

cost. Severe penalties were enacted against venality in the judges, a gross evil under the preceding reigns, as well as against such counsel as took exorbitant fees, or even maintained actions that were manifestly unjust. Finally, commissioners were appointed to inspect and make report of the proceedings of municipal and other inferior courts throughout the kingdom.<sup>14</sup>

The sovereigns testified their respect for the law by reviving the ancient, but obsolete practice of presiding personally in the tribunals, at least once a week. "I well remember," says one of their court, "to have seen the queen, together with the Catholic king, her husband, sitting in judgment in the alcazar of Madrid, every Friday, dispensing justice to all such, great and small, as came to demand it. This was indeed the golden age of justice," continues the enthusiastic writer, "and since our sainted mistress has been taken from us, it has been more difficult, and far more costly, to transact business with a stripling of a secretary, than it was with the queen and all her ministers."<sup>15</sup>

King and queen preside in courts of justice.

By the modifications then introduced, the basis was laid of the judiciary system, such as it has been perpetuated to the present age. The law acquired an authority, which, in the language of a

Reestablishment of order.

<sup>14</sup> Ordenanças Reales, lib. 2, tit. 1, 3, 4, 15, 16, 17, 19; lib. 3, tit. 2. — Recop. de las Leyes, lib. 2, tit. 4, 5, 16. — Pulgar, Reyes Católicos, part. 2, cap. 94.

<sup>15</sup> Oviedo, Quincuagenas, MS. — By one of the statutes of the cortes of Toledo, in 1480, the king was required to take his seat in the council every Friday. (Ordenanças Reales, lib. 2, tit. 3; ley 32.) It was not so new for the Castilians to have good laws, as for their monarchs to observe them.

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Spanish writer, "caused a decree, signed by two or three judges, to be more respected since that time, than an army before."<sup>16</sup> But perhaps the results of this improved administration cannot be better conveyed than in the words of an eyewitness. "Whereas," says Pulgar, "the kingdom was previously filled with banditti and malefactors of every description, who committed the most diabolical excesses, in open contempt of law, there was now such terror impressed on the hearts of all, that no one dared to lift his arm against another, or even to assail him with contumelious or discourteous language. The knight and the squire, who had before oppressed the laborer, were intimidated by the fear of that justice, which was sure to be executed on them; the roads were swept of the banditti; the fortresses, the strong-holds of violence, were thrown open, and the whole nation, restored to tranquillity and order, sought no other redress, than that afforded by the operation of the law."<sup>17</sup>

Reform of  
the juris-  
prudence.

II. Codification of the laws. Whatever reforms might have been introduced into the Castilian judicatures, they would have been of little avail, without a corresponding improvement in the system of jurisprudence by which their decisions were to be regulated. This was made up of the Visigothic code, as the basis, the *fueros* of the Castilian prin-

<sup>16</sup> Sempere, *Hist. des Cortès*, p. 263.

<sup>17</sup> Pulgar, *Reyes Católicos*, p. 167.—See the strong language, also, of Peter Martyr, another con-

temporary witness of the beneficial changes in the government. *Opus Epistolarum*, (Amstelodami, 1670,) ep. 31.

ces, as far back as the eleventh century, and the "Siete Partidas," the famous compilation of Alfonso the Tenth, digested chiefly from maxims of the civil law.<sup>18</sup> The deficiencies of these ancient codes had been gradually supplied by such an accumulation of statutes and ordinances, as rendered the legislation of Castile in the highest degree complex, and often contradictory. The embarrassment, resulting from this, occasioned, as may be imagined, much tardiness, as well as uncertainty, in the decisions of the courts, who, despairing of reconciling the discrepancies in their own law, governed themselves almost exclusively by the Roman, so much less accommodated, as it was, than their own, to the genius of the national institutions, as well as to the principles of freedom.<sup>19</sup>

The nation had long felt the pressure of these evils, and made attempts to redress them in repeated cortes. But every effort proved unavailing, during the stormy or imbecile reigns of the princes of Trastamara. At length, the subject having been

