



Issue 5 (Spring 2018), pp. 63-96  
DOI: 10.6667/interface.5.2018.58

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## **Exile and the Nature of Law in Medieval Castile**

### **(The Un-Lawing of the Cid)**

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MICHAEL MCGLYNN  
*National Taiwan University*

### **Abstract**

Modernity tends to view exile as unduly harsh punishment, and many modern states have abandoned its practice. However, in the European Middle Ages, exile was common and often temporary, a concomitant of infighting among the ruling elite, and a natural alternative given their social infrastructure's lack of alternative solutions for maladaptive behavior or for dealing with powerful men who have lost in the struggle for ruling power. Since exile involves the limits of the law, a truer view of exile provides a truer view of foundational legal concepts. The celebrated exile of the eleventh-century Castilian nobleman and conqueror of Valencia, Rodrigo Díaz, aka, El Cid, provides a good case for reconsidering notions of exile in their historical alterity, especially considering that all parties benefitted from his exile. A comparison of roughly contemporaneous legal documents with Rodrigo Díaz' exile in a literary text and a Latin biography provide new insight about his exile, exile in general, and law in medieval Castile. Exile in medieval Castile makes it evident that exile points to that liminal space between competing interpretations, or systems of law.

**Keywords:** *El Poema de mio Cid*, exile, *Historia Roderici*, Rodrigo Díaz, medieval law

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# Exile and the Nature of Law in Medieval Castile

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## (The Un-Lawing of the Cid)

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### 1 Background

Modernity tends to view exile as unduly harsh punishment (Armstrong, 1963, 758), and many modern states have abandoned its practice (Anonymous, 1971, p. 54). However, in the European Middle Ages, exile was common and often temporary, a concomitant of infighting among the ruling elite, and a natural alternative given their social infrastructure's lack of alternative solutions for maladaptive behavior or for dealing with powerful men who have lost in the struggle for ruling power. Since exile involves the limits of the law, a truer view of exile provides a truer view of foundational legal concepts. The celebrated exile of the eleventh-century Castilian nobleman and conqueror of Valencia, Rodrigo Díaz, provides a good case for reconsidering notions of exile in their historical alterity, especially considering that all parties benefitted from his exile.

Spanish historiography, including historical jurisprudence, was influenced by late-nineteenth-century German scholarship, which viewed *der Bann*<sup>1</sup> as an ur-institution of the Germanic peoples passed down into Western European monarchies, as “*obrigkeitliche Befehl*” (Brunner, 1892, p. 34: “sovereign command”) for violation of the sovereign’s honor or the security of the people (Cavalca, 1978, p. 18). When we view actual records, it is clear that many powerful elites were banned not for violating rule of law (much less for challenging it) but for political reasons, or even for what we would call the personal whim of the ruling class. In this paper, an examination of one case of outlawry will give us a better idea of the ad hominem, ad hoc nature not only of medieval

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1 “Bann” is the autochthonous Germanic word for exile, including prohibition, proscription, and anathematization, but its connotations include something beyond the political, as evident in the modern German colloquialism *unter einem Bann stehen* (“to be under a spell”).

Castilian law but of exile itself.

The case of exile I consider below is that of the titular hero of the most canonical literary text of the Spanish Middle Ages, the *Poema de mio Cid* (hereafter *PMC*), a text exalted in the nineteenth century as a cultural equivalent of Homer, used to postulate not only Spanishness but also pan-Germanism and other -isms. There are two principal accounts of the Cid's exile: in the 13<sup>th</sup>-century *cantar* (Romance language epic), and in the 12<sup>th</sup>-century Latin biography, *Historia Roderici* (hereafter *HR*). Rodrigo Díaz, known also by his Arab-derived honorific el Cid, lived ca. 1043 to 1099. His life is attested not only in literary texts and historical chronicles but also in curial diplomas where he is mentioned as participating in what we would call court business.

This essay is divided into three sections: background, textual analysis, implications. In the analysis section, I focus on the two primary sources for the Cid's exile, one literary and one historical, and two relevant legal texts. My method is philological and comparative, informed by the law and literature approach. In a subsequent essay, I will problematize the implicit law and literature approach in Cidian scholarship.

## 1.1 Literature Review

Spanish literary criticism and historiography continue to follow the 19<sup>th</sup>-century German jurisprudential tradition. The seminal work on the kind of exile we see in the *PMC* is Argentine scholar Hilda Grassotti's 1965 study of the *ira regia* (literally "king's anger"), a medieval juridical practice by which someone suffered the confiscation of their land and goods, the loss of their office, and exile. While Grassotti sees the origin of the Cid's exile as the "institution" that protected the pan-Germanic *pax regis* (1965, p. 11: "king's peace"), a wider jurisprudential perspective suggests that the *ira regia* amounts to falling out of favor with the ruling elite and getting removed from a jurisdiction as a result. The *ira regia* is an inevitable legal process given the material and ideological conditions of Castile.

## I N T E R F A C E

Since 2000, a handful of articles on the destierro (exile) and the *ira regia* have appeared. In 2003 and 2007 Óscar Martín wrote about the way various literary and historical sources of the *Cid* relate to each other on the topics of exile and *ira regia*, but these are not legal studies per se and are mostly concerned with properly establishing lines of influence among *Cidian* monuments (*Historia Roderici*, *Carmen Campidoctoris*, *Linaje del Cid*, *Poema de mio Cid*). Komé Koloto Dikanda Madeleine's 2004 article on the *ira regia* comes to the very sound but perhaps obvious conclusion that, "la *ira regia*, tal como se presenta en el *Poema*, no coincide exactamente con el *Fuero Juzgo*, ni con las *Partidas*, ni con las leyes visigóticas, sino que deriva de ellas."<sup>2</sup> The conclusion is also vexed insofar as the *PMC* predates the *Partidas*.

Writing in masterful detail, Pérez-Prendes y Muño Arraco analyzes the *Cid*'s second exile as a legal action, making reference to the *Partidas*, *Espéculo*, and the *Ordenamiento de Alcalá*. The author concludes, among other things, that there was a customary (oral) law in Castilla-León "no muy diferente del que se nos conserva fijado en ciertas redacciones doscientos años más tarde"<sup>3</sup> (Pérez-Prendes y Muño Arraco, 2004, p. 335), a claim whose terms are vague enough to be sustainable but not altogether interesting, as it is bound up in the thesis that Pérez-Prendes has asserted in several works, namely, that the *Cid*'s men resemble a "Germanic" *Gefolgschaft*.<sup>4</sup> In a series of articles available as a monograph, Javier Planas has shown this dated idea to be false insofar as the "Germanic" aspects of Spanish law are more likely Frankish and not Gothic (1997), so the assertion that Castilian legal culture reflects a latent, surviving Gothic legal culture is hard to sustain without evidence. More to the point, the idea that oral texts (Visigothic customary law) pass easily into written form (*Fuero Viejo* and other extant Castilian legal texts) without wholesale transformation is mistaken.<sup>5</sup>

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2 "the king's wrath as it is presented in the *PMC* is not exactly the same as it is in the *Fuero Juzgo* or in the *Partidas*, nor is it the same as Visigothic law. Rather, it is derived from these legal sources."

