

The Fuero de Cuenca: Legal Innovation on the Medieval Iberian Frontier

Ever since Frederick Turner's groundbreaking essay on 'The Significance of the Frontier in American History' in 1893, the frontier concept has fascinated historians of every period and region.¹ More than simply boundaries between countries and societies, frontiers are zones of contact. For scholars of medieval Iberia, therefore, the frontier did not merely demarcate Christendom from the Islamic world. It was also an arena of intense social encounters that gave rise to a number of significant cultural developments on the Peninsula.²

One particularly intriguing avenue of inquiry focuses on the emergence of a new legal framework in the nascent Spanish kingdoms of Castile and Aragon during the 12th and 13th centuries, forced by the unique challenges and opportunities presented by the *Reconquista*. Ongoing war between Christian and Muslim realms created an environment where creative forms of regulation were required to both defend and advance an ever-changing frontier.

Here, I examine the local forces that shaped this emergent legal system, which took

the form of so-called municipal *fueros*. Homing in on the remodelled law of Cuenca, a small but significant town of central La Mancha, I explore two local frontier authorities who gained prominence in what was a combative environment that rewarded the militarily capable.

Frontier *Fueros*

The municipal *fueros* have long been recognised as invaluable resources for historians of medieval Iberia.³ They grew out of the need for a new legal framework in post-conflict society as Christian domains were expanded with further conquest throughout the 12th and 13th centuries.⁴ Other incarnations of *fuero* existed both before the Muslim conquest – notably, the 7th-century *Fuero Juzgo* – and continue to play a role in the modern Spanish legal system – most obviously in the form of Navarrese regional autonomy (Spanish: *La Comunidad Foral de Navarra*).⁵ However, I will focus solely on those *fueros* written for settlements in the immediate aftermath of their capture

¹ Frederick Jackson Turner, 'The significance of the frontier in American history', *American Historical Association*, (1893).

² Robert I. Burns, 'The significance of the frontier in the middle ages', in Robert Bartlett and Angus MacKay (eds.), *Medieval Frontier Societies* (Oxford, 1992), p. 315; Pascal Buresi, 'The appearance of the frontier concept in the Iberian Peninsula: at the crossroads of local, national and pontifical strategies (11th-13th centuries)', *Quaestiones Medii Aevi Novae*, 16 (2011), p. 86.

³ Jonathan Ray, 'The Jew in the text: what Christian charters tell us about medieval Jewish society', *Medieval Encounters*, 16 (2010), p. 254; Jerry R. Craddock, 'On old Spanish municipal charters as primary sources for linguistic history', *Romance Philology*, 24(1) (1970), p. 119.

⁴ See Appendices A and B in James F. Powers, *A Society Organized for War: The Iberian Municipal Militias in the Central Middle Ages, 1000-1284* (Berkeley, 1988). Excluding Portuguese *foros* (pp. 215-8), Powers identifies three major related groups of *fueros*: the Cuenca-Teruel, Coria Cima-Coa and Toledo "formularies" (see pp. 219-29).

⁵ For the *Fuero Juzgo*, see Samuel P. Scott (ed. and trans.), *The Visigothic code (Forum judicum)* (Boston, 1910).

by Christian forces during the *Reconquista*, replacing Muslim rule under the Almohads.

Among the entire corpus of *fueros*, the *Fuero de Cuenca* stands out as the most extraordinary. Indeed, this text is widely considered one of the most illuminating examples of written municipal law anywhere in Europe during the medieval period, as well as perhaps the most significant legal document of the Central Middle Ages in Iberia.⁶ This is largely due to its unprecedented length and detail, but also because of its subsequent use as a template for the *fueros* of many other Iberian settlements both close to Cuenca and further afield.⁷