<sup>18</sup> Prieto y Sotelo, *Historia del Derecho Real de España*, (Madrid, 1738,) lib. 3, cap. 16-21. — Marina has made an elaborate commentary on Alfonso's celebrated code, in his *Ensayo Histórico-Crítico sobre la Antigua Legislación de Castilla*, (Madrid, 1808,) pp. 269 et seq. The English reader will find a more succinct analysis in Dr. Dunham's *History of Spain and Portugal*, (London, 1832,) in Lardner's *Cyclopædia*, vol. iv. pp. 121-150. The latter has given a more exact, and, at the same time, extended view of the early Castilian legislation, probably, than

is to be found, in the same compass, in any of the Peninsular writers.

<sup>19</sup> Marina (in his *Ensayo Histórico-Crítico*, p. 388,) quotes a popular satire of the fifteenth century, directed, with considerable humor, against these abuses, which lead the writer in the last stanza to envy even the summary style of Mahometan justice.

"En tierra de Moros un solo alcade  
Libra lo cevil e lo creminal,  
E todo el día se esta de valde  
Por la justicia andar muy igual;  
Alli non es Azo, nin es Decretal,  
Nin es Roberto, nin la Clementina,  
Salvo discrecion e buena doctrina,  
La qual muestra a todos vevir communal."  
p. 389.

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resumed in the cortes of Toledo, in 1480, Dr. Alfonso Diaz de Montalvo, whose professional science had been matured under the reigns of three successive sovereigns, was charged with the commission of revising the laws of Castile, and of compiling a code, which should be of general application throughout the kingdom.

Code of Ordenanças Reales.

This laborious undertaking was accomplished in little more than four years; and his work, which subsequently bore the title of *Ordenanças Reales*, was published, or, as the privilege expresses it, "written with types," *excrito de letra de molde*, at Huete, in the beginning of 1485. It was one of the first works, therefore, which received the honors of the press in Spain; and surely none could have been found, at that period, more deserving of them. It went through repeated editions in the course of that, and the commencement of the following century.<sup>20</sup> It was admitted as paramount authority throughout Castile; and, although the many innovations, which were introduced in that age of reform, required the addition of two subsidiary codes in the latter years of Isabella, the "Ordenanças" of Montalvo continued to be the guide of the tribunals down to the time of Philip the Second; and may be said to have suggested the idea, as indeed it was the basis of the comprehensive compilation, "Nueva Recopilacion," which has since formed the law of the Spanish monarchy.<sup>21</sup>

<sup>20</sup> Mendez enumerates no less than five editions of this code, by 1500; a sufficient evidence of its authority, and general reception

throughout Castile. *Typographia Española*, pp. 203, 261, 270.

<sup>21</sup> *Ordenanças Reales*, Prólogo. — *Mem. de la Acad. de Hist.*, tom.

III. Depression of the nobles. In the course of the preceding chapters, we have seen the extent of the privileges constitutionally enjoyed by the aristocracy, as well as the enormous height to which they had swollen under the profuse reigns of John the Second, and Henry the Fourth. This was such, at the accession of Ferdinand and Isabella, as to disturb the balance of the constitution, and to give serious cause of apprehension both to the monarch and the people. They had introduced themselves into every great post of profit or authority. They had ravished from the crown the estates, on which it depended for its maintenance, as well as dignity. They coined money in their own mints, like sovereign princes; and they covered the country with their fortified castles, whence they defied the law, and desolated the unhappy land with interminable feuds. It was obviously necessary for the new sovereigns to proceed with the greatest caution against this powerful and jealous body, and, above all, to attempt no measure of importance, in which they would not be supported by the hearty coöperation of the nation.