3 "not very different from that [customary law] preserved in certain redactions two hundred years later."

4 In heroic literature, *Gefolgschaft* (*comitatus* in Latin) refers to the male camaraderie group, the group of armed men who followed a leader in exchange for prizes and honor.

5 See McGlynn (2010) for an analysis of the complexities of this phenomenon in the case of the first, written, Icelandic law code.

## 1.2 Historical Perspectives on Exile

Exile is a legal power, but perhaps not in the modern sense. Exile was inevitable in a legal system with no resources for containing violence, detaining the powerful, or settling disputes between certain players. As Shaw (2000, pp. 4-5) writes of fifteenth-century Italy, all major political players, including kings, experienced exile. In fact, the king who exiled Rodrigo Díaz was himself exiled prior to his ascension. Part of the reason exile was so common is because political succession was not stable, and there was no better option for political rivals than exile (Shaw, 2000, p. 6). Execution was too extreme and would contribute to volatility; long-term imprisonment was not supported by infrastructure and would probably also contribute to instability. Insofar as incarceration was practiced, it sometimes resembled exile in its purpose. For example, the *Fuero de Escalona* stipulates jail for certain delinquents, and their sentence can be commuted to exile (from Escalona) so long as they promise to do no harm in Escalona (cited in Ramos Vázquez 2007, p. 711, fn. 8). There are different kinds of incarceration (see Ramos Vazquez' article), and the medieval *fueros* make it evident that jailing in order to exclude someone from society is one of them.

Exile, then, was a way to remove rivals from circulation temporarily. As the many exiles and returns in Spanish medieval history make evident, in a pre-print, pre-media age, exile, at least in some cases, meant silencing any political influence a rival could have while the leading political forces tried to establish themselves. In his study of exile in Basque Country in the late Middle Ages, Bazán Díaz (1999, p. 25) writes that “el destierro fue considerado una pena corporal más, ocupando el nivel inferior de la jerarquía de penas *corporis afflictive*.”<sup>6</sup> Bazán Díaz (1999, pp. 52-53) sees all of European exile as a ritualized marginalization that takes place within a larger framework of community ties that begin with baptism and which do not end with exile.

Exile was also practiced by municipalities to remove a harmful person

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6 “exile was considered one more corporal punishment, and stood at the low end of the hierarchy of punishments of the *corporis afflictiva* type.”

## I N T E R F A C E

their territory. The long history of municipal law codes (*fueros*) tells a varied story about exile. Some *fueros* stipulate banishment from the city in case of serious crimes, such as the *Fuero de Soria*, which mandates exile in perpetuity for falsification of documents when the falsification is costly (cited in Sainz Guerra, 2006, 160). Although the *Fuero de Soria* shows the influence of the *Fuero Real*, the character of municipal law in medieval Spain was more ad hoc and pragmatic, much less doctrinaire or moralizing than later royal law.

Problems of succession and other kinds of political rivalry led to many cases of exile, from the Visigoths in the early Middle Ages to Machiavelli in the Early Modern period, and hardly needs to be documented here.<sup>7</sup> The instability of political succession is related to the foundational concept of law as privilege, a concept that differs radically from modern or 21<sup>st</sup> century foundational legal concepts. If Medieval and Early Modern princes regarded kingdoms as family property to be divided according to family taste, then this is only a symptom of the belief that the ruling class's personal disposition has legal status. In the case of the Cid, Alfonso VI's "anger" or "love" are the words used to define the Cid's legal status. Spanish medieval history is full of wars of succession, and the generation of Alfonso VI is typical. Even when there is a clear successor, there is infighting for the right to influence him, as is the case of Alfonso XI, who was an infant when he succeeded his father. Civil war among his tutors resulted.

## 2 Textual Analysis

The story of the Cid's exile varies by source. The two major sources, the *HR* and the *PMC*, are unambiguous and clear: while he is away doing great and heroic things, Rodrigo is victim of gossip and slander spread by less successful rivals at the court of Castile who are jealous of his monumental accomplishments. The *Carmen Campidoctoris* makes the

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<sup>7</sup> See Olmos for a recent article on the topic. Olmos' bibliography includes some of the more seminal articles on problems of succession among the Visigoths. The *romancero* (Spanish ballad tradition) telling of the fall of the final Visigothic king and his betrayal by Conde Julián could be considered a kind of exile from below.

same kind of claim, namely that rumor-mongers (line 57: *susurrones*) provoke fear in Alfonso, resulting in a full political reversal: “omnem amorem in iram convertit” (line 61: “all [the king’s] love becomes anger”). In his book on Alfonso VI, Bernard F. Reilly, as professional historian, rejects the personalized portrayal of exile in the *PMC*, an epic poem, and uses an incident from the *HR* to suggest that Alfonso’s exile of the Cid might have been motivated by impersonal, political expedience. Somewhat inconsistently, Reilly (1989, p. 129-30) takes an incident from the not unliterary *HR*’s recounting of the Cid’s counter-raid on Gormaz—as an infraction of Alfonso’s “protection” of Toledo. According to Reilly, faced with the need to appear just and self-consistent, Alfonso had no choice but to at least appear to punish Rodrigo Díaz. “We do not know whether Alfonso VI exiled Rodrigo Díaz in anger or sorrow...or [whether] it was indeed a real penalty in the eyes of either of the protagonists [Alfonso and Rodrigo]”. Moreover, the Cid going east, toward Valencia, with an army, was a buffer for Alfonso against the recently broken-away Valencia, and any hostilities between Valencia and Rodrigo would not be the fault of Alfonso, since Rodrigo was no longer his vassal.

The texts that bear on the *destierro* (exile) are the *PMC*, the *Fuero Viejo*, legal diplomata of Alfonso VI, the *HR*, and the *Carmen Campidoctoris*. We do not know with certainty the precise nature of *destierro* in the time of Rodrigo Díaz, and it is likely incorrect to assume a single, normative legal practice. We do not know the rights and privileges of the *desterrado* (the person exiled), including how much time he was allowed to get his affairs in order, whether he was allowed to bring vassals, whether the vassals were obliged to accompany him, if there were any kind of legal process or right of appeal, if the king could seize benefice properties (*honores*), if the king could seize traditional family holdings (*solar*). Most importantly, we do not know if there was any one source of legal authority governing these matters. Cidian scholars generally assume legal verisimilitude of the *PMC* and consonance between literary and legal documents in answer to these questions, despite regional, class, and chronological disparities.

## I N T E R F A C E

The *Poema de mio Cid* is divided into three sections, the first of which recounts the hero's exile and economic success as an exile. The narrative of exile is simple. Alfonso VI exiles the Cid, seizing his possessions. The Cid leaves Castile with his band of warriors (*mesnada*), and goes raiding in Muslim lands, where he earns fabulous prizes. From these prizes he sends enormous wealth to Alfonso via his own vassals, and, before long, he is repatriated and given even greater honors and esteem by the king, including counts as sons-in-law.

