Muslims and Jews in Thirteenth-Century Valencian Law

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MUSLIMS AND JEWS IN THIRTEENTH-CENTURY VALENCIAN LAW

by

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Most importantly, for her constant love, support and guidance I dedicate this work to my wife, Bonnie.

Scott M. Gyenes
When the Muslim kingdom of Valencia was conquered between 1233-1245 during the Reconquista, by James I, a new era was ushered in for the resident Muslims and Jews, because they would now be ruled by a minority Christian government. King James, in an attempt to control the newly settled Christians, issued the law code the Furs of Valencia. Additionally the Furs also established Christian legal superiority over the Muslims and Jewish populations, too.

The Furs of Valencia are highly valuable in the study of law, because of the influence of Roman, canon, and Islamic law. These influences helped slow the diminution of the native Muslims and Jews and prevented their mass displacement, while allowing the new Christian government to maintain control in Valencia. By studying the newly codified Furs of Valencia and how its laws relate to the Muslims and Jews a more complete picture of thirteenth-century Muslim and Jewish life will be achieved.
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CHAPTER I

INTRODUCTION

Quatuor ex verbis virtutem collige legis:
Permittit, punit, imperat atque vetat.1

Law is the oldest and most tangible form of control
able to be studied by the historian. Pre-historic man
had law even if he did not know it. Law originated when
a leader emerged, and enforced his way of thinking and
norms on his surrounding society. It was not until
Hammurabi codified the existing oral laws of Mesopotamia
that a civilization could be historically studied, evalu­
ated, and interpreted by its laws. By studying a soci­
ety’s laws, the historian can hope to extrapolate the
ideals, thoughts, and attitudes which its people valued.
The same historical process may be utilized in studying
both ancient laws and modern laws. Most societies know­
ingly and unknowingly describe themselves within their
written laws. The period of the High Middle Ages may

1E.N. van Kleffens, The Background of Hispanic-Ameri­
can Law: Legal Sources and Juridical Literature of Spain
value of law is found in these four functions: To pun­
ish, to permit, to veto, or give injunctions." Van
Kleffens added that St. Ramon de Penyafort added a fifth:
to recommend.
arguably be described as a golden age for the creation and writing of law. A combination of canon, Roman, and civil law produced an entirely new and innovative style of law.

One of the best places to study this new form of law is in thirteenth-century Spain, particularly in the post-Reconquista Crown of Aragon. Within the newly reconquered lands the victorious Christians imposed their authority over the native Muslims and Jews by issuing new laws. One of the greatest Christian conquests of the period was that of Muslim Valencia by James I, king of Aragon. By a careful study and evaluation of the Furs of Valencia, a law code issued by James, the historian may begin to understand the attitudes, fears, and hopes of the new rulers of this kingdom. Since it would be impossible in a limited space to do a careful study of all the laws within the Furs, this paper will focus on those laws which were created to deal with the newly conquered subjects of Valencia, the Muslims and Jews.

The history of the medieval Iberian peninsula, particularly that of the Crown of Aragon during the thirteenth century, provides an outstanding example for the study of legal history because "all the promise of the twelfth-century Renaissance flowered now in the great
works of law."² Spanish legal history provides a vastly more interesting situation than many other European nations because of the presence of the Muslims and Jews. For centuries Islam had dominated the Spanish land and its inhabitants, and more importantly her laws. The influence of Islam began to deteriorate with the emergence of the Christian states, particularly Castile, Aragon, and Catalonia, during the tenth and eleventh centuries, and the subsequent victories of the Reconquista of the twelfth and thirteenth centuries.

The Crown of Aragon was not an ancient kingdom when the reconquest of Spain began in 711. In fact, the Crown of Aragon, which was comprised of the Kingdom of Aragon and the County of Catalonia, was not formed until 1137. It was in that year that Ramon Berenguer IV, the count of Barcelona, the major city of Catalonia, married the heiress of the Kingdom of Aragon. These two lands comprised the heart of the medieval Crown of Aragon and were controlled by the counts of Barcelona. Therefore, the Kings of the Crown of Aragon often were referred to as "count-kings."

The two original lands of the Crown of Aragon, the Kingdom of Aragon and the County of Catalonia, were quite different. The Kingdom of Aragon comprised the largest geographical area and "was a royal-baronial confederation for the exploitation of multi-cultured lands united by little more than name." The Mediterranean based economy and life of Catalonia was quite different from that of the agrarian, militaristic composition of the Kingdom of Aragon. Unlike the separatist, feudalistic society found in Aragon, Catalan society was more homogeneous and united.

The separation of the two lands was based as much on history as on geography. Both kingdoms had been created by Charlemagne as buffer zones against the Muslims in the peninsula; however, the Frankish influence lasted far longer in Catalonia than in Aragon. This influence is still present in the native language of each land. Aragonese is basically modern Spanish, and although Catalan, the language of Catalonia, is closer to French, it is nevertheless a distinct and separate language in and of itself, and closely related to Provençal.

Over time the Crown of Aragon began to politically acquire additional lands. In 1151, Ramon Berenguer IV

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gained control of Montpellier and Narbonne, and by 1162 had secured Provence in Occitania. Furthermore, Alfonso II expanded the Crown’s dominance in Iberian affairs by acquiring Saragossa, militarily from Islam and diplomatically from Castile. The political history of the Crown of Aragon was one of slow acquisition and loss, a process that continued well after the thirteenth century. However, during the thirteenth-century, the Crown of Aragon united with its neighbor, the Kingdom of Castile, to complete the reconquest of all the Iberian peninsula, save Grenade, from the Muslims.4

From its creation the Crown of Aragon was involved in the reconquest of the Iberian peninsula. As early as 1147, Ramon Berenguer IV had begun his conquest of Islamic lands. In 1148 Tortosa and Lérida were captured, and by 1153 the Muslims had lost Miravet and Siurana. Between the 1150 and 1200, however, the relationship between the Crown of Aragon and Islamic Valencia was one of little political or military involvement. The Crown of Aragon was too involved with Castile to worry about

Islamic Valencia. In 1151, with the treaty of Tudillén, the Crown of Aragon was recognized, by Castile, to control the right to conquer Islamic Valencia. However, the Crown of Aragon and the other kingdoms of the Iberian peninsula were too busy fighting one another to allow for any serious attack on Islamic Valencia to occur. According to the treaty of Cazola, Castile and Aragon were to divide up Navarre, while giving Islamic Murcia to Castile and Islamic Valencia, once again, to Aragon.

Although Aragon and Castile made pacts they both continued to harass one another. The pacts between Aragon and Castile were broken in 1189-90, when Castile invaded Aragon leading to a "more general pact, extended to include Leon and Portugal, against Castile." Finally, this lack of involvement with Islamic Valencia, by the Crown of Aragon, prior to 1200 is evident by the fact that Catalan trade prospered in Islamic Valencia, an occurrence which would rarely happen during warfare.

Control of Valencia had always been a major goal of the crusaders in the Iberian peninsula. In 1094, early in the reconquest, the city was conquered by the Cid, but

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5Bission, Medieval, 33.
6Ibid., 36.
7Ibid., 38.
8Ibid., 44.
was soon lost after his death in 1102. The Christians were unable to win the Islamic kingdom until James the Conqueror defeated the Muslims between 1232-1245. It was also during this period that James conquered the island of Majorca in 1229-1232, and licensed the conquest of Ibiza in 1235; Islamic Minorca paid tribute to James (and was later conquered in 1287.)

James I made Christian Valencia a separate kingdom within his Crown of Aragon. To facilitate the change of control, James gave the conquered kingdom its own law code, the *Furs* of Valencia. Thus the name "Valencia" refers to both the capital city of Valencia and the Kingdom of Valencia. In addition, Thomas Glick has stated, the name Valencia also refers to the, "the huerta of some fifty square miles of rich, alluvial fields surrounding the city."\(^9\) It was these agriculturally rich lands, irrigated by the superior Muslim irrigation techniques, along with the paper producing center in Játiva, and international trade which made the Kingdom of Valencia a prized possession.

Unfortunately, very few Christians made their way south to settle in the new land. As a result, the Christian leaders were dependent on the already existing

Muslim majority. Moreover, a substantial number of Jews remained within the new kingdom. The Christians who did come to the newly reconquered lands settled in the central region around the city of Valencia while the rest of the kingdom remained Muslim. James made his son procurator or viceroy of Valencia. In addition, he created a number of lesser official positions to directly govern the three distinct areas of the kingdom and established a parliament that convened for laws and crises. The Kingdom of Valencia was the golden jewel in the crown of the reconquest. For the rest of his life James was determined to keep Valencia under Christian control and in doing so he died on July 27, 1276 during the Muslim rebellions of Valencia.

There are four main reasons for the importance of the medieval Crown of Aragon, and more particularly the Kingdom of Valencia, in the study of law. The first reason concerned the influence of Islam. Although Islam was losing political control of the peninsula, the deterioration of Islamic influence was slower in agriculture,


technology, and some aspects of the law in the Kingdom of Valencia. In fact, Islamic influence may be seen throughout most of the high-medieval law codes of Spain. Secondly, medieval Spain is an example for the understanding and study of medieval law because of the influence of Roman and canon law. Although canon law was losing some of its pre-eminence in European affairs to the recently rediscovered Roman Law, both were understood and utilized by the promulgators of the various law codes of Spain, since "each society, throughout its legal stratum, was a prime mover in introducing Roman Law into Europe." Finally, the prominence of local customary law, especially that of the Usatges of Barcelona, which played a significant role within the newly codified laws of the Reconquista, can be seen. By studying these customs and the later codified laws one can examine the changes or lack of changes after the Reconquista and the influence of these upon the local population.

The various Islamic, canonical, Roman, and customary legal influences were shaped to allow the Muslims and Jews to occupy a unique position within thirteenth-century Spain. But what were the lives of this oft-perse-
cuted people really like? In addition to law codes, many other forms of primary evidence, such as Church records, notarial records and royal decrees have been or are being examined for the lands of the thirteenth-century Crown of Aragon. Unfortunately, the law codes have not received the attention they deserve. Two law codes for these newly reconquered areas, that of Tortosa and Valencia, provide information pertaining to Muslims and Jews. The law codes of many Spanish states were similar, but each has a "fascinating history of its own," and no two codes are completely alike and, therefore, each deserves specific study and research. Although a law presents an ideal, one which is not often to be reached, one thing is certain for any given law: a glimpse of contemporary

21-25 September 1976, eds. Stephan Kuttner and Kenneth Pennington (Città del Vaticano: Biblioteca Apostolica Vaticana, 1980), 388. Burns writes, "Like the Reconquest, the legal renaissance and the reception of Roman and canon law in Spain neither began nor ended in the thirteenth century. But both movements made their most striking advances then, culminating and converging to comprise an intertwined phenomenon. The convergence invites us to study the Spanish crusades in the legal documents of church and state, and to study legal evolution in the documentation of the Reconquest."

14 The Costums of Tortosa has been heavily utilized by John Boswell in his The Royal Treasure: Muslim Communities Under the Crown of Aragon in the Fourteenth Century (New Haven: Yale University Press, 1977).

society is able to be seen in it, "at the very least a sense of engagement with the subject of law." Of the two, the Furs of Valencia has received the least attention yet governed more territory and a greater number of individuals. The Muslims and Jews of the Crown of Aragon are as under-studied as the law codes. By studying what the Furs of Valencia stated about the Muslims and Jews a more complete picture of thirteenth-century Valencian life and legal practices may be constructed. In the Furs, one may uncover a thirteenth-century ideal regarding Islamic and Jewish life for,

Man lives by Law. More than just a frame and guide, it is a manner in which life flows. It incorporates and passes on into the community more substance, more basic attitudes, values, and presuppositions, than its unwitting subjects realize.


17Burns, "Canon law," 414. Burns writes, "'If law in the lands of the Crown of Aragon has been insufficiently studied in modern times,' Garcia Sanz and Colon could write as late as 1970, 'Valencian Law has suffered this misfortune more than any other'. . . . The Furs remain a fertile area of investigation, a true research frontier."

