# LAW AND MEMORY
## THE MANY ASPECTS OF THE LEGAL INQUISITION IN THE MEDIEVAL CROWN OF ARAGON

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**Resumen**: Este artículo analiza la importancia de la encuesta judicial en la Corona de Aragón en la Edad Media. El autor revisa esta forma jurídica desde sus orígenes romanos, pasando por la influencia de la ley visigótica y la de los varios códigos legales de la España oriental durante el Medievo. El uso de la encuesta judicial por la corona, la iglesia, la nobleza y los gobiernos municipales demuestra claramente cuan adaptable podia ser. La manipulación de la encuesta, de la evidencia escrita y de las declaraciones de los testigos son cruciales para comprender cómo la ley ibérica percibió y estableció la memoria de acontecimientos pasados.
**Palabras clave**: Derecho civil medieval; Derecho penal medieval; Encuesta judicial; Memoria histórica; Gobierno real; Gobierno municipal; Corona de Aragón en la Edad Media.

**Abstract**: This article discusses the importance of the legal inquisition in the medieval Crown of Aragon. The form is reviewed from its Roman origins through the influence of Visigothic law and that of the various law codes of eastern Spain during the Middle Ages. The use of the legal inquisition by the crown, the church, the nobility and town governments clearly demonstrates how adaptable it could be. The form's manipulation of both written evidence and witness testimony is crucial for the understanding of how Iberian law perceived and shaped the memory of past events.
**Keywords**: Medieval civil law; Medieval criminal law; Legal investigation; Memory; Royal government; Urban government; Medieval Crown of Aragon.

According to the eminent Marxist historian E.H. Carr (whose little book *What is History?* has initiated whole generations of undergraduates into the historical profession), "history is an unending dialogue between the present and the past"[2]. The principal speaker in this exchange is human

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[2]Edward Hallett CARR, *What is History*?, New York, 1964, p. 35; Richard J. EVANS, *In Defense of History*, London, 1997, p. 225.

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memory which, like a long string of glassy reflections, transforms past events and interprets them from the uncertain vantage point of the present moment[3]. Far from being a neutral receptacle of the dead past, memory especially in the early Middle Ages was a living force that allowed education, undergirded by the art of mnemonics, to survive and adapt to the fall of the Roman world view[4]. It also became a force in the fashioning of religious and secular ritual which attempted to commemorate great figures of the past so their greatness would not pass into forgetful oblivion[5]. This recovery of the "eternal landscape of the past" was never complete, however, and often sacrificed the memory of a societal majority for the remembrance of its most important members. With the fear that the commemoration of their accomplishments and travails might eventually fade before the march of time "as hail or snow melts in the waters of a swift river," urban institutions, nobles, and great churchmen turned to the technology of writing to record past events[6]. In both the rebirth of history writing and the documentation of the very stuff of everyday life, whether economic, fiscal, or social, this new graphic regime seemed to carry all before it[7]. Because the past could be "silenced" or manipulated by those who wielded the pen, a great battle between the written word and oral tradition was joined and re-joined throughout the medieval centuries. The two forms had no trust in each other, writing often being viewed by its opponent as little better than forgery and orality, a set of imprecise remembrances only

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[3]Mary CARRUTHERS, *The Book of Memory: A Study of Memory in Medieval Culture*, Cambridge, 1991, pp. 192-93; Brian STOCK, *Augustine the Reader: Meditation, Self-Knowledge, and the Ethics of Interpretation*, Cambridge, Mass., 1996, pp. 12-14; Ivan ILLICH, *In the Vineyard of the Text: A Commentary to Hugh's Didascalion*, Chicago, 1993, pp. 38-42.

[4]Frances A. YATES, *The Art of Memory*, London, 1966, pp. 63-65, 72-104, 166; CARRUTHERS, *Book of Memory*, pp. 71-78; Jonathan D. SPENCE, *The Memory Palace of Matteo Ricci*, London, 1985, pp. 5-6, 8-9, 14-16.

[5]Patrick J. GEARY, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium*, Princeton, N.J., 1994, pp. 48-80; Karl J. LEYSER, *Ritual, Ceremony and Gesture: Ottonian Germany*, in *Communications and Power in Medieval Europe: The Carolingian and Ottonian Centuries*, London, 1994, pp. 189-213; Jacques LE GOFF, *Le roi dans l'Occident médiéval*, in *Kings and Kingship in Medieval Europe*, ed. Anne J. DUGGAN, London, 1993, pp. 8-12; David A. WARNER, *Ritual and Memory in the Ottonian Reich: The Ceremony of Adventus*, "Speculum", 76 (2001), pp. 258-59.

[6]Ordericus VITALIS, *The Ecclesiatical History of Ordericus Vitalis*, ed. and trans. Marjorie Chibnall, 6 vols. Oxford, 1969-1980, III, p. 284; VI, p. 9; M.T. CLANCY, *From Memory to Written Record: England 1066-1307*, Oxford, 1995, p. 146.

[7]Harvey J. GRAFF, *The Legacies of Literacy: Continuities and Contradictions in Western Culture and Society*, Bloomington, Ind., 1987, pp. 34-73; Rosamond MCKITTERICK, *The Carolingians and the Written Word*, Cambridge, 1990, pp. 23-75; CLANCHY, *Memory*, 45-135; GEARY, *Phantoms*, pp. 81-106.

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a step from senility[8]. This fractured view of the past was put to its more severe test within the realm of law when litigants, judges, or juries sought to establish from written records and human memory past truth "beyond a reasonable doubt"[9]. A prime tool for the transformation of memory into acceptable proof was the inquest or inquisition.

This paper will concentrate on the inquisition, a legal procedure of ferreting out past evidence and transforming it into proof. Though a common form in both civil and canon law throughout Europe, I will focus on the inquisitorial practice of the high Middle Ages in the Iberian Peninsula, especially within the Crown of Aragon, a set of distinct realms unified superficially by their allegiance to the same "lordly federative kingship"[10]. By reviewing the statutory database and determining how these laws effected investigations and final verdicts, I will show how the judicial determination of past truth in the Crown of Aragon came into being, how it transcended the often-artificial categories of civil, canon, and territorial law, and how it both interfered with and advanced the crown's drive for expanded power.

## I

Though "inquisition" (*inquisitio*) has long been associated with papal and Spanish efforts to destroy religious and social heterodoxy no matter the

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[8]Janet L. NELSON, *Dispute Settlement in Carolingian West Francia*, in *The Settlement of Disputes in Early Medieval Europe*, ed. Wendy DAVIES and Paul FOURACRE, 1986; reprint, Cambridge, 1992, pp. 58-59; Wendy DAVIES, *People and Places in Dispute in Ninth-Century Brittany*, *Settlement*, pp. 74-75; Chris WICKHAM, *Land Disputes and their Social Framework in Lombard-Carolingian Italy, 700-900*, *Settlement*, p. 115; GEARY, *Phantoms*, pp. 107-14; Matthew INNES, *Memory, Orality, and Literacy in an Early Medieval Society*, "Past and Present", 158 (1998), pp. 3-36; Julia M.H. SMITH, *Oral and Written: Saints, Miracles, and Relics in Brittany, c. 850-1250*, "Speculum", 65 (1990), pp. 309-43; Huw PRYCE, *Lawbooks and Literacy in Medieval Wales*, "Speculum", 75 (2000), pp. 29-67; Ruth FINNEGAN, *Literacy and Orality: Studies in the Technology of Communication*, Oxford, 1988. For medieval forgery, see CLANCHY, *Memory*, pp. 148-49, 318-26.

[9]G.C.J.J. VAN DEN BERGH, *The Concept of Folk Law in Historical Context: A Brief Outline*, in *Folk Law: Essays in the Theory and Practice of Lex Non Scripta*, ed. Alison DUNDES RENTELN and Alan DUNDES, 2 vols., Madison, Wisc.1994, pp. 10-11; James A. BRUNDAGE, *Medieval Canon Law*, London, 1995, pp. 93-95, 132.

[10]Thomas N. BISSON, *Statebuilding in the Medieval Crown of Aragon*, in "XV Congreso de Historia de la Corona de Aragón" ("El poder real en la Corona de Aragón (Siglos XIV-XVI)", 5 vols., Zaragoza, 1993), *Ponencias*, p. 147.

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cost in human cruelty[11], the term itself had a long history that predated Christianity and stretched back to ancient Rome. In the records of the early Republic, *inquirere*, with the essential meaning "to search," was largely synonymous with *investigare* "to judicially investigate" and *cognoscere* "to become acquainted with"[12]. Initially, these terms referred to investigative activities a litigant could engage in to strengthen his case. Even during the late Republic, both consuls and their deputies as well as military commanders rendered justice "after looking into the case" (*causa cognita, inquisita*)[13]. While normally tied to individual suits, these official investigations occasionally arose in response to a general climate of wrongdoing[14]. With the rule of Augustus (31B.C.-14A.D.), more inquisitions were conducted by judicial officials who served the law than the disputants that stood before it. In Rome's imperial centuries, investigation of facts contested in litigation increasingly fell to judges and their subordinates[15]. Though much of Roman litigation was formulaic, in one type of tribunal, the "extraordinary investigation" (*cognitio extraordinaria*), judges gathered evidence through eyewitness or written testimony which was ranked according to its credibility[16].