The extant poem begins with the Cid weeping over the loss of his home and possessions. Though much has been made of the pathos of the opening *tirada*<sup>8</sup> of the *PMC* as typical of the art of the *juglar*,<sup>9</sup> sociologists report that exiles, expellees, refugees, and displaced persons in general suffer “memories of persecution (see the Cid's fourth plea in the *HR*), wrenching decisions about leaving family and friends (see the eighteenth *tirada*, especially the *carne de la uña* scene [375b])<sup>10</sup>, constant thought of what was left behind (see the first *tirada*)...uncertainties of future prospects (hence the need to swindle Raquel and Vidas) (Rose, 1993, p. 9). Therefore, the pathos of the opening scene is a sociologically accurate representation of exile.

The first explicit mention of the Cid's exile in the *PMC* is the well-commented description of the royal legal instrument that has been read in the streets of Burgos:

antes de la noch    en Burgos del entro su carta  
con grand recabdo    e fueite mientre sellada,  
que a mio Çid Ruy Diaz    que nadi nol diesse(n) posada,  
e aquel que gela diesse    sopiesse—vera palabra—  
que perdiere los averes    e mas los ojos de la cara

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8 *Tirada* is the word for the stanza form of the Spanish epic; *tiradas* are bound by theme and assonant rhyme.

9 Minstrel.

10 In this often-cited scene, the Cid takes leave of his wife and children, and the poet uses the simile of separating nail from finger to express pain.



e aun demás los cuerpos e las almas.<sup>11</sup> (*PMC*, 23-28)<sup>12</sup>

As Peter Dunn (1975, pp. 258, 260) pointed out long ago, the language of these lines clearly borrows from legal instruments, though we need not assume any kind of a direct representation of legal language insofar as such existed. Montaner, in his edition of the *PMC*, notes the anachronism of this *mandato real*, suggesting that *mandatos reales* were used from the time of Alfonso VII to the 14<sup>th</sup> century; more importantly, that the *mandato real* contradicts the *Fuero Viejo* (I.iv.2) and the *Partidas* (IV.25.10) in prohibiting the selling of provisions to the Cid (Montaner, 2011, p. 661, n. 23). However, this is a poetic text whose heuristic is literary representation; also, the application of medieval law was not a calculus of substituting in for “x” as we might imagine it from our positivist legal perspective. Legal instruments were status objects whose use varied, and of course the application and interpretation of law is always interested and “political”.

Fletcher’s authoritative and thorough study of the seals and genre of the royal order as it developed in the reign of Alfonso VII and after, with its implied argument about the date of the *PMC*, argues for verisimilitude regarding the way Burgos was informed of the Cid’s exile. Naturally if Fletcher is right that both “carta” and “fuerte miente sellada” of the noun phrase “carta...fuerte miente sellada”<sup>13</sup> (1976, p. 23-24) suggest legal procedures of the reign of Alfonso VII or after (Fletcher 1976, p. 322), then it is not really surprising that we find anachronism in the poetic text. With their nostalgic retrospection, epic always suggests at least two time frames: that of the writing and that depicted. The more significant point of verisimilitude for this essay is that Alfonso VII uses the same kind of language associated with the *ira regia*, namely, “quia si fecerit perdet meum amorem; hebetitis sine dubio meam iram”<sup>14</sup>

11 Before night the [king’s] letter arrived in Burgos  
With great care and heavily sealed,  
Prohibiting anyone from giving lodging to my Cid,  
And anyone who would do so  
Would lose their possessions and their eyes,  
And worse--body and soul).

12 All references to the *Poema de mio Cid* are from Ian Michaels’ edition.

13 “a heavily sealed document”.

14 “because if he does so he will lose my love and doubtless incur my wrath.”

## I N T E R F A C E

(quoted in Fletcher, 1976, p. 329). The point is that the king's wrath expresses illegality.

The first reconciliation scene takes place in the forty-seventh *tirada*. The king speaks first, and though it follows a kind of procedural logic and thus could be a verisimilar protocol for an interview, we cannot confirm its practice as such. Minaya presents gifts and then makes his case. His case consists of a narrative (lines 875-876: *Mio Çid Ruy Diaz...vençio dos reyes de moros*<sup>15</sup>), a payment (line 878: *A vos, rey ondrado,/enbia esta presentaja*<sup>16</sup>), and a public expression of vassalship and subordination (line 879: *besa vos los pies/e las manos amas*<sup>17</sup>). The phrase *besa vos los pies* is not unlike the legal formula in the *Fuero Viejo* "Señor fulan Rico ome, beso vos yo la mano por él, e de aquí adelante non es vostro vasallo" (I.iii.3). This speech act and ritual establish the independence of the speaker, an important aspect of exile in this case.

The king responds by proclaiming that three weeks after exile is too soon to pardon the Cid (line 883: *acogello*), but that Alvar Fáñez is now restored as vassal (line 888: *d'aquí vos do mi graçia*), that Alvar Fáñez has rights of exit and entry to Castile (line 888: *hid e venit*), and that his benefice and hereditary lands are now restored (line 886-887: *a vos quito, Minaya,/honores e tierras/avellas condonadas*). Alvar Fáñez then thanks the king and kisses his hands a second time. It is clear that this legal process is an exchange of information, a confirmation of the king's status, and renegotiation of vassalic status by means of material and symbolic gifts. It is more akin to today's mediation insofar as the parties involved negotiate a new relationship and distribution of goods.

Alvar Fáñez' second embassy to Alfonso follows the same protocol: Alvar Fáñez presents the gift (one hundred horses), kneels to kiss the king's hands, tells the story of Valencia, declares that he is acting as proxy for the Cid (lines 1338-1339: *besa vos las manos...razonas por vuestro vasallo/e a vos tiene por señor*<sup>18</sup>), and makes a specific request (lines 1351-

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15 "My Cid Ruy Diaz...defeated two Moorish kings."

16 "To you, honored king, I sent this gift."

17 "I kiss your feet and hands."

18 "[The Cid] kisses your hands...he considers himself your vassal/and takes you as his lord."

1352: *su muggier doña Xiemena/e sus fijas... irien pora Valençia*<sup>19</sup>). The legal language is not technical but moral and personal: Alvar Fáñez asks if the king is pleased (1351: *si vos cayesse en sabor*), and the king responds “*Plazme de coraçon*” (lines 1343, 1355: “It pleases me at heart”). I shall say more about the personalized nature of law below.