CHAPTER II

FUEROS: A TYPICALLY SPANISH PHENOMENON

Civil Law rode gorgeously
And Canon Law rode haughtily
Ahead of all the other arts.

-Henri d'Andeli

Before proceeding with how the laws within the Furs of Valencia affected the Muslims and Jews of thirteenth-century Valencia, it is important to present a brief history of the fuero and its role within medieval Iberia, specifically in James I's Crown of Aragon. The fuero is a Spanish phenomena and is as complex and diverse as the lands which it represents. The fuero constitutes one of the distinct legal traits which makes medieval Spain unique. The fuero itself had many different forms and it is the job of the historian to figure out in which


3The word fuero is derived from the Latin forum meaning tribunal or venue. See van Kleffens, Hispanic Law, 124.

4van Kleffens, Hispanic Law, 17-18.
specific framework a certain fuero belongs and how it operates.⁵

Four specific areas of influence should be addressed when dealing with the Furs: Roman, canon, custom, and Islamic law. The Furs of Valencia were codified, during the thirteenth century, in 1245 and 1276.⁶ An early preliminary version of the Furs was spread throughout the kingdom within a short time after the fall of the capital city of Valencia.⁷ This early version was imposed as a municipal Costum either in 1239 or 1240 and was only called Furs in 1252.⁸ The original Furs were composed in Latin and then, around 1261, were translated and issued in Catalan. In 1261 the Furs were accepted and ratified by the corts, or parliament, in agreement with King James

⁵According to van Kleffens, Hispanic Law, 124, there are four general types of fueros: deeds for founding a new center in an unpopulated territory wrested from the Moors; charters, given by the king to townships liberated from the Moors for their governance; special statutes granted by the king to social groups and institution (church, nobles, mozarabs, mudejars); sets of laws with state-wide application (fueros generales).

⁶Burns, The Crusader Kingdom of Valencia, 123.

⁷Robert I. Burns claims that this preliminary copy was on view within eighteen months of the fall, while Antonio Ubieta claims that a copy of the Furs was distributed within seven months. For more on this dispute see, Burns, "Canon Law," 411.

I. Although the Furs underwent slight revisions during the thirteenth century, the last occurring in 1271, the modern Furs of Valencia remain quite true to the original. Many historians debate the authorship of the Furs. Many older scholars believe that the Furs were the work of the canonist Vidal de Canyells, bishop of Huesca, while most modern scholars believe that Vidal de Canyells had little, if nothing to do with the composition of the Furs. A general consensus suggests that the Furs were composed by anonymous local Valencian jurists who have remained unknown to the historian.

The Latin edition of the Furs, Fori antiqui Valentiae, utilized in this paper were compiled under the supervision of Manuel Dualde Serrano and is faithful to the revision of 1271. The original Furs were divided into two books but the compilation Fori antiqui Valentiae has only one book which is divided into 144 chapters. Like most law codes, the Furs regulates daily life, the

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9 This agreement is a landmark moment in Spanish history, because from this moment on the term fuero came to "mean any legal provision agreed upon by the three estates that composed the cortes and ratified by the king. As a result the authority of the fueros became superior to that of any other law." see Strayer, Dictionary, s.v. "Fuero," by Maria Pilar Aparicio-Llopis.

punishment of criminals, and the functions of various governmental offices. The Furs do not devote individual chapters to the Muslims and Jews; laws regarding the Muslims and Jews are incorporated into the various chapters of the text, unlike some other contemporary Spanish law codes, thus forcing the historian to examine the entire document to uncover all information pertaining to the Muslims and Jews.

The most important component of the Furs which allows it to stand out from the other fueros is the influence of Roman Law upon it. After James conquered Valencia in 1238, his Furs was one of the first, and most important generally applicable Roman law codes in Europe. However, the Furs "had more practical Romanistic effect than such celebrated secular codes as the Melfi and the constitutions of Frederick II." The Constitutions of Melfi (or Liber Augustalis as it is often referred to) were instituted by Frederick II in Sicily in 1231 and remained that kingdom's fundamental law code throughout the Middle Ages. The Constitutions of Melfi were issued by

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11Burns, "Introduction," Worlds, 7. The other important Roman law code of this time are the Constitutions of Melfi promulgated by Emperor Frederick II in 1231. For more on this code and a detailed bibliography see James M. Powell, trans., The Liber Augustalis (Syracuse, New York: Syracuse University Press, 1971) and Strayer, ed. Dictionary, s.v. "Melfi, Constitutions of," by James M. Powell.

Frederick in an effort to consolidate his sole authority in the Kingdom of Sicily. Roman law is the core of his constitutions. However, the Constitutions of Melfi differ from the Furs of Valencia because they organize society around a policy of royal absolutism. Although the Crown controlled Valencia the Furs do not give autocratic power to the king; instead, they allow for a more even legal balance between crown, church, nobles, and citizens, whether Christian, Muslim, or Jew. The Constitutions of Melfi combine Roman law with aspects of Germanic law to produce a form of ultimate control for Frederick II. The Constitutions of Frederick II are more a "compromise of royal absolutism with an older order based on more particularist loyalties."13

The fact that Roman law was such a focal point for James is not unusual for the king who was hailed as the new Justinian.14 The title of "new Justinian" is appropriate for James, for under his leadership Valencia received the "first fully practical Romanized law code in Europe."15 The compilers of the Furs, under his leadership and guidance, closely followed the layout and wording of the Justinian code. Consequently they often took

13Powell, Liber Augustalis, xxii.
14Hillgarth, Spanish Kingdoms, 1:101.
15Burns, Islam, 14.
titles verbatim, closely paraphrasing entire segments, and gave the Furs an order resembling that of Justinian's Code.\textsuperscript{16}

It is not surprising that James would be influenced by Roman law since he was a product of the legal renaissance occurring throughout medieval Europe. As the historian Walter Pakter has written:

During the twelfth and thirteenth centuries, Roman law influenced both the theory and practice of European law. It provided a sophisticated corpus for the education of young jurists; second, it was practiced by early civilians serving as judges and legal advisors, third it provided models for notaries and other practitioners in drawing up documents . . . fourth it was a source for fundamental legal principles and constitutional arguments . . . fifth, it served as a model for public law . . . finally Roman law was incorporated into canon law.\textsuperscript{17}

Therefore, the Furs are important for the information they contain and they ought to be evaluated as the "first among Spanish [codes] which follows the Roman organization and consequently holds prototypical importance for the study of the reception of Roman and canon law."\textsuperscript{18}

The status of customary law diminished with the emergence of Roman law. The only written compilation of laws for the Crown of Aragon, prior to the various

\textsuperscript{16}Burns, "Canon law and the Reconquista," 412.

\textsuperscript{17}Walter Pakter, Medieval Canon Law and the Jews (Ebelsbach: Verlag Rolf Gremer, 1988), 10.

\textsuperscript{18}Burns, "Canon Law," 412.
fueros, were the Usatges of Barcelona. The Usatges were simply a written account of the previously orally transmitted customary codes of the Crown of Aragon. There are two schools of thought concerned with the influence of customary law on the fueros of the Crown of Aragon. Many historians believe that customary law had no influence on the later fueros, nor, more importantly, on the Furs of Valencia. Donald Kagay, the compiler of the English translation of the Usatges states that “such influence for the Usatges was officially rendered impossible in Valencia . . . by Jaime I’s promulgation of a comprehensive law code, the Furs, for the kingdom.”19 On the contrary, customary law did indeed play a role within the Furs with regard to the laws governing the Muslims and Jews. Without even examining the Furs themselves, any knowledge of the period would lend itself to support the notion of customary influence within the Furs.

Although conquered Valencia never received the Christian colonizers needed to secure its defense, King James would have left customary law, as well as a form of Islamic law (which will be dealt with later), in place. James was desperate for settlers “so as to consolidate and defend his Valencian conquest, he had to be generous

in allowing wholesale importation of these local custom codes." Customary legal influence thus persisted in Valencia and therefore would have been an important component in thirteenth-century Valencian law. While the Furs of Valencia were not customary law, they were influenced by it. The Furs were a re-birth of Roman law, but as Robert Burns writes, "within the obvious Roman skin, however, lies an equally unmistakable native personality; local experience and custom are given expression." The ongoing debate about the role of customary law illustrates that it was an important legal ingredient in thirteenth-century Valencia. Customary law therefore did play a substantial role in the Furs, although the mortal enemy of custom was indeed Roman law from the middle of the thirteenth century. One must remember that Roman law was only utilized by a reforming elite who wanted to unify the Crown by diminishing the power of both customary law and the local governments; Roman law allowed them to do this. However, one must be careful when study-

20Burns, "Canon Law," 410.
21For more on customary law during Roman and Visigothic Spain see van Kleffens, Hispanic Law, 122-23.
22Burns, "Canon Law," 413.
23van Kleffens, Hispanic Law, 127.
24Ibid., 146.
ing the Furs not to forget that even though Roman law was supreme, local customs were still "solidly rooted . . . in the popular conscience." 25

The Furs of Valencia were not a new idea that sprang from the minds of trained legalists in Roman law, but a compilation of Roman, canonical, and customary law. Further legal complexities in the Kingdom of Valencia arose from the fact that the majority of inhabitants were not Christians but Muslims. James, not an ignorant man, understood that for Christian Valencia to survive he would need to appease the Muslim population. To this end, the Christians left the legal situation in Valencia basically as they found it. 26 Thus the new Christian law code retained many ingredients from the laws of the Muslims. 27

The most striking feature kept, in Valencia, was a form of the dhimma system where it was utilized best. 28

The dhimma was a contractual form of life in Islamic lands regarding the status of non-Muslims, mainly Jews and Christians. Since most countries were conquered by relatively few Muslims, the new minority ruling class

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25 Ibid., 37.


27 van Kleffens, Hispanic Law, 120.

28 Burns, Muslims, 59.
needed to appease its subjects. This was accomplished by
the *dhimma* system. In its most basic form, the *dhimma*
��統 allowed Christians and Jews to exist at a second-
class citizenship level within Islam because they were
*ahl al-kitab* or peoples of the book. In return for a
*diizyah* or annual poll-tax, the *dhimmi* (as the Christians
and Jews were called in this system) were afforded pro-
tection, allowed to live peacefully, practice their reli-
gion, and govern themselves in Islamic lands. Origi-
nally, many other derogatory acts were required of the
*dhimmi*: wearing of distinguishing clothing, prohibition
of fine clothing and horses, and acts of humility and
lowliness when in the presence of Muslims were but a few.
However, these restrictions were not often enforced, the
only continually enforced requirement of the *dhimmi* being
the poll-tax.\(^\text{29}\)

\(^\text{29}\)For information about the *dhimma* system, see S.D.
Goitein, *Jews and Arabs: Their Contacts Through the Ages*
(New York: Schocken Books, 1974); Bernard Lewis, *The Jews of
Islam* (Princeton: Princeton University Press, 1984); Norman
A. Stillman, *The Jews of Arab Lands: A History and Source
Book* (Philadelphia: The Jewish Publication Society of
America, 1979); Fazlur Rahman, *Islam* (Chicago and London:
al., eds. *The Encyclopaedia of Islam*, New Edition (Leiden,
Cahen; A.S. Tritton, *The Caliphs and Their Non-Muslim
Subjects: A Critical Study of the Covenant of 'Umar*
(London: Oxford University Press, 1970); Bat Yéor, *The
Dhimmi: Jews and Christians under Islam*, trans. David
Maisel, Paul Fenton and David Littman, rev. ed. (Rutherford,
Madison, and Teaneck: Fairleigh Dickinson University Press,
1985); and Stephen R. Humphreys, *Islamic History A Framework
The Christians not only adopted the Islamic system but added to it. They adapted the dhimma system by fusing Roman, canonical, and customary law into it. In essence, "humanistic legalism . . . in this age of the renaissance of academic law, thus reshaped the dhimma model."\(^{30}\) Another example of the reliance on Islamic law within Christian Valencian law is the continued use of the Arabic word *aljama* for the Jewish quarters of the Kingdom.\(^{31}\)

With this picture of the Furs of Valencia as background, this outstanding legal text needs to be examined for the information contained in its pages, information which controlled the society of three very different groups of peoples. As with most other areas of medieval Spanish history, a debate has arisen as to how the Jews and Muslims were treated legally in thirteenth-century Valencia. A well-known Jewish historian has stated that Jews and Muslims constituted a separate class within the law:

Variety, diversity marked every feature of Spanish law; and the population . . . was divided and subdi-

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\(^{30}\)Burns, *Muslims*, 58.

vided into a bewildering number of categories, each marked and distinguished by a law and statues of its own . . . and were judged by totally different standards of law.\textsuperscript{32}

While Neuman states that Jews and Muslims constituted a separate legal class with a defined legal status, J.N. Hillgarth in his monumental work claims the opposite to be true, stating that "Christians, Muslims, and Jews were always legally figured together because of the long tradition together . . . when one spoke of all men," he claims, the speaker "naturally referred to men of each faith."\textsuperscript{33}

The answer to this difference of opinion is easily resolved by a detailed examination of the Furs of Valencia and how the laws pertained to the Muslims and Jews. When attempting to figure out where to start with regard to the laws of the Furs, the words of the eminent medieval Valencian historian, Robert I. Burns, come to mind:

the mass of documentation . . . virtually ignores the resident Muslims. So much was this true that it is possible to write a considerable history of Christian Valencia with no more than an infrequent glance at the Muslim remnant.\textsuperscript{34}


\textsuperscript{33}Hillgarth, Spanish Kingdoms, 1:161-62.