With the vast devastation that accompanied the barbarian invasions, all phases of legal procedure in the western Empire underwent a drastic change. Shifting from the territorial focus of imperial law, barbarian codes had no sense of such general litigation. Instead, they conceived of not one law but many, each of which applied to different populations, even those living

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[11]The inhumanity of the Spanish Inquisition and the cruel record of Spanish colonization in the New World formed the two pillars of the "black legend". (*leyenda negra*) which posited the true barbarism of the Spanish nation. See, Philip W. POWELL, *Tree of Hate*, New York, 1971; Julian MARIAS, *Understanding Spain*, trans. Frances M. López-Morillas, Ann Arbor, Mich., 1992, pp. 205-16; Henry KAMEN, *The Spanish Inquisition*, New York, 1965, pp. 283-300; William S. MALTBY, *The Black Legend in England: The Development of Anti-Spanish Sentiment, 1558-1660*, Durham, N.C., 1971, pp. 31-33, 38-40.

[12]For various meanings and uses in classical literature, see *Oxford Latin Dictionary*, ed. P.G.W. GLARE, 1982; reprint, Oxford, 1988, p. 919.

[13]TITUS LIVY, *Ab urbe condita*, ed. Stephen KEYMER JOHNSON and Robert SEYMOUR CONWAY, 6 vols. 1935; reprint, Oxford, 1964, 4: XXVI, 48:8-9; JULIUS CAESAR, *The Civil War*, trans. Jane F. GARDNER, London, 1976, p. 79 (1.87.5).

[14]MARCUS TULLIUS CICERO, *Against Verres* in *Selected Works*, trans. Michael GRANT, 1960; reprint, Baltimore, Md., 1965, p. 39 (I.97;II.138).

[15]H.F. JOLOWICZ, *Historical Introduction to the Study of Roman Law*, Cambridge, 1967, pp. 370-71, 407-8; Edward PETERS, *Inquisition*, Berkeley, 1989, pp. 12-17.

[16]JOLOWICZ, *Historical Introduction*, p. 406; O.F. ROBINSON, *The Sources of Roman Law: Problems and Methods for Ancient Historians*, London, 1997, p. 94.

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side by side[17]. From this legal kaleidoscope, the concept of proof and how it was determined necessarily changed.

Though the Roman methods of inquisition remained in faint outline in Visigothic and Frankish kingdoms, they escaped the full control of judges and could again be utilized by litigants[18]. The search for evidence concerning the particulars of both criminal and civil cases was increasingly subsumed by the disparate class structures of society or the final intervention of God. Accusations of violent acts committed by one individual against another were settled not by the law, but personally through feud or the more sensible "blood money" (*wergeld*). In this latter form, the offender paid a sum determined by his status and that of his victim to the eldest member of his enemy's family[19].

In this purchased peace, proof was largely irrelevant. When some level of certitude was required from early medieval law as in boundary or commercial disputes, however, litigants turned to Holy Writ, each lining up a small troop of witnesses to swear to the truth of his claim[20]. Since the effectiveness of this process often relied on the relative status of the testators, it could easily descend into further rounds of disagreement and violence[21]. Largely viewing legal proof as unattainable, litigants across western Europe turned to the ultimate judge for resolution of their differences. Whether utilizing the more passive forms of God-proof (the "ordeal" (*ordalium*) or attempting to shape divine justice through the more pro-active "wager by battle" (*batalla, duellum*), courts and those who stood before them increa-

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[17]S.L. GUTERMAN, *From Personal to Territorial Law*, Metuchen, N.J., 1972, pp. 1-34; Norman ZACOUR, *An Introduction to Medieval Institutions*, New York, 1976, pp. 122-127.

[18]*Leges Visigothorum. Monumenta Germaniae Historica. Legum: sectio I*, ed. Karl ZEUMER, Hanover, 1902, p. 222 (V, 4, 14), p. 280 (VI, 5, 14); Edward PETERS, *Inquisition*, Berkeley, 1989, pp. 34-35; François Louis GANSHOF, *Frankish Institutions under Charlemagne*, trans. Bryce and Mary Lyon, New York, 1968.

[19]*The Lombard Laws,* trans. Katherine FISCHER DREW, Philadelphia, 1973, pp. 60-72 (arts. 43-137); *Laws of the Alamans and Bavarians*, trans. Theodore John RIVERS, Philadelphia, 1977, pp. 50-51, 54-55 (XIV:5; XV, XXVIII:1-2; XXIX:1; XXXIX:2); *The Usatges of Barcelona: The Fundamental Law of Catalonia*, trans. Donald J. KAGAY, Philadelphia, 1994, pp. 67-69 (arts. 13-19); Harold J. BERMAN, *Law and Revolution: The Formation of the Western Legal Tradition*, Cambridge, Mass., 1983, p. 50.

[20]Henry Charles LEA, *The Duel and the Oath*, ed. Edward PETERS, 1866; reprint, Philadephia, 1974, pp. 21-94; BERMAN, *Law*, pp. 58-61.

[21]BERMAN, *Law*, pp. 309-10; Donald J. KAGAY, *Violence Management in the Twelfth-Century Crown of Aragon*, In *Marginated Groups in Spanish and Portuguese History*, ed. William D. PHILLIPS, Jr. and Carla Rahn Phillips. (Minneapolis, 1990), pp. 11-21.

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singly looked on law as a process that only the hand of God could safely guide.[22] The almost sacramental appeal of the various forms of God-proof for litigants was not broken even after both church and state turned against them in the thirteenth century[23]. One of them, the duel, was revived and then transmogrified by association with the strong social and literary magnetism of chivalry[24]. The strong attraction of the duel continued in eastern Spain, even after more than one sovereign passed laws that equated killing an adversary in *batalla* with homicide[25].

## II

The cause of the legal paradigm shift away from God-proof was the widening influence of Roman and canon law, which from the twelfth century had redefined the understanding of evidence and the proof constructed from it. Canon law constituted one bridge over which inquisitorial practice passed from imperial to medieval law. With God-proof on the wane, a new, more reliable means of garnering evidence emerged with the *inquisitio*. Not requiring a direct accuser for activation, this form, normally the purview of the local bishop, could be brought to bear by a well-grounded suspicion (*mala fama*) of wrongdoing. Even when crimes were committed secretly, such investigations could go about their work in bringing to light new evidence, and this might establish the accusation and conviction of hitherto-unknown

[22]LEA, *Duel and Oath*, pp. 107-99; IDEM, *The Ordeal*, 1866; reprint, Philadelphia, 1973; Donald J. KAGAY, *The Iberian Diffidamentum: From Vassalic Defiance to the Code Duello*, in *The Final Argument: The Imprint of Violence on Society in Medieval and Early Modern Europe*, ed. Donald J. KAGAY and L.J. Andrew VILLALON, Woodbridge, Suffolk, 1998), pp. 76-77; Robert BARTLETT, *Trial by Fire and Water: The Medieval Judicial Ordeal*, Oxford, 1986; BERMAN, *Law*, 60-61.

[23]KAGAY, *Iberian Diffidamentum*, p. 77; LEA, *Ordeal*, pp. 175-82; IDEM, *Duel and Oath*, pp. 199-247.

[24]François BILLACOIS, *The Duel: Its Rise and Fall in Early Modern Europe*, ed. Trista SELOUS, New Haven, Conn., 1990, pp. 16-17; Kevin MCALEER, *Dueling: The Cult of Honor in Fin-de-Siècle Germany*, Princeton, N.J., 1994, pp. 12-18; Maurice KEEN, *Chivalry*, New Haven, Conn., 1984, pp. 203-4, 208.

[25]JOHANNES DE SOCARRATS, *Tractatus Petri Alberti canonici barchinonensis de consuetudines Cataloniae inter dominos et vassalos ac nonnullis aliis que commemorationes Petri Alberti appellantur*, Barcelona, 1551, p. 483 (law 46).

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culprits[26]. With the growing identification of justice with the prosecuting power posited by such original scholars of the thirteenth century as William of Ockham, Jacques de Revigny, and Pere Albert, it it remarkable that in the realm of the ecclesiastical inquisition, suspects could not be charged without a concomitance of telling evidence, nor forced to undergo a second trial if unconvicted in a first[27].

Along with its ecclesiastical well-spring, the inquisition, especially within the territories of the Carolingian empire, can be traced back to the Frankish inquest. Unlike the largely feudal regime of compurgation, in which vassals swore in support of their lord and not about what they knew of his case[28], the civil inquisition developed under Charlemagne to solve crimes with no obvious perpetrators. To seek such miscreants and find sufficient evidence to convict them, the Frankish emperor charged his extraordinary officials (*missi dominici*) and county courts (*malli*) with the collection of all pertinent testimony[29]. Even with the fall of the Carolingian *dominium* in the tenth century, rulers from England to the Iberian Peninsula retained the inquisition both because of the effectiveness and support it lent to monarchies just beginning to see the far limits of their own power[30]. Besides the crown, individual litigants and town councils utilized this investigative tool to illuminate past events touching on both criminal and civil cases. With it, all inquisitors could establish various levels of certitude which could be arranged to support a claim of either guilt or innocence[31]. Since God was no longer directly involved in bringing litigation to a successful end, man now had to

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[26]BRUNDAGE, *Medieval Canon Law*, pp. 93-95; R.H. HELMHOLTZ, *The Spirit of Classical Canon Law*, Athens, Ga., 1996, pp. 114-5, 295-96.

