MUDEJARS IN THE CRIMINAL LAWS OF THE FURS DE VALÈNCIA UNDER JAUME I

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The great body of Román law, with all its wisdoms and wiles, followed at the heels of King Jaume’s army in its southern trek to wrest Valencia from Islam. The Valencian reconquest, part of the great Christian onslaught of the thirteenth century upon al-Andalus which included such dramatic episodes as the battle of Las Navas and the taking of Seville, witnessed a transformation of the victor’s society. Jaume was faced with the problem of governing a vast new realm filled with an alien culture while trying to maintain control over an increasingly rebellious barony. The Valencian kingdom, comparable in size and shape to the crusader kingdom in the Levant, was overwhelmingly Islamic in population and character with a fragile fabric of Christian institutions laid atop it. One of the most important elements of this transformation was the growing influence of Roman law upon both Jaume’s Christian and Muslim subjects. Like so much of medieval Spanish history, the topic presents a tabula rasa to the historian; and owing to the size of that table, we shall examine in this essay only one aspect of the overall development: namely the code of criminal law established in the newly-conquered kingdom by the man who conquered it (1).

From the moment he gained his victory, Jaume intended to create in his new realm a political entity unique to the western Mediterranean: a state under

the direct rule of a sovereign on the firm basis of Roman legal and political tradition. Within a few years of the conquest Jaume was able to issue a comprehensive law code for the realm, which he promulgated in 1240 in a Latin text and soon after had translated, in an expanded form, into Catalan. With the exception of the short-lived legal corpus of the Hohenstaufen emperor Frederick II, the Fori antiqui Valentiae represents the first complete Roman law code issued and generally applied by a reigning monarch in the west since the rediscovery of Justinian's text.

The Fori (Catalan Furs de València), unlike the famed Siete Partidas of Castile's Alfonso X, were not a broadly conceived or even carefully designed collection of laws; they were, rather, a makeshift conglomeration of statutes based upon Roman principles. Three generations of scholars have debated the original territoriality of the code: that is to say, whether Jaume intended the code for all Christian subjects of Valencia or whether he issued it solely as a local code for Valencia city and environs (2). The king himself, after he had issued the Furs, formally swore to uphold the code for all the Christian subjects in the kingdom, and further obliged all his successors «to swear and confirm the laws and «to observe them and never oppose them at any point» (3). Whatever his intentions may have been, it is certain that the de facto jurisdiction of the Furs initially extended no further than the city walls of the capital. So great was the Christian opposition to Jaume's Romanization of the law that, in his desperate need for settlers in the new land, the king was forced to permit dozens of towns to follow their traditional customs brought down from the north, or else to adopt one of the less-restrictive codes of other cities (4).

The history of Jaume's Muslim subjects provides a contrast. In ordinary cases, whether criminal or civil, the Valencian mudéjars continued their Islamic tradition and kept their Sunna law (5). An act of Jaume's reconfirmed the
mudéjars’ right to maintain their traditions of criminal law and justice (6); and a document of his son Pere’s reign recalled Jaume’s decree that «in all criminal cases [the mudéjars] cannot be called before a Christian judge, but rather shall be judged for their crimes according to their Sunna law and they shall be cited by Saracen judges» (7). Ironically, Islamic tradition in regard to criminal justice—in which the ruler (either directly or through one of his agents, usually the qāḍī) served as both lawmaker and judge—facilitated Jaume’s attempt to implant Roman law in Valencia. The administrative structure for mudéjar criminal justice complemented and paralleled the Roman law system that the king was slowly establishing for his Christian subjects. Comparable to the Christian justiciero was the Muslim qāḍī as chief legal officer in each city district or al­­jama; the sobrejuntero was roughly paralleled by the amīn or muḥtasib as chief peace officer and sometime prosecutor; and the municipally elected civic inspectors had their Islamic partners in the muḥtasib (8).

Certain towns enjoyed even greater autonomy for their mudéjar citizens. The mudéjar charter of Chivert—which is dated 28 April 1234 and is the most lengthy and detailed of the Valencian charters—granted Muslims the right to have and administer their own jail (9). A 1273 Valencia city statute provided for separate prisons for Jews and Muslims (a separate prison for Christian criminals had long been established, so that the capital city henceforth had complete division of prison jurisdiction) (10). Immediately after the conquest, and for the first twenty years of colonial rule, the king’s justiciero had criminal jurisdiction over the Muslims of Cocentaina. On the twentieth anniversary of the crusade, however, the king transferred this jurisdiction to the royal bailiff with the strict injunction that the bailiff should judge all criminal cases according to Sunna law; moreover, the king guaranteed the qāḍī of Cocentaina jurisdiction over all civil cases (11). Likewise the 1252 municipal charter of Játiva—the city whose superb paper mills made possible the documentary explosion of Jaume’s reign—granted all criminal jurisdiction to the Muslim