The town of Cuenca was equally conspicuous for its political significance in the eyes of the Castilian kings. It was captured after a protracted siege of eight months, led by Alfonso VIII of Castile with the timely assistance of Aragonese forces under their respective monarch, Alfonso II. Situated on Castile's borders with both Almohad lands to the south and the powerful Kingdom of Aragon to the east at the time of the *Fuero's* publication in 1190, Cuenca was seen as a particularly strategic outpost, not only for the defence of Castilian lands from external threats but also for future offensives towards the Mediterranean.⁸

And yet the Castilian monarchy could do little to determine whether Cuenca would sink or swim in what remained a fragile region. In the decades following its capture by Castilian forces in the late-1170s, the town was exposed to a sustained period of offensive raiding by the Almohads for more than two years after the major Castilian defeat at Alarcos in 1195. This was part of a much longer guerrilla campaign by Muslim forces around the Tagus river area between 1171 and 1211.⁹ Despite its military significance, the king was unable to devote enough time and resources

to personally protecting the town. Rather, that responsibility primarily fell on local protagonists.

Crown and Town

It is essential to note that the Iberian monarchies remained far from firmly established at this time.¹⁰ Their role was thus important but by no means the most important on the frontier. The Castilian monarch's authority was respected but not revered in Cuenca, where most citizens had, until recently, lived under the Muslim rulers of Al-Andalus.¹¹

The Cuencan municipal council, or *concejo*, was composed of elected leaders who governed day-to-day life in the town. The *iudex* was essentially the mayor, or highest-ranking civil official, of Cuenca, while the *alcaldes* were parish officials.¹² Interestingly, the Spanish word *alcalde*, which is still used widely today, is an Islamic legacy itself while the Jewish community in Cuenca elected their own *alcaldes* and *iudex*-equivalent official, called the *albedí* – another title derived from Arabic.¹³ These officials were the highest legal authorities in the town. Although the king was permitted two official representatives in the town, the *Señor* and the *merino*, their activities were strictly limited in the *Fuero* to their roles as the king's ambassador and his rent-collector, respectively.¹⁴

Certainly, the council was not clearly subordinate to the king. Even if the latter were physically present in Cuenca, it is unclear whether or not he would have assumed jurisdiction over and above the elected council leaders, the most senior of whom was the *iudex*:

“The iudex should receive forty menkales [equivalent to approximately ten aurei] as remuneration for the service that he gives

⁶ See James F. Powers, 'Introduction', in his own English translation of *The Code of Cuenca* (Philadelphia, 2000), p. 23.

⁷ For a full list of the towns that adopted Cuenca-type *fueros*, see Powers, *Society Organized for War (SOFW)*, pp. 227-8, in which the author describes the proliferation of the Cuencan *fuero* according to three geographical town groupings in New Castile, La Mancha, and upper Andalusia.

⁸ James F. Powers, 'The early reconquest episcopate at Cuenca, 1177-1284', *The Catholic Historical Review*, 87(1) (2001), pp. 2-5.

⁹ Powers, 'Introduction', p. 13; Powers, *SOFW*, pp. 51-2; González Jiménez, 'Frontier and settlement', p. 60.

¹⁰ Powers, 'Introduction', p. 2; Powers, *SOFW*, p. 223.

¹¹ Powers, 'The early reconquest episcopate', p. 2.

¹² Powers, 'Introduction', p. 5.

¹³ *Ibid.*, p. 5-6, 13.

¹⁴ *Code of Cuenca*, (Glossary) p. 231.

to the council, and the council should pay them to him; he should receive also the seventh part of the fifth [of war booty] and of those things that the council delivers voluntarily to the king or to the Señor [king's representative] of the town. It is said "voluntarily", because the Council of Cuenca does not ever have the obligation to give anything by the code or by right to the king, to the Señor of the town, or to any other, since I have made it free of all submission to the king and to the Señor of the town, of all tax, rent and fazendera [public works tax]."¹⁵

Therefore, the relationship between council and king was based on voluntary obligation, rather than prescriptive hierarchy. Whereas one would expect the council to have had to take an oath of loyalty to the king upon assuming office, council members were instructed only to swear loyalty to their own municipal institutions.¹⁶ The article specifying the oath-taking requirement appears to only insert obligation to the king as an after-thought: council members had to swear loyalty to the council in its entirety, "without violating the king's honour".¹⁷