The first measure, which may be said to have clearly developed their policy, was the organization

vi. Ilust. 9. — Marina, *Ensayo Histórico-Crítico*, pp. 390 et seq. — Mendez, *Typographia Española*, p. 261. — The authors of the three last-mentioned works abundantly disprove Asso y Manuel's insinuation, that Montalvo's code was the fruit of his private study, without any commission for it, and that it gradually usurped an authority which it had not in its origin. (Dis-

curso Preliminar al Ord. de Alcalá.) The injustice of the last remark, indeed, is apparent from the positive declaration of Bernaldez. "Los Reyes mandaron tener en todas las ciudades, villas é lugares el libro de Montalvo, é por él determinar todas las cosas de justicia para cortar los pléitos." *Reyes Católicos*, MS., cap. 42.

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of the hermandad, which, although ostensibly directed against offenders of a more humble description, was made to bear indirectly upon the nobility, whom it kept in awe by the number and discipline of its forces, and the promptness with which it could assemble them on the most remote points of the kingdom; while its rights of jurisdiction tended materially to abridge those of the seignorial tribunals. It was accordingly resisted with the greatest pertinacity by the aristocracy; although, as we have seen, the resolution of the queen, supported by the constancy of the commons, enabled her to triumph over all opposition, until the great objects of the institution were accomplished.

Another measure, which insensibly operated to the depression of the nobility, was making official preferment depend less exclusively on rank, and much more on personal merit, than before. "Since the hope of guerdon," says one of the statutes enacted at Toledo, "is the spur to just and honorable actions, when men perceive that offices of trust are not to descend by inheritance, but to be conferred on merit, they will strive to excel in virtue, that they may attain its reward."<sup>22</sup> The sovereigns, instead of confining themselves to the grandees, frequently advanced persons of humble origin, and especially those learned in the law, to the most responsible stations, consulting them, and paying great deference to their opinions, on all matters of importance. The nobles, finding that

<sup>22</sup> Ordenanças Reales, lib. 7, tit. 2, ley 13.

rank was no longer the sole, or indeed the necessary avenue to promotion, sought to secure it by attention to more liberal studies, in which they were greatly encouraged by Isabella, who admitted their children into her palace, where they were reared under her own eye.<sup>23</sup>

But the boldest assaults on the power of the aristocracy were made in the famous cortes of Toledo, in 1480, which Carbajal enthusiastically styles "cosa divina para reformation y remedio de las desórdenes pasadas."<sup>24</sup> The first object of its attention was the condition of the exchequer, which Henry the Fourth had so exhausted by his reckless prodigality, that the clear annual revenue amounted to no more than thirty thousand ducats, a sum much inferior to that enjoyed by many private individuals; so that, stripped of his patrimony, it at last came to be said, he was "king only of the highways." Such had been the royal necessities, that blank certificates of annuities assigned on the public rents were hawked about the market, and sold at such a depreciated rate, that the price of an annuity did not exceed the amount of one year's income. The commons saw with alarm the weight of the burdens which must devolve on them for the maintenance of the crown thus impoverished in its resources; and they resolved to meet the difficulty by advising at once a resumption of the

Revocation  
of the royal  
grants.

<sup>23</sup> Oviedo, *Quincuagenas*, MS., bat. 1, quinc. 1, dial. 44. — Sem-pere notices this feature of the

royal policy. *Hist. des Cortès*, chap. 24.

<sup>24</sup> Carbajal, *Anales*, MS., año 80.

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grants unconstitutionally made during the latter half of Henry the Fourth's reign, and the commencement of the present.<sup>25</sup> This measure, however violent, and repugnant to good faith, it may appear at the present time, seems then to have admitted of justification, as far as the nation was concerned; since such alienation of the public revenue was in itself illegal, and contrary to the coronation oath of the sovereign; and those who accepted his obligations, held them subject to the liability of their revocation, which had frequently occurred under the preceding reigns.

