

REVIEWS

***The Code of Cuenca. Municipal Law on the Twelfth-Century Castilian Frontier*, trans. James F. Powers (Philadelphia: University of Pennsylvania Press 2000) 243 pp.**

A welcome addition to the corpus of medieval Iberian source material in English, James F. Powers's translation of the medieval *Fuero de Cuenca* "makes available to English readers for the first time a large body of urban custom from south of the Pyrenees" (23), quite useful for those to whom the Latin and Castilian published editions of the code have been unavailable or inaccessible. The earliest code of its kind created in Castile during the High Middle Ages, the *Fuero de Cuenca*—similar to the related *Fuero de Teruel* from neighboring Aragon—consisted of a lengthy compilation of municipal law and custom depicting numerous aspects of urban life along the Christian-Muslim frontier. Spanish *fueros* until the late-twelfth century took the form of *cartas de población* or *de franquicia* similar to charters of rights and foundation in many other parts of Europe. For Cuenca, the Castilian king along with the town's burghers produced a much more detailed codification of custom governing everything from the role of urban officials to the social and economic needs of the town. Cuenca most likely received this special privilege due to its recent reconquest by Alfonso VIII in 1177 along a key piece of the frontier facing Muslim Al-Andalus. Over the following 150 years, Cuenca's code became a model for at least seventeen similar *fueros* throughout Castile, thus establishing an urban legal tradition for the entire kingdom of Castile and eventually for all of Spain.

A very suggestive source for the study of Iberian society, the *Fuero de Cuenca* extensively portrayed all areas of social and economic life, including: family and marriage (chapters IX and X); violence, sex and insult (VI, XI and XII); pasturage and agriculture (III–V); buying and selling lands and goods (XXXII and XXXIII); and the rights and obligations of wage and dependent laborers (XXXV–XXXIX and XLII). The code detailed procedures for selecting town officials—as well as the rights and jurisdictions of those officials (I, XVI, XXVIII, and XLIII)—and determined how, when and where to bring cases to court: providing bondsmen and sureties (XV, XVII, and XIX); giving testimony (XVIII, XX, XXI, XXV); arranging judicial combat (XXII); and

resolving conflicts between Christian and Jewish citizens (XXIX). Of greatest importance considering Cuenca's precarious position on Castile's southern border, the *fuero* also delineated the mustering and conduct of the military force of the town (XXX and XXXI). Notable throughout is the prominent inclusion of women—as actors and those acted upon—while the interaction of Christian, Muslim, and Jewish communities in both a restrictive and cooperative manner is also visible. The extensive classification of social, economic, legal and military behavior is of course what makes the *Fuero de Cuenca* significant, yet that significance is not as easily determined as Powers seems to indicate in his introduction.

The original *Fuero de Cuenca* does not survive, but both Latin and Romance—as Powers describes medieval Castilian—copies do. The earliest manuscripts originated in the first half of the thirteenth century for the Latin *Forum Conche*, and in the mid- to late-thirteenth century for many of the Romance versions. Powers's translation depends on Rafael de Ureña y Smenjaud's 1935 critical edition¹² which provided four versions of the code side by side—two Latin and two Castilian. Powers selected the Latin versions as his base text in the belief that the Latin manuscripts must be more reflective of the original twelfth-century code, although he also compared these to the Romance versions and to a modern Spanish translation.¹³ While Powers acknowledges “the inability to bring a body of text written in a different era and culture into modern English with perfect accuracy” (24), the translation suffers at times from a too literal interpretation of the originals. The chapter organization—provided without explanation by Powers—can be misleading. Powers's table of contents mirrors the chapter titles of the text itself which followed the normal medieval practice of utilizing the first clause rubric as title. Yet quite different is the modern norm where a title is usually descriptive of the entire chapter—a role not fulfilled here. Without an explanation of the difference between medieval and modern practice this might be disconcerting to non-specialists. Even his literal translation sometimes fails to be consistent or clear. For example, the rubrics of chapter XIII and of the chapter's first clause are equivalent in all versions of the *Fuero*, yet the former is translated as “no one should respond for counseling,” which is obscure, and the lat-

¹²Rafael de Ureña y Smenjaud, *Fuero de Cuenca* (Madrid 1935).