Any official found to have gained office by influence of the king or his representatives was to be barred from any such position for the remainder of his life.¹⁸ As such, loyalty to the king over the council was an impeachable offence. There is a clear suspicion of royal interference throughout the *Fuero de Cuenca* and, even when Alfonso X sought to re-establish royal control over these towns from the 1250s, the councils that had received *fueros* similar to Cuenca's struggled fiercely to protect their autonomous rights.¹⁹ These legal documents were living texts ("*textos*

vivos") to which royal authority could only provide an outline, but not impose their content.²⁰

Power of the Order

Investigating the etymology of the Spanish word for frontier – '*frontera*' – is valuable in identifying a second important local authority. Originally a Latin neologism, *frontera* was coined in Iberia by the military orders as a result of contact between their own properties and Islam.²¹ One knighthood, in particular, was instrumental in the district of Cuenca: namely, the Order of Santiago, which had played a key role in capturing the town initially, but which retained lasting claims of jurisdiction over the settlement's lands and citizens.²²

Political capital on a combative frontier often derived from military capability. This is partly why the Church is somewhat side-lined in the *fueros*; although, remarkably, the Bishop of Cuenca is known to have led long-term military forays into enemy territory across Valencia and Murcia in 1225.²³ Military pressure from the south and east meant that the additional assistance of knightly authorities was required to maintain security, law and order in Cuenca. As a result, the *Fuero* specifies that law-making in the town was to be "defined under the supervision of the knighthood".²⁴ Although it is left unclear exactly what "supervision" involved, a passage from the Order of Santiago's own founding charter provides a clue:

"If, God willing and with the master present, they [the knights] acquire any personal property or a town or a castle in the land of the Saracens, after reimbursement has been made for horses and arms lost

¹⁵ *Code of Cuenca*, (Ch. XVI, art.12) p. 111. For the Latin, see *Forum Conche* (Chicago, 1909), George H. Allen (ed.), (Part II, Cap. XVI, art. 13) p. 9.

¹⁶ *Code of Cuenca*, (Ch. XVI, art. 7) p. 110.

¹⁷ *Ibid.*; *Forum Conche*, (Part II, Cap. XVI, art. 8) p. 8.

¹⁸ *Code of Cuenca*, (Ch. XVI, art. 5) pp. 109-10.

¹⁹ Powers, *SOFW*, pp. 70-80.

²⁰ Remédios Morán Martín, 'Fueros municipales. Traza de derecho', *Medievalista*, 18 (2015), p. 10.

²¹ Buresi, 'The appearance of the frontier concept', pp. 81-4.

²² Powers, 'The early reconquest episcopate', pp. 5-7.

²³ Powers, *SOFW*, pp. 58-9.

²⁴ *Code of Cuenca*, p. 28; *Forum Conche*, p. 15. (Latin: "*sub equitatis examine liceat deffiniri*").

*there, let a fifth part and the lordship of the town or castle be given to the master.*²⁵

Based on this evidence, written five years before the *Fuero de Cuenca*, “supervision” might have even equated to a form of “lordship” over the town. Whether such lordship meant that the knights ruled the town over and above the king and the council is open to debate, but it is undeniable that the Order would have held a high degree of influence in determining the new legal order of Cuenca following its capture.

Crucially, the knights of this Order were permitted to be especially ambitious in their pursuit of personal conquest. They were awarded the right “to preserve faithfully the property that they now have or which, in the future, they gain or will have gained for the profit of their brothers and the growth of their house”.²⁶ Such a grant would have likely encouraged the knights to be especially competitive in fighting for and protecting land; even more so given that the property and tax revenues they acquired as a result constituted hereditary property, which would ensure the future prosperity not only of their Order, but also of their own families. Thus, as González Jiménez notes, war became an essential element of the frontier economy, at a time when jurisdictional competition between all the major Castilian powers equated to opportunistic competition for resources due to severe economic stress.²⁷ This would have engendered great desire among the knights for personal and collective aggrandizement, particularly in towns like Cuenca.