The exile of the Cid has Visigothic precedents, which do not necessarily imply a Visigothic inheritance for Castilian law in every case. In the *Crónica Mozárabe de 754*, Witiza is reported to have recalled men his father sent into exile (*damnaverat*) (p.62, chapter 44). According to the chronicler, Witiza not only invited them back, he did so with joy, returned their confiscated lands, and compensated them for damages with gifts.<sup>20</sup> Grassotti (1965, p. 9) and Orlandis (1944, p. 653) see the *ira regia* as originating in the Visigothic law. In a 1088 diploma, Alfonso VI cites Visigothic law —II.i.iv— in an exile case involving a count named Rodrigo Ovéquiz. This law from the 12-book compilation of Visigothic law, the *Liber Iudiciorum*, stipulates that traitors shall suffer the death penalty except the ruler pardon them, and even then, they must be blinded and lose their property.<sup>21</sup> We might surmise that blinding and loss of property for treason in the *PMC* echo this Visigothic law (II.i.6) in the mind of monk-copyist or perhaps even that both texts reflect actual practice. In this diploma of Alfonso VI, the count’s land is alienated: “*Addicimus etiam hereditatem de Veremudo Osoriz, quae est in ipso cauto, id est IIIa de ecclesia de Sancto Iohanne de Titimauri; villa de Baguexios; in Mazeoni*” (Gambra, 1988, p. 245).<sup>22</sup> This alienation of a count’s family lands contradicts the *Fuero Viejo*, which maintains that the *solar* (hereditary landholdings) is not to be touched, even when a *rico ome* (upper Castilian nobility) makes war on the king. But law codes are not necessarily indicative of practice.

The family of *fueros* derived from the *Fuero de León* give some insight into legal procedures regarding the seizure of property by the local authorities, in this case, the legal municipality. For example, the

19 “His wife Doña Jimena/and his daughters will go to Valencia”

20 Most interestingly, Witiza burned their *digne*. What was this written document? Was there some kind of public notice of exile, as appears in the *PMC*?

21 For Visigothic law, see *Leges Visigothorum* in the references.

22 “Furthermore, we hereby confiscate the hereditary property of Bermudo Osoriz, which territory is a third of the parish of San Xoán de Tirimol, in the villa of Baguexios, in Mazoi”

## I N T E R F A C E

*Fuero de Villavicencio* stipulates that the authorities should seize neither the house nor the livestock of those caught for homicide; those not caught will have half of their possessions seized, the remaining half being awarded to the wife and children of the murderer (Vázquez de Parga, 1944, 490). However, methodologically speaking, we must note that royal law and municipal law are not the same, and legal statutes and legal application are also not the same, so whether or not a given *fuero* calls for seizure of property may or may not have anything to do with the royal exile of a court insider (Rodrigo Díaz). Municipalities did not struggle with political rivalries in the way that royal courts did, and we are arguing here for the Cid's exile as a political expediency in the context of a hotbed of court rivals. Whether the opening of the extant *PMC*, with its meditation on loss in four aspects (open doors, unlocked entrances, empty clothing hangers, and an absence of hunting birds) suggests that all or some of the Cid's possessions have been seized still requires interpretation, and the greatest hispanists have proffered contradictory interpretations.<sup>23</sup>

In its performative aspect, medieval law operates through legal formulae. The formulaic phrase here is *Addicimus hereditatem...que est in ipso cauto*. In the write-up of the Rodrigo Ovéquiz' alleged misdeeds, we see several formulae found in the Castilian legal, historiographic and epic traditions.

Nam Dei rebelles et mei regni mei fraudatores et uite et corporis mei traditores, Rudericus uidelicet Ouequiz et Geloria mater eius et illorum progenies mortifera et mentita, perdiderunt et amiserunt recto Dei iudicio propter traditionem et inuasionem quam exarcerunt in me et in regno meo. (Gambra, 1988, p. 245)<sup>24</sup>

Naturally the words for the alleged misdeed: *fraudator* (commiter of fraud; cheater) and *traditor* (traitor) are both common in Castilian le-

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23 See Montaner's note to line three (2016, p. 647) for references.

24 "And so, as rebels against God and my kingdom, as liars and traitors against my life and my body, Rodrigo —namely Ovéquiz and Geloria his mother and that deadly, lying clan— have lost and forfeit the right to a Judicium Dei because of their treason and raid which they carried out against me and against my kingdom."

gal discourse on treason. For example, the listing of synonymous for “traitor” recalls “*falso, malo y traidor*”, (liar, bad person, traitor) from the *Siete Infantes de Lara. Et vite e corporis mei traditores* (Gambra, 1988, p. 245) recalls the *reptar el cuerpo* of the *PMC*. According to the diploma, Rodrigo Ovéquiz and his mother Evlira lost the right to ordinary due process on account of their part in the uprising and attack on Alfonso’s holdings, and are therefore exiled (Gambra, 1988, p. 246: “*a me in exilio missi sunt*”). The diploma shows a continuity of judicial concepts with regard to exile from the earliest part of the Middle Ages.

The *Fuero Viejo* is a thirteenth-century compilation of legal rights granted to the nobility over the course of centuries in the form of local charters. This text helps fill out our picture of the Cid’s exile. Lacarra and others have used *Fuero Viejo* as a source of information on the *PMC*, though we must do so carefully since the exile laws in the *Fuero Viejo* make reference to a class of nobles (*ricos hombres*) different from that of Rodrigo Díaz (*hijos de algo*) and since the use and status of written law in medieval Spain requires a study of its own. The exact correspondence between literary and legal texts requires its own study. For present purposes, we observe that *Fuero Viejo* offers at least one invaluable insight into the nature of medieval Castilian law, namely the word *desaforado*, a participial adjective derived from the verb *desaforar*, “to remove from the protections of law.” Moreover, the *Fuero Viejo* stipulates that the *desterrado* (exile) is to go in search of a new *señor* because he has no legal privileges until he finds one because “law” is a set of privileges granted by a lord, or social superior. To an extent, medieval Castilian law more closely resembles an employer contract than the modern notion that transcendent rights inhere in the individual by dint of his or her personhood or humanity, a conceptual model which culminates in the 1948 Universal Declaration of Human Rights.

The *Fuero Viejo* is an exemplary case of legal and literary interpretation. The *fuero* itself establishes authority with the formulaic phrase, “*Esto es fuero de Castilla*,” which is to say, “these are the customary privileges of the political elite of Castile.” The legal historical commonplace is that customary law derives its authority from long-held usage,

## I N T E R F A C E

but nostalgia is a trope used in both literature and law to justify present conditions. The textualization of the *Fuero Juzgo*, the act of compiling and writing customary law in the mid-thirteenth century, represents a transformation and an interpretation of oral materials. The phrase “esto es fuero” is an interpretation and a speech act. According to the customary usage prologue of the *Fuero Viejo*, privileges granted ad hoc through legal charters made to monasteries, vassals and communities were reviewed and combined into a treatise. In other words, an oral tradition became a literate one. The aesthetic phenomena described by literary scholars can be observed in this legal text, which is to say that meaning depends on form to some extent. In sum, exile in the *Fuero Viejo* is a complex issue.

From the point of view of the *Fuero Viejo*, *ricos omes* had the right to break their vassallic bond to the king provided they “published” their intention by proxy, through a vassal, with the legal formula: “*Señor fulan Rico ome, beso vos yo la mano por él, e de aquí adelante non es vostro vasallo*”<sup>25</sup> (I.iii.3) . In I.iv.2, the *Fuero Viejo* adds that the *rico ome* should also provide the reason why he is leaving his lord (in addition to giving notice and kissing the king’s hand).