\textsuperscript{34}Burns, Islam, 9.
It is in an attempt to rectify this situation and because of their extreme importance to medieval Valencia that the examination of the various laws dealing with the Muslims and Jews in the Furs of Valencia will begin by first treating the Muslim population and their legal situation within thirteenth-century Valencia.
CHAPTER III

THE FURS AND THE MUSLIM

Muslim, Christian, and Jew, pirate and preacher, eventually encountered the king's law.¹

Although conquered, Valencia remained predominately Islamic in character and population.² The great need to retain the native Muslim population is illustrated by the fact that James refused the papacy's request to expel the Muslim population after the conquest.³ In addition, James went so far as to halt any Muslim mass emigration from conquered Valencia.⁴ Neither the minority Christian populace nor the majority of Christian leaders supported the Church's anti-Muslim attitudes. In addition to the resident Christian refusal to heed calls to expel the Muslims, very few native Muslims followed the prescribed teachings of their religious leaders to leave Christian Valencia. Thus neither the ruling Christians nor the

¹Burns, Muslims, 193.

²According to Vicens Vives, two-thirds of the total population of thirteenth-century Valencia was Muslim. This compares to 35% for Aragon and 3% for Catalonia. Burns, Islam, 80.

³Hillgarth, Spanish Kingdoms, 1:92.

⁴Ibid., 163.
subjugated Muslims made any major attempt to alter the status quo.\textsuperscript{5} Although James came from a cosmopolitan Catalan society which traditionally had the general attitude of recognition and tolerance, and was comparatively tolerant towards Muslims, this historic attitude was not a major factor in his desire to have them remain.\textsuperscript{6} The basic reason for James’s decisions was financial and political need, because

Valencia depended on Muslim skill and labor for grain, salt, and of course, the maintenance of the systems of irrigation developed (if not invented) by the Muslims. The paper the royal Chancery used was provided by the Valencian Muslims exclusively.\textsuperscript{7}

Although Christians were the ruling minority of Valencia, very little effort and innovation was needed by the new Christian government in controlling the Muslims because "Valencia . . . constituted a more self-confident and

\textsuperscript{5}Leonard Patrick Harvey, \textit{Islamic Spain, 1250-1500} (Chicago: University of Chicago Press, 1990), 60, writes: "The teachings of the Christian religious hierarchy in practice were ignored by the civil authorities because Christians needed the services of the Muslim inhabitants of the occupied territories. The teaching of the \textit{fugaha} . . . were ignored by many Muslims. Whether the reason was love of homeland or whether it was poverty and lack of means we do not know, but very many Muslims who in all ways tried to lead pious lives stayed on in spite of the strictures of their leaders." Since Islamic law stated that Muslims should never live under non-Islamic law, why would they have stayed? An answer not readily given is that the laws, in particular the \textit{Furs}, made it, if not advantageous, at least tolerable for them to remain.

\textsuperscript{6}Ibid., 158.

\textsuperscript{7}Boswell, \textit{Royal Treasure}, 58.
self-assertive Muslim community than the others outside Granada.\textsuperscript{8}

What was the legal situation like for the Muslims of Valencia? This chapter will deal only with those laws pertaining solely to the Muslims. Many laws deal with both Muslims and Jews and will be taken up later. But the fact that the framers of the Furs found it necessary to distinguish certain laws for only Muslims and for only Jews is quite interesting. The general royal attitude of the kings of the Iberian peninsula in relation to Muslims and Jews was that they should "observe their laws and not attack ours."\textsuperscript{9} In general, the Muslim communities were governed by Islamic law infused with Roman law in connection with the Furs.\textsuperscript{10} In fact, James often reissued official protection of Muslim goods.\textsuperscript{11} Within the Furs three main groups of laws may be noted which deal only with the Muslims: freedom to work and trade; laws regarding rebellious Muslims, and laws regarding

\textsuperscript{8}Harvey, Islamic Spain, 100.

\textsuperscript{9}Hillgarth, Spanish Kingdoms, 1:171.

\textsuperscript{10}Ibid., 1:183.

\textsuperscript{11}Jesús Ernesto Martínez Ferrando, Catálogo de la documentación relativa al antiguo reino de Valencia contenida en los registros de la cancillería real (Madrid: Imprenta Gongora, 1934), 1:441 doc. 2026 states that "Grace granted by the prince to the Muslims of Eslida permitting them to retain their possessions and practice their religion in their mosques."
slaves. The rights of freedom to work and trade will be examined first.

By studying customary law it may be seen that Jews and Muslims had traditionally been given protection by the kings of Aragon. The twelfth-century *Usatges* of Barcelona states:

Since a land and its inhabitants are ruined for all time by an evil prince who is without both truth and justice, therefore we the oft-mentioned princes R[amón Berenguer] and A[1modis], with the counsel and aid of our nobles, decree and command that all princes who will succeed us in this princely office shall have a sincere and perfect faith and truthful speech for all men, noble and ignoble, kings and princes, magnates and knights, peasants and rustics, traders and merchants, pilgrims and wayfarers, friends and enemies, Christians and Muslims, Jews and heretics might trust and believe in the princes without any fear or evil suspicion for their persons but also from their cities and castles, fiefs and property, wives and children, and for anything they possess.

The attitude that all men, including Muslims and Jews, should retain what is theirs, both legally and morally, changed little in thirteenth-century Valencia. Throughout the Middle Ages land was the most important commodity. Without land, many a person was reduced to becoming a pauper, vagabond, or worse, a criminal. Therefore, the Christian rulers made sure to protect the rights of the Muslims. Theoretically the Christians owned all the

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12Within Valencia and throughout the Crown of Aragon, most slaves were Muslim; Hillgarth, *Spanish Kingdoms*, 86.

13*Usatges*, 78.
land. In practice "Mudejars were masters of their own properties, their rents assuming the nature of taxes." The rights of the Muslims to have protection of their land and the right to do with it as they wish was guaranteed in the Furs:

In due time, the Muslims' land will have been unpopulated they ought to be able to freely use anything, even labor without the yoke of servitude to another and . . . other than building-sites and lands already having been given first by us to others . . . the Muslims ought to hold it just as any other inheritance.

This freedom, enjoyed by the Muslims of Valencia, was common among the newly reconquered lands. According to

14 Out of 5,000 square kilometers the land distribution within the kingdom of Valencia was: 1,300 for the Crown, 900 for the Barons, and 1,300 for the Church. This left 1,500 sq. kilometers to the Jews and Muslims. For more information on land distribution in thirteenth-century Valencia see Burns, Islam, 21.

15 Burns, Muslims, 39. According to Burns in Medieval Colonialism, 85, according to the Furs legally the Muslims had to pay rent: "the lords of an estate are to have the besants of the Muslims." Although when reading Burns, one would assume this was a derogatory situation for the Muslims, however, it is quite the opposite. There would be no expectations that the Muslims would not pay either rents or taxes. In fact, it is quite exceptional that the Christians did not make the Muslims pay both rents and taxes on the land.

the *Costumes* of Tortosa, Muslims in that city were also protected from unwarranted search because it was stipulated that Christian officials were not allowed to enter a private Muslim residence even to restore a captured runaway slave, "without being accompanied by two Muslims of the gadi’s choosing."\(^{17}\) This policy was Crown-wide, because a Christian official could not enter the morería unless first delegated by the Crown and even then they must be accompanied by the *amin*.\(^{18}\) This freedom extended to the ownership and selling of property.\(^{19}\) Although originally this law was to prevent discrimination and attacks upon the Muslims, by the thirteenth century the Crown would begin to disallow the free sale of Mudejar goods to Christians because the Crown could make more money off of it by allowing the property to be owned by tax-paying Muslims.\(^{20}\)

A second instance of Muslim protection within the *Furs* is in relation to trading and shipping. Unlike Castile, the Catalan lands of the Crown of Aragon were a

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18 Ibid., 65.

19 According to the *Costumes* of Tortosa, I.1a.19-20, Muslims (and Jews) were guaranteed equal property rights with Christians, to own, buy and sell immovable property to or from whomever they wished. See Boswell, *Royal Treasure*, 273.

seafaring society. Catalonia in particular built its power by the sea. The twelfth-century Usatges of Barcelona illustrate the desire of Catalonia to continue its Mediterranean superiority in trading and maritime enterprises: "let the peace and promise not to take violent action which the princes should give to Spain and the Muslims on land and sea be maintained by them." This law, written a century earlier than the Furs of Valencia, bears a striking resemblance to the protection afforded the Muslims traders residing in thirteenth-century Valencia:

Merchants, private or public, Christian or Muslim, practicing their trade should be able to expect and to receive safe passage from both Christians and Muslims even though we might have, will have, or should have wars between Christians and the Muslims, as long as they do not carry forbidden items into their own land.

The importance of the Muslims, and more importantly their money, to the kings of the Crown of Aragon shifted as the Crown’s needs shifted. In the twelfth, as in the thirteenth century, the Crown had final say, through its laws, as to how the Muslims ought to be treated, thus "the oft-mentioned princes also ruled and ordered that

21Usatges, 78.

22Fori antiqui Valentiae, 18 (V.6): "Mercatores civitatis et regni possint habere et accipere securitatem a quibuscumque christianis et sarracenis, causa mercimonii exercendi, licet nos cum christianis et sarracenis guer­ram habeamus, habuimus vel debeamus habere, dum tamen ad terram ipsorum res prohibitas non deffereant."
all men living in their country shall for all time make peace and war by sea and land with the Muslims according to the princes' orders."  

The protection of Muslim goods was, occasionally, legally dissolved. The history of Muslim uprisings is too well-known and not important to the present study to discuss further here; except, that when an uprising did occur, it was considered just cause for the legal deprivation of the protection of property and wealth. In fact, the Crown often had the rebellious Muslims sold into slavery over the protests of local officials.

The largest amount of information by far pertaining to solely the Muslims within the Furs of Valencia are those laws dealing with the Muslim as slave. It has already been stated that Muslims were the majority of slaves in thirteenth-century Valencia and, therefore, laws regarding slaves would naturally constitute a major percentage of the law code. Although canon law contributed the major source of slavery laws, these canon

23Usatges, 98.

24There were five major phases of Moorish revolts: 1247-49, between 1252-56, early in 1257, again in early 1260, and finally a major revolt occurred in 1275-77. For more information regarding the phases of Moorish revolts see Burns, Medieval Colonialism, 8.