(7) Ibid., Pere III, Reg. Canc. 50, fol. 124; «cuiusdam privilegium dominus Iacobus feliciis recordationis pater noster concessit sarracenis omnibus regni sui videlicet quod in causis criminalibus non possint coram christiano iudice preveniri sed quod pro suis culpis secundum suas zunas iudicentur tantum ac quod preveniantur a iudicibus sarracenis».
(10) Ibid., Pere III, Reg. Canc. 50, fol. 124; «cuiusdam privilegium dominus Iacobus feliciis recordationis pater noster concessit sarracenis omnibus regni sui videlicet quod in causis criminalibus non possint coram christiano iudice preveniri sed quod pro suis culpis secundum suas zunas iudicentur tantum ac quod preveniantur a iudicibus sarracenis».
(11) Ibid., Pere III, Reg. Canc. 50, fol. 124; «cuiusdam privilegium dominus Iacobus feliciis recordationis pater noster concessit sarracenis omnibus regni sui videlicet quod in causis criminalibus non possint coram christiano iudice preveniri sed quod pro suis culpis secundum suas zunas iudicentur tantum ac quod preveniantur a iudicibus sarracenis».

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aljama with the usual exception of capital cases; but here again, in the instances of capital crime, the king’s bailiff administered the trial according to Sunna law (12).

On occasion these usually-parallel administrative grids intersected; as a rule this happened only in capital cases or in serious crimes which crossed ethnic lines. Jaume repeatedly affirmed the policy that non-capital criminal cases which involved only Muslims were to be turned over to the amín of the respective urban quarter (morería) (13). The idea of juridical independence for the mudéjars did not rest easily upon the minds of the king’s Christian subjects and officials; these men frequently sought to disrupt the mudéjar criminal justice system by attempting to appropriate jurisdiction in certain cases or even by physically intimidating or attacking Muslim officials. Thus we see the king interposing his bailiff as protector of Muslim defendants illegally seized by Christian officials (14); other instances show the king ordering one of his leading Valencian knights to refrain from attacks on the person and property of the qa’id of Tárben and commanding all Christian officials south of the Júcar river to grant protection to two other Muslims notables (15).

Given the virtual autonomy of the Muslims to govern their own judicial affairs, it is not surprising that the great majority of the documents in Jaume’s registers dealing with criminal matters pertains exclusively to Christian criminal defendants and their Christian victims. Nevertheless, a number of criminal cases involving mudéjars reached the king’s courts and the royal registers; all of these cases exemplify and illustrate the policies described above in Jaume’s decrees and the charters of Játiva, Chivert and Cocentaina.

One such capital case arose in 1279 when Hasan b. Sulaym was convicted of murdering another free Muslim. The aljama court in Picasent sentenced Hasan to death, according to Islamic law, but the case was automatically appealed to the royal court since it involved capital punishment. The king—as mindful as ever of financial concerns in addition to justice—commuted the sentence to slavery and ordered the royal agent Simón of Arnet to oversee the settling of Hasan into bondage (16). At other times the royal court overthrew convictions handed down by the Muslim judges. A pitiable case of ac-


(13) Arch. Crown, Jaume I, Reg. Canc. 15, fol. 18 verso: «ab alamino eiusdem morerie».

(14) Ibid., Pere III, Reg. Canc. 46, fol. 182; ROCA TRAVERS «Un siglo de vida mudéjar» (see n. 5 above) docs. 13, 16 and 22.

(15) Ibid., Jaume I, Reg. Canc. 10, fol. 109 verso: «Mandamus vobis firmiter quatenus non faciatis impedi-mentum aliquod vel contrarium alcaido de Tárben nec aliquibus bona suae», and again on the same folio: «... fidobibus suis baiulis, alcaidis, iusticiis ac universis alis officiibus et subjuis nostri regni valentiae a rivo Xuchari ultra ... mandamus vobis quatenus in veste custodia et comanda bestiare alcaidii Mafumet et Almufudini alcaidi de Planes, et non permittatis in dictione ganato sive bestiario ab aliquibus personas molestiam aliquam fieri vel contrarium in aliquo loco...»

cidental murder —manslaughter, technically— came to the king's attention in 1273. One Aḥmad, Muslim slave of Berengar Andreu, was absolved «from every criminal and civil penalty» for the unintentional murder of Saʿīd, another slave to the same Berengar; testimony given «by worthy men» had proved to the king's satisfaction that poor Saʿīd's death resulted from an accident during a friendly game (startling to modern tastes) of catch played with javelins. The javelin, when once caught by Saʿīd, had passed through his hand and pierced his throat (17).