The laws of the *Fuero Viejo* pertaining to exile, either self-imposed or imposed by the king, are repetitious and suggestive of an unsynthesized compilation of various legal manuscripts. Though these seams must be read for the information they offer, for present purposes I offer the following synthetic summary of the main legal clauses of the *Fuero Viejo* regarding exile and self-exile. For comparison, I include PMC and diploma of Alfonso VI mentioned above.

The table makes it clear both that there is variance among literary, historical, and legal texts, and that there is also continuity among what we moderns perceive to be unconnected disciplines. The table also makes it clear that the *Fuero Viejo* offers some protection to exiles.

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<sup>25</sup> “[Oh, King], I kiss your hand in the name of Lord [name of the *rico hombre* who breaking vassallic ties to the king], and from here on he is no longer your vassal”.

**McGLYNN**

	<b><i>Fuero Viejo</i></b>	<b><i>PMC</i></b>	<b><i>HR</i></b>	<b><i>Diploma</i></b>
<b><i>role of vassals of the exiled</i></b>	The vassals of exiled <i>ricos omes</i> or <i>fijosdalgo</i> should accompany their lord in exile.	Rodrigo asks his vassals if they want to accompany him and recruits others.	Brings his army	Unknown. It seems that the <i>satellites</i> might have also been exiled.
	Should send all of first winnings to king and half of second winnings to the king in exchange for indemnity for royal reprisals to raiding on king's territory.			
	Should be given a chance not to fight if the king musters troops to fight against belligerent exiled <i>ricos omes</i> .			
<b><i>property and family of the exiled party</i></b>	The exiled should not make war on king; if he does, the king may take anything he finds on his lands; raze houses; destroy vineyards, trees and anything he finds; the king should give him time to leave his lands.	Alfonso VI takes back <i>honores</i> .	His family, his family lands, and his <i>honores</i> (lordship over villas, etc. awarded for service) are seized during the second exile.	Alfonso takes back <i>honores</i> and hereditary lands of Rodrigo Ovéquiz and his mother.

## I N T E R F A C E

	the king should not touch <i>solares</i> or <i>heredades</i> or <i>dueñas</i> in any case.			
<b>notice</b>	Time to exile: thirty-day notice, nine-day notice, three-day notice.	9 days (lines 306-307).	(not mentioned)	No explanation given.
<b>safe passage</b>	Other <i>ricos omes</i> are to provide horses. King is to provide guidance, fair-priced provisions.	Cid must provide his own safe passage.	(not mentioned)	No rights of the exiled are mentioned.
<b>reasons</b>	King is not to <i>dereredar</i> any vassal or vassal's property unless said vassal first <i>desereda</i> the king or king's property.	Ximena says it is <i>malos mestureros</i> (line 267).	Envious courtiers; accused of being <i>traditor et malus</i> .	<i>Traditio</i> and <i>invasio</i> .
<b>raiding</b>	If the exile makes war or raids the king or king's property, the vassals of the exile should send back their part of the booty to the king, their "natural lord."	Cid takes Alcocer but refrains from raiding the protectorates of Alfonso VI.	The Cid continues to raid; according to Reilly, the counter-raid on Gormaz is one of the causes of his exile.	Raiding ( <i>invasio</i> ) is one of the two <i>causa iuris</i> of the exile.

**Table 1: Summary of the main legal clauses of the Fuero Viejo regarding exile and self-exile**

The Middle Ages were not without its debates about royal authority, the *Magna Carta* being exemplary in the English tradition. According to Komé Koloto de Dikanda Madeleine, in his royal court (*curia regia*) of



1188, Alfonso IX tried to make royal justice more just (section 6, n/p). At the level of the text, this characterization seems sound. The *decreta* mandate against unjust seizure of person and property, and call for due process for those accused. In particular, there are several clauses relevant to the procedures we see in the case of Rodrigo Díaz. First, accusations must be made in Alfonso's IX's royal court, and the accuser is punished if the accusation is not borne out by the facts. Presumably, this constrains even the king to level accusations carefully. Perhaps most importantly:

Juravi etiam quod numquam propter mezclam michi dictam de aliquo in vel in alium qui dicatur de illi facere malum uel damnum uel in persona uel in rebus suis donec uoce meum per literas meas ut ueniat ad curiam meam facere d...tum secundum quod curia mea mandauerit et si probatum nom fuerit ille qui mezclam fecerit patiator poenam supradictum et soluat in super expensas quas facit mezclatus in eum [...] et re[...]cundo. (Transcripción Latina de los 'Decreta' de León de 1188 a partir del 'Tumbo Colorado' de la Catedral de Santiago de Compostela, cartulario compilado en la transcripción de los siglos XII al XIII)<sup>26</sup>

Alfonso XI is reported as having made a similar stipulation in the verse biography *Poema de Alfonso onceno* in a judicial session convoked in Valladolid (Yáñez, 1991, stanzas 329-336). If applied to the Cid and Alfonso VI, such a provision might evaporate the drama of the *PMC*.

Though the royal court might not protect subjects from the royal will, it would theoretically protect royal subjects from each other. The fact that the court must issue a written summons conforms to the *PMC*'s written document about the Cid's exile. Perhaps the most relevant part of the Ordenamiento de 1188 is the king's promise that those who rally ("*faciat assunodas*"), apparently taking justice in their own hands, will pay

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26 "If someone brings me an accusation against someone else, or makes a claim of harm, I also swear that the accused will incur no damage either in their person or in their goods before they are called by letter to my court to be processed by law, whatever my court decides. If the accusation or the damages are proven false, the above-mentioned punishment will fall to the accuser, and the accuser will also pay the travel costs of the accused to and from court".

## I N T E R F A C E

double fines and lose the king's "love" ("*pendat amore meum*"). Thus, even in the context of rendering royal justice fair, the king's favor is still legally binding and final.

Despite being a nobiliary document, the *Fuero Viejo* offers some protection to the king in exile cases. As to the seizure of the exile's booty, the *Fuero Viejo* offers a formula for returning booty:

Señor, fulanos cavalleros vasallos de al Rico ome, que vos echastes de tierra, vos imbian estas suertes, que ganaron cada uno de ellos de tal corredura, que ficieron en fulan lugar, que ganaron de vosotros vasallos, e de vostra tierra, e imbianvos pedir merced, que enderecedes el mal, que ficistes a su Señor en esta guisa: E devegelo todo decir delante. (I.iv.2, p.16) <sup>27</sup>

As can be seen in this stipulation, conflicting allegiance arises because of the complex web of interrelationships that characterize feudal or semi-feudal societies. Vassals whose new lord is at war with their old lord are in a predicament that this legal stipulation means to sort out. The vassals are exonerating themselves from warring on the king while also retaining loyalty to their lord (the *rico ome* who had been vassal of the king). *E devegelo decir todo delante*<sup>28</sup> is legal publishing, the performative aspect of this speech act. This legal process is to be repeated: vassals of exiled *ricos omes* should send fifty percent of second winnings to the king and no portion of subsequent winnings. In exchange, these vassals are indemnified against any form of royal reprisal. Thus we see that at least one version of law in medieval Castile allowed for a kind of exile that turns profitable. And we see that the exiles had rights.