25Martinez Ferrando, Catálogo, 1:436 doc. 2002, orders the Bailiff of Valencia not to "impede the sales of Muslims who have taken part in the rebellions."
dictates were heavily influenced by Roman law. In Valencia, as with the majority of other Spanish kingdoms by the end of the Reconquista, slavery seldom existed except for Muslims captured in war. However, all the "customary ways of enslaving were prevalent in the Crown of Aragon: by birth, marriage, judicial sentence, and debt." With the end of the war against Islam, though, the majority of slaves were supplied by piracy and trade. There were a great number of slaves in Catalonia; most of them being found in the towns and with owners of all levels of the socio-economic level. Valencian slavery was no different than Catalanian because "slavery in the newly conquered kingdom . . .

26 The influence of Roman law on canon law regarding slavery will be dealt with in chapter 4 regarding the Furs and the Jews, since most laws deal with the Jew owning slaves.


29 Ibid., 109.

30 Hillgarth, Spanish Kingdoms, 1:87.
conformed to the normal Mediterranean pattern—urban rather than rural, domestic rather than agricultural."31

The Furs at times contradicts itself about the situation of the Muslim. Sections of the Furs describe the Muslims as nothing more than property or inanimate objects. This is especially true when considering wills and other legal documents. The Furs state that unless the future of a Muslim servant is stipulated in a will, the Muslims may be divided up by the court to the heirs, just as trees, mules, stones and other inanimate objects and animals would be.32 In addition, the Furs placed slaves under the control of the household, along with minors, women, and the mentally incompetent.33 Another area in which Muslims were treated like objects was in regard to the tolls charged for foreign Muslims, as if


32Fori antiqui Valentiae, 80-1 (L.2): "Cum res aliqua inter aliquos fuerit dividenda, cuius divisio commodo fieri non potest, veluti furnus, balneum, puteus, vestes facte, cyphus, molendinum, arbor, lapis, servitus vie, servus, sarracenus, mulus, equus, avis aut quelibet alie res que de sui natura sine interitu vel corrupcione sui divisionem in se non recipiunt, aut etiam castrum, domus, fundus qui quandoque commodo dividi non potest, licitatio sive encantum fiat inter eos super illa re, ut, qui eorum plus obtulerit, eam consequatur, restituendo partem precii alteri consocio contingentem."

33Fori antiqui Valentiae, 153 (LXXXIII.9): "Domesticos vocamus uxores, servos, liberos mercennarios, nepotes, discipulos, scolares et omnes mares et feminas qui sint de familia." For a more in-depth study of this topic see Burns, Islam, 109.
they were nothing more than common goods since "the Valencian Furs set transit duty on foreign Muslims at four pence, a horse at two solidi, and a mule at twelve pence." Customary law once again illustrates that Muslims had a long history in Catalan law of being considered slaves and thus as expensive objects. The Usatges of Barcelona state:

If a peasant finds either gold or silver ... a horse or mule, a Muslim or goshawk, let him immediately notify his lord, show and return it to him, and then receive whatever reward his lord wishes to give him.

Although the Furs at times treats the Muslim as property, or as a group unable to care for itself, this is not the major component of the laws dealing with Muslim slaves. The majority of laws as will be seen, are quite sympathetic to Muslims. Two sections remain, which deal with the Muslim as slave, in the Furs of Valencia: the baptizing of slaves leading or not leading to their freedom, and sexual relations with Muslim slaves and the consequences. The more important of these two, regarding

34Burns, Medieval Colonialism, 87.

35According to Boswell, Royal Treasure, 53, "the prices for Muslim slaves rose steadily throughout the thirteenth and fourteenth centuries." Boswell quotes Verlinden that the price for a Muslim slave ranged from forty-five to 340 sous in the thirteenth century to 260-400 sous at the beginning of the fourteenth. In addition, the average price for a male Muslim was 649 sous and females about 516 sous.

36Usatges, 88.
the freeing of baptized slaves, will be dealt with first. The *Furs* have three main laws dealing with the baptizing of Muslims. One deals with a Jewish lord, another with a conflict between two Christian lords, and the last is the procedure for a willing release of a Muslim from his Christian lord.

Under Valencian law, if a converted Muslim could buy his freedom he was not to be detained for any reason by a Jew. However, the law also states that if a Muslim wanted to convert but could not afford to pay the Jew, the newly-baptized Christian could remain with another Christian and pay the Jew later.

If a Muslim, male or female, is baptized with or without the Jewish lord’s will, they should be made free and released from the power of said Jew forever and they should be obligated to pay six morabatins [gold coins] to said Jew; if they should not have those, they may be enslaved and stay with another Christian only until they should acquire the six morabatins; which they must give and pay to the said Jew. . . . 37

The influence of canon law upon this law is evident. In both Gratian’s *Decretum* and Ramon de Penyafort’s *Decretales* the authority of canon law regarding the freeing of converted Muslims or their purchasing of their

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37 Fori antiqui Valentiae, 154 (LXXXIII.15): "Si sarracenus vel sarracena voluntate vel sine voluntate domini sui iudei bab[t]izentur, liberi fiant et a potestate dicti iudei perpetuo eximantur et iudeo iam dicto VI morabatinos solvere teneantur; quos si non habuerint, servient et stent cum aliquo christiano ta[n]tum donec quisiverint VI morabatinos, quos dicto iudeo donent et solvant. . . ."
freedom is addressed. In addition, the final line of the law, "it is sacrilegious for a Christian whom Christ redeemed, with the blasphemous things He endured, to be detained in chains under the yoke of Jewish servitude,"

38 Gratian, the twelfth-century canonist and compiler of the Decretum, writes twice about Jews not being permitted to have Christian slaves, and the forcing of Jews to free their Muslim slaves if they convert. Since Jews cannot own Christian slaves, if a Muslim converts to Christianity he is therefore to be set free. Gratian states this in Decretum Part I: Distinctio LIV, Canon XII: "Christian slaves purchased by Jews should be set free. You must set free, according to the precepts of the law and without delay, Christian slaves whom a Jew happens to purchase, lest--Heaven forbid!--the Christian religion be defiled by being subject to the Jews." Quoted in Chazan, Church, 21, Gratian further writes in Decretum Part I: Distinctio LIV, Canon IV, "Slaves who proceed from infidelity to faith are to be set free" (Chazan, 22). Again in Canon XVII, "If the slaves of the Jews, not yet converted, flock to the grace of Christ, they shall be granted liberty." Ramon de Penyafort in his Decretales, Title VI: "Concerning Jews, Saracens, and their Slaves," Chapter XIX, further borrows from Gratian and adds an exact monetary concession to the Jew for the loss of his Muslim slaves. Ramon writes, "No Jew may buy or retain in his service a baptized slave or one who desires to be baptized. If the Jew, for purposes of business, buys an unconverted slave and the slave afterwards becomes or desires to become a Christian, the Jew shall be paid twelve shillings for him, and he shall be withdrawn from service at once. But if he does not put the slave up for sale within three months . . . without any compensation the slave shall be set free." (Chazan, 35) This price is identical to the amount stated by Gratian in Decretum Part I: Distinctio LIV, Canon XVIII (Chazan 22). Additionally, Ramon states the same idea in his Summa De Poenitentia et Matrimonio, Chapter 6, (Chazan, 41), which is in accordance with the decrees of the Third Lateran Council in Grayzel, Church, 1:297.
further illustrates the Church's attitude within this law.39

Two more laws which allowed for Muslim freedom are designated within the Furs. Both are influenced by canon law, but both were molded by contemporary necessity. The first law states that, "if a male or female Muslim slave will be, by free will, baptized by his lord, the lord may neither sell nor retain the slave against his or her wishes, but must completely set him free."40 The other law deals with the instance when one owner of a slave wanted to free him, as prescribed by canon law by baptizing, and the other refused to free the slave. The superiority of canon law is again evident in the outcome:41

If two partners should own a Muslim together and one would like to baptize him or to give him freedom but the other should object, let him, the one who withheld, give part of the objecting partner's recompense that he may bid farewell on that day upon which he shall be freed and baptized.42


40Ibid., 153 (LXXXIII.13): "Si sarracenus vel sarracena captivi voluntate domini sui batbizatus vel bab[t]izata fuerit, non possit dominus eum vel eam vendere vel retinere contra eius voluntatem, sed penitus sint liberi."

41See note 38 for the specific canon laws which influenced this particular law of the Furs.
Although, legally, the former Muslim slave ought to be freed, as with keeping with canon dictates, very often the economic factors could not allow for it. Due to the economic disasters which it would have caused by freeing the Muslims, the king was forced to issue a decree that although Muslims may convert to Christianity their freedom is up to their lord, even if they had the lord's blessing to be baptized.\textsuperscript{43} This situation of retaining former Muslim slaves was not unlike the situation which was taking place to the north of Valencia in Tortosa, where a Muslim who converted remained a slave, but could only be sold to another Christian and not a Jew.\textsuperscript{44} The practice of Christians retaining newly baptized slaves was not without canon precedent. Gratian states that if a Muslim is baptized and the Jew has received his money, "any Christian shall have the right of purchasing that slave, either for release or for servitude."\textsuperscript{45} However, 

\textsuperscript{42}Fori antiqui Valentiae., 114 (LXXXII.3) "Si duo socii habuerint sarracenum communem et unus eorum voluerit baptizare eum vel dare ei libertatem et alius contradixerit, det, qui voluit, contradicenti partem precii quod valuerit illa die qua liberatus vel bab[t]izatus fuerit."

\textsuperscript{43}Burns, "Journey from Islam: Incipient Cultural Transition in the Conquered Kingdom of Valencia (1240-1280)," \textit{Speculum} 35, no. 3 (July 1960), 344.

\textsuperscript{44}Hillgarth, \textit{Spanish Kingdoms}, 1:86.

\textsuperscript{45}Chazan, \textit{Church}, 22.
Ramon de Penyafort in one place agrees with Gratian, in *Decretals* Chapter I, and then contradicts Gratian by claiming that the former Muslim slave is allowed to buy his freedom from his Christian master and thus be freed.\(^{46}\) If, however, he does not have enough to buy his freedom, "he may beg from house to house, or he may serve him for a certain time as arbitrated by reliable men or for five years."\(^{47}\)

The final series of laws, dealing solely with the Muslim, has to do with sexual relations between Muslims and Christians, marriage, and prostitution of Muslim slaves. When studying the *Furs* with regards to the consequences of sexual relations between a Christian and his Muslim slave, the laws bear a similarity to those of the *Costums* of Tortosa, except that the outcomes are completely opposite.\(^{48}\) According to the *Furs*, the children of these relations are always to be freed:

If any Christian man should sleep with his Muslim slave and from this she should bear a son or a daughter, said son or daughter of incontinence should be baptized, and the mother and child should be freed. And if any should sleep with another's Muslim and from this she should bear a son or daugh-

\(^{46}\)Ibid., 28.

\(^{47}\)Ibid., 41.

\(^{48}\)These laws deal only with relations between Muslims and Christians. There are laws which speak of sexual relations among Christians, Muslims, and Jews, which will be discussed in Chapter V.
ter, said son or daughter should be baptized and not bound by any servitude.49

Sexual relations between Christians and Jews was prohibited in the Church.50 However, canon law was utilized in this law regarding the children of these relations. According to Gratian, children of Jewish-Christian relations are to be always brought up Christian rather than in the religion of the infidel.51 Although Gratian used the term infidel to mean a Jew, by the thirteenth century the term was used with reference to Muslims too, and thus this canon law would aptly apply to Christian-Muslim relations.

The last law which deals with the sexual relations between a Muslim and Christian, pertains to a female Muslim slave impregnated before being sold. In this case, the woman is not to be sold and the children and mother may be allowed to be baptized and given their freedom:52


50Chazan, Church, 25.

51Ibid., 23.

52This law contradicts a law which will be examined in chapter 5, in that after the Muslim women has given birth, the Christian may sell her, but not to a Jew, until after she has given birth. It is further stated that the
Muslim women, impregnated by a Christian before bringing forth delivery by a Christian, Jew, or even Muslim are not to be sold nor otherwise divided; the child from her, however, should be baptized and freed entirely.\(^{53}\)

The **Furs** of Valencia were much kinder to the Muslim woman than the laws of Tortosa. In Tortosa, during the thirteenth century, the Muslim woman remained a slave even if she had a child to her Christian master. In addition, if a Christian had a child with another man’s Muslim slave neither the child nor the mother were freed.\(^{54}\) Hence, in Tortosa, it was easier for a Muslim slave of a Jew to become free after converting to Christianity or by payment than it was for a slave of a Christian.

