

CORPORATE REPRESENTATION IN LEON AND CASTILE DURING THE THIRTEENTH CENTURY

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Modern parliamentary democracy has familiarized us with the concept of representation. We find nothing remarkable in that a group of persons or a community should be re-presented by a single individual, who would, within the limits of his mandate, speak and act in their place, and bear their corporate personality in such wise that what he affirms, decides or agrees to is considered as being affirmed, decided and agreed to by them. Yet this concept of corporate representation is by no means an obvious or natural one. It is the result of a slow, gradual and complex development which has in recent years attracted and absorbed the attention of medievalists; for it was during the Middle Ages that like so many other institutions characteristic of Western civilization corporate representation as we know it today took shape.

While the development of corporate representation in France and Italy has been the subject of numerous studies by the best scholars in the field, such as Petit-Dutaillis, Lousse and C. H. Taylor, to mention only three, the Spanish phase of that development, not less interesting and significant, has been sadly neglected. One of the few pioneers, however, is Professor Gaines Post of the University of Michigan, and therefore it would not be amiss to take as the starting-point of this essay his excellent article on "Roman Law and Early Representation in Spain and Italy."¹

The conclusion arrived at by Prof. Post in that article is that while representation "of a loose kind" existed in

¹ *Speculum*, XVIII (1943), 211-232.

Spain as early as the middle of the twelfth century, representation "of a really corporate kind" did not arise as a system in Spain before the second half of the thirteenth, and it is not until 1305 that we have clear evidence of "corporate proctorial representation."

Prof. Post has good reason to regret the dearth of scholarly studies and critical editing of documents on this aspect of the institutional history of Leon and Castile, or, for that matter, of all the medieval Spanish kingdoms. However, a limited amount of pertinent source material may be found in a wide variety of publications, ranging from the finely edited collection of documents pertaining to the Cortes of Castile and Leon published by the Royal Academy of History, to *pieces justificatives* attached as appendices to town histories and the annals of individual reigns.²

Even a cursory reading of this material brings out the fact that while the terms *procurator* or *procurador* do not seem to have been used in Leon and Castile before the middle of the thirteenth century, frequent instances occur throughout the course of the century of *omes bonos*, *personeros* and *mandaderos* acting in behalf of corporate bodies such as town councils, cathedral chapters and monasteries. In view of Professor Post's conclusions, we are naturally led to ask a number of questions regarding these variously-named agents.

First of all, what was the precise nature of their function during the first half of the thirteenth century? Did their relations to town councils and other groups constitute representation of a "loose" kind only, or representation of a "really corporate" kind? Do the correspondence between kings and town councils, the charters of towns and town confederations, and other documentary materials belonging to the second half of the thirteenth century furnish any clear evidence of corporate proctorial representation in Leon and Castile before 1305?

² Particularly good examples are Antonio Lopez Ferreiro's *Fueros municipales de Santiago y de su tierra* (2 v., Santiago, 1895), and *Memorias de Don Fernando IV de Castilla*, Antonio de Benavides, ed., 2 v., Madrid, 1860.

I

A remarkable passage in a letter of Fernando III, the Saint, to the town council of Guadalajara, dated at Seville, April 13, 1242, has a direct bearing on our first question.³ The King assumes that he would have occasion at times to summon men of the council to talk over certain matters pertaining to the royal service, and that at other times the council would want to send him on its own initiative its "good men" (*vuestros omnes bonos*) to speak in its behalf. He therefore lays down certain regulations regarding the sending of these "good men."

The council must select those knights from its membership whom it considers worthy of being sent to the King. It must give them their travelling expenses: one-half maravedi a day as far as Toledo, one maravedi a day from Toledo towards the Moorish frontier, wherever the King may happen to be at the moment. Not more than three or four men should be sent unless the King ordain otherwise, and each man must not have more than three mounts for the journey. The council is to appoint two of its members (*jurados*) and two magistrates (*alcaldes*) to assess the value of the animals, because the council and the town would have to make good their loss if they should die on the journey.⁴

What information can we legitimately derive from these

³ Text in Francisco Layna Serrano, *Historia de Guadalajara y sus Mendozas* (4 v., Madrid, 1942), I, 260-261.