[27]HELMHOLTZ, *Spirit*, p. 294; Brian TIERNEY, *The Idea of Natural Rights, Natural Law and Church Law 1150-1625*, Atlanta, Ga., 1996, pp. 29-30; Kenneth PENNINGTON, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition*, Berkeley, 1993, pp. 90-118; Donald J. KAGAY, *The King's Right Must Be Preferred to the Lord=s: Sovereignty and Suzerainty in the Treatises of Pere Albert*, "Proceedings, 10th International Congress of Medieval Canon Law", Forthcoming; *The Customs of Catalonia between Lord's and Vassals by the Barcelona Canon, Pere Albert: A Practical Guide to Castle Feudalism in Medieval Spain*, trnas. Donald J, KAGAY (Tempe, Ariz., 2002), pp. 38-39 (art. 38).

[28]BERMAN, *Law*, pp. 58, 65-66; LEA, *Duel and Oath*, pp. 33-66.

[29]GANSHOF, *Frankish Institutions*, pp. 82, 91-92.

[30]*Customs of Catalonia*, XVII-XXII; Donald J. KAGAY, *Rule and Mis-Rule in Medieval Iberia*, "Journal of the Georgia Association of Historians", 21 (2000), pp. 53-54; Bryce LYON, *A Constitutional and Legal History of Medieval England* New York, 1960, p. 183.

[31]BRUNDAGE, *Medieval Canon Law*, pp. 94-96; HELMHOLTZ, *Spirit*, p. 295; BERMAN, *Law*, pp. 448-51.

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find ways of assessing the features of a deceased past. This was rendered doubly difficult since, as one Spanish king put it, "antiquity ... makes men forget past events"[32].

The medieval inquisition in all of its many forms remained simply one stage in a set of legal proceedings which harkened back to the courtroom and administrative practices of Imperial Rome, while incorporating the common law norms of the region it served[33]. Though judges could be clerical or lay, they had to be of good character and "learned in law". Litigants could argue their own cases or employ advocates to do so. The specific rules of the case were set by the presiding judge, but an emerging procedural canon directed his orchestration of the suit. Legal decisions took place within the framework of written Roman law and the customary law of the region. The plaintiff and defendant largely eschewed emotional presentations of their cases, and instead attempted to win legal points by the logical character of their arguments. To see that his courtroom functioned properly, the judge relied on the "bailiff" (*sagio*, *sayon*) to keep peace while the trial unfolded, and then to see that sentences were accurately carried out. Judges, either individually or in panels, rendered the final verdict, also called a "definitive sentence" (*sentencia definitiva*). Litigants could normally appeal such decisions and the sovereign had the clear right of abrogating them[34].

The acquisition of evidence was at the heart of every trial, and, as such, had to be completed (at least in theory) before the legal proceedings began. Individual litigants or their agents could conduct such research which was necessarily limited by the focus of the case. The inquisition had far greater influence on a public level when judges and other royal officials investigated the long-forgotten background of civil disputes or the particulars of unsolved crimes. How these fact-finding procedures operated varied somewhat from region to region, but their general aim was the gathering of truthful information. This evidence consisted of sworn witness deputations,

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[32]ALFONSO X, *Las Siete Partidas*, trans. Samuel Parsons Scott, ed. Robert I. BURNS, S.J. (5 vols., Philadelphia, 2001), vol. 3, p. 692 (Part. III, tit. XVIII).

[33]BERMAN, *Law*, pp. 250-53, 469-70; HELMHOLZ, *Spirit*, pp. 292-93; A.H.M. JONES, *The Later Roman Empire, 284-601* (2 vols., Norman, Okla., 1964), vol. 1, pp. 578-62; *The Oxford Classical Dictionary*, ed. Simon HORNBLOWER and Anthony SPAWFORTH, Oxford, 1986, p. 39.

[34]*Siete Partidas*, ed. BURNS, 3, pp. XI-XVIII; Marta MADERO, *Formas de justicia en la obra jurídica de Alfonso X el Sabio*, "Hispania", 56 (1996), pp. 447-66; Antonio AUNÓS PÉREZ, *El Derecho catalán en el siglo XIII*, Barcelona, 1926, pp. 169-190.

documents of different types, and even facts revealed under torture[35]. The true weakness of such operations was their open-endedness. They often failed to discern prejudicial testimony and at times accepted hearsay as acceptable evidence[36].

## III

Children of Visigothic and Roman parents, the codes and evolving legal systems of the realms of Christian Iberia came into being in an atmosphere of slavish imitation and judicial cross-pollination, a process Burns characterizes as "convergence and symbiosis"[37]. Despite this unceasing interaction, Castilian law first emerged as the true judicial leader in the Peninsula, forming a model which Aragonese and Catalan systems largely followed[38]. This was surely due to the influence of the great Castilian lawgiver, Alfonso X (1252-1282) and his masterwork, the *Siete Partidas*[39]. In the third section of this great work, Alfonso, or more properly the legists who worked for him, outlined how the inquistion or *pesquisa* should be carried

[35]PETERS, *Inquisition*, p. 65; Bernard HAMILTON, *The Medieval Inquisition*, New York, 1981), pp. 46-47; Henry Charles LEA, *The Inquisition of the Middle Ages: Its Organization and Operation*, 1954; reprint, New York, 1963, pp. 115-24.

[36]AUNÓS PÉREZ, *Derecho*, pp. 192-194.

[37]Robert I. BURNS S.J., *Canon Law and the Reconquista: Convergence and Symbiosis in the Kingdom of Valencia under Jaume the Conqueror (1213-1276)*, in "Proceedings of the Fifth International Congress of Medieval Canon Law", ed. Stephan KUTTNER and Kenneth PENNINGTON, Vatican City, 1980, pp. 387-424. For Visisgothic and Roman influences on Iberian law, see A.H.M. JONES, *Studies in Roman Government and Law*, Oxford, 1960, pp. 101-103; Leonard A. CURCHIN, *Roman Spain: Conquest and Assimilation*, London, 1991, pp. 66-69; P.D. KING, *Law and Society in the Visisgothic Kingdom*, Cambridge, 1972, chap. 2.

[38]*Usatges*, trans. KAGAY, p. 49; Ramon D'ABADAL I DE VINYALS, *Les "Partidas" y Catalunya*, "Estudis Universitaris Catalans", 6 (1912), p. 301; José María FONT RIUS, *El desarrollo general del derecho en los territorios de la Corona de Aragón*, in "VII Congrés d'Història de la Corona d'Aragó" (3 vols., Barcelona, 1963-1964), vol. 1, p. 301.

[39]Joseph F. O'CALLAGHAN, *The Learned King: The Reign of Alfonso X of Castile*, Philadelphia, 1993, pp. 31-37, 136-37, 273-75; Jerry R. CRADDOCK, *The Legislative Works of Alfonso el Sabio*, in *Emperor of Culture: Alfonso X the Learned of Castile and his Thirteenth-Century Renaissance*, ed. Robert I. BURNS, S.J., Philadelphia, 1990, pp. 182-97; Robert A. MACDONALD, *Law and Politics: Alfonso's Program of Political Reform*, in *The Worlds of Alfonso the Learned and James the Conqueror: Intellect and Force in the Middle Ages*, ed. Robert I. BURNS, S.J., Princeton, N.J.,1985, pp. 150-202.

out[40]. It was generally used to investigate "evil deeds committed secretly" ranging from murder to arson to rape[41]. The king could chose "examiners" (*pesquisadores*) from any class, but he normally turned to townsmen or clerics for this work. The only qualifications the Castilian king insisted on in regard to these men was that they "fear God, ... [be] of good reputation, promote the welfare of the people, and not be quarrelsome"[42]. To avoid jurisdictional questions, Alfonso largely forbade clerical examiners from participating in cases involving laymen and vice versa[43]. Since the inquisitor was paid by the crown, his status and power reflected on that of the royal estate; therefore whoever insulted or attacked a *pesquisador*, diminished the king's authority and the viability of his government[44]. Because of the crucial importance of the inquisition to subsequent legal proceedings, Alfonso adamantly attempted to prevent dishonest or prejudiced examiners from holding office. Those responsible for such nefarious acts would ultimately have to answer to "God, the king, and the party against whom the false investigation had been conducted"[45]. The immediate result of the Castilian *pesquisa* was information, theoretically unfettered by prejudice or favoritism, which was gathered from the population of the effected locale and then utilized to render justice[46].

In the Crown of Aragon, composed of Aragon, Catalonia, Valencia, the Balearics, and a number of Pyrenean holdings[47], several strains of law

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[40]For general discussion of Castilian *pesquisa*, see *Siete Partidas*, ed. BURNS, 3, pp. XVIII-XX; Joseph F. O'CALLAGHAN, *The Cortes of Castile-León 1188-1350*, Philadelphia, 1989, pp. 168-70; Evelyn S. PROCTER, *Curia and Cortes in León and Castile 1072-1295*, Cambridge, 1980, pp. 40-41, 245-46; IDEM, *The Judicial Use of "Pesquisa" in León and Castille, 1157-1369*, "English Historical Review", supplement 2 (London, 1966); Joaquín CERDÁ RUIZ-FUNES, *En torno a la pesquisa y procedimiento inquisitivo en Derecho castellano-leonés de la Edad Media*, "Anuario de Historia del Derecho Español" [AHDE], 32 (1962), pp. 483-517; Jerry R. CRADDOCK, *La pesquisa en Castilla y Aragón: un caso curioso del "Libre dels feyts" de Jaume I*, "Anuario de Estudios Medievales" [AEM] 27 (1997), pp. 370-79.