The protection of the Muslim slave is further illustrated in the two remaining laws which deal solely with Muslims. This protection extended to marriage. Although it was an Islamic marriage, "If a slave or maid had contracted the marriage of another slave, before their mas-

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\(^{53}\) Fori antiqui Valentiae, 155 (LXXXIII.18): "Sarracena pregnans a christiano ante partum editum christianis, iudeis vel sarracenis non vendatur nec aliter distrahatur; proles autem ex ipsa edita bab[t]izetur et libera omnino."

\(^{54}\) Hillgarth, *Spanish Kingdoms*, 1:87.
The final law affording protection exclusively to the Muslim is the protection of female Muslim slaves from prostitution:

Likewise, we make a new law for none who will have a Muslim woman may openly hold her for his own prostitute nor make her available as a prostitute; that is, he may not receive payment for her; and if he should act against this, let him surrender her and let her be confiscated by us.56

Prostitution, like many other service-oriented functions of the Kingdom of Valencia, was a royal monopoly. The main impetus behind this law forbidding the prostitution of a Muslim slave was because the brothel was regulated by Crown officials. Although the Crown takes a moral stand against other vices such as gambling, "the Crown seems to have concluded that prostitution could be more effectively regulated than eradicated," and thus could help increase the Crown’s treasury since all prostitutes needed to obtain a license from the royal bailiff.57

55Fori antiqui Valentiae, 155 (LXXXIII.17): "Si servus vel ancilla alicuius matrimonium contraxerit, nichilominus sub potestate et domin[i]o sui domini remaneat sicut prius."

56Ibid., 22 (IX.2): "Item facimus forum novum quod nullus, qui habebit sarracenam, teneat eam pro meretrice sua palam nec ipsam pro meretrice exponat, id est, solidatam pro ea accipiat; et, si contrafecerit, ipsam amitat et nobis confiscetur."

57Mark D. Meyerson, The Muslims of Valencia In the Age of Fernando and Isabel: Between Coexistence and Crusade
Therefore, the Furs made it illegal for a Christian, Jew, or Muslim to prostitute their Muslim slave, since it would be cutting into the purse-strings of the king.

As may be seen from the above laws, the Muslims were both protected and regulated by the Furs of Valencia. The influence of the dhimma system on the Furs is quite obvious in many of the laws. In addition, many of the laws in the Furs have their foundations based on former customary law. In relation to their Christian neighbors, the Muslims did indeed constitute a second-class citizenship. The laws dealing with only Muslims were much more influenced by former customary law than by canon law. However, as will be seen, the laws dealing with only the Jews of Valencia have nearly their entire foundation in canon law.

CHAPTER IV

THE FURS AND THE JEW

The legal situation of the Jews is more complex than that of the Muslims. Unlike the large number of laws which deal only with the Muslims, very few laws in the Furs of Valencia pertain to only the Jews.\(^1\) What are the possible reasons for this lack of legal control? One reason could be the general lack of Jews, compared to Muslims, living in thirteenth-century Valencia.\(^2\) Although the number of Jews living in Valencia was smaller than that of the resident Muslims, the Jews still constituted a substantial minority. Indeed by 1300, Spain held by ratio the largest Jewish community in Europe. By 1300 there were 150,000 Jews out of a population of 5,500,000. Compared to France (100,000 out of 14,000,000), Italy (50,000 out of 11,000,000), and the Holy Roman Empire (100,000 out of 12,000,000), Spain held proportionally

\(^1\) Although the number of laws pertaining to only Jews is slight, the number increases, exceptionally, for those laws where the Jews and Muslims are grouped together. These laws will be dealt with in the next chapter.

\(^2\) Hillgarth, Spanish Kingdoms, 1:31, states that by the thirteenth-century there were fewer than 2,000 Jews residing in Valencia. Burns, Muslims, 137, writes that by the end of the thirteenth century, there were 250 tax paying Jews in the capital city.
more Jews than any other European kingdom. The Jewish minority was continually growing since the ninth century due to the emigration of Jews from the Muslim south to the Christian north. This influx of Jews began around 1090 when the Almoravids took control of Islamic Spain. Unlike the Fatimids, who showed great tolerance for non-Muslims, the Almoravids were not as compromising with regards to the dhimmi. However, the Jewish population of Christian Spain, and more importantly Valencia, was greatly enlarged by the Almohad conquest of both North Africa and Muslim Spain starting in 1140. From 1140 to 1230 Jews were either massacred or forced to convert to Islam. Hence, the Jews of North Africa and southern Spain fled to the relatively stable conditions offered in Christian Spain. In addition, Jews were continually arriving because James encouraged Jewish immigration to Valencia. The reasons James needed the Jews were two-fold. First, James needed the money the Jews were able

3For more about the Jews' geography and population see Strayer, Dictionary, s.v. "Jews in Europe: After 900," by Kenneth R. Stow.

4Assis, The Jews of Spain, 17.

5Burns, "Immigrants from Islam: The Crusaders' Use of Muslims as Settlers in Thirteenth-Century Spain," American Historical Review 80 (December 1975): 38 n. 44. Neuman, Jews, 1:5, states that James, "extended letters of naturalization and passes of safe-conduct to all Jews who would come by land and sea to settle in the province of . . . Valencia."
to provide for his war campaigns and the defense of the Kingdom of Valencia. The Jews gave money to James for his conquests and in return James repaid the loans and the Jewish services by appointing Jews as bailiffs in the main cities of Aragon, Catalonia, and Valencia. Second, he was desperate for settlers in Valencia to counterbalance the native Muslim majority. Although the Church attacked James' longing and apparent favorable attitudes toward Jews, its pressure was not enough to dissuade James from recruiting Jews to move to Valencia, because "the status of Jews as colonizer was well established throughout the Christian Kingdoms and efforts of hostile elements, such as the Church, to undermine their position were doomed to failure." Rather than follow the recent anti-Jewish attitudes of the Church, as presented in the Third and Fourth Lateran Councils, James' attitude follows more closely with that of the earlier papal bull Sicut Judaeis and those canon laws which were heavily


7 Hillgarth, Spanish Kingdoms, 1:239.

8 Assis, Jews of Spain, 17.
influenced by Roman law. In fact, according to archival evidence, as late as 1273 James confirmed the rights of the Jews of Valencia to have protection and possession of their houses and shops in the capital city. As may be easily understood, the main reason for this failure to impose the anti-Jewish codes of the Third or Fourth Lateran Council was the fear of losing the newly colonized Jews of Valencia back to Muslim Granada. Sicut Judaeis was first issued by Pope Calixtus II (1119-24) and was re-issued by five more popes by the end of the twelfth century and another ten in the thirteenth century. The version of Sicut Judaeis, written by Pope Clement III between 1187-1191 was "incorporated into 'authoritative' canon law in the Decretals of Pope Gregory IX (1227-41)."

Sicut Judaeis was issued by Pope Calixtus II (1119-1124). The main idea of the bull was that Jews were to be allowed to "live peacefully in their midst." The main points of the bull are: Since there were limits imposed on their [Jews] freedom there should be limits in what is forbidden them; forced conversion was forbidden; only local authorities could commit a Jew to death; Jews must not be harmed in body or property.

Martínez Ferrando, Catálogo, 1:336 doc. 1536.

The decrees of the Third and Fourth Lateran Councils were enforced in neither the Crown of Aragon nor the Kingdom of Castile. For more information pertaining to the roles of these Councils upon the life of Spanish Jewry, see Hillgarth, Spanish Kingdoms, 1:167, and Assis, Jews, 19.

It was stated that the Furs were heavily influenced by Roman law. Nowhere is this better illustrated than in the laws dealing with solely the Jews. Although this may seem ironic, because of the natural influence of canon law, it will soon be shown that the Furs utilized canon law, which in itself was influenced by Roman law. The major Roman influence on both thirteenth-century canon and civil law was the Theodosian Code, compiled around 429-438, and is a "mixture of tolerance (the legacy of polytheistic Rome) and the intolerance inherent in monotheistic Christianity."\textsuperscript{13} The major section of the Theodosian Code which deals with the Jews, is the final section, Book 16. Book 16 was "accepted by the church as an authoritative source of canon law."\textsuperscript{14}

It has now been seen that James desperately wanted Jews to come to or remain in Valencia. Naturally, the only way he could entice them to come was to offer them a better situation than they had under the dhimma system within Islamic Granada or North Africa, especially Morocco. The solution James offered was simply to allow them to retain their life style as they had before, under Muslim rule.

\textsuperscript{13}Ibid., 32.

\textsuperscript{14}Ibid., 36.
Under the dhimma system the Jews were given the right of self-government and worship in return for an annual tax. Jews received rights similar to Christians living under the dhimma system which was explained in chapter two. Thus, James utilized a form of the Islamic dhimma system in an effort to appease the local Muslim, and in this case Jewish, populations.\textsuperscript{15} Hence, there was little change under the new Christian government, because their right to govern themselves was never questioned.\textsuperscript{16}

It was this allowance of self-government, as prescribed in canon law and the Christianized dhimma system, which makes it so difficult to study the legal situation of the Jews from the Furs of Valencia.\textsuperscript{17}

The Furs of Valencia were only to be followed among the Jews when a Christian or Muslim was involved, all other legal actions were taken care of by the Jewish


\textsuperscript{16}Tov Assis, Jews of Spain, 22.

\textsuperscript{17}The Jews were given near autonomy by James. Duties which were permitted the Jewish government were: regulating election of magistrates and rabbis; regulating general religious and moral conduct; tax assessment; administration of justice; and the right to punish criminals. Baer, History, 1:143. James gave the Jews of Valencia the right to choose two officials from among themselves for the position of "men of commerce," see Martínez Ferrando, Catálogo, 1:255 doc. 1021.
aljama, which was the local Jewish community, or court.\textsuperscript{18} In addition, any public attack, inquisition, or questioning against the Jews which was sponsored by Christians had to conform with the laws set down in the Furs.\textsuperscript{19} The Jews were very defensive about their rights in Christian Valencia. In fact, when a royal porter attempted to seize their goods because of their delinquency in paying taxes they physically prohibited him. According to the documents, the king forgave them for not paying the tax.\textsuperscript{20} Within the Furs of Valencia there are only four laws pertaining solely to the Jews. Two concern the role of Jews in court, one the fleeing of Jews to another lord, and the last the seizure of a Jewish-Muslim child by a Christian.

The largest set of laws deals with the Jew in a Christian court. The first reinforces the stipulation, set down in civil law under James, canon law, Roman law, and Islamic law that the Jews may be allowed to govern themselves but must utilize Christian courts and the Furs of Valencia in cases involving Christians. This legal

\textsuperscript{18}Neuman, The Jews in Spain, 24. For more about the inner workings of the Jewish court system see Tov Assis, Jews, 18. At times, James granted exemption to the Jews from receiving Valencian justice [el justicia], see Martínez Ferrando, Catálogo, 1:396, doc. 1813.

\textsuperscript{19}Neuman, Jews, 1:29.

\textsuperscript{20}Martínez Ferrando, Catálogo, 1:129, doc. 580.
right of the Jews to use their own law when dealing with other Jews was definitely influenced by Roman law. In fact, the Emperor Augustus wrote in 1 B.C. that "Jews shall use their own customs in accordance with their ancestral law, just as they used to use them in the time of Hyrcanua, the high priest of their highest god." In addition, according to the Furs of Valencia, if the case is heard in a Jewish court the Jews must still understand that the Furs and not "some other statute is the final law." The second law dealing with court procedure deals with oaths and a "protection fee" which Jews were required to pay.

The oath was a major component of medieval law. The importance was only further increased when canon law came to adopt the pivotal place the oath played in Roman law. In medieval law, without the oath, "testimony prejudicial to another’s interest was not to be believed." The oath which Jews were required to take originally dates from around the fifth century and was normally issued in

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22 Fori antiqui Valentinae, 59 (XXXVII.6): "Iudei super omnibus questionibus seu demandis civilibus vel criminalibus, quas cum christianis habeant, respondeant et accipiant iusticiam in posse curie civitatis, non obstante aliquo privilegio eis facto vel fatiendo, et, si iudei causam inter se habebunt, quod de ea eorum iudices cognoscant."

a degrading manner, which differed in the various kingdoms of Europe.  