⁴ Here is the passage in question: "Et mando e tengo por bien, que quando yo enbiare por omnes de vuestro Conceio que vengan a mi por cosas que ayere de ffablar con ellos, o quando quissieredes vos a my enbiar vuestros omnes buenos de parte de vuestro Conceio, que vos catedes en vuestro Conceio Cavalleros a tales que les tovyeredes por guisados de enbiar a my, et aquellos Cavalleros que en esta guisa tomarades para enbiar a my, que les dedes despensa de Conceio en esta guisa. Que quando vynieren para Toledo que dedes a cada Caverro medio mrv cada dia e non mas. Et de Toledo contra la Frontera que dedes a cada Caverro un mrv cada dia e non mas. Et mando e deffiendo que estos que a my enbiaredes, que non sean mas de tres fasta quatro, si non si yo enbiasse por mas. Et otrosi tengo por bien e mando, que quando yo enbiare por estos Caverros assi como sobredicho es o el Conceio los enbiare a my por parte de vuestro Conceio, que trayan cada Caverro tres bestias e non mas. Et estas bestias que gelas aprecio dos Jurados e dos Alcaldes quales el Conceio escogiere para ello, cada una quanto vale quando fazen la muebda del logar dont los embian, que si por aventura alguna daquellas bestias muriere que sepades que ayedes de dar el Conceio e el Pueblo por ella, que dedes tanto por ella quanto fue apreciada daquellos dos Jurados e dos Alcaldes assi como sobredicho es."—*ibid.*

ordinances regarding the function of these *omnes bonos*? First of all, it is clear that they do not make the journey to the court on their own account. They are sent for by the King as "men of the council," and it is expressly stated twice that the council sends them in its behalf (*de parte de vuestro Conceio*). Secondly, they are chosen not by the King but by the council; the King limits himself to specifying the number to be sent. Finally, the King expects the council to pay their travelling expenses, and not only the council but the town to make good the property they are most apt to lose during the journey. All this leaves little doubt that the business they are engaged in is not their own but that of town and council. They are agents; agents of the town council from which and by which they are chosen and sent; so completely its agents that the King, in speaking to them, considers himself as speaking to the council itself.⁵

Agents in what kind of business? The document does not specify. Was it exclusively the King's business, that is, business undertaken on the King's initiative and in his interest? This would seem to be the opinion of Professor Post, according to whom these *omnes bonos* were "local magistrates and prominent members of the *concejos* who had information on local custom and law, took oaths of fealty to the King in his high court, and received royal commands issued by the King's council and court of prelates and magnates."⁶

Fortunately, the document under examination was written after an actual meeting between the King and the sort of *omnes bonos* it speaks about. The King had summoned these "good men" in order to inform them that the "good ordering of the land" required certain restrictions in the selection of town ensigns, a stern ruling against "evil confraternities and assemblies" injurious to the royal power, and sumptuary regulations. The "good men" apparently took these measures in good part, because the King expresses himself as well pleased. "*Et esto pasado*," he adds, "and all this being settled, they asked and besought my

⁵ The document begins, "I (the King) sent my letters to you, the Council of Guadalajara, that you should send your good men of your Council to me regarding matters which I had to see and to speak about *with you* (convusco)."

⁶ "Early Representation," *op. cit.*, p. 218.

favor in behalf of their town, that I should allow them those laws (*fueros*) and that way of life and those customs which they had in the time of the King Don Alfonso my grandfather"—which meant chiefly that certain villages which he had taken away from the town "when I was younger" be given back to it. The King holds counsel with his son, his brother, certain nobles and prelates, and "caveros (*sic*; *cavalleros*) e omnes buenos de Castilla e de Leon," and accedes to this request.⁷

Here, then, is a pretty clear indication of the kind of business which these *omnes buenos* were likely to conduct and conclude—did actually conduct and conclude—at the king's court. They gave the king the information he desired, to be sure; they received his commands. But they also petitioned in behalf of their town and council. They obtained their petitions through a kind of tacit exchange of services: "*et esto pasado, rogaronme e pedieronme mercet*;" that is, if we may read between the lines, the King's business having been transacted to *his* satisfaction, they proceeded to transact the townsmen's business to *their* satisfaction.

But what is even more significant, other *omnes buenos* like themselves, from other towns of Leon and Castile, were *consulted*, along with the prelates and nobles of the court, on the "good ordering" of the town of Guadalajara. These "good men," therefore, were not merely passive recipients of "the royal commands issued by the king's council and court of prelates and magnates."⁸ They had a part in that council; admittedly a minor, merely consultative,

⁷ Layna Serrano, I, 260.