As the intended measure involved the interests of most of the considerable proprietors in the kingdom, who had thriven on the necessities of the crown, it was deemed proper to require the attendance of the nobility and great ecclesiastics in cortes by a special summons, which it seems had been previously omitted. Thus convened, the legislature appears, with great unanimity, and much to the credit of those most deeply affected by it, to have acquiesced in the proposed resumption of the grants, as a measure of absolute necessity. The only difficulty was to settle the principles on which the retrenchment might be most equitably made, with reference to creditors, whose claims rested on a great variety of grounds. The plan suggested by cardinal Mendoza

<sup>25</sup> See the emphatic language, on this and other grievances, of the Castilian commons, in their memorial to the sovereigns, Appendix, No. 10, of Clemencin's valuable compilation. The commons had pressed the measure, as one of the last necessity to the crown, as early as the cortes of Madrigal, in 1476. The reader will find the whole petition extracted by Marina, Teoría, tom. ii. cap. 5.



seems to have been partially adopted. It was decided that all, whose pensions had been conferred without any corresponding services on their part, should forfeit them entirely; that those, who had purchased annuities, should return their certificates on a reimbursement of the price paid for them; and that the remaining creditors, who composed the largest class, should retain such a proportion only of their pensions, as might be judged commensurate with their services to the state.<sup>26</sup>

By this important reduction, the final adjustment and execution of which were intrusted to Fernando de Talavera, the queen's confessor, a man of austere probity, the gross amount of thirty millions of maravedies, a sum equal to three fourths of the whole revenue on Isabella's accession, was annually saved to the crown. The retrenchment was conducted with such strict impartiality, that the most confidential servants of the queen, and the relatives of her husband, were among those who suffered the most severely.<sup>27</sup> It is worthy of remark that no diminution whatever was made of the stipends settled on literary and charitable establish-

<sup>26</sup> Salazar de Mendoza, Crón. del Gran Cardenal, cap. 51. — Mem. de la Acad. de Hist., tom. vi. Ilust. 5. — Pulgar, Reyes Católicos, part. 2, cap. 95. — Ordenanças Reales, lib. 6, tit. 4, ley 26; — incorporated also into the Recopilacion of Philip II., lib. 5, tit. 10, cap. 17. See also leyes 3 and 15.

<sup>27</sup> Admiral Enriquez, for instance, resigned 240,000 maravedies of his annual income; — the Duke of Alva, 575,000; — the

Duke of Medina Sidonia, 180,000. — The loyal family of the Mendozas were also great losers, but none forfeited so much as the overgrown favorite of Henry IV., Beltran de la Cueva, duke of Albuquerque, who had uniformly supported the royal cause, and whose retrenchment amounted to 1,400,000 maravedies of yearly rent. See the scale of reduction given at length by Señor Clemencin, in Mem. de la Acad., tom. vi. loc. cit.

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ments. It may be also added, that Isabella appropriated the first fruits of this measure, by distributing the sum of twenty millions of maravedies among the widows and orphans of those loyalists, who had fallen in the War of the Succession.<sup>28</sup> This resumption of the grants may be considered as the basis of those economical reforms, which, without oppression to the subject, augmented the public revenue more than twelve fold during this auspicious reign.<sup>29</sup>

Legislative  
enactments.

Several other acts were passed by the same cortes, which had a more exclusive bearing on the nobility. They were prohibited from quartering the royal arms on their escutcheons, from being attended by a mace-bearer and a body-guard, from imitating the regal style of address in their written correspondence, and other insignia of royalty which they had arrogantly assumed. They were forbidden to erect new fortresses, and we have already seen the activity of the queen in procuring the demolition or restitution of the old. They were expressly restrained from duels, an inveterate source of mischief, for engaging in which the parties, both principals and seconds, were subjected to the penalties of treason. Isabella evinced her determination of enforcing this law on the highest offenders, by imprisoning, soon after its enactment, the counts of Luna and Valencia for exchanging a

<sup>28</sup> "No monarch," said the high-minded queen, "should consent to alienate his demesnes; since the loss of revenue necessarily deprives him of the best means of rewarding the attachment of his friends, and of making himself feared by his enemies." Pulgar, *Reyes Católicos*, part. 1, cap. 4.

<sup>29</sup> Pulgar, *Reyes Católicos*, ubi supra. — Mem. de la Acad. de Hist., tom. vi. loc. cit.