Although the Jews were not forced to submit to the degrading aspect of the oath for much of the early Middle Ages, Constantine VII (912-59) once again required a humiliating form of oath, known as more Judaico when Jews were in Christian courts.

The law dealing with Jewish oaths in the Furs of Valencia illustrates the relative kindness of James towards the Jews. The Furs do not contain any of the derogatory formalities or maledictions which were often present in Jewish oaths of the Middle Ages and allows the Jews to swear on the Ten Commandments. In addition, in 1239 James I officially exempted the Jewish community of

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Valencia from using the maledictions.\textsuperscript{27} A second distinctive Spanish feature regarding the Jewish oath was the right to pay a fee and thus be exempted from being forced to make any derogatory statements.\textsuperscript{28} Thus, the fee required of the Jews in the Furs took the place of any maledictions or derogatory formality. This fee, therefore, was used to ensure truthful confessions on the stand. This allowance illustrates the respect shown for the Jews in thirteenth-century Valencia.\textsuperscript{29}

Jews may swear oaths, be questioned, and may answer as if an oath brought forth by us concerning loans. Nevertheless, they may openly, without legal formalities, swear on the law of Moses or the Ten Commandments.

Additionally, the lord king added in this statute that on all occasions, in which a Jew should have to pay a sum to the court to be kept if the Jew speaks badly. The Jew will lose only this money and not other rights granted to them.\textsuperscript{30}

\textsuperscript{27}Neuman, \textit{Jews in Spain}, 1:158.


\textsuperscript{29}Muslims were permitted to swear oaths on the Koran. Burns, \textit{Medieval Colonialism}, 11.

\textsuperscript{30}Fori antiqui Valentiae, 92 (LXII.7): "Iurent iudei et interrogentur et respondeant sicut in sacramentali a nobis edito super usus in Girunda, ipsis tenentibus tamen coram se librum legis Moysi sive decem precepta legis. Addidit dominus rex in hoc foro quod in omni causa, in qua iudeus debat facere sacramentum, quod iuret per illud sacramentale de malediccionibus quod per ipsum dominum regem fuit ordinatum super usus in Girunda, non obstante aliquo privilegio eisdem iudeis ab ipso dominio rege concesso sive indulto."
The third law, which deals solely with the Jews, regards the Jew as a form of property or as a tenant in a transaction between two Christians. In a sense, the law pertains only to Jews in a secondary way by allowing them the freedom to move from one lord to another. However, before they change "official" residence, the Jews must get their former lord's permission, for he would be losing revenue from taxes.

Jews, although they may take refuge with another ecclesiastical or secular lord or shall serve or remain at another domicile's domain, may not be freed for that reason alone from our domain, but are forever ours, unless the lord of that place has from us or ours a declaration of termination and of donation of the said Jew.31

The final law dealing with only the Jews centers on the situation where a Christian would confiscate and adopt a child of a Jewish-Muslim relationship. The law stipulates the outcome for both the child and mother; the latter is to be freed from all servitude, and the former is to be baptized. In addition, the Jew may never be allowed to ask for the return of her child. Since both mother and child are to become Christians, this law deals with Jews owning Christian slaves. A number of Roman,

31Ibid., 21 (VIII.3): "Iudei, licet ad alium dominum ecclesiasticum vel secularem confugerint vel in alterius dominio domicilium fecerint vel morentur, non sint a nostro dominio ideo aliquatenus absoluti quin imperpetuum sint nostri, nisi dominus loci a nobis vel nostris haberet super hiis definitionem vel donationem."
canon, and civil laws already stated in the Furs are used as precedents for this law. As has already been illustrated, Roman law heavily influenced the Furs and this is no less true than in this law. As was stated earlier, book 16 of the Theodosian Code was incorporated into the official canon law of the Church. Title 9 of book 16 deals entirely with Jews holding slaves and is entitled, "No Jew Shall Have a Christian Slave." In addition, Constantine the Great stated, regarding Jews holding Christian slaves, that "if any Jew should purchase and circumcise a Christian slave or a slave of any other sect whatever, he shall not retain in slavery such circumcised person." In addition to these two Roman examples, the Codex of Justinian also forbids Jews from owning Christian slaves. The number of canon laws used here are quite large and many of them have already been referred to in this study. First, in the Decretum, Part I, Distinctio LIV, canons xiii, xv, xvi, xvii, and xviii forbids Jews from owning Christian slaves. Secondly, in the Decretales, Title VI, "Concerning Jews, Saracens, and their Slaves" Chapter XIII states that Jews are not to have Christian nurses or servants, and chapter XIX

32 Cohen, Under, 35.
33 Pakter, Medieval, 5.
34 Chazan, Church, 21-23.
forbids a Jew from owning a Christian slave or retaining any slave who wishes to be baptized.\textsuperscript{35} Another canon law source for this law in the Furs is in \textit{Summa De Poenitentia et Matrimonio} part 6 which recommends the prohibition of Jews owning Christian slaves.\textsuperscript{36} Additionally the Third Lateran Council of 1179 forbade Jews and Muslims from owning Christian slaves.\textsuperscript{37} Finally, this law in the Furs has precedent within the Furs itself which states that "Jews or Muslims may not hold or even possess Christian slaves nor Christians wetnurses."\textsuperscript{38} Many different legal precedents play a role in the foundation of this particular law of a Jew holding a newly baptized child. However, the law also states that the Jewish child is to be taken away from the parents and raised by Christians. This too has canon law precedent. Part II, \textit{Causa XXVIII, Questio I, Canon XI} of the \textit{Decretum} states that

\textit{it was decreed the Children of Jews as well as others coming into the faith ... leave the society of infidels. Christians are to be removed from the fellowship of parents, lest they become entrapped in their errors. We order that the sons and daughters}

\textsuperscript{35}\textit{Ibid.}, 33-35.

\textsuperscript{36}\textit{Ibid.}, 41.

\textsuperscript{37}\textit{Grayzel, The Church}, 1:297.

\textsuperscript{38}\textit{Fori antiqui Valentiae}, 21 (VIII.2): "Iudei vel sar-raceni non teneant vel habeant servientes christianos vel christianas vel nutrices."
of Jews be removed from the fellowship of their parents. They are instead to be sent to monasteries or to God-fearing Christian women or men.\textsuperscript{39}

Finally, the \textit{Furs} states that if a male Christian and Jewish women had a child the Christian is to pay a fine.

If the Christian should take from a Muslim a child of another Jewish slave, that child is to be baptized and the Jew may never be a maid-servant, but should be freed and not bound by any yoke of servitude. But a Christian who shall have impregnated a Jewish maid ought to pay the court twelve sous as punishment.\textsuperscript{40}

The \textit{Furs} exacts a less severe punishment for a Christian having a child with a Jew than does canon law which states that sex with a Jew is punishable by excommunication.\textsuperscript{41}

The lack of any strong legal evidence within the \textit{Furs} of Valencia which pertains solely to the Jews clearly supports the fact that the Jews had a tremendous amount of self rule. James allowed the \textit{aljamas} to retain their ancient laws and customs, which they had under the previous \textit{dhimma} system and early Church regulations, in

\textsuperscript{39}Chazan, \textit{Church}, 24.

\textsuperscript{40}\textit{Pori antiqui Valentiae}, 155 (LXXXIII.16): "Si christianus a sarracena alicuius iudei captiva prolem susceperit, proles illa bab[t]zetur et nunquam iudei sit ancilla, sed sit libera et ab omni iugo servitutis immuni, et nullo precio ipsi iudeo pro illa prole dato, perducatur proles illa ad premia libertatis. Sed christianus, qui ancillam iudei gravidaverit, solvat curie XII solidos currentis monete."

\textsuperscript{41}Chazan, \textit{Church}, 25.
return for their loyalty and support of the new Christian ruler, James himself. However, in the few laws which are in the Furs, the influence of Roman law by way of canon law is clearly visible.

Turning to the final group of laws, those which combine Muslims and Jews together, it will be evident that the Jews were much more regulated than may appear at first glance. The next chapter will deal with the laws which pertain to the Muslims and Jews together, and how they were legally treated in the Furs of Valencia.
CHAPTER V

THE FURS AND BOTH MUSLIMS AND JEWS

The final and most important group of laws must now be studied. These are laws which treat the Muslim and Jew together. In addition, a number of laws in the Furs combine the new Christian population along with the Muslim and Jew and thus considers all as equal under the law. It will be these general Valencian laws, dealing with Muslims, Jews, and Christians, which will be dealt with first.

Certain laws within the Furs of Valencia imposed restrictions, not only on the Muslims and Jews, but also on the ruling Christian population. Thus it may be said that these laws were truly universal, in that all inhabitants, regardless of religion, were subject to them. There are three main topics which the Furs addresses regarding Muslims, Christians and Jews in Valencia: heretics, sodomites and those Christians who convert to Islam or Judaism; the practice of usury; and the loss of contracted goods.

The law which will be dealt with first is that which frightened Christian medieval Europe the most, that of "faithful" Christians being converted either to Islam or
Judaism. The Furs of Valencia follow the prescribed canonical practice of death for those converting to Islam or Judaism. Further following canon law, Christians who did convert were associated with those true enemies of medieval Christianity, the heretics and sodomites. As

1Canon law is based on the Gospels and it is from there that this law originated. See Galatians 5:2-7, "Mark my words: I, Paul, say to you that if you get yourself circumcised Christ will benefit you no more [bold mine]. I impress on you once again that every man who accepts circumcision is under obligation to the entire law. When you seek to be justified by way of law, you are cut off from Christ: you have put yourselves outside God's grace. For it is by the Spirit and through faith that we hope to attain that righteousness which we eagerly await. If we are in union with Christ Jesus, circumcision makes no difference at all, nor does the lack of it; the only thing that counts is faith expressing itself through love." In addition, the papal bull Turbato Corde, issued by Pope Clement IV on July 27, 1267, stated the real fear the apostatizing of Christians to Islam and Judaism had become in Europe. Grayzel, Church, 2:102. According to Dwayne E. Carpenter, Roman law also played a role in formulating this strict measure against Jews, and later Muslims, who convert Christians. After adopting Christianity, Emperor Constantine the Great forbade anyone from converting to Judaism: "Moreover, if any person from the people should betake himself to their [the Jews'] nefarious sect or should join their assemblies, he shall sustain with them the deserved punishments." This Roman law edict, that Jews are not to convert Christians, was followed in early Church laws. In Ravenna in 409 it was stated that Jews are forbidden from missionizing since it was, "'more grievous than death and more cruel than murder for a Christian to adopt Judaism.' Proselytizers for the Jewish faith were to be punished in the same manner as those guilty of treason." For more on the influence of Roman and early canon law regarding Jewish proselytizing see Dwayne E. Carpenter, Alfonso X and the Jews: An Edition of and Commentary on Siete Partidas 7.24 "De los judios." (Berkeley and Los Angeles: University of California Press, 1986), 83-84.

2For more on sodomites in the Middle Ages see John Boswell, Same-Sex Union in Premodern Europe (New York: Villard Books, 1994).
has already been stated the prescribed "cure" for those Islamic and Jewish converts was death.