⁸ "Early Representation," *ibid.* In order to forestall a possible objection it should be noted that the term *cavallero*, usually translated as "knight," did not necessarily mean a member of the nobility in medieval Castile. As Prof. A. R. Pastor says, "In practice everyone was a *cavallero* who served in war with a horse, even if he was not a *hidalgo*" (*Chivalry*, Edgar Prestage, ed., London, 1928, p. 117). Hence when Fernando III says to the Council of Guadalajara that "you should select those knights (*cavalleros*) of your council whom you think fit to send to me," he is not limiting its freedom of choice to magistrates or the more prominent of its members. Moreover, he equates *cavalleros* with *omnes buenos*, who are certainly not members of the nobility. A curious confirmation of this early freedom of choice regarding the social rank of town representatives in Leon and Castile is that later Cortes repeatedly complained that mere villagers and peasants were being sent as proctors by certain towns—"gente de pequenna manera" who should not be allowed to dispute with their betters. See, e.g., Cortes of Palencia, 1431, in *Cortes de los antiguos reinos de León y Castilla* (5 v., Madrid, 1861-1903), III, 101; Cortes of Zamora, 1432, *ibid.*, III, 135.

and occasional part, but nonetheless a part. They would seem to be, in a very real sense, corporate representatives.

True, there is no mention of their bearing a written mandate from the town council. They are not called *procuradores*. They are referred to vaguely as "good men" or "knights." But I do not see how we can look upon these agents of a town council, who are designated and sent by that council, whose expenses are paid, or ought to be paid, by that council, who obtain redress of grievances and extension of privileges from the king in behalf of that council, and who are consulted by him as to what is right and just in the good ordering of the realm, as having a representative function of a merely loose and informal sort. I do not see where their standing differs in any essential respect from our definition of formal corporate representation, except for the absence of a written mandate, and the absence of such mandate, or rather, our present lack of evidence as to its existence, does not seem to be decisive.

We might add that the need which Fernando III felt of issuing regulations regarding these *omnes buenos* suggests that this type of representation had been going on for some time; while the regulations themselves, as we have tried to show, take for granted a much more evolved and "formal" type of representation than the term *omnes buenos*, taken by itself, would imply.

But perhaps the case of Guadalajara is exceptional. One instance does not make a system, and it is a system of corporate representation before the second half of the thirteenth century that we must question with Professor Post. Can the documents produce any other instance? Curiously enough, we find that in 1250, that is, eight years later, the instructions to Guadalajara are repeated, almost word for word, in a letter of Fernando III to the town council of Segovia.⁹ The impression is unavoidable that the clerks of the royal chancery were copying—perhaps were instructed to copy—the letter to Guadalajara. If continuity and regularity are the essential attributes of a system, then this imposition by Fernando III of the same set of rules on two different towns at an interval of eight

⁹ Dated at Seville, November 22, 1250; text in Diego de Colmenares, *Historia de la insigne ciudad de Segovia* (Segovia, 1637), pp. 62-65.

years would seem to indicate at least the beginnings of a system of corporate representation.

What makes this conclusion difficult to accept is that there seems to be no precedent in Leon and Castile for so mature a development; no distinguishable preliminary stages which would make its existence credible at this early period. Professor Post's reading of the evidence seems to be that the idea of corporate representation developed earliest in Italy under the influence of Romano-canonical procedures, and that the revival of interest in Roman and canon law, which was not felt in Spain until the second half of the thirteenth century, was what was chiefly responsible for the development of corporate proctorial representation there.¹⁰ My own impression, however, is that if sufficient information regarding an autonomous growth of corporate representation in Castile is lacking, this argues not so much to an absence of such growth as to the necessity of further research.

This is not merely wishful thinking. It is based on the fact that even the small fraction of archival material published by Spanish medievalists provides tantalizing glimpses into what may well have been preliminary sketches and studies, as it were, of the already firm and vigorous outlines of a system of corporate representation in Fernando III's reign.

Such, for instance, are the following two articles in the *Fuero* of Salamanca, which Sánchez Ruano dates as shortly after the conquest of Toledo, and in any case before 1208:

CCLXVI. *De los caualleros que uan ala iunta.*

E la iunta de la uilla d'areualo, e de medina, e de olmedo, e de coca e de toro, e de camora a medianero del conceio, cada cauallero medio marauedi; e se fueren las aciudades (a las ciudades?) denles sennos marauedis. A la iunta de segouia e de sepuelga (Sepúlveda?) sennos marauedis; e se fueren a las ciudades sennos marauedis. A la de toledo, e de palencia, e de leon, e de burgos cada cauallero iiii marauedis. . . .