[41]*Siete Partidas*, ed. Burns, 3:685-87 (Part.III, tit. XVII, laws I-III).

[42]*Ibid.*, 3, p. 687 (Part. III, tit. XVII, law IV).

[43]*Ibidem.*

[44]*Ibid.*, 3:688-89 (Part. III, tit. XVII, laws VII-VIII).

[45]*Ibidem.*, 3, pp. 690-91 (Part. III, tit. XVII, laws XI-XII).

[46]*Ibid.*, 3, XVII-XVIII; PROCTER, *Curia and Cortes*, pp. 69, 90.

[47]For good description of this strange political conglomeration, see Thomas N. BISSON, *Prelude to Power: Kingship and Constitution in the Realms of Aragon*, pp. 1175-1250, *Worlds*, pp. 25-26; Jesus LALINDE ABADÍA, *La gobernación general en la Corona de Aragón*, Madrid, 1963, pp. 3-125; Robert I. BURNS, S.J. *Medieval Colonialism: Postcrusade Exploitation of Islamic Valencia*, Princeton, N.J., 1975, pp. 4-5; IDEM, *Society and Documentation in Crusader*

developed, which, though similar, self-consciously maintained their differences[48]. Unlike the Castilian *pesquisa*, the legal inquisition became part of eastern Spanish, territorial law only in Castile's closest neighbors, Aragon and Valencia, where the form was referred to as both *pesquisa* and *inquisitio*. In Catalonia, the inquisition was much more of an administrative than a purely legal tool. Royal officials, such as the *justicia*, *alcalde*, and *zalmedina* in Aragon and the *batles* and *veguer* in Catalonia and Valencia, could conduct both civil and criminal investigations. Though it often brought intense protest from the crown, clerical and monastic leaders could also activate inquisitions if their ecclesiastical colleagues or their vassals were accused of wrongdoing or were the victims of crime[49].

The uncertain existence of the legal inquisition somewhere between administrative usage and judicial theory is reflected in the fundamental law codes of Aragon, Catalonia, and Valencia which turned to the inquisition only in the last resort —if at all. Though God-proof still existed in the pages of these codes and in the action of the royal government[50], it was a slowly, replaced by the testimony of documents and witnesses. Judges increasingly relied on documents as the evidence on which they based their rulings. Since this type of proof could be forged, tribunals gave even more weight to witness testimony. Only credible Christians could swear to the truth of documents or to that of a litigant's case.. Excluded from this number were Jews, Muslims, and convicted felons (even if they happened to be Christians). A witness was to swear "according to his knowledge" with his hand on the Bible while standing on the front steps or altar of the local church. He was to conclude his testimony with a resounding "amen". If his testimony was necessary in a

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*Valencia*, vol. 1 of *Diplomatarium of the Crusader Kingdom of Valencia: The Registered Charters of its Conqueror, Jaume I, 1257-1276* (3 vols. to date, Princeton, N.J. 1985-), 3-8; David ABULAFIA, *A Mediterranean Emporium: The Catalan Kingdom of Majorca*, Cambridge, 1994.

[48] *Usatges*, trans. KAGAY, pp. 50-51; FONT RIUS, *Desarrollo*, 1, pp. 289-326; Jesus LALINDE ABADÍA, *Los fueros de Aragón*, Zaragoza, 1976.

[49] Luis GARCÍA DE VALDEAVELLANO Y ARCIMIS, *Curso de Historia de las Instituciones españolas de los origenes al final de la Edad Media*, Madrid, 1968, pp. 558-561; J. LEE SHNEIDMAN, *The Rise of the Aragonese-Catalan Empire 1200-1350* (2 vols., New York, 1970), vol. 1, pp. 109-210.

[50] José MARTÍNEZ GIJÓN, *La prueba judicial en el derecho territorial de Navarra y Aragón durante la Baja Edad Media*, "AHDE", 31 (1961), pp. 42-48; AUNÓS PEREZ, *Derecho*, p. 177; *Usatges*, trans. KAGAY, pp. 85-87; *Fori Antiqui Valentiae*, ed. Manuel DUALDE SERRANO, Madrid-Valencia, 1950-1967, pp. 270-73 (CXXXIII); ACA, Cancillería real, reg. 220, ff. 92r-v; *Colección de las Cortes de los antiguos reinos de Aragón y de Valencia y del principado de Cataluña* [*CAVC*], ed. Fidel FITA Y COLOMÉ and Bienvenido OLIVER Y ESTRELLER (27 vols. Madrid, 1896-1922), vol. 1, pt. 1, pp. 265-67 (arts. 22, 24-27).

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lawsuit, it had to be delivered personally in the presence of the defendant. To assure the validity of judicial evidence, eastern Spanish judges established a scale of believability for the evidence on which they based their verdicts. Most judgements were tied to the probative value of documents, but if these proved doubtful, witness testimony was relied on. If such testimony seemed suborned or otherwise prejudiced, the judges had no option but fall back on the simple oaths of the litigants which would then be validated by ordeal or battle[51]. Judges also had to turn to the legal inquisition, even while law codes were attempting to severely limit its use.

## IV

In theoretical terms, the most extensive discussion of the judicial inquisition occurs in Aragon's various medieval codes and jurisprudential treatises. In these works, a distinction is made between the *pesquisa* as an evidence-finding tool for individual litigants and a formal investigation by municipal or royal officials in both civil and criminal actions[52]. The second of these was considered the most invasive and, as such, the most dangerous. Despite this, Aragonese law warranted the use of the *pesquisa* when land or jurisdictional disputes flared between townsmen or among castle populations. Since these cases normally involved the pitting of one memory against that of another, local authorities would routinely turn them over to the "inquisition of wise men" who were charged with "seek[ing] out the truth". To carry out their duties, the *pesquisadores* were given the power to interrogate every member of the community they served. Failure to cooperate with the investigation cast suspicion on reluctant witnesses and could cost them a stiff fine[53]. In matters which touched on the public estate, such as homicide, counterfeiting, or the malfeasance of royal officials, "the king had to demand

[51] *El Fuero de Jaca*, ed. Mauricio MOHLO, Zaragoza, 1964, 53, 67, 122, 138, 174, 186-87, 202, 336, 445-46, 449-50, 453, 462-63 (arts. 54, 94, 122, 237, 256, 21, 17, 19, 53, 239, 243, 245-46, 249, 253, 271; *El Fuero Latino de* Teruel, ed. Jaime CARUANA GOMEZ DE BARREDA, Teruel, 1974, pp. 198-203 (arts. 237-46); *Usatges*, trans. KAGAY, p. 75 (arts. 46-49); AUNÓS PEREZ, *Derecho*, pp. 177-79; MARTÍNEZ GIJÓN, *Prueba*, pp. 28-39.

[52] MARTÍNEZ GIJÓN, *Prueba*, p. 42.

[53] *Ibidem*, 20, pp. 41-42; *Los Fueros de Aragón*, ed. G. TILANDER, London, 1937 (art. 4).

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the truth and a *pesquisa"*. This process was carried out by the sovereign himself, by royal officials, or by delegate judges[54].

In Valencia, a kingdom to the south of Aragon which was heavily influenced by its law[55] the legal inquisition was also extensively dealt with in traditional law. In the *Furs* (*Fori Antiqui Valentiae*), a code, in which "local experience and customs [were] given a Roman expression"[56] the *inquisitio* was permitted, but only in very limited conditions warranted by "Valencian custom"[57] For a long list of crimes which were often committed secretly, a court could move to use the inquisition to identify the perpetrator and gather evidence against him.[58] This could not be done in secret, however, and witnesses turned up in such investigations would have to swear to the truth of their testimony in the presence of the accused. If he believed that such witnesses were not "of good reputation...[and] were his enemies," or that the court itself was prejudiced against him, the accused could demand an inquisition against his accusers[59]. Valencian judges thus had to be careful in the use of these independent investigations and were strictly prohibited from ordering them in civil cases. The inquisition was also barred in monetary disputes, except those involving malfeasance[60]. Though not subject to constant frontal attack as in Aragon, the use of the Valencian inquisition would be increasingly restricted as the thirteenth century waned[61].

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[54]MARTÍNEZ GIJÓN, *Prueba*, pp. 40-41.

[55]Sylvia ROMEU ALFARO, *Los Fueros de Valencia y los Fueros de Aragón*, "AHDE", 42 (1972), pp. 75-114; Jesus LALINDE ABADÍA, *Los Fueros de Aragón*, Zaragoza, 1979, 75-79.

[56]BURNS, *Canon Law*, p. 413.

[57]*Fori*, p. 13 (art. 16).

[58]*Ibidem*, 11 (art. 7). The crimes mentioned are sodomy, theft, housebreaking, highway robbery, rape, destruction of crops, arson, counterfeiting, and *lèse majesté*.

[59]*Ibid.*, 13 (art. 16).

[60]*Ibid.*, 14-15 (art. 18).