At other times the king's mercy took other, and less admirable, paths. In 1258 Jaume absolved the Christian Joan Sanc of all criminal penalties and civil suits resulting from the case «of Ibn Gamer... whom you wickedly murdered some time ago». Joan Sanc's guilt in the murder of the mudejar slave was not questioned; the king simply found it to be politically and economically expedient, for whatever specific reasons now lost to us, to waive the penalty and to confirm Joan's Valencian properties and possessions (18). The king's action appears even more suspect in a later document: Joan Sanc's co-defendant in the murder was al-Mubārak al-Ma'dāni, the muqqadat of the Jewish community at Alcira. Al-Mubārak was, like Joan, found guilty of murdering Ibn Gamer, but unlike Joan he was hanged for the crime and his properties were confiscated (19).

In the wild frontier society of crusader Valencia, the mudejars were especially susceptible to kidnapping and being sold into slavery. The Christian barons and merchants held no monopoly on the profits of the slave-trade, though they did comprise the majority of the practitioners; but their frequent partners and clients were indeed other Muslims. Bartomeu Sellart of Burriana purchased a Muslim woman and her young child, in 1259, from pirates who had kidnapped the pair at sea; he then sold them in turn to the qaʾid of Tārben at a price of three hundred and fifty Valencian sous. But the mother and child had been «under the king's peace», so Jaume directed his lieutenant to force Bartomeu (presumably on penalty of imprisonment or fine) to remit the money to the qaʾid (20). On another occasion Jaume directed the vicar of Barcelona

(17) Ibid., Jaume I, Reg. Canc. 20, fol. 332 verso; «noveritis nos absolvisse Azmet sarracenum Berengarii Andrei civis Valencie parechie Sancte Katharine ab omni... pena civili et criminali quam... facere vel imponere possemus ratione mortis de Zehit sarraceno Berengarii vicini Valencie de qua idem Azmet exstiterat inculpatus, pro eo quod invenimus per homines fidedigno quod non interfect eum scienter sed ictu fortuito cum uno dardo quando cum alus sarracenis ipsum iactando, et quod dedit dardus predictus dedit e¡ per gula et interfecit eundem».

(18) The Valencian ius did not provide for any statute of limitations in criminal penalties, and so Jaume's decision to dismiss the sentence could not have been based on the idea that the murder had occurred «some time ago». See Arch. Crown, Jaume I, Reg. Canc. 10, fol. 62 verso: «absolvimus et definimus tibi ohani Sancii... omem accionem et demandam ac penam civilem et criminalem quam et quas nos contra te habemus et habere possumus aut tibi infligere racione Avingamerar sarraceni nostri quem olim nequitter occidistis».

(19) Ibid., fol. 66 bis recto and verso. Al-Mubārak's widow had to bid at public auction to regain her husband's possessions.

(20) Ibid., fol. 106 verso: «mandamus vobis quatenus, viss presentibus, compellatis Bartholomaeum Celart de Burriana et bona sua ad restituendum alcaido de Tarbena illos CCC°L solidos regalium, quos ab eo habuit et recept pro quadam Sarracena nomine Faton et quodam Sarraceno filio suo nomine Azmet.
to seek out «a certain Saracen of Tárbena named Ėssān», who had likewise been kidnapped at sea while under the king’s peace, and to set him free of his captors (21). We learn nothing from the document about the intended fate of the kidnappers and slave-merchants.

In these cases the crime was kidnapping—and specifically kidnapping others while under the protection of the king’s peace—not slavery. Jaume’s Valencian *Furs* recognized slavery as a legal practice; he sought only to regulate the institution by forbidding Jews or Muslims to have Christian slaves. «No Jew or Saracen ought to purchase a Christian slave, nor hold one by donation or any other manner» (22). The king indirectly sanctioned the trade in slavery by such steps as his 1257 action dismissing «every penalty in perpetuity» which might apply to Lord Carrôs of Rebollet for his complicity in his nephew’s slave transactions in the region of Denia (23). Nevertheless, Jaume took pity on many slaves—as in the murder trial of Ahmad mentioned above—and tried to curb abuses and regulate the slave-trade. Thus a measure of 1263 granted in perpetuity «to you Ėbû Ja’far Ėlamîd, son of the deceased Ėbû Sa’îd b. Hudhayl» an extensive territory comprised of the city and tower of Polop, the tower of Altea and all neighboring buildings, villages and farmlands as a tax-free estate. In addition to the generous grant, Jaume guaranteed Ėbû «that if any Muslim slave should take flight from any land and should arrive in (your) said castle or on (your) said land, then he cannot be removed; rather (the slave) shall be freed and absolved from his captivity and be able to come and go through the whole land of my realm, remaining safe and secure» (24).