The Martial Council

Perhaps the most extraordinary legal phenomenon in Cuenca is how the role of the council changed with the presence of the knightly orders on the frontier. To survive and rule in such a volatile region, the Cuencan council could not simply function as an administrative system. Instead,

it also came to function as a military unit in much the same way as the Order of Santiago.

In many ways, the two institutions converged in the frontier environment to become one and the same. Evidence of this can be found in the resemblance between the service exemption granted to the council of Cuenca (see earlier section) and the exemptions granted to the military orders by the Iberian kings. The best example of the latter is in the legal freedoms – also called *fuero* – given to the Confraternity of Belchite, an Aragonese knighthood, of which a similar version would have also applied to the Order of Santiago:

*“Nevertheless, over this army and these knights of Christ, I [King Alfonso VII of León-Castile] make myself in God’s name the principal brother and protector; below me, I establish and confirm there as chief and rector Lupo Sancho, so that he may govern and protect and lead that army of God and those knights of Christ, and so that they, who are about to serve me above and beyond [other] Christians, themselves remain exempt from a service obligation to me.”*²⁸

Comparing this excerpt with the autonomous rights granted to the council, it seems that article 12 of Chapter XVI of the *Fuero de Cuenca* may have even been modelled upon the freedoms conceded to the military orders, given the striking linguistic parallels in the law. It is likely that the council needed legal freedoms similar to those granted to the knightly orders in order to simply survive as a legitimate institution in such hostile surroundings.

In the end, the council exploited its autonomy to thrive both militarily and economically on the frontier. Council leaders frequently embarked on independent military expeditions and not solely to join up with royal forces in capturing Seville in 1248, for example.²⁹ The *Fuero de Cuenca* provides extensive measures as to how the

²⁵ ‘The Brothers of Avila and the Order of Santiago (1172)’, James W. Brodman (trans.), in Olivia R. Constable (ed.), *Medieval Iberia: Readings from Christian, Muslim, and Jewish Sources* (2nd ed.) (Philadelphia, 2012), p. 207.

²⁶ *Ibid.*

²⁷ González Jiménez, ‘Frontier and settlement’, p. 55; Powers, ‘The early reconquest episcopate’, pp. 7-14.

²⁸ ‘Privilege to the Confraternity of Belchite (1136)’, James W. Brodman (trans.), in Constable, *Medieval Iberia*, p. 204.

²⁹ Powers, *SOFW*, p. 61.

town should continue to function while the council led these ventures, proving that they were far from uncommon. In fact, eighty-five articles of law concern ‘*The Government of the Military Expedition*’ and ‘*The Emergency Military Muster*’.³⁰

Both municipal leaders and regular citizens, none of whom were soldiers in any formal sense, were converted into military men by the law. As such, high-risk frontier conditions forced towns like Cuenca to become what were, legally-speaking, military units akin to the military orders, both institutions being exempt from service obligation to royal authority. In this era of advancement of the unstable frontier, there was thus undoubtedly a close relationship between the knighthoods and the frontier municipalities.³¹

The *Fuero de Cuenca* is a fascinating example of how legal innovation manifests itself in frontier environments. The Castilian social contract had to be completely reimagined in response to continuous conflict and, as a result, it was the Order of Santiago and the local council, above all other authorities, whose influence came to dominate the new *status quo*. These institutions, militarily adapted to the frontier, arguably mattered even more so to the kingdom’s successful continuity than the king himself. Scholars should continue to investigate historical frontiers as the origins of such whacky cultural developments, just as Turner advocated back in 1893.



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³⁰ Code of Cuenca, (Ch. XXX-XXXI) pp. 165-80.

³¹ Powers, SOFW, p. 66.

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