The relationship between documents pertaining to the Cid, Rodrigo Díaz, is the subject of extensive scholarly writing.<sup>29</sup> It is generally sup-

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27 "Lord, the knights here named, whom you exiled, send you these gifts, which they earned raiding in such-and-such a place by defeating your vassals on your lands, now ask your mercy, that you fix this wrong, which you committed against your Lord in this way. All this should be said before the lord.")

28 "and everything should be said aloud in the king's presence".

29 Montaner's recent article ("El proyecto historiográfico"), including its argument and its references, is a good *punto de arranque* for this long scholarly conversation.

posed that the *HR* might have influenced the *PMC*. In the *HR*, the Cid is exiled twice, both times due to the envy of rivals of the Cid. The exile as depicted in the *PMC* seems to be a combination of these two. In the severity of its consequences, the *PMC* exile seems to be a conflation of the two exiles mentioned in the *HR*. This literary condensation demonstrates a quintessential and typical power of fiction and poetry; by condensing the asymmetries of the Cid's comings and goings into a single narrative arc, a single exile, the text makes a focused, coherent case for the Cid as exemplary vassal, in answer to the charge of treason, which apparently had circulated orally, i.e., was known. The *PMC* seems to answer this charge. The first exile in the *HR* occurs after two of Rodrigo's victories, both of which result in envy and slander. Fighting on the side of the king of Seville, the Cid defeats the king of Granada and the Castilians fighting on the side of Granada. Because of these conflicting secondary allegiances, many Castilians turn against the Cid in reaction to his victory:

tam propinqui quam extranei causa invidie de falsis et non ueris  
rebus apud regem accusauerunt (1990, chapter 9).<sup>30</sup>

The Cid is honored for his victories against Granada, and goes on to capture enormous booty and many prisoners in Toledo, at which point the envious slander turns specific. The text specifies that "*curiales inuidientes*" (1990, chapter 11: "envious courtiers") accused the Cid of trying to set up the Christian armies for ambush in Toledo (1990, chapter 11). This would be an act of treason, and treason is always among the most serious crimes since it invalidates the legal system itself (Robinson 122). Thus, Alfonso reacts by exiling the Cid. Note the language of the exile ("*commotus et iratus eiecit eum de regno suo*", 1990, chapter 11)<sup>31</sup> suggests only that the Cid is expelled from Alfonso's kingdom, which, pace the *Deutsche Rechtsschule* and its more recent reflexes, is not the severest punishment, and not irreversible. In fact, it is a very precise punishment. Moreover, it is limited, since Rodrigo, according to the *HR* narrative, is seldom in Alfonso's kingdom anyway. The Cid

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30 "because of their envy, both relatives and strangers accused the Cid before the king of things that were false and not true".

31 "agitated and angry, [the king] threw [the Cid] out of his kingdom"

## I N T E R F A C E

takes on a new lord in Mu'tamin, where he is better received and spectacularly recompensed. In fact, in chapter 19, the Cid declines Alfonso's invitation to return to Castile (choosing Mu'tamin instead) because he senses an exile in the making. The second exile is worse insofar as the king seizes Rodrigo's "*honorem*" (villas and castles awarded as honors), family properties, moveable goods, and wife and daughters (1990, chapter 34). The extant first scene of the poem (*PMC*) dramatizes this precise loss, and the rest of the poem dramatizes —at length— the Cid's rehabilitation. The rest of the poem dramatizes the undoing of his exile. As Alfonso reaches out to the Cid, it's almost as if the poet-narrator makes the figure of an unjust Alfonso eat his words, while the Cid's chief rival looks on in frustration (line 1345). For example, the poet not only restores the Cid's reclaimed benefice properties with an entire kingdom (Valencia), Alfonso himself recompenses the Cid by allowing him use of whatever property he needs (lines 1364-1365).

In the *HR*, the cause of the second exile is the same as the first: envious Castilians accuse Rodrigo of treason, in this case, not coming to the aid of the king at Aledo. The Cid's response is legally appropriate: he offers to undergo due process (trial by combat), he denies the charges, he swears vassalic fidelity then and now, and he ratifies the testament by means of an imprecation formula (1990, chapter 35). Exile here is a negotiated standoff between rival powers. In the *HR* text, "Rodrigo and his army" is repeated enough to become something like an epithet, a clear reminder that Rodrigo is a major player in Iberian politics whose *de facto* power threatens to exceed that of the *de jure* ruler or at least that of the Castilian counts whom Alfonso must please. Exile can be an act of mercy (Armstrong, 1963, 768), as it might have been the case of the historical Cid. The strength of Rodrigo's position is highlighted by the fact that he submits to Alfonso four letters with four different paths to resolution. The fourth plea is quite different from the others in that it does not even address Rodrigo's absence at Aledo but focuses rather on the Alfonso's actions against him *sine merito*, *sine ratione* (35, p. 67). Was Rodrigo getting fed up? Trying a new legal strategy? The first three pleas follow the same format. The differences in content are merely amplifications or reductions of the same structure: explanation

**McGLYNN**

of what happened at Aledo, a denial of treason (of the cause for exile), and an imprecation formula.

# I N T E R F A C E

	First Plea	Second Plea	Third Plea	Fourth Plea
<b>Prologue: illocution</b>	Was held in love.			
	Will fight by challenge duel.			
<b>Aledo</b>	Swears that he did not know the King's route to Aledo.	Did not know that the King was ahead of him until the king was on his way back to Toledo. Had he known, he would have joined the king.	Sent letters to king without evil intent.	
<b>Bitter reproach</b>				Rodrigo has neither spoken, thought or committed evil against king since he swore loyalty until that day that king "cruelly and without reason" took Rodrigo's benefice lands and wife.
				King has committed unearned and irrational suffering and dishonor upon Rodrigo.

**McGLYNN**

<b>Denial of lying</b>	Did not lie.		Rodrigo did not send letters so that the king would be defeated.	
<b>Denial of disobedience</b>	Did not disobey.		Obedied king by waiting at Villena, per king's orders.	
<b>Denial of treachery/ motives for exile</b>	No deceit, plotting, treachery, evil ( <i>fraudum, ingenium, traditionem, rem malam</i> ).		Did not commit treason or evil ( <i>traditionem, rem malam</i> ).	
	No one is more faithful.			
<b>Imprecation formula</b>	If this is a lie, may God deliver me into the king's hands.	If this is a lie, may God deliver me into the king's hands.	If this is a lie, may God deliver me into the king's hands.	If this is a lie, may God deliver me into the king's hands.
	If not a lie, may God deliver me.	If not a lie, may God deliver me.	If not a lie, may God deliver me.	If not a lie, may God deliver me.
	This oath will be repeated by Cid's champion.	This oath will be repeated by Cid's champion.	This oath will be repeated by Cid's champion.	This oath will be repeated by Cid's champion.
<b>Epilogue</b>				King should choose one of the oaths for Rodrigo to take or send a written solution.