Heretics and sodomites ought to be burned and if a Christian should convert to Jewish or Islamic law and, because of this he should be circumcised, he ought to be burned.³

The laws in the Furs which deal with Christian slaves and the Church's strict laws forbidding it has already been dealt with. The fear of converts to Judaism and Islam did not only come, however, from the ranks of Valencian slaves. Christian converts to Judaism and Islam came from all sectors of Christian society. Although the exact number may never be known, "it is quite apparent that it was no unusual phenomenon for proselytes to be drawn to Judaism from the ranks of . . . Christians, even at the risk of confiscation, slavery and death."⁴

Although it has been previously seen that customary law played a major role in the compilation of the Furs of Valencia, the change in attitudes, in regards to Christians converting to Judaism or Islam, during the century between the codification of the Usatges of


⁴Neuman, Jews, 1:194.
Barcelona and the Furs of Valencia illustrates how fearful Europe had become of Judaism and to a greater extent Islam. Regarding the occurrences of a child converting to Islam, the Usatges states that "the aforesaid forebears, however, can disinherit their sons or daughters, nephews, or nieces if they . . . become traitors . . . or if the sons become Muslims and do not want to recant."\(^5\)

In connection with the crime of converting to Islam or Judaism, the act of a converted Christian backsliding to one’s previous religion normally called for confiscation of property and being burnt at the stake.\(^6\) The penalty for a Jew or Muslim converting a Christian was stiffer in the thirteenth century than in the twelfth. The cause may be attributed to the ongoing war between Christianity and Islam and the influence of canon law because the Usatges of Barcelona states that:

If anyone lures a baptized Jew or Muslim back to their religion or calls him either "turncoat" or "renegade" or if anyone within our city walls or burghs is the first to draw a sword against another or calls him a "cuckold," let him pay a fine of twenty golden ounces of Valencia to the prince because of his ban. And if he hears or suffers any wrong there, let no compensation be made him for this and afterwards let him await the law and justice of his adversary.\(^7\)

\(^5\)Usatges, 95.

\(^6\)Burns, "Journey from Islam," 342.

\(^7\)Usatges, 81.
What had been punished by a fine in the twelfth century was now punishable by death in the thirteenth. The difference between punishments is a direct influence of the Church and canon law, particularly the *Decretum*. In fact, to protect former Jews and Saracens from being tempted to backslide to their former faith, the Fourth Lateran Council forbade new converts from retaining any of their former rites, "for it is a lesser evil not to know the Lord's way than to go back on it after having known it." ⁹

The second law where Christians are legally associated with Muslims and Jews is in regards to usury. The historiography of Jewish history has been laced with the misconceptions that the Jews were solely involved in the moneylending business. If you believe all the misconceptions which have been written regarding this area, it would seem that every Jew since biblical times was a moneylender, holding every credit contract of the entire Christian population. In fact, it was only in the thirteenth century in Spain that canon law forbidding Christians from taking excessive interest from fellow Christians was beginning to be enforced and thus it was


only from this time that moneylending became a "Jewish specialty." However, the Furs of Valencia, not unlike other law codes, both canon and civil, group Jews with Christians and Muslims when it comes to usury. According to the Furs of Valencia, usury, which is charging extreme interest on loans, was committed when charging more than four diners a month per twenty sous. Thus, according to the Furs of Valencia usury was committed when charging more than twenty percent. Since the government now regulated the amount of interest, the Jews' ability to compete for customers diminished, since the same interest rate could now be had Kingdom-wide.

Christians, Jews and Muslims may not receive payment for usury except only four diners a month per twenty sous, it is legal that they may hold fixed levies or other entrance contracts.

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12Fori antique Valentiae, 99-100 (LXVII.1): "Christiani, iudei, sarraceni non accipiant pro usuris nisi tantum IIII denarios in mense de XX solidis, licet habuerint certa pignora vel pacta aliter inita; et ex quo usura equiparata sit sorti, deinde usura nullatenus crescat aliqua temporis diuturnitate, immo, ex quo usura sorti equiparata sit, reddere instrumenta, pignora et fidancias absolvere compellantur."
The most obvious legal precedent for the law regarding usury in the Furs is decree 67 of the Fourth Lateran Council of 1215 entitled "On the usury of Jews."

Although Muslims are included in this law, very little documentation exists which involves Muslims in moneylending. Although both Christians and Jews were active in this occupation, the fact has already been stated that the Christian rulers were dependent on Jewish money for protection of Valencia and for the expansion of the war against Islam.

The final law where Christians are legally associated with Muslims and Jews is in regards to the loss of contracted goods. The law states that if a Muslim, Christian, or Jew profits by the loss of another's goods by an assortment of listed ways, the criminal will be executed. The only way to avoid capital punishment is by the presentation of evidence that these goods were lost in good faith.

Merchants, slave traders, moneychangers, clothiers, whether they be Christian, Jew or Muslim, who on account of loans made, deposits, purchases, or if by any contract made they will come into indebtedness,

13Tanner, Decrees, 1:265.

14The kings were very strict in forcing Christians to pay their debts to the Jews. The main reasons being that the Crown needed the good favors of the Jews and that the money being paid by the Christians was the money which the Jews would later loan to the Crown. For more on this topic see, Hillgarth, Spanish Kingdoms, 1:172.
se alzavertit with or seized someone else's things, are to be punished by death, unless it were to be demonstrated through clear proof the chance they lost those things whether on land or at sea without profit.\(^{15}\)

If the laws dealing with Muslims, Christians, and Jews are some of the most important of the Furs of Valencia, since Muslim, Christian and Jew are considered at one and the same time, than those dealing with sexual relations are the most confusing.

The law does not contradict itself and is very clear in the cases of sexual relations between a male Jew or Muslim having sex with a female Christian. In both instances the penalty considered appropriate is death by burning.\(^{16}\) The penalty was the same in the Costums of Tortosa too, and this law follows both Roman and canon precedent.\(^{17}\) Although the punishment in Valencia and Tortosa was the same, death, the Decretum calls only for

\(^{15}\) *Fori antiqui Valentiae*, 204 (CII.4): "Mercatores, captalanii, campsores, draperii, sive sint christiani, iudei, et sarraceni, qui ex causa mutui, depositi, empcionis seu cuiuslibet alterius contractus fuerint debitores, se alzaverit cum rebus alienis vel s'abatran, morte puniantur, nisi per evidentias probabatur scienter quod casu fortuito in terra vel mari res illas amiserint sive bona."

\(^{16}\) Ibid., 230 (CXIV.8): "Si iudeus vel sarracenus habendo rem cum christiana inventus fuerit, comburantur ambo."

\(^{17}\) For more information on sexual relations between Muslims and Christians see, Boswell, *Royal Treasure*, 343-44.
excommunication and banishment from the Christian community.\textsuperscript{18}

The confusion, regarding this set of laws, is that the \textit{Furs} of Valencia contradicts itself when dealing with sexual relations between a Christian man and Muslim women and thus the situation is not as clear when dealing with a male Christian having sexual relations with Muslim or Jewish women. The reason it is not clear is that, in laws already studied, where Christian men and Jewish and Muslim women have had children, the penalties are completely different from those encountered in this section. Now that Jews and Muslims have been grouped together, the penalties are much harsher than those present in laws regarding only Muslims or Jews. In chapter four it was stated that if a male Christian had a child with a Jewish women the only penalty he had to pay was "twelve solidos currentis as punishment." Now that the Jew has been leg-

\textsuperscript{18}According to the \textit{Theodosian Code}, sex with a Jew was considered adultery and was therefore punishable by death. For more regarding Christian and pre-Christian Roman law dealing with Christian-Jewish relations see Cohen, Under, 35. The \textit{Decretum} states "If anyone joins himself by conjugal bond to Jewish depravity, whether a Christian female is joined by carnal bond to a Jew or a Jewess to a Christian male, and is known to admit such a misdeed, he shall be excluded from Christian assembly and society and from the communion of the Church." Chazan, \textit{Church}, 25.
ally associated with the Muslim the penalty for the same affair is death by burning.\textsuperscript{19}

A second instance where the Furs of Valencia contradicts itself is in the section of the law which deals with a male Christian having an affair with a Muslim woman. Previously, in Chapter three, it was shown that if a Christian male and Muslim female had children together both mother and child were to be freed, unless the Muslim was the slave of another. In addition, Muslim women who had been impregnated were not to be sold and were never to be separated from their children. However, in the laws dealing with both Muslim and Jew the penalties are much different. In addition, there were penalties prescribed against the Christian man for having sexual relations with a Muslim woman.\textsuperscript{20}

If a male Christian is found to be having an affair with a Jew they ought to be burned. If with a Muslim, both are to be quickly stripped of citizenship, and if a Christian shall impregnate a

\textsuperscript{19}Fori antiqui Valentiae, 230 (CXIV.9): "Si christianus inventus fuerit habendo rem cum iudea, comburantur."

\textsuperscript{20}John Boswell has stated that there were no penalties for the men involved with Muslim women. See Boswell, Royal Treasure, 334. The situation of Muslim-Jewish relations, although outside the context of the present study, has been addressed in an article by David Nirenberg, "Muslim-Jewish Relations in the Fourteenth-Century Crown of Aragon," Viator 24 (1993): 249-268. According to Nirenberg the Jewish and Muslim communities often reacted with the same zeal when dealing with inter-religious affairs, with penalties ranging from execution and whipping to banishment.
Muslim, at no time may he sell the Muslim to a Jew, until what time she gives birth, and if the Christian shall have sold her to the Jew, he may lose the Muslim and the punishment of another may be more effective than what the court gives as punishment, and the Christian ought to be chided to support the child whom he might have with a Muslim or Jew, and baptize the woman.21

The only section of the laws which agree are that the children and Muslim women, if not sold into slavery, are to baptized at all costs. The differing penalties must have made for a confusing situation for the resident population when instances of mixed religious sexual relations occurred.

Four remaining groups of laws regarding the Muslims and Jews are left to be examined in the Furs of Valencia. These laws deal with daily and very common situations: the fleeing to churches for protection; the use of common utilities and the keeping of holy days; the legalities of Muslim and Jewish witnesses in Christian courts; and the already intensely studied topic of Muslims and Jews not being allowed to buy Christian slaves.22

21 Fori Antiqui Valentiae, 230 (CXIV.9): "Si christianus inventus fuerit habendo rem cum iudea, comburantur. Si cum sarracena, currant ambo nudi per civitatem, et si christianus impregnaverit sarracenam, numquam sarracena vendatur iudeo, quousque peperit, et si christianus vendiderit illam iudeo, perdat sarracenam et pretium alterius que tantum valeat, det curie pro pena, et compellatur christianus nutrire prolem quam a sarracena vel iudea habuerit, et babtizare illam."

22 The topic of Christian slaves being owned by Muslims and Jews has already been addressed in the present study in chapters three, four and the first part of chapter five. There is no difference in the attitude of the Furs regarding
It has been seen throughout this study that canon law at times gave way to Roman law. In addition, it has been further seen that James I made sure that Christians paid their debts to their Jewish creditors. It is now time to examine the law, influenced by canon law, which forced the Jews and Muslims to "repay the universal debt to God." Therefore, the examination of the final group of laws which deal with both the Muslims and Jews will begin with the situation where Jews and/or Muslims flee to churches for protection.

In chapter three it was stated that Valencia was plagued by a great number of Muslim uprisings. The consequence of these rebellions was often a period of small-scale warfare against the Muslims. During these periods of rebellion, the Crown, which often acted as protector of the Muslims and Jews, casually looked the other way.23

this topic in the present chapter. The wording of the Furs alters little between the previous two chapters regarding Muslims and Jews owning Christian slaves: "A Jew and Muslim ought neither to buy a Christian slave nor adopt any title over a Christian." Fori Antiqui Valenciae, 21 (VIII.1): "Iudeus, sarracenus servum christianum nec comparare debet nec largitatis nec quocumque titulo consequetur." In addition to the precedents for these laws already stated in chapters three and four the direct influence of the Third Lateran Council is seen. For more on this influence see Grayzel, Church, 1:297. For more information regarding Christian slaves being owned by Muslims and Jews see chapter three, pp. 32-40 and chapter four, pp. 53-58.