CCCVIII. *De los caualleros que fueren a la iunta.*

Qui fuer a la iunta de cibdat rodrigo a medianero aian entre iiii caualleros i marauedi; e si fueren a la iunta denles sennos marauedis a cada cauallero: et otro tanto a aiula (Avila?); et otro tanto a areualo; et otro tanto a zamora. Et quien fuer

¹⁰ "Early Representation," *op. cit.*, p. 232.

a la iunta d'alua e de ledesma a medianedor non coman nada; e el que fuer dentro a la uilla cada cauallero den medio marauedi, e el que fuer a coria (Soria?) o a leon den ii marauedis a cada cauallero."¹¹

What are we to make of these *caualleros* who attend gatherings (*juntas*) in all these various towns as "go-betweeners" (*a medianero del conceio; a medianero; a medianedor*) for the council of Salamanca, and who do so with their expenses paid by the said council? To Puyol y Alonso, there is no doubt whatever about it:

The passage transcribed (*Fuero de Salamanca*, art. cclxvi) empowers us to assert: first, that there existed a certain community of interests between the cities and towns of Salamanca, Arévalo, Medina del Campo, Olmedo, Coca, Toro, Zamora, Segovia, Sepúlveda, Toledo, Palencia, León and Burgos; second, that to deliberate on these matters, assemblies were held at stated times which were attended by representatives of said towns; and third, that such an organization with such functions leaves no room for doubt that there was question of a true confederation of towns (*hermandad*), whatever be the name or designation adopted.¹²

We cannot go so far as this merely on the basis of these obscure texts.¹³ And yet we do seem to catch, through them, a fleeting glimpse of tentative gropings towards corporate representation; faint foreshadowings which, while not definite enough to be established facts in their own right, serve at least to make the advanced development of town representation suggested by the ordinances of Fernando III a little more credible.

II

We have reason, then, to suppose that by 1242, if not earlier, certain town councils of Leon and Castile were sending "good men" chosen by themselves to conduct business in their behalf at the royal court. These missions

¹¹ *Fuero de Salamanca*, J. Sánchez Ruano, ed. (Salamanca, 1870), pp. 77, 89.

¹² Julio Puyol y Alonso, *Las hermandades de Castilla y León* (Madrid, 1913), pp. 18-19.

¹³ Puyol y Alonso (*ibid.*, pp. 11-17) sees a reference to these early *hermandades* of Castilian towns in the prohibitions issued by Fernando III and Alfonso X against joining "certain evil confraternities and assemblies".

were very probably to assemblies of the Cortes; but at any rate they were frequent enough and important enough for the king to feel compelled to issue regulations concerning them. These regulations indicate rather clearly that these "good men" functioned as true representatives of the town councils and the towns. That they were recognized as agents not of the king but of the towns and, to use Professor Post's expression, "were responsible to their constituents even though they must obey a superior jurisdiction in the king's court and council,"¹⁴ seems a reasonable inference from the fact that the king made no attempt to interfere in their selection, and considered it only just that the town should pay their travelling expenses and insure them against loss in the performance of their duties.

This is, however, merely inference. To establish the fact as certain we would need some sort of documentary proof that these "good men" recognized that their powers to act proceeded entirely from the council which sent them; the kind of proof that can best be provided by a written mandate. I have not come across any such mandates among the published sources for this period, but it is not at all unlikely that a careful search of Spanish municipal archives will turn one up.

In the meantime, it would not be out of place to note that the necessity of such written mandates being given by a principal to the agent who acts for him was very early recognized in Castilian customary law. Even without going as far as the *Fuero Juzgo*,¹⁵ the longer version of the *Fuero* of Soria, drawn up between 1190 and 1214,¹⁶ explicitly states that the *personero*¹⁷ must be

which detract from the royal power and lordship. It is not quite clear from the documents, however, whether these *cofradías* and *ayuntamientos* were associations of towns, or merely associations of individuals within a single town, perhaps factions within the town council.

¹⁴ "Early Representation," *op. cit.*, p. 224.

¹⁵ See "Titulus de mandatoribus et mandatis," lib. II, tit. iii, *Fuero juzgo en latin y castellano*, edited by the Real Academia Española (Madrid, 1815), pp. 20-22.

¹⁶ *Fueros castellanos de Soria y de Alcalá de Henares*, Galo Sánchez, ed., Madrid, 1919. Don Galo Sánchez establishes the limiting dates in the study which accompanies this admirable edition, pp. 237-238.