Sexual crimes involved a complex ethic. The rape of a Christian woman by a Jew or brought a penalty of death by fire. The standard punishment for a Christian man who raped a Jewish or Muslim woman, however, was a fine (25). Cases of infra-group sexual violence were adjudicated according to the corresponding Jewish or Muslim traditional law. It is interesting

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(21) *Ibid.*, fol. 109: «mandamus vobis quatenus ubicumque... lator presencium ostenderit vobis quendam Sarracenum de Tárbena nomine Äçen, qui fuit furatus in mari prout intelleximus tempore pacis et treuge, tradatis ipsum eidem et tradi ac restituí faciatis, libere et sine aliquo impedimento».

(22) *Furs* (see n. 1 above) lib. I, rubric 8.1-3. Under this same rubric are statutes forbidding free Jews and Muslims to work in their public workshops on Christian religious holidays.

(23) Arch. Crown, Jaume I, Reg. Canc. 9, fol. 39 verso: «remittimus, absolvimus et definimus vobis... et vestris in perpetuum omnem penam quam incurristis, et omnem questionem et demandam quam contra vos et bona vestra movare aut facere possemus, racione quorundam Sarracenorum de Denia quos vos... vendistis».

(24) *Ibid.*, Reg. Canc. 12, fols. 118 verso-119: «Per nos et nostros damus et concedimus per hereditatem propriam, francham et liberam tibi Abuliafar Hamet, filio quondam de Acet Abinhudy, et tuis in perpetuum castrium et villam de Polop... Concedimus insuper quod, si aliquis Sarracenus captivus fugam rapuit de aliqua parte et in dicto castro veniret seu in dicta terra, nullus inde extrahi possit; sed sit semper de predicta captivitate liberatus vel solutus, et possit per totam terram dominacionis nostre deinde ire et stare atque redire salve pariter et secure».

(25) *Fori antiqui Valentiae* (see n. 1 above) pp. 229-230. A Christian man who raped a Christian woman of lower social station was fined; the rape of a woman of equal or higher station was reconciled by marriage to the victim.
that Jaume’s Furs considered cross-cultural adultery a crime of greater seriousness than cross-cultural rape: the penalty demanded by this crime was death by fire regardless of religion. «If any Jew or Saracen is found committing adultery with a Christian woman, they both shall be burned. And if any Christian man is found committing adultery with a Jewess, they both are to be burned; if with a Muslim woman, they (are to be beaten while) running naked through the city» (26). But the court could forgive even the breaking of this taboo. For a price of five thousand sous, for example, the king pardoned Salimah b. Shulana, a Jew from Játiva, «for having had carnal relations with the said (Maria, a convert from Judaism), and indeed you and the said convert confessed to having had intercourse with each other» (27). So violent a society could more readily pardon a crime of violence than a crime of love. The killing of Gerard Arquer by Bernat Sa Clusa in 1263 was declared a crime passionel by the court, and Bernat was fully pardoned «because you had found him committing adultery with your wife» (28).

To sum up a brief discussion: Jaume’s Furs de València was a principie tool in the king’s attempt to unify Valencia politically and to elevate, via Roman concepts of governance and rulership, the royal position in his new realm. The criminal law statutes and the documents in the royal registers illustrate the difficulties faced by the king in this attempt. Forced to grant concessions to whole cities and religious-ethnic groups, and compelled to allow exceptions in return for political or economic assistance, Jaume nevertheless pressed on with his attempt to bring Romanized law into Valencia (20). Change came slowly, but it came: ordeals and purgations were gradually dispelled with, and the tedious civility of witnesses, evidence and appeals replaced the more exciting barbarisms.

In general the Valencian mudéjars retained their own criminal law and judicial traditions. Jaume permitted this out of necessity and on account of the complementary nature of Islamic tradition with the Roman principles of the Furs. The law code commanded that all Jews, in criminal cases involving Christians, had to face Christian judges and justice (30). But the overwhelming majority of Valencia’s mudéjars required that they be granted a certain judicial autonomy. In some towns, Christian or Jewish testimony could not even be used against a Muslim defendant (in non-capital offenses only, of course) (31). With time, the parallel Islamic and Roman traditions of criminal law and justice (along with the parallel administrations which oversaw them) evolved in Valencia, but king Jaume had laid down their foundations.

(26) Ibid., p. 230: «Si iudeus vel sarracenus habendo rem cum christiana inventus fuerit, comburantur ambo. Si christianus inventus fuerit habendo rem cum iudea, comburantur. Si cum sarracena, currant ambo nudi per civitatem».


(28) Ibid., fol. 32 verso: «absolvimus et definimus tibi... pro eo qua tu adulterando inveneras cum uxore tua».

(29) For another exception to the Furs granted by Jaume, this time in a civil case, see Ibid, Reg. Canc. 9, fol. 80 verso.

(30) Furs (see n. 1 above) lib. III, rubric 5.48.

(31) BURNS, Islam under the Crusaders (see n. 10 above) 265-266.