[61]*Ibid.*, 13-14 (n. 19); Luis GONZALEZ ANTÓN, *Las uniones aragonesas y las cortes del reino (1283-1301)* (2 vols., Zaragoza, 1975), vol. 2, p. 25 (doc. 1, art. 17). In November, 1281, Pere II convoked an assembly at Valencia to revise the status of the kingdom's inquisitorial practices. This meeting confirmed the crown's duty to maintain its "peaceful and quiet realm" by investigating the "public offenses... [committed by] evil men". All crimes, except adultery, could be investigated in this way, but the testimony had to be written down and this transcript made available to the accused. Inquisitions were thus allowed in Valencia, but they could not be applied to "cold cases" or utilized in "fishing expeditions" to look into matters based on rumor. Even when properly used, the reach of the inquisition could not penetrate within the homes of Valencian nobles.

Despite this grudging acceptance of the inquisition on certain procedural levels, the general trend of the Valencian and Aragonese "judicial order was contrary to the *pesquisa*"[62]. Since it was seen as a tool of royal government using "new law" and its practitioners as attempting to expand royal power, there was a growing fear among many of the Crown of Aragon's baronies that the inquisition would undermine individual privileges[63]. As the Aragonese and Valencian society increasingly fell under the influence of baronial "brotherhoods" (*uniones*) during the last decades of Jaume's reign, the inquisition came under constant attack[64]. In their first real victory in attempting to hem in royal power, the *Fueros de Exea* in 1265, the Aragonese barons totally forbade the use of the *pesquisa* against any of their fellows[65]. During the reigns of Pere II (1276-1285) and Alfons II (1285-1292), the aristocratic rebellion, becoming institutionalized with the creation of the *Unión*, sought to re-define all aspects of royal government with the issuance of crucially-important laws for all the Crown of Aragon between 1283 and 1285[66].

The *Unión*'s hatred of the inquisition, which it viewed as a royal method of fabricating evidence and completely disregarding ancient privilege in the rendering of its verdicts, eventually caused the form's total ban within Aragon. With Pere II's reluctant promulgation of the *Privilegio General* in 1283, the triumphant Aragonese barony gained the total suppression of the

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[62] *Ibid.*, 40.

[63] *Customs of Catalonia*, XVII-XXII; BURNS, *Canon Law*, pp. 389-92. For opposition to Roman law and its advocates during Jaume I's reign, see *Documentos de Jaime I de Aragón* [*DJ*], ed. Ambrosio HUICI MIRANDA and María Desamparados CABANES PECOURT (5 vols., Valencia, 1976-1982), vol. 3, pp. 24-25 (doc. 563); Fernando VALLS TABERNER, *Los abogados en Cataluña durante la Edad Media*, in *Obras selectas* (4 vols., Madrid: 1954-1961), vol. 2, pp. 286-88; Donald J. KAGAY, *Structures of Baronial Dissent and Revolt under James I (1213-76)*, "Mediaevistik" 1 (1988), pp. 66-67.

[64] For the emergence of the *uniones*, see KAGAY, *Structures*, p. 69; Joseph F. O'CALLAGHAN, *Kings and Lords in Conflict in Late Thirteenth-Century Castile and Aragon*, in *Iberia and the Mediterranean World of the Middle Ages: Essays in Honor of Robert I. Burns, S.J.*, ed. P.E. CHEVEDDEN, D.J. KAGAY, P.G. PADILLA, and L.J. SIMON (2 vols., Leiden, 1996), vol. 2, pp. 125-28; GONZALEZ ANTON, vol. 1, pp. 20-23.

[65] José Luis LACRUZ BERDEJO, *Fueros de Aragón hasta 1265*, "Anuario de Derecho Aragonés", 2 (1945), pp. 359-60 art. 352); Carlos LÓPEZ Y HARO, *La constitución y libertades de Aragón* (Madrid, 1926), pp. 303-304; GONZÁLEZ ANTÓN, *Uniones*, vol. 1, p. 24

[66] For the great unionist privileges granted by Pere II in Catalonia, Valencia, and Aragon during this period, see Donald J. KAGAY, *The Development of the Cortes in the Crown of Aragon, 1064-1327*, (Ph.D. diss., Fordham University, 1981), pp. 164-92; Esteban SARASA SÁNCHEZ, *El privilegio general de Aragón: La defensa de las libertades aragonesas en la Edad Media*, Zaragoza, 1984; LALINDE ABADÍA, *Fueros*, pp. 69-75.

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*pesquisa* "against anyone in any suit" and the immediate nullification of any royal verdict based on evidence gathered from inquisitions[67]. Even with the accession of a new king, Alfons II in 1285, the rebellious nobility continued their reshaping of the Aragonese judiciary. In the *Privilegio de la Unión* of 1287, they proclaimed that all trials in Aragon had to be conducted by the *Justicia Mayor* or one of the local justices according to proper legal custom or *fuero*. No execution could be carried out against any Aragonese resident, unless he had received his day in court and had been proved guilty. Though the 1287 laws did not mention the inquisition, they define a fair trial as one conducted in accordance with foral and not Roman legal standards[68].

With the ascent to the throne of Jaume II (1291-1327), the *Unión* encountered a crafty negotiator who, as ruler of Sicily from 1285-1291, had been indoctrinated in a tradition of strong royal sovereignty advanced by Frederick II (1212-1250)[69]. Soon realizing he could not openly challenge the unionists, Jaume proceeded to both enact laws which effectively chipped away at the great privileges of the last decade and intelligently turned these privileges against their creators. In a "general court" (*curia generalis*) at Zaragoza in late summer of 1300, the king addressed the crucial issue of testimony without tying it to the *pesquisa*. Because evidence given by witnesses was so important, he allowed judges the right to determine the character of those giving testimony by inquiring into their past lives from their neighbors[70]. Though still formally banned, the spirit of the inquisition again lived in the Aragonese judiciary. Even with this understated victory, the king

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[67]Real Academia de la Historia [RAH], Colección Salazar, Ms 139: Anales de Aragón, f. 8v; González Antán, *Uniones*, vol. 2, p. 15 (art. 2); *Privilegio General*, pp. 64, 82; Jesús LALINDE ABADÍA, *Inquisición (pesquisa)*, in *Gran enciclopedia aragonesa*, 7, 1823-1824.

[68]RAH, Ms. 139, 101v-102v; ACA, Cancillería real, R. 75, ff. 43v-44; GONZÁLEZ ANTÓN, *Uniones*, vol. 2, pp. 246-247, 340 (docs. 95, 198); Vicente de la FUENTE, *Estudios críticos sobre la historia y el derecho de Aragón* (4 vols.), Madrid, 1942, vol. 3, p. 124. For the *Justicia Mayor* who was established in 1265 as a "middling judge" between the crown and the Aragonese nobility, see Julian RIBERA, *Orígenes del justicia mayor de Aragón*, Zaragoza, 1897; Andrés GÍMENEZ SOLER, *El justicia de Aragón ¿es de origen musulmana?*, "Revista de Archivos, Bibliotecas y Museos", 5 (1901), pp. 201-206; O'CALLAGHAN, *Kings*, pp. 126-27.

[69]*The Chronicle of San Juan de la Peña: A Fourteenth-Century Official History of the Crown of Aragon*, trans. Lynn H. NELSON, Philadelphia, 1991, p. 88 (chap. 38); David ABULAFIA, *Frederick II: A Medieval Emperor*, London, 1988, pp. 206-213; IDEM, *The Western Mediterranean Kingdoms 1200-1500: The Struggle for Dominion*, London, 1997, p. 115.

[70]*Fueros, Observancias, Actos de Corte, Usos, Costumbres del Reino de Aragón*, ed. Luis PARRAL Y CRISTOBAL (2 vols., Zaragoza, 1907), vol. 2, p. 59 (art. 32); Luis González Antón, *Las Cortes de Aragón*, Zaragoza, 1978, pp. 85-86; Esteban SARASA SÁNCHEZ, *Las cortes de Aragón en la Edad Media*, Zaragoza, 1979, pp. 39-40.

found that the inquisition was not always necessary to advance his judicial power. In an assembly of August, 1301 at Zaragoza, he found many of the Aragonese great lords in violation of the unionist laws and saw them convicted by the *Justicia Mayor*[71]. Despite this stunning setback, the *Unión* was far from beaten as Jaume would discover in 1325 when he met the Aragonese again at Zaragoza. Economically overextended because of a proposed invasion of Sardinia[72], the king had no choice but to give the Aragonese what amounted to a re-affirmation of the *Privilegio General*. The resulting *Declaratio* clearly restated royal allegiance to unionist law. The *pesquisa* was again formally outlawed except in the case of counterfeiting. If two witnesses accused a person of this crime which was tantamount to *lèse majesté*, royal officials could utilize the inquisition, but only if the forgers were not Aragonese. Otherwise, evidence gathered from such an investigation was unadmissable[73].

Despite the *Unión*'s effective removal of inquisitorial practices from Aragon's legal regime, the *pesquisa* would eventually outlast its old enemy. In 1390, after several decades of dissatisfaction with the government of Pere III (1336-1387), a general parliament (*corts general*) assembled at Monzón and proposed the use of the inquisition to set the reign of Pere's son and heir, Joan I (1387-1396), on firm judicial footing[74]. The Aragonese delegates at this assembly attempted to accomplish this aim by more closely regulating the greatest judicial officer of their land, the *Justicia Mayor* of Aragon. Though born from the great struggle of the Aragonese barony and their sovereigns in the late thirteenth and fourteenth centuries, the *Justicia* had moved away from his position as a "middling judge" between king and nobility toward greater accommodation with the crown. To reestablish control over this functionary, the Aragonese at Monzón turned to the inquisitorial format. They appointed one "inquisitor" from each of the parliamentary estates (upper and lower nobility, clergy, and townsmen) and charged these four men with investigating accusations that the *Justicia* was guilty of corruption or unfair practice in his

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[71]Donald J. KAGAY, *Rebellion on Trial: The Aragonese Union and its Uneasy Connection to Royal Law 1265-1301*, "Journal of Legal History", 18 (1997), pp. 30-43.