¹⁷ The term *personero* figures largely in our study. In the *Siete Partidas*, III, tit. v, ley 1, it is defined as follows: "Personero es aquel que recabda o face algunas pleytos o cosas ajenas por mandado del dueño dellas, et ha nombre de personero porque parece, o este en juicio o fuera

given a *carta de personería*, that is, a written mandate drawn up by a public notary or clerk and sealed with a recognized seal.¹⁸

This provision of foral law, which must have been generally recognized throughout Leon and Castile¹⁹, was by no means a dead letter. Such written mandates were given to and demanded from *personeros* not only of individuals but—which is to our purpose—of corporate bodies who were parties to a legal suit. This is clear, for instance, from a judgment handed down by Fernando III in a dispute between the council of Santiago and the archbishop and chapter of the same in 1250. The case was argued before the king by *personeros* of both parties;

and for the council (of Santiago) came Don Martín de Tudela, and Don Sancho Yáñez, and Don Pedro Núñez, and Don Martín Cabeza, with letters of procuration (*cartas de personaría*) of the council of Santiago, in which it says that the council of Santiago gave them full power, and that it will stand by whatever they should do before me in this suit, whether by (way of) judgment, whether by (way of) composition, whether by any other way which they may think good.²⁰

The document from which the above passage is taken belongs to a group published by López Ferreiro to illustrate one phase of a longstanding conflict between the town council and the cathedral chapter of the famous shrine. Now it is important to bear in mind not only the *fact* that this suit was argued by *personeros* armed with *cartas de personería*, but the *nature* also of the suit. One issue of that quarrel was purely legal, a dispute over customary revenues;²¹ but another, and the more bitterly contested, issue concerned the jurisdiction of the

del en lugar de la persona de otro" (ed. Real Academia de la Historia, 3 v., Madrid, 1807, II, 418). Although the *Partidas* belong to the second half of the thirteenth century and are profoundly influenced by Romano-canonical ideas, nevertheless the definition given applies fully to the *personero* as described in the earlier *Fuero* of Soria. See "Capítulo de los personeros," cap. xvii (pp. 53-57 in the edition of Sánchez).

¹⁸ *Ibid.*, pp. 53-54.

¹⁹ Galo Sánchez does not hesitate to say that no municipal charter has exercised so great an influence on Spanish law as the *Fuero* of Soria, *ibid.*, p. 258.

²⁰ López Ferreiro, *Fueros municipales de Santiago*, I, 216-217.

²¹ *Ibid.*, I, 225.

town justices. What was the nature and extent of their competence? Were they merely delegates of the archbishop, as that dignitary claimed, all their decisions being subject to his review, or did they possess, at least in certain cases, an independent jurisdiction?²²

Here was a question which, while still legal, was at least in part administrative and could easily become political. In view of this the *personeros* of the town council at the king's court cannot be said to have been merely legal proctors. They were forced by the very fullness of the *plena potestas* so clearly granted them to be corporate representatives in a much wider sense, and so bring town representation a step closer to the fully evolved, unmistakably political form which it had assumed by the last decade of the century.²³

Now then; the *omnes buenos* of Guadalajara in 1242 and those of Segovia in the very year that this dispute was in progress at Santiago, 1250, were also at the king's court on business not essentially different from that of Don Martín de Tudela and his companions. They too had been sent by their towns to defend and if possible to extend their municipal liberties. Is it not reasonable to suppose that they also must have been provided with *carta de personeria* whose necessity is so clearly set forth by customary law and the actual practice of the royal court as illustrated in the Santiago case? But whether they were or not, it is at any rate quite clear that before the first half of the XIII century was over certain towns of Castile had developed a system of corporate representation whereby they acted in both legal and non-legal business through *omnes buenos* or *personeros* who, were, in all but name, the equivalent of the later proctors.

III

In 1255 the name proctor itself, as applied to representatives of the towns in the Castilian Cortes, makes its appearance in a document of some interest. Preserved

²² See López Ferreiro's admirably-documented account of this aspect of the quarrel, *ibid.*, I, 230-246.

²³ In the system of representation of the *hermandades* which we shall have occasion to examine further on.

in the Archives Nationales in Paris (J 601, no. 25), it was published by V. Piskorski in 1897²⁴ and by G. Daumet in 1914²⁵. Daumet's version is much better than Piskorski's which contains a number of rather serious errors of transcription.

The document was drawn up at Palencia, May 5, 1255,²⁶ at the behest of Alfonso X, for transmission to Prince Louis, eldest son of king Louis of France. This explains its presence in the French archives. An agreement had been reached between the two sovereigns that Alfonso's daughter Berenguela, at that time little over two years old, would marry Prince Louis, who was not yet twelve.²⁷ The document assures the prospective bridegroom that the Infanta Berenguela as the firstborn of Alfonso X would succeed to the throne of Castile in the defect of male issue. The succession was guaranteed not only by undisputed Spanish custom but by the oath of fealty to Berenguela taken by the estates of the realm in an assembly of the Cortes held at Toledo. Since this last statement is what interests us most, I transcribe the passage which contains it:

Nos igitur Alfonsus Dei gratia rex Castellae, Toleti, Legionis, Galletie, Sibilie, Cordube, Murcie et Jahenni, volentes karissime filie nostrae infantissae Berengarie in posterum juxta regales sanctiones et consuetudinem Hispanie providere, Toleti, fratres nostros, archiepiscopos et episcopos, barones et optimates nostrae curie, civitatum, castrorum et villarum procuratores ad hoc a suis communitatibus destinatos convenire fecimus, et cum eis juxta morem generali curia celebrata, eidem, juramentis ad sacrosancta Dei Euvangelia interpositis, de omnibus regnis nostris homagium ab eisdem fieri fecimus ut si nos, non relicto filio superstite de uxore legitima procreato, contingeret ab hac vita discedere, ipsam in dominam suam et heredem nostram reciperent et ipsa absque alicujus obstaculo regni ceptum concenderet ac regna nostra juxta donum sibi a Domino traditum gubernaret.²⁸

²⁴ *Las cortes de Castilla en el período de tránsito de la edad media a la moderna*, 1188-1520, Claudio Sánchez-Albornoz, tr. & ed., Barcelona, 1930. The original Russian edition of this work appeared at Kiev, 1897.

²⁵ *Mémoire sur les relations de la France et de la Castille, de 1255 à 1320* (Paris, 1914), pp. 143-146.

²⁶ "In Era millesima CC nonagesima tertia." On the Spanish Era and its reduction to the Christian see A. Giry, *Manuel de diplomatique* (Paris, 1894), pp. 91-96.

²⁷ On the possible reasons of state behind this arrangement, see Daumet, *op. cit.*, ch. 1.

²⁸ *Ibid.*, pp. 143-144.

With regard to the *procuratores* mentioned in this document we may be permitted to make the following observations. First, whatever may have been the distinction between *civitates* (episcopal towns?), *castra* (fortified or garrison towns?), they were certainly town proctors. Second, they were designated by their respective communes, not by the king or anyone else: "*a suis communitatibus destinatos.*" Third, they were designated to perform a specific act: "*ad hoc a suis communitatibus destinatos.*" Fourth and last, they performed this act in an assembly of the Cortes, which it was already customary for such proctors to attend: "*cum eis juxta morem generali curia celebrata.*"

It would appear, then, that these Castilian *procuratores* of the middle of the XIII century were town representatives in the strict sense, exercising formal, corporate, proctorial representation.²⁹

Procuradores of cities and towns are frequently referred to in the *Crónica* of Alfonso X as being summoned by the king for various reasons or sent to assemblies of the Cortes, and they are usually said to be provided with full powers in the form of written mandates: *poderes ciertos, personerías cumplidas.*³⁰ But while these indications are very probably accurate, they do not have a strict probative value, since the *Crónica* is not a strictly contemporary source. The consensus of opinion among Spanish scholars assigns its authorship to Fernán Sánchez de Tovar, who wrote in the first half of the XIV century.³¹ By that time the use of the term *procurador* was common in Castile, and so no very strong argument can be drawn from Sánchez de Tovar's terminology regarding the nature of town representation during the reign of Alfonso X.

Luckily, we do not have to depend on such arguments. The Palencia document of 1255 is, as we have seen, a

²⁹ Contrary to Prof. Post's statement that "we have no clear evidence of corporate proctorial representation (in Leon and Castile) until 1305" ("Early Representation," *op. cit.*, p. 218).

³⁰ E.g., in 1276 and 1281; cf. "*Crónica del rey don Alfonso X.*" *Biblioteca de autores españoles*, ed. Rivadeneyra (71 v., Madrid, 1846-1880), LXVI, 52, 59.

³¹ See Benito Sánchez Alonso, *Fuentes de la historia española e hispanoamericana* (3 v., Madrid, 1927-1946), I, 107.

piece of strictly contemporary evidence. It is by no means the only one. We have already shown that even before 1255 agents not only of individuals but of corporate bodies were representing their principals at the king's court, were provided with written mandates, and were transacting not only legal but also non-legal business. We suggested that they were true proctors, although they did not go by that Romano-canonical name but by the native Castilian title of *personeros*. If further proof were needed of this identification of the *personeros* with the proctor even in cases of corporate representation, Alfonso the Learned will provide it.

King Alfonso X and the associates who helped him with his legal writings were learned not only in Roman and canon law but also in Castilian customary law. If the *Fuero Real* follows pretty much the structure of the *Decretals*,³² and if the *Siete Partidas* owe a great deal to Azo and the Cardinal Bishop of Ostia,³³ it is no less true that the *Fuero Real* had for one of its principal sources the *Fuero* of Soria.³⁴ When, therefore, proctorial representation is treated in these codes under the heading of "De los personeros," we may be sure that the term was used advisedly as that which corresponded to the Latin *procurator*, and was generally understood in Castile as so corresponding.