**Table 2: The Four Pleas of Cid Analyzed as Legal Formula**

### 3 Implications

#### 3.1 Eleventh-Century Banishment

Despite the historiographical clichés that banishment was the severest punishment of early societies, that is certainly not the case with eleventh-century Castile. Banishment is not exclusively penal but also a means of effecting some other end (Armstrong 760). It is an ancient debate whether exile is punishment or escape from punishment (Cicero, n/d, section 34).<sup>32</sup> We might go so far as to argue that the pathos of opening *tirada* of the *PMC* is to ameliorate any sense that the Cid's exile was not punishment. Alfonso VI banished Rodrigo to remove him from circulation, thereby keeping peace among various constituents of his power base. What if, as a secondary motive, Alfonso sent Rodrigo not so much from Castile as to the Moors, knowing that he would wreak destruction on them? Banishment in eleventh- and twelfth-century Castile is not being driven into the wilderness so much as being removed from play, removed from circulation. Alfonso's job was to maintain balance among his vassals, tributaries, and enemies, in short, among the positive and negative poles of his political world. Rodrigo Díaz, having taken García Ordóñez and other Castilian magnates prisoner, having crossed Ramón Berenguer and other allies of Alfonso, threatened that balance.

#### 3.2 *Desaforado*: The Nature of Early Castilian Law

The crux of the banishment of Rodrigo Díaz in the nomo-historiographic tradition of Castile is expressed in the notion of Rodrigo Díaz as *desaforado*, “unlawed,” or removed from a system of law. The term *desaforado* appears in the *Fuero Viejo*. The *PMC* uses the term *desterrado*. They are the same insofar as the royal law is always seen as consensant and coterminus with royal territory. This is one of the most fundamen-

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<sup>32</sup> “Exsilium enim non supplicium est, sed perfugium portusque supplici” (“Pro Aulus Caecina”, n/d, section 34: “For banishment is not a punishment, but is a refuge and harbour of safety from punishment”).



tal suppositions of monarchy: the king's law rules the king's land. The modern English term "law" fails utterly to represent medieval Castilian cultural assumptions and relationships that we are trying to represent with that term. *Desaforado* is derived from *fuero*, and *fuero* of course is derived from Latin *forum*, and, in a time such as early medieval Castile, when law was done not only in court but in the field, on the road, in a fight or wherever, the need arose for settlement and mediation, *forum* comes to mean not the place where law is done but the doing of the law itself. *Fuero* comes to refer to the system of law, or, more accurately, the system of privileges and interchanges defining relationships, rights, and concrete situations. As mentioned above, the early medieval sense of "fuero" is more like a renter's contract insofar as Castilian kings issued *fueros* as sets of privileges to newly conquered frontier towns, as incentive for relocation there. Contingent upon inhabitation, rights and duties were granted to settlers.

Rodrigo, being *desaforado*, removed from a legal system, as the *Fuero Viejo* puts it, is outside the privileges of Alfonso, but he is also outside of Alfonso's restrictions. Part of the nature of law is a negotiated interchange of services and goods which is not necessarily territorial. *Desterrado*, removed from a territory, is a concretization of *desaforado*, being excluded from privileges, protections, and punishments of a given interpretive community; all of this is closer to a true sense of exile and banishment. There are Indo-European correlatives to *desterrado*, this concept of law as that area which is protected. The depiction of Polyphemus in the *Odyssey* as wild and lawless, even single eyed (no concession to other points of view) suggests this same concept of law as a privileged, protected domain (as opposed to law as a set of restrictions). Medieval Scandinavian law recognized degrees of exclusion from the protections and privileges of law. Due to Iceland's wealth of legal and literary documents related to exile and banishment, Icelandic outlawry is among the most studied cases of exile. Like the Spanish sources, the first Icelandic lawbook, the *Grágás*, adjudicates how soon the exile must leave, what happens to his property, and who can help or harm

him, and how soon.<sup>33</sup> Recio Juárez interprets the *inimicitia*<sup>34</sup> of Visigothic law in this way, which would mean that part of the significance of the number of days allotted to exiles like the Cid to leave Castile was to let everyone know how long the exile's indemnity under royal law lasted, i.e., at which point his rivals could attack him or take vengeance for any debt of violence owed.<sup>35</sup> However, the expired indemnity implied by *inimicitia* is more relevant in homicide cases, crimes begging for blood vengeance. The Cid's exile is not a feud in the anthropological sense (impassioned, tit-for-tat revenge killings between two collectives).

The Icelandic legal text uses various words for outlaw, including *vargr*, or wolf, which suggests that those who are not complicit with the law are wild. Of course Roman law and English law make use of this same ecology-based metaphor: the outlaw “shall wear a wolf's head” (*gerat caput lupinum*), or go unprotected, because wolves as apex predators posed serious rivalry for men. Taking a cognitive studies perspective on metaphor, i.e., that metaphors are based ultimately on sensorial experience including, in this case, ecological experience, then we gain an insight into exile. The insight is that exile is about winning a rivalry. Some serious challenge to status quo is posed by a social actor, and the

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33 The legal source for information on outlawry during the Icelandic commonwealth period is the *Grágás*. Finsen's edition of the *Kónungsbók* MS is still the most used reference. The information about outlawry is spread throughout the *Grágás*, but there are sections dedicated to the outlaw's safe passage and the confiscation of his good (section 53, p. 89 ff.).

34 “State of enmity”; in some contexts enmity against the ruling power, therefore a treasonous act; in others a state of enmity between rivals, therefore “feud.”

35 Recio Juárez (2016, p. 60, note 99) writes,

“La *lex visigothorum*, más adelante recopilada como el *Fuero Juzgo*, recoge la *inimicitia*, institución germánica por la cual el culpable o enemigo era condenado a pagar una cantidad y desterrado de su localidad, quedando así expuesto a la venganza del ofendido u ofendidos quienes después de esa declaración judicial podían matarle impunemente tras un periodo de 3 a 9 días durante los que podían huir del lugar”

(“Visigothic Law, later promulgated as the *Fuero Juzgo* [by the kings of Castile], preserves the *inimicitia*, a Germanic legal institution by which the guilty party or enemy was condemned to pay a certain amount and then banished from that locale, and was thereby exposed to the vendetta of the offended party[ies], who, after said legal declaration, could kill him with impunity after a period of three to nine days—the time allotted for him to flee”).

The easy equation of seventh-century Visigothic law and thirteenth-century Castilian law is problematic to anyone with a sense of legal context or a sense of translation. Also problematic is the notion of a “Germanic” institution surviving unchanged into the thirteenth century. The strong association of Germanic peoples and blood vengeance is tantamount to the permeable boundary between Chinese martial arts fiction and Chinese kung fu: literature seems to have infiltrated objectivity.

current group authority decides to remove that rival. Execution is not the same as outlawry just as captivity is not the same as hunting. Jailing and execution assume a relationship between established authority and social inferiors, where hierarchy is not in dispute. Calling the exile a dangerous prey is what stands behind the hunting metaphor. The metaphor also implies that the domain of law is a bounded geographical domain where safety rules, where predators are barred from entering. But not all cases of exile conform to this hunting mythos. The Cid's exile is a political move. The Cid is no werewolf.