[72]ABULAFIA, *Western Mediterranean Kingdoms*, pp. 123-128.

[73]RAH, Ms. A-2, ff. 254v-57; *Fueros*, ed. PARRAL Y CRISTOBAL, vol. 2, pp. 44-46.

[74]For full records of the Monzón assembly, see Arxiu de la Corona d'Aragó [ACA], Real Cancillería, Procesos de Cortes, nos. 10, 10bis; Generalidad de Cataluña, Procesos de Cortes, nos. 958-59. Santiago SOBREQUÉS I VIDAL, *La nobleza catalana en el siglo XIV*, "Anuario de Estudios Medievales", 8 (1972-1973), p. 524; José María LACARRA, *Las Cortes de Aragón y de Navarra en el siglo XIV*, "Anuario de Estudios Medievales", 8 (1972-1973), p. 648.

judicial rulings[75]. It is not clear if this form of oversight survived Joan's reign into the Trastámara rule of the fifteenth century, but it does highlight how politically powerful the long-spurned judicial inquisition could be.

## V

Despite this fairly-late inclusion of the inquisition in the parliament's institutional arsenal, the form remained an extremely adaptable tool for both the crown and many of the jurisdictions that existed below it. Whether conducted by churchmen, townsmen, or royal officials, the *inquisitio* was officially motivated by the same aim: "to diligently and faithfully investigate and inquire after the truth"[76]. Even with this guiding principle, inquisitions in the Crown of Aragon were almost always complicated by jurisdictional strife within the church, between clerics and laymen, and between the crown's officials and its subjects. The archepiscopal see and town of Tarragona is a good example of this welter of claim and counterclaim. Utterly destroyed in 714 during the Islamic invasion, the site was deserted until the eleventh century when it was established as the principal ecclesiastical see in eastern Spain[77]. Within a very short time, however, this "place of horror and vast solitude" was converted into a populated center, whose political and fiscal jurisdictional base was steadily divided between the archbishop, a Norman clan, the count of Barcelona, and a town council[78]. With this subdivision of local power an established fact by the thirteenth century, few legal inquisi-

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[75]VALDEAVELLANO Y ARCIMIS, *Curso*, pp. 377-78.

[76]ACA, Cancillería real, reg. 10, f. 7v; *Diplomatarium*, ed. BURNS, 2, pp. 14-15 (doc 10ª).

[77]Lawrence J. MCCRANK, *The Foundation of the Confraternity of Tarragona by Archbishop Oleguer Bonestruga, 1126-1129*, in *Medieval Frontier History in New Catalonia*, Aldershot, 1996, pp. 159-160 (study III); Marcelin DEFOURNEAUX, *Les français en Espagne aux XI^e*, Paris, 1949, p. 224; *Liber Feudorum Maior: Cartulario real que es conserva en el Archivo de la Corona de Aragón*, ed. Francisco MIQUEL ROSELL (2 vols., Barcelona, 1945), vol. 1, p. XXIII.

[78]Lawrence J. MCCRANK, *Norman Intervention in the Catalan Reconquest: Robert Burdet and the Principality of Tarragona, 1129-1155*, "Journal of Medieval History", 7/1 (1980), pp. 67-82; *Marca hispanica sive limes hispanicus, hoc est, geographica et historica Cataloniae, Ruscinonis, et circumiacientium populorum*, comp. Pierre de MARCA, ed. Étienne BALUZE (1688; reprint, Barcelona, 1972), 1316 (docs. 421, 425); Emilio MORERA Y LLAURADÓ, *Tarragona cristiana: Historia del arzobispado de Tarragona* (4 vols., Tarragona, 1894), vol. 1, pp. 458-68; Joseph F. O'CALLAGHAN, *Reconquest and Crusade in Medieval Spain*, Philadelphia, 2003, pp. 31-32.

tions, whether taking place in city, village, or countryside, could be conducted without stirring up long-simmering jurisdictional disputes.

The lingering confusion over who ultimately controlled the use of the *inquisitio* motivated the attempts of eastern Spanish sovereigns throughout the fourteenth century to bring some sense of order to a situation badly muddled by clerical and feudal rivalries[79]. Despite the ties of allegiance that prompted churchmen to investigate crimes against their lay vassals, the king repeatedly disallowed such clerical inquisitions. Time and again, he was forced to remind his officials that, despite clerical lordship over a village or town, legal offenses against the site's lay population had to be investigated by the crown. A lay victim required a lay inquisitor for, in this case, the ultimate jurisdiction "pertains to us [the king] and not to them [the clergy]"[80]. This same argument was used to replace clerical with lay inquisitors, even when the churchmen thought a layman had committed a particularly heinous crime that posed a clear danger to society at large. Such was the case in 1314 when the bishop of Lérida initiated an inquisition against a royal troubadour for the unspeakable "sin of sodomy"[81]. For Aragonese kings, then, the issue was not the nature of the crime, but the social rank of the person who was charged.

Despite the attempts by eastern Spanish rulers to firmly separate the ambit of clerical and ecclesiastical inquisitions, the Christian societies carved out from Muslim *Hispania* seldom managed such a logical division between the legal affairs of church and state. One of the great reconquest warriors of the thirteenth century, Jaume I (1213-1276), accepted the hybrid nature of law in his realms, while acting to modernize it by upgrading custom and issuing new codes[82].

Jaume's judicial flexibility was especially apparent in the investigation of crimes in which laymen and clerics were involved. How the king guided his law through this hodgepodge of jurisdictions was especially apparent in

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[79]For the unique feudal Asystem of eastern Spain, see *Usatges*, trans. KAGAY, pp. 11-17; *Customs of Catalonia*, pp. XXIV-XLIV; Thomas N. BISSON, *The Problem of Feudal Monarchy: Aragon, Catalonia, and France*, "Speculum", 53 (1978), pp. 460-78.

[80]ACA, Cancillería real, reg. 249, f. 194v; *Documenta selecta mutuas civitatis Arago-Cathalaunicae et ecclesiae relationes illustrantia* [*DS*], Barcelona, 1936, pp. 322-23 (doc. 444).

[81]ACA, Cancillería real, reg. 241, f. 121v; *DS*, 146 (doc. 216). For contemporary understanding of sodomy and legal proceedings concerning it, see, see *Siete Partidas*, ed. BURNS, vol. 5, pp. 1427-28 (Part. VII, tit. XXI, l. 1-2); Michael GOODICH, *The Unmentionable Vice: Homosexuality in the Later Medieval Period*, Santa Barbara, Ca., 1979, pp. 89-124; Mary Elizabeth PERRY, *Gender and Disorder in Early Modern Seville*, Princeton, NJ., 1990, p. 123-27.

[82]BURNS, *Canon Law*, pp. 408-12; FONT Y RIUS, *Desarrollo*, vol 1, pp. 307-26.

August, 1257 when he received "serious complaints" from the master of the Hospital and a representative of the Templars concerning certain wrongs they had suffered at the hands of the townsmen of Tortosa. Unwilling to allow these crimes to go unpunished, Jaume appointed two men, a cathedral canon and a lawyer, "to investigate the merits of the case and faithfully seek out the truth"[83]. Though no suspects were named in Jaume's various communiques to the Tortosa council, the town leaders were sternly warned to provide "advice and aid" to the investigators. This would necessarily include the coercion of witnesses so the "guilty miscreants [would suffer] suitable penalties"[84]. Though few leads were turned up from the process, it is possible, given the long history of contested land and tithe claims between the crusading orders and the Tortosa bishop, that some of the nebulous wrongdoers mentioned in these orders may have been in episcopal employ[85]. The legal inquisition, not bound by the judicial limits between lay and ecclesiastical claims theoretically laid out in eastern Spanish civil and canon law, would prove invaluable in plumbing the depths of such complex intramural differences.

Though firmly supporting its right to carry out inquisitions, the crown often had to bow to the complexity of the jurisdictional labyrinth in which it found itself. Thus when clerical property holders contracted to exchange villages or farmlands largely peopled by laymen, the legal examination investigating former titles or boundaries fell to clerical and not lay inquisitors[86]. The same was true in sites such as Tarragona where sovereign and great churchmen held joint jurisdiction or in charged situations such as interdicts, in which churchmen issued religious embargoes on lay populations[87]. In any of these cases, the crown might waive its right to legally inquire so as not to bring down the opprobrium of a jurisdictionally-jealous papacy or simply to maintain the peace of its realms.

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[83]ACA, Cancillería real, reg. 10, f. 7v; BURNS, *Canon Law*, p. 416 (doc. 1).

[84]ACA, Cancillería real, reg. 10, f. 7v; BURNS, *Canon Law*, p. 417 (doc. 2).

[85]Robert I. BURNS, S.J., *The Crusader Kingdom of Valencia: Reconstruction on a Thirteenth-Century Frontier* (2 vols., Cambridge, Mass., 1967), vol. 1, pp. 181, 188.

[86]ACA, Cancillería real, reg.. 226; *DS*, 170 (doc. 254).