What, then, do the *Siete Partidas*³⁵ have to say about corporate *personeros*? First, that corporate bodies such as town councils, cathedral chapters and monasteries not only may but should be represented by a *personero* in litigation.³⁶ Second, that town councils should provide their *personero* with a written mandate properly executed by the town clerk according to a model which is thoughtfully provided.

Como debe seer fecha la carta del personero de concejo o de iglesia conventual.

Concejo de villa o iglesia conventual facen a las vegadas

³² Juan Beneyto Pérez, *Fuentes de derecho histórico español* (Barcelona, 1931), p. 131.

³³ *Ibid.*, p. 135.

³⁴ A relationship first remarked and demonstrated by Galo Sánchez in his critical edition of the *Fuero* of Soria, *Fueros castellanos*, pp. 258-274.

³⁵ The first redaction of this code was begun in 1256 and finished in 1263; a second and shorter redaction was completed in 1265. Cf. Beneyto Pérez, *op. cit.*, p. 133.

³⁶ III, tit. ii, ley 13 (ed. Real Academia, II, 359-360).

personeros, et la carta de la personeria debe seer fecha en esta manera: Sepan quantos esta carta vieren como Rodrigo Esteban et Alfonso Diaz alcalles de Sevilla, seyendo ayuntado el concejo dese mesmo lugar en tal eglefia con placer et con otorgamiento de todos, ficieron a Diego Alfonso su personero para demandar et para responder ante nuestro señor el rey o sus jueces en el pleyto que han o esperan haber con el arzobispo o el cabillo de la eglefia de santa María de Sevilla en razon de Villaverde, o en otra cosa qualquier que la eglefia de Sevilla moviese pleyto contra el concejo dese mesmo lugar: et otorganle poderio de facer preguntas et respuestas, et de poner defensiones ante si, et de tomar alzada et seguirla, et de facer todas las cosas que verdadero personero puede facer en juicio et fuera de juicio: et prometieron et otorgaron que habrien por firme et por estable quanto aquel personero ficiese, et que nunca vernien contra ello; et mandaron a mi fulan escribano publico que ficiese ende esta carta publica. Et en esta mesma manera debe facer el perlado con otorgamiento de su convento o de su cabillo la carta de personeria.³⁷

This model mandate is perhaps more significant to our present subject than would appear at first glance.³⁸ In the first place, the very fact that it is included in what is in effect a legal formulary³⁹ is an indication that such mandates were in common use. Secondly, its tenor corresponds perfectly to Professor Post's definition of corporate representation as that in which the agent is responsible to his constituents even if they must obey a superior jurisdiction. Thirdly, it is a good example of *plena potestas*. Fourthly, its use of specific names of persons and places suggests that it is based on an actual mandate.

The *Siete Partidas* did not receive the force of law until almost a century after their redaction. They were, however, widely used and studied in the XIII century.⁴⁰ We may be sure, then, that the *cartas de personeria* of corporate proctors who argued cases before Alfonso X were drawn up more or less according to the model provided by the Learned King himself. We have found several references to such *cartas* in published documents of the

³⁷ III, tit. xviii, ley 98 (*ibid.*, II, 614-615).

³⁸ Prof. Post merely refers to it without comment, "Early Representation," *op. cit.*, p. 222, note 3. It would be interesting to learn why he did not consider it evidence of corporate proctorial representation.

³⁹ III, tit. xviii, "De las escripturas por que se prueban los pleytos," (*op. cit.*, II, 546-633).

⁴⁰ *Ibid.*, I, xxvii-xxviii. The *Siete Partidas* were given the force of law by Alfonso XI in the *Ordenamiento* of Alcalá, 1348.

reign,⁴¹ but our search for an actual *carta de personeria* has so far been fruitless.⁴²

IV

Although most of the references indicated above concern corporate proctors engaged in the conduct of legal business, there are not lacking instances of town representatives being sent on business other than legal.⁴³ This is only to be expected. The development of the king's court in León and Castile followed the same general lines which Prof. C. H. MacIlwain has traced for us in his masterly study of the English Parliament.⁴⁴ The insensible degrees by which the royal court was differentiated into a court of justice and legislative body, and that "fusion of functions"—Professor MacIlwain's happy phrase—which enabled it to pass from the exercise of the judicial to that of the law-making power, were naturally reflected in the imprecise and shifting role of town representatives at that court.

If, then, we are looking for an instance of town proctors exercising a markedly political rather than legal function, I would suggest that we direct our search not to the king's court but to those confederations of towns or *hermandades* which entered upon a vigorous period of development during the troubled minority of Fernando IV.