¹³Alfredo Valmaña Vicente, *El fuero de Cuenca*, 2nd ed. (Cuenca 1978).

ter as “no one should respond for giving advice,” which is not much improved (92).

Powers’s preference for the Latin version, and his dependent assumption of a twelfth-century origin for the *Fuero de Cuenca*, raises troublesome questions concerning the place of the *Fuero de Cuenca* within medieval legal development and political growth across the Iberian Peninsula. Of primary importance to Powers’s argument is his belief in “the coincidental, if not co-planned, determination to grant large territorial codes to two of their recently conquered frontier municipalities” (19), referring to Alfonso VIII at Cuenca and Alfonso II of Aragon at Teruel. These two codes’ similarity in length and type of included law do suggest many potential connections, but they did not have to be coincidental in time to make them so. In fact, all of Powers’s arguments for dating the *Fuero de Cuenca* to the period between 1189–1191—particularly personal references made in a prologue that even Powers admits is extremely problematic (18–21)—can be explained by placing the creation of this extensive *fuero* within the political context of early- to mid-thirteenth-century Castile, coincidental, in other words, with the earliest surviving manuscripts and not with the *Fuero de Teruel*.

Difficulty dating the *Fuero de Cuenca* exposes another problem: Powers’s presentation of the code as a simple collection of positive law—oral custom made literate—which then accurately described and regulated social, economic, and political activity within the town. As many studies of legal customs and codes have now made clear,¹⁴ the role of written forms of law in non- or semi-literate societies are by no means paramount, especially when the written code is an exceptional and new introduction to the community. In fact the *Fuero de Cuenca* itself suggests the competitive positions of oral and written when in

¹⁴Or muddy, since there is no firm consensus on the meaning, importance or role of the transition from oral custom to written codex. Some of the relevant works of sociology and history dealing with the issues of custom, law and the tension between oral and written include Max Weber, *Basic Concepts in Sociology*, trans. H. P. Spencer, (London 1968); Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge, 1972); Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge 1996); Esther Cohen, *The Crossroads of Justice: Law and Culture in Medieval France* (Leiden 1993); Michael Clanchy, *From Memory to Written Record* (Oxford 1993); as well as Gadi Algazi, “Lords Ask, Peasants Answer: Making Traditions in Late Medieval Village Assemblies” in Gerald Sider and Galvin Smith, eds., *Between History and Histories: The Making of Silences and Commemorations* (Toronto 1997) 199–229; and Michael Toth, “Asking the Way and Telling the Law: Speech in Medieval Germany,” *Journal for Interdisciplinary Studies* 16 (1986) 667–682.

chapter XXIV, clause 7, it states “whoever appeals to the Judgment on Friday or to the Charter for the same thing, should lose the case ...”(145). While this regulation might indicate two forms of appeal or the attempt by some to appeal to both in sequence, there seems to be a difference between the presumably oral pronouncements of the town’s judges and referral to the written code. Even the clauses which indicate procedure by referring to the code—i.e., “he should demand a bondsman from him, according to the Code of Cuenca” (180), or “whoever sells an animal to a citizen, according to the Code of Cuenca, the buyer should hold it for nine days” (183)—could indicate that the procedure written in the *Fuero* was in opposition to some other custom. While Powers does not set out to analyze the role of legal codification in twelfth- and thirteenth-century Castile, which would require study of court documents far beyond the intentions of this book, his introduction could better serve his audience by providing a detailed, contextual consideration of the code including an appraisal of the role of oral and written law.

While the introduction would benefit from a greater interpretive context for the study of the *Fuero de Cuenca*, this translation provides an extremely useful, considerable source for the study of twelfth-through fourteenth-century law and society in Castile. Powers hopes that, as it relates especially to the experience of the American frontier in the memory of students in the United States, “the code evokes a sense of adventure and exuberance that puts us in touch with the world of the Reconquest frontier in Iberia” (23). I believe that Powers has provided a translation which will comfortably fulfill such a role.

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