[87]ACA, Cancillería real, reg. 240, f. 190v; reg. 243, f. 132; reg. 244, f. 49v; *DS*, 116, 188, 212-3 (docs. 178, 280, 313).

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At times, this decision to refrain from taking up the inquisition was not such an ad hoc matter, but became enmeshed in the royal granting of privilege. Though the *inquisitio* of crimes committed within urban sites could be conducted by a joint tribunal of clergy and royal officials if the urban jurisdictional base was divided between the king and a local churchman, some towns, such as Cervera, which was ruled by a communal organization of citizens, took control of the inquisition within their city limits. From early in the history of such communes, townsmen utilized their organized strength to prevent any inquisition, royal or clerical, against one of their fellow citizens unless it was conducted under direct supervision of the commune[88].

Despite the disagreements concerning who should preside over a legal inquisition, the procedure proved crucial in gathering all types of evidence for both civil and criminal cases. The overlay of clerical and lay jurisdictions greatly complicated even the simplest land transfers and made the establishment of property or tax-district boundaries matters of bitter dispute. To untangle these many claims to privilege and revenue attached to any one location, the crown, clergy, and towns relied on fact-finding investigations to establish the truth of current claims by researching the past history of properties "during the time of the Moors". To establish the history of a certain parcel of land, the inquisitors might even rely on the deputations of elderly Muslims who remembered how the district had been institutionally configured before the first Christians came[89].

Considering the Mediterranean climate and the large swaths of dry scrub characteristic of the eastern Iberian litoral[90], it is not surprising that judicial clarification was constantly needed to regulate the use of and profit derived from water. Though all the peninsular realms of the Crown of Aragon used irrigation, the verdant garden or *huerta* that was Valencia produced by far the greatest network of "canals" (*acequias*)[91]. While Valencian irrigation had given rise to extremely complex institutions for its regulation, the *acequia*

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[88]ACA, Cancillería real, reg. 239, f. 226v; [*DJ*], vol. 5, p. 217 (doc. 1526); *DS*, 107 (doc. 165).

[89]ACA, Cancillería real, reg. 15, f. 82; *Diplomatarium*, vol. 3, pp. 321-322 (doc. 766[a]).

[90]For climate and land forms, see N.J.G. POUNDS, *An Historical Geography of Europe*, Cambridge, 1990, pp. 15-16; Thomas F. GLICK, *Irrigation and Society in Medieval Valencia*, Cambridge, Ma., 1977, pp. 11-13.

[91]GLICK, pp. 262-63; IDEM, *Islamic and Christian Spain in the Early Middle Ages: Comparative Perspectives on Social and Cultural Formation*, Princeton, N.J., 1979, pp. 96-103.

officials were occasionally unable to arbitrate between angry water users[92]. At this point, the disaffected parties often turned to the local royal official and demanded an inquisition to decide between the different versions of past truth which often spawned such disputes[93].

## VI

Besides its research function in resolving civil cases, the inquisition provided evidence that often guaranteed convictions in criminal actions. Such investigations sometimes blurred the lines between civil and criminal, starting out to settle a simple property or monetary dispute and ending by preferring criminal charges. Such was a case of 1257-1258 at the Aragonese town of Daroca when a royal inquisition awarded a coin hoard to its finder, a local resident, but only after prosecuting all the Christians and Muslims who had looted the find and then had the gall to later put in claims for an even greater share of the hoard[94].

In other instances, inquisitions were used in scatter-shot fashion after an accusation was lodged against a group of suspects in hopes that the innocent could later be separated from the guilty. In one case of this sort, all persons found in 1258 near a house in Barcelona that had been looted and then partially burnt, were accused of arson and battery. After a legal inquisition, a number of the accused were absolved from "every plea, question, or claim, civil or criminal"[95]. Far from changing legal results, some inquisitions, even before they had been conducted, bore out the prejudices of those who ordered them. As such, they delivered the truth required by the party that had activated the inquisition. Investigations against usury and other sharp practices in money lending such as that at Lérida in 1255, clearly rounded up the usual Jewish suspects, who surely bought themselves out of the charge[96].

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[92]For irrigation officials at Valencia, see GLICK, *Irrigation*, pp. 64-68.

[93]ACA, Cancillería real, reg. 15, f. 83v; *Diplomatarium*, vol. 3, pp. 326-28 (doc. 769ª).

[94]ACA, Cancillería real, reg. 9, ff. 2v, 3v, 43; *DJ*, 3, p. 281 (doc. 816); 325 (doc. 881); 329 (doc. 997). For the medieval legal assessment of coin hoards and their discovery, see *Usatges*, trans. KAGAY, p. 88, (art. 94); Ann WROE, *A Fool and his Money: Life in a Partitioned Town in Fourteenth-Century France*, New York, 1995, pp. 83-90.

[95]ACA, Cancillería real, reg. 9, f. 58v; *DJ*, vol. 4, pp. 123-24 (docs. 103-4).

[96]*DJ*, vol. 3, pp. 170-71 (doc. 681).

The investigations of assault and homicide brought the greatest interest from the crown and its officials. Sworn "to punish evil men ... remove vices ... and suppress scandals," the king and his men left no stone unturned in convicting the guilty parties[97]. In the case of the above-mentioned arson, the home owner was stoned in a riot that swirled around his domicile. Since the king, Jaume I, could not ascertain the identities of the criminals, he accused all of the capital's population ("greater, middling, and lesser") of the crime and then used the inquisition to ferret out the malefactors[98]. The crown clearly paid more attention to these kinds of investigations than any other, occasionally commanding its greatest officials to review the records of local inquisitions to see if they were carried out properly[99].

## VII

From the foregoing, it is clear that the inquisition, though a vital cog in the common legal machinery of eastern Spain, was only personally wielded by the sovereign when his authority was directly challenged. These cases included the extraordinary dangers to the commonwealth posed by direct attacks on the king, his family, or officials, devaluation of royal coinage, and the murder of high churchmen[100]. Whenever such a crime was committed in his lands, the king reacted swiftly through the upper rungs of his government. The reason for such desperate haste was crystal clear to the sovereign: such acts were "prejudicial to ... [his] person," and, as such, had to be investigated and punished as quickly as possible. When in 1257 the rebellious citizens of Perpignan thoroughly intimidated royal officials or in 1312 when a clergyman wounded a royal judge with a crossbow just a few paces from his courtroom, the king took the inquisition out of the hands of his officials and turned it over to his wife or son who also might hold the post of governor general or

[97]ACA, Cancillería real, reg. 335, f. 336v; *DS*, 91-92 (doc. 146).

[98]ACA, Cancillería real, reg. 9, f. 13; *DJ*, vol. 4, p. 33 (doc. 929).

[99]*The Register "Notule Communium" 14 of the Diocese of Barcelona (1345-1348)*, ed. J.N. HILLGARTH and Giulio SILANO, Toronto, 1983, p. 174 (doc. 467).

[100]For Roman and feudal treason, see *Usatges*, trans. KAGAY, p. 42; BERMAN, pp. 420-421; Kenneth PENNINGTON, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition*, Berkeley, 1993, pp. 96-98, 169-70; Floyd S. LEAR, *Treason in Roman and Germanic Law*, Austin, 1965.

lieutenant in the realm where the crime was committed. Despite this delegation of inquisitorial power, the king kept a direct line of communication to his relatives by written messages or personal contact[101].

When the matter to be investigated was important enough or the inquisitors proved inept, the king would simply take over the investigation himself. The most famous example of this occurred at Tarazona in 1267 when a counterfeiting ring flooded the Aragonese countryside with bogus gold coins[102]. Since Jaume I felt it dangerous that "such crimes against royal majesty ... go unpunished," he charged members of the Tarazona town council with conducting an inquisition to identify the "false moneyers" and then turning them over to royal officials to be executed. According to the king, the tribunal deposed thirty witnesses, but still could not discover the guilty parties until he, using an informant, put the inquisition on the scent of the ringleaders who finally met their fate on the gallows[103].

While the sovereign might put a relative in charge of an inquisition or even interfere in an investigation while it was still in session, he at times had to directly assume the role of inquisitor. One of the clearest examples of this was the vicious murder of Abbot Arnau Ramon de Biure in the cathedral of the Benedictine monastery of San Cugat de Vallès outside Barcelona during Christmas Eve services in 1350. This deed, perpetuated by "sons of iniquity" who wore disguises, was considered "horrible and inhumane, unprecedented ... unusual ... and unheard of"[104]. Since the Aragonese sovereign, Pere III,

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[101]ACA, Cancillería real, reg. 9, f. 5; reg. 239, f. 226v; *DJ*, vol. 3, p. 334 (doc. 896); *DS*, 107 (doc. 165). For the communication between king and his relatives who investigated such crime, see Donald J. KAGAY, *The 'Teasons' of Bernat de Cabrera: Government, Law, and the Individual in the Late-Medieval Crown of Aragon*, "Mediaevistik", 13 (2000), pp. 40-41.

[102]For eastern Spanish coinage of Jaime I's reign, see Felipe MATEU I LLOPIS, *La moneda española*, Barcelona, 1936, p. 178; *Diplomatarium*, vol. 1, pp. 108-10; Thomas N. BISSON, *Fiscal Accounts of Catalonia under the Early Count-Kings (1151-1213)* (2 vols., Berkeley, 1984), vol. 1, pp. 304-305. For royal ban on counterfeiting during he thirteenth and fourteenth centuries, see ACA, Cancillería real, reg. 243, f. 140v; *DS*, 189 (doc. 281); Earl J. HAMILTON, *Money, Prices, and Wages in Valencia, Aragon and Navarre, 1351-1500*, Cambridge, Mass., 1936), p. 86.