Borrowing Agamben's principle of the sovereign ban, we might read in Rodrigo's exile not just an incident of Castilian politics, but the essential structure of Castilian sovereignty: "The ban has constituted the essential structure of sovereign power from the beginning" (Agamben, 1998, p. 111). Alfonso has to assert his authority against the Cid because he would have no authority if he did not. For Agamben, the ban is "the sovereign *nomos* that conditions every rule, the originary spatialization that governs and makes possible every localization and territorialization" (Agamben, 1998, p. 111). The Spanish terms make Agamben's point even clearer: that *desterrado* could be a synonym of *desaforado* shows this spatialization. The conflation of law and authority over a territory is the spatialization of law. In a globalized, information era, law must necessarily be de-territorialized. The mesmerism of the metaphor must be broken now since geographical boundaries will prove untenable in cyberspace or in physical space once travel reaches a speed at which all places become contiguous.

Said another way, perhaps a way more familiar to scholars of literature, we may read in the exile of Rodrigo Díaz an etiological allegory for the political authority of Western law. The exile of Rodrigo Díaz explains early Western law in figural terms as Cain and Abel explain the origin of crime and outlawry. Alfonso VI, embodying the crown, makes a personal decision to exact retribution for his subject's supposed crime. Since the Cid is not a peon but a major political player, Alfonso must remove the Cid from circulation. The remaining elements of the allegory are: slander (representing the power of consensus), *ira regia* (rep-

## I N T E R F A C E

resenting violence or exclusion, law’s two forces), the king’s individual decision (representing interpretation, or application of law).

<b>FIGURAL</b>	authority	subject	consensus	exclusion	interpretation (application) of law	outside of law (tacit recognition of law’s limits)
<b>LITERAL</b>	Alfonso VI	Cid	slander	<i>ira regia</i>	king’s will	exile

**Table 3: Allegory For Law**

The legal allegory of the *PMC* makes it clear that law is not external or imposed from the outside but contractual and relational; not natural but contingent upon agreements. Law is an agreement to impose or dissolve boundaries. Any kind of text —legal or literary— can contribute to the understandings of those boundaries. Since the boundaries or affinities are always only imagined, they must be enacted publicly, so all can see to believe.

### 3.3 Medieval Personalization, Modern Dehumanization

Moderns have had difficulty reading the *ira regia* as anything but injustice. Even Grassotti, who views the *ira regia* as an institution with roots in Spanish and European law, views it as personal whim. She associates the *ira regia* with “despotism” and calls it “an arbitrary act” of individual will (7). It is all those things, but to assume that modern law is not those things is to fail to see our legal fictions. In the case of the exile of Rodrigo Díaz as we know it in the *PMC*, we can easily see how the declarative statements “the king is angry” and “the king is pleased” signify pragmatically, that is to say, affect lives. In the *PMC*, the Cid’s privileges as vassal of Alfonso VI, including his right to live on his hereditary land, are expressed simply as “*Alfonso tiene gran saña*” (“Alfonso is greatly enraged”) and “*plázme*” (“it pleases me”). These phrases and the *ira regia* constitute a legal status or sentence. It is a legal category personalized and personified as an individual’s (the

king's) emotional state. The personification says more about the nature of law as embodied than it does about medieval law being subjective or primitive. From the perspective of those holding the modern legal fiction of objective standards, the *ira regia* is a subjective state; however, the consequences are "objective" in the sense of being uniform and real. More than subjective or objective, "embodied" better captures the way law is expressed. Things embodied are both subjective and objective. As a political reading of the *ira regia* in the *PMC*, we might extrapolate from Bataille's association of sovereignty with the right to consume and waste without "sin" (1991, pp. 198ff.) We might extrapolate to suggest that kingship, as portrayed in the *PMC*, is the right to determine political consequences based on individual desire and emotion. This is not unlike Agamben's notion that the sovereign has a monopoly on the power to decide (1998, p. 16), and unites justice and violence (p. 31). Agamben writes that the sovereign power exceeds the level of the judicial rule (1998, p. 43), that the sovereign ban applies to the exception in no longer applying (p. 46). The Cid's exile is precisely what Agamben describes as the state of exception: law becomes indistinguishable from life (1998, p. 55). However, this is reading too far, for this is how the *PMC* tries to make it seem—that the law is the law. If Rodrigo Díaz did indeed establish a new vassalic relationship with Almotamid, then we see that the sovereign ban has limits, at least literally. The fiction of the outlaw metaphor is that human social life ends at the edge of law. The case of the Cid makes it clear that this is not true.

In fact, the overestimation of the individual is what the law always tries to hide. The ascendance of one individual as lawmaker over another is not the law itself. The fiction that one man can become prey to others (*vargr/lupus*) is the inhumanity that makes law possible and "natural." This is what Agamben was trying to express by noticing the conceptual slippage between sacred as holy and sacred as detestable in the Latin legal concept of *homo sacer*. We have always simultaneously overestimated and underestimated the importance of the individual in the context of the law. The law must be expressed as individual narrative (a legal case); authority must take expression as an individual (ruler or judge). Monarchy of course has an elaborate mythology to naturalize its choice

## I N T E R F A C E

of individual. Democracy likewise.

Law was wholly personalized in the Western European Middle Ages: the king embodied the law, personified the law; laws applied to people by class (much as they do today by nationality). The extreme personalization of law in the Western European Middle Ages, though, is not unique. It is simply a different flavor of the reality of law: the law must always be personalized as plaintiff or defendant or violator, etc. The idea of the law as objective material “out there” is but a figuration perhaps ultimately related to the concept of a monotheistic deity —transcendent and bodiless. What always matters in law is not the norm or ideal but how its application affects a given individual or group of actual people. The law is always personal or it would be a kind of art for art’s sake, ignored by everyone but a few enthusiasts.

To misperceive Rodrigo Díaz’ exile as Germanic outlawry (though there might be connections) or as the caprice of an absolute monarch is to misunderstand early medieval Castilian law, and to misunderstand the law itself. It is well known that early medieval kingship was not absolute, and that there is a modern tendency to misread medieval kinship anachronistically through the lens of Baroque absolute monarchy and through the doctrine of the divine right of kings.<sup>36</sup> That this is the case is evident in the scholarly tradition of reading for the “rebellious vassal” in early Castilian heroic texts.<sup>37</sup> Law was pluralistic in early Castile. Lord and vassal might typically be working with different legal assumptions and competing systems of law. What constitutes “legal” is itself a competition, as various interpretations or even legal systems compete for dominance. Exile marks that possibility of re-setting givens. Exile is that liminal space between competing interpretations, or systems of law. Exile, ironically, flags the ultimate freedom—the freedom to remake the law.

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36 Dian Fox (1983, p. 325) cites the well-known dictum: “the power of the monarch was not appreciably consolidated until the later Middle Ages.”

37 To the point, see Burshatin and Thompson (1976-1977).

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[received December 2, 2017  
accepted January 22, 2018]



