vows of individual

⁷⁰ See his *The Templars in the Corona de Aragón*, London, 1975, 60-61.

⁷¹ See his *Church Property on the European Continent, 701-1200*, *Speculum*, 36, 1961, 92.

⁷² This is O'Callaghan's conclusion; see his «Ecclesiastical Estate», 211; and his *The Cortes of Castile-León, 1188-1350*, Philadelphia, 1989, 168.

⁷³ For example, see *Cortes de León y Castilla*, 119, n.º 2 (Cortes de Valladolid, 1293); 147, n.º 6 (Cortes de Burgos, 1301); 156, n.º 17 and 158, n.º 26 (Cortes de Zamora, 1301); 191, n.º 15 (Cortes of Valladolid, 1307).

⁷⁴ O'CALLAGHAN: *Ecclesiastical Estate*, 211.

poverty, owned wealth only corporately; ecclesiastical law never limited its acquisition but placed severe restrictions upon its alienation. Thus, bodies like monasteries and military orders, free to exploit the guilty consciences of land-rich settlers, might well acquire so much land as to restrict the development of towns, limit the well-being of the settler-class, and deprive the king of his new-found revenues. Once the new society had put down permanent roots and their communities had ceased being frontier settlements, the temptation to alienate presumably more developed and valuable property to the Church diminished, and with it the importance of such legal restrictions.