[103]*Llibre dels fets del rei en Jaume*, ed. Jordi BRUGUERA (2 vols., Barcelona, 1991), vol. 2, pp. 333-336 (chaps. 465-70); A. CANELLAS LÓPEZ, *Fuentes de los Anales de Zurita: El proceso de los monederos falsos de Tarazona*, "Homenaje a Don José Maria Lacarra" (3 vols., Zaragoza, n.d), vol. 1, pp. 264-77; Donald J. KAGAY, *The Line between Memoir and History: James I of Aragon and the "Llibre dels Feyts"*, "Mediterranean Historical Review", 77/2 (December, 1996), pp. 175-76; CRADDOCK, *Pesquisa*, p. 378.

[104]*CAVC*, 1, pt. 2, pp. 386-387; J.N. HILLGARTH, *The Spanish Kingdoms, 1250-1516* (2 vols., Oxford, 1978-1980), vol. 2, p. 115.

was meeting with a *corts* at Perpignan at the time of the murder, he converted the entire assembly into an inquisition. Even though the grizzly deed had occurred in a clerical institution and was directed against a churchman, Pere overcame his qualms about royal law overriding canon law in this case by appealing to the "protection" (*tuicio*) he had sworn to extend to San Cugat and other monasteries in his lands. Using the full might of his government, the king quickly publicized in the assembly a list of six men who had carried out murder and warned his people that aiding these criminals would earn them a similar fate: death by hanging[105]. Despite the rapid action of the parliamentary inquisition in 1350, none of the murderers were brought to justice and six years later charges connected with "the murder of the Abbot" were still being referred to in Pere III's communiques as unresolved[106]. In truth, one of the only tangible results of the Perpignan inquisition/assembly was a law which prohibited Catalans of any rank from wearing "false beards" either publicly or privately[107].

## VIII

The "murder of the Abbot" had moved Pere III to rapidly nationalize the legal inquisition until convictions for the heinous deed were gained; another crime, that of treason, led the king and his successors to manipulate royal justice to safeguard royal sovereignty. Treason in the Crown of Aragon was a strange hybrid of feudal and royal law. In the former, it was known as *traiçio* or *bausia* and involved delinquency in carrying out vassalian duties and was normally punished by fine[108]. In the latter, it was increasingly connected to the Roman concept of "majesty" (*maiestas*), was seen as an attack on the king's power base, and normally brought down corporal punishment on the

[105]*CAVC*, 1, pt. 2, p. 392; Josefa MUTGÉ VIVES, *La ciudad de Barcelona durante el reinado de Alfonso el Benigno (1327-1336)*, Barcelona, 1987, pp. 173-174.

[106]ACA, Cancillería real, reg. 1379, f. 41v. This document, dated October 8, 1356, is characteristic of a great number of others in the same era who proclaimed remission of charges for those who served in the war with Castile.

[107]*CAVC*, 1, pt. 2, p. 397 (art. 40).

[108]*Usatges*, trans. KAGAY, pp. 72-74, 80, 82, 84 (arts. 25-26, 37-38, 40, 42); Walter ULLMANN, *The Individual and Society in the Middle Ages*, Baltimore, 1966, p. 13; *The 'Coutumes de Beauvaises' of Philippe de Beaumanoir*, trans. F.R.P. AKEHURST, Philadelphia, 1992, p. 599 (chap. 58, no. 1642).

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guilty party[109]. These two very different concepts intertwined and came to utilize the inquisition in extremely different ways, but all of them in the service of the crown.

While treason and royal attempts to restrict it existed in the first centuries of the Barcelona dynasty, the true high point of royal treason proceedings was the fourteenth century. In 1301,[110] 1343[111], 1361[112], 1364[113], 1396-1398[114] and 1414[115], Aragonese sovereigns utilized their judiciary to hamstring or isolate rivals both within the royal court and among the eastern Spanish baronies. In the 1396-1398 case, Joan's entire government was investigated for traitorous malfeasance after the king's sudden and mysterious death. Only in the first of these suits did inquisitors gather evidence before the proceeding began: in 1301, Jaume II cagily accumulated proof that his Aragonese nobles had violated the very unionist laws they had previously forced on the crown. In all the other actions, the "traitor," whether Jaume III of Majorca, Bernat de Cabrera, Joan I's courtiers or Jaume de Urgel, was not confronted with sworn deputations that proved his guilt. Instead, these cases were "aired" only after the accused had been imprisoned, killed in resisting royal troops, or executed. Long after he was dead and buried, inquisitors gathered "true, legitimate, and clear proofs" of the traitor's obvious guilt[116]. In these proceedings that often long outlived the person whose actions had spawned them, the inquisition delivered what the crown wanted even if this meant a heavy reliance on hearsay and a shifting interpretation of the feudal

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[109]*The Digest of Justinian*, trans. Alan WATSON (2 vols., Philadelphia, 1985), 48:4:1-11; TACITUS, *The Annals of Imperial Rome*, trans. Michele GRANT, London, 1961, 71 (1.72); J.A. CROOK, *Law and Life of Rome, 90B.C.-A.D. 212*, Ithaca, N.Y., 1967), pp. 252-53, 275-76.

[110]*Colección de documentos inéditos del Archivo General de la Corona de Aragón* [*CDACA*], ed. Prospero de BOFARULL Y MASCARÓ (42 vols., Barcelona, 1850-1856), vol. 38; KAGAY, *Rebellion on Trial*, pp. 30-43.

[111]Pere III, *Chronicle*, trans. Mary HILLGARTH, ed. J.N. HILLGARTH, 2 vols., Toronto, 1980, vol. 1, p. 203 (II, p. 25); Rafael TASIS I MARCA, *Pere el Ceremoniòs i seus fills*, Barcelona, 1980, p. 32; J.E. MARTÍNEZ FERRANDO, *La tràgica història dels reis de Mallorca*, Barcelona, 1979, pp. 206-208.

[112]*CDACA*, 34, pp. 39-51; KAGAY, *A 'Treasons'* pp. 44-45.

[113]*CDACA*, 33, pp. 132-35, 245-58; 34, pp. 236-38; KAGAY, *'Treasons'*, pp. 48-50.

[114]Donald J. KAGAY, *Poetry in the Dock: The Court Culture of Joan I on Trial (1396-1398)*, "Journal of the Georgia Association of Historians", 22 (2001), pp. 48-99.

[115]*CDACA*, vol. 36; I.I. MACDONALD, *Don Fernando de Antequera*, Oxford, 1948, 193-196.

[116]*Fori Antiqui Valentiae*, ed. Manuel DUALDE SERRANO, Madrid, 1950-1967, p. 241 (CXIX:19); KAGAY, *'Treasons'*, pp. 49-50.

and Roman norms of treason. Unlike judicial theory current during Jaume I's reign that would rather see a hundred guilty men escape penalty "than condemn an innocent one merely from suspicion", the underlying motivation of the inquisitors of the treason trials of the next century was the documentation of the well-known guilt of men who had committed "greater treason than that done by Count Julian"[117].

## IX

To look forward from the God-proof of the eleventh and twelfth centuries to these royally self-serving treason trials of the fourteenth and fifteenth, one can make out the road of regnal authority steadily widening to a complex administration and then to a free-standing royal government. The pavement over which this institutional march took place was law and its facilitator, the inquisition. We must not assume that this legal highway was universally celebrated; for it was not. Like the compiler of one English law code, many citizens of the Crown of Aragon sadly admitted that there was "so much profusion of evil that the precise truth of the law can barely be found and he who does the most harm to the most people is valued the most"[118]. This sinful state of affairs was often seen by such fire-and-brimstone preachers as Vincente Ferrer to be the fault of selfish lawyers who, like "birds of prey ... profited from drawing out lawsuits and filling books with useless words"[119]. Despite such intermittent eruptions of anger against the course that their law took, observers in eastern Spain surely had to stand in grudging wonder at the way it aided the once-weak counts of Barcelona/kings of Aragon in solidifying their power. Rather than looking forward to new codes that reshuffled the political deck whenever the crown wished it, rulers, like Jaume II and Pere III, looked backward to find the basis of their power. By

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[117]*Fori*, 241 (CXIX, p. 19); KAGAY, *Treasons*, p. 51. For Count Julian of Ceuta who supposedly betrayed Visigothic Spain to the Muslims in 711, see Roger COLLINS, *Early Medieval Spain: Unity in Diversity, 400-1000*, London, 1983, pp. 150-151; IDEM, *The Arab Conquest of Spain 710-797*, Oxford, 1994, pp. 35-36.

[118]Frederic L. CHEYETTE, *The Invention of the State*, in *Essays on Medieval Civilization*, ed. Bede K. LACKNER and Kenneth R. PHILP, Austin, 1978, p. 171.

[119]AUNÓS PÉREZ, pp. 170-172; James S. AMELANG, *Barristers and Judges in Early Modern Barcelona: The Rise of a Legal Elite*, "American Historical Review", 89 (1984), pp. 1266-67.

trial-and-error, they had come to realize that, with the legal inquisition, they could not only control the past, but even remake their subjects' memory of it.

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