23On many occasions, James gave rebellious Muslim property to his Christian servants. See Martinez Ferrando, Catálogo, I:172 doc. 770; I:197 doc. 897; I:286 doc. 1305; I:447 doc. 2049; and I:448 doc. 2052.
Therefore, the only recourse for the Muslims and Jews was to seek shelter and protection, of both body and property, ironically from the one place safe from Christian ire, their spiritual enemy, the Church. Although it has been shown that the Church had little political power over the Muslims and Jews both in Valencia and throughout the entire Crown of Aragon, it was situations, such as the physical violence during failed rebellions, which allowed the Church the opportunity to impose its desire for conversion on the Jews and Muslims. James needed the Muslims and Jews, but when he turned away from them during these periods of rebellions the Church was able to finally achieve this goal because

Jews and Muslims, who with any guilt or debts of trouble feign to wish to be joined with the Christian laws, that fleeing they may be able to avoid criminal charges or the weight of debts, are to be kept away unless they have already received baptism.24

Further evidence, of Church influence is shown in a small section of the law: "However, in this law we amend but when he shall be baptized, he is held to pay the debt and

24Fori Antiqui Valentiae, 22 (IX.1): "Iudei vel sar-raceni, qui reatu aliquo vel debitis fatigati simulant se christiane legi velle coniungi, ut ad ecclesias confugientes evitare possint crimina vel pondera debitorum, arceantur nec ante suscipiantur ad babtismum, quam debita universa red-diderint vel solvere asecuraverint vel fuerint innocentia demostrata purgati."
to answer the criminal charge."25 Thus, although the former Muslim or Jew may be physically protected the Church refused to protect their property.

In addition to the religious aspects of the Furs of Valencia, more mundane laws pertain to the Muslims and Jews. The location, times, and instruments of work and play, for the Muslims and Jews, were regulated in the Furs of Valencia. Regarding when and where Muslims and Jews could work and the consequences associated with breaking the law, the Furs of Valencia states that:

Jews nor Muslims may not . . . work, be it inside or outside the city, on public holidays, in any part of the Kingdom of Valencia, but only in their own homes; nor may they keep their workshops open on public holidays: but if they do, they lose everything which they were able to earn from in their workshop on that day without recompense.26

In addition to these prohibitions, the Muslims and Jews were not even allowed to work in their own homes on the most important of festival days: Christmas, Easter,

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25Ibid., additional paragraph between sections one and two, "In hoc autem foro emendamus quod bab[t]ismus non ei vetetur nec alonguetur racione alic[u]is debiti vel crimi-nis; sed, quando erit bab[t]izatus, debitum solvere et re-spondere crimini teneatur."

26Ibid., 21 (VIII.2): "Iudei vel sarraceni non . . . operentur diebus festivis publice infra civitatem vel ex-tra, aliqua parte regni valentie, sed infra domos suas, nec teneant operatoria aperta in festivis diebus; quod si fecerint, perdant omnia sine remedio que in operatorio eorum die illa poterunt inveniri."
Pentecost, and the Day of Blessed Mary.\footnote{Ibid., added section between sections two and three, "Addimus autem huic foro quod sarracenis non vetetur operari in suis propriis hereditatibus nec in aliis quas tene/ant ad operandum ad medietatem vel ad certum quid, in diebus festivis, exceptis die Nativitatis Domini nostri Ihesu Christi, Pashe floride, die Pentecostes, die beate Marie . . . ."} The main impetus to these regulations was canon law. The Decretaales of Gregory IX, compiled by Ramon de Penyafort, state that Jews are not to have open doors or windows on Good Friday, but must keep them closed the entire day.\footnote{Chazan, Church, 30.} A different canon states that Jews and Muslims should not be out in public on the "Days of Lamentations or the Sunday of Easter."\footnote{Ibid., 34.} In addition, the Fourth Lateran Council decreed that Jews and Muslims must not "appear in public at all on the days of lamentation and on passion Sunday."\footnote{Tanner, Decrees, 1:266.} The main reason the Church forbade Jews and Muslims to appear in public on these days was that, according to the Church, the Jews and Muslims acted arrogantly and did not respect the most holy of days.

Besides not being allowed to work, Jews and Muslims (as well as Christians) were not allowed to use the mills, ovens or baths on any of the "Lord's days and other holy days before Easter, but by any, Christian,
Jew, and Muslim."31 Canon law also stipulates that Christians and Jews should not utilize the same baths, but must be separate at all times.32

The final law within the Furs of Valencia deals with the Jews and Muslims as witnesses in a Christian court. The role of Jews and Muslims and the Valencian court system has already been evaluated in their respective chapters. However, situations in which Muslims and Jews acted as witnesses within a Christian court are one of the most important and interesting factors of medieval Valencia, because the act of Jews testifying in court was a purely Spanish phenomenon.33 Generally, in cases which included members of different religions, one member of each religion is enough to act as witnesses.

A Christian may bring charges against a Jew with a Christian and Jew, and unless he should make his case with the Jew, the trial against him is not

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32Chazan, Church, 39.

33Pakter, Medieval, 159-61.
An additional section was added in the *Furs* which stated that rather than providing two witnesses of different faiths, two witnesses of the defendant’s faith could be used as witnesses for the prosecution. In addition, the opposite is true for the defense, namely that two witnesses of the opposite faith are enough to act as support for the defense. The additional section of the law goes directly against canon law which stipulated that Jews must be forced to accept Christian witnesses against them.\(^{35}\)

Additionally in this law, if a Christian should bring charges against a Jew through two Jews, then the case should be strong; and if a Jew should be able to bring charges against a Christian through two Christians then such a case should be strong. And the same is observed among the Muslims.\(^{36}\)

This law, as with many of the laws within the *Furs* of Valencia, found its basis in customary and canon law.

Under customary law:

\(^{34}\)Fori Antiqui Valentiae, 95 (LXII.24): "Christianus probet contra iudeum cum christiano et iudeo, et, nisi probaverit cum iudeo, non valet probatio contra eum. Idem dicimus de sarraceno contra christianum et iudeum."


\(^{36}\)Fori Antiqui Valentiae, 95 (LXII), paragraph added between sections 24 and 25: "addentes huic foro quod si christianus probaverit contra iudeum per duos iudeos, quod valeat probatio; et, si iudeus poterit probare contra christianum per duos christianos, quod valeat talis probatio. Et illud idem in sarracenis observetur."
If a dispute occurs or a lawsuit arises between Christians and Jews, two witnesses from both parties—namely, one from the Christian and the other from the Jew—shall suffice to prove their cases. 37

This law of having Jews act as witnesses goes directly against Roman Law, especially the Codex of Justinian. 38 The practice of requiring witnesses of both faiths was unique to the thirteenth century. The reason for this was that in 1272 Pope Gregory X, in an effort to halt the rising tide of anti-Semitism, ruled "that thereafter the testimony of a Christian against a Jew should not be accepted unless confirmed by a Jew." 39

When combined as one legal entity, the Muslims and Jews had far less freedom and much harsher penalties than when regulated as separate groups. However, at times Jews and Muslims were grouped with resident Christian population and were thus, in certain situations, treated equally. In addition, the Church had greater influence on the laws which pertained to both the Muslims and Jews than it did on the laws dealing with each separately.

37Usatges, 92.
38Pakter, Medieval, 5.
39Durant, Age, 389.
CHAPTER VI

CONCLUSION

Now that the Furs of Valencia have been examined some generalizations may be stated. First, the law of thirteenth-century Valencia was a combination of many different legal sources; Roman, canon, and customary law all were major ingredients in the new Christianized law code. In addition, the former Islamic dhimma system was adapted to fit into newly conquered Christian Valencia, and thus the Jews and Muslims did constitute a type of second-class citizenship.

Second, it was illustrated that the Furs of Valencia treated the Muslims and Jews differently, depending on whether the laws were dealing with them as two distinct groups or as one universal legal class. Generally speaking, when Muslims and Jews were treated as separate classes they were afforded protection and near equality under the law. The majority of laws examined protected the lives and property of both the Muslims and Jews. Both Muslims and Jews were guaranteed freedom of worship and life in Christian Valencia. The majority of the laws dealing with only the Muslims pertains to the Muslims as slaves, the options of a Muslim slave who wishes to conv-
The influence of customary law, particularly the Usatges of Barcelona, is most obvious in the laws dealing only with the Muslim. However, canon law was heavily utilized when dealing with the topics of inter-confessional sexual relations and slavery.

In the laws dealing with only the Jews, canon law and Roman law are utilized much more than in the laws pertaining to only Muslims. However, in these laws the Furs receive their canonical influence more from the papal bull Sicut Judaeis than from the Decretum of Gratian or the Decretaales of Gregory IX, both of which illustrate the rise of anti-Jewish attitudes in the high medieval Church. Following the example of Sicut Judaeis, the laws of the Furs which deal only with the Jews are much more accommodating to the idea of Jewish self-government and control. The Furs were only to be utilized if a Jewish-Christian or Jewish-Muslim conflict occurred. Half the laws pertaining to only the Jews deals with the Jew in Christian courts, while the rest deals with the slaves of Jews and the Jew fleeing to another lord.

However, when Muslims and Jews were considered together, the general legal attitude of the Furs becomes quite intolerant. In fact, this altering of attitudes affects the actual laws within the Furs of Valencia. The laws of the Furs may be subdivided into two main sections.
when the Muslims and Jews are considered together. The first set of laws legally equates the Jews and Muslims with the Christian population in Valencia, and thus a form of legal equality is discovered. These laws discuss the consequences of Christians converting to Judaism and Islam, usury, and the rights of the parties involved in a contract. The second, and most numerous, group of laws covers topics as wide-ranging as the backsliding of former Jews and Muslims to the use of mills and baths on holy days. The penalty for many of these laws is strict and harsh, occasionally including execution. In addition, some topics treat Muslims and Jews individually and also jointly with the outcomes contradicting each other. The most obvious case in the differing penalties for the same crimes regarding sexual relations.

However, the fact must not be forgotten that the Christians were both a minority and a new uninvited ruler. It is difficult to be engaged in fighting an enemy one moment and to consider him a friend the next. By combining the Muslims and Jews together, the Furs were able to set the limits of a conquered people and thus allow the Christians an easier form of control. The Christians needed both the Muslims and Jews, and the need for them is illustrated in the individual laws pertaining to each group as a separate entity. Thus those laws per-
taining to only the Jews and only the Muslims are laws being given to fellow citizens--citizens who were desper­ately needed to make Valencia strong. The laws design­nated to both the Muslims and Jews as one were laws meant to control a conquered enemy and not incorporate them into Valencian society.

Because of the differing attitudes within the Furs of Valencia one sound conclusion may be made regarding the lives of thirteenth-century Valencian Muslim and Jews: it was a period of confusion, at times filled with ex­treme tensions and at other times of general acceptance. Many factors contributed to the differing establishments of these laws: the ongoing crusade against Islam, the numerous Muslim uprisings in Valencia, and the continuing pressure applied by the Church against the Jews.

These pressures would only continue, eventually to the point of expulsion. However, despite the differing opinions found in the Furs of Valencia, for its time it was indeed remarkably equitable and protective towards the Muslims and Jews. James never claimed to be building a utopia in Valencia; he pacified the Muslims and Jews because he needed them as much as they needed him. Had the necessary Christian colonizers moved into conquered Valencia the Furs of Valencia may not have had nearly the number of laws which protected the Muslims and Jews. In
fact, it is quite possible that the expulsions, which would come some two hundred years later, would have occurred en masse after the Reconquista. The expulsions James instituted during the numerous Muslim uprisings perhaps further illustrate the what-if scenario the best.¹

Nevertheless, James was realistically unable to have a prosperous Valencia without the Muslims, let alone the Jews. Therefore, the only important fact is that, for a short time, Muslim, Christian, and Jew strove, and often realized, if not legal equality, at least the closest option available in medieval Europe, because,

Christian Spain stood out among the Christian states of Europe as at once a land of religious fanaticism and religious tolerance. Both were natural phenomena in a county where members of all three monotheistic faiths lived and worked side by side. In the everyday relations among the several communities there were frequent manifestations of genuine cordiality.²

¹When the Muslims revolted in the 1240's in Valencia James expelled many Muslims, even those who were not involved in the actual rebellion. He further records his delight in this action in his Book of Deeds: "It pleases me much, for on account of the treaties made with the Muslims I did not drive them out of this country. Since they have done something now by which I should [be justified] in driving them out, I am delighted that where the name of Muhammad has long been invoked men will call on the name of Our Lord Jesus Christ." Quoted in Hillgarth, Spanish Kingdoms, 1:210.

²Baer, History, 1:182.
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