On July 6, 1295, certain town councils of Leon and Galicia signed a *carta de hermandad* at Burgos, uniting their respective towns in a league for the mutual protection of their rights and liberties against the violence of the times and the encroachments of the nobility and the royal

⁴¹Cf., e.g., *Memorial histórico español* (34 v., Madrid, 1851-1895), I, 131, 201.

⁴² There is, indeed, the curious letter of Alfonso X, 1256, published by López Ferreiro in his *Historia de la santa a. m. iglesia de Compostela* (11 v., Santiago, 1898-1909), V, Appendices, 91-93. In this letter the King acknowledges the oath of fealty taken by the *personeros* of the archbishop and chapter of Santiago in their behalf to the Infanta Berenguela as heiress to the throne. He says that the *personeros* carried a *carta de personeria* "fecha en esta guisa"—but what follows is not so much the mandate as the oath of fealty itself.

⁴³ E.g., to obtain charters of privileges from the king; cf. *Memorial histórico español*, I, 229, 278.

⁴⁴ *The High Court of Parliament and Its Supremacy* (New Haven, 1910), ch. iii.

power.⁴⁵ This charter was confirmed six days later by the town proctors who were present at the Cortes of Valladolid, probably with the addition of new members.⁴⁶ On October 4 of the same year the towns of Murcia, Cartagena, Lorca and others formed a similar confederation.⁴⁷ These three charters provide, among other things, for the holding of yearly assemblies to which each member council was to send two representatives "to come to an agreement and see to the doing of these things (*i. e.*, the objectives of the *hermandad* as enumerated in the charter), that they always be well kept in the manner aforesaid."⁴⁸ They also set down guarantees of immunity for these representatives and impose fines and other penalties on the town councils which fail to send them.⁴⁹ It is quite obvious that the signers of these charters meant business.

Not only did they mean business, but they had the fullest possible powers to transact business. For here at last, under date of October 1, 1295, is an actual *poder*, or mandate, given by the town council of Lorca to its "especiales e generales procuradores e legitimos personeros"⁵⁰ to enter into a confederation with the council of Murcia and with any others which should be willing to do so. On October 16 of the same year a late comer, Cartagena, empowers "nuestros especiales procuradores ciertos e legitimos" for the same purpose.⁵¹

It is difficult to imagine proctorial powers more extensive and more complete. The proctors of Lorca may enter into any agreement or agreements, take any oath or oaths they may think necessary, always saving the town's allegiance to the king. Whatever they shall do, establish, assent to, the council now, in advance, accepts, confirms, and promises to hold, accomplish and observe "pora siempre jamas." More: the council provides them with a blank parchment, sealed with its seal, in which they may cause to be written all the conditions, clauses, oaths, protestations,

⁴⁵ Text in *Memorias de don Fernando IV de Castilla*, II, 3-7.

⁴⁶ *Ibid.*, II, 7-13.

⁴⁷ *Ibid.*, II, 46-51.

⁴⁸ *Ibid.*, II, 11.

⁴⁹ *Ibid.*, II, 6, 11-12, 49.

⁵⁰ *Ibid.*, II, 45.

⁵¹ *Ibid.*, II, 52.

homages and penalties they may agree to with a view to the confederation.

And that this *procuracion*⁵² which we the abovementioned council execute be more firm and more lasting, forever and ever, and not be called into question, we seal it with our seal of pendent wax, being written by the hand of Guillem de Vallebrera, our public clerk, signed by his manual in witness of the truth. And if anything should be lacking in this procuracion to render it less full than shall be required, you may insert it in this procuracion and it shall be as valid as though we ourselves were present (when you do so).⁵³

Here, then, we have, five years before the close of the XIII century, the "compleat" town proctor; the full-grown, three-dimensional term of that long process of development which began with the wraithlike *cavallero* of the *Fuero* of Salamanca, moving through the mists of the first years of the century upon some dark unfathomable business for which he received from his fellow townsmen one-half maravedí a day.

V

We may now tabulate the conclusions of this little study. In the first place, the beginning of formal corporate representation in Leon and Castile does not have to be fixed at the comparatively late date when the term *procurador* makes its appearance in the documents. There is good reason to believe that representation, not merely of a loose or informal, but even of a really corporate kind arose in Castile before the second half of the thirteenth century. *Personeros* and *mandaderos* performed essentially the same functions as the *procuradores* of the late thirteenth and fourteenth centuries; and even the generic terms *ommes buenos* and *cavalleros* could be used of persons invested with powers of corporate representation.

Secondly, there is no clear evidence of a *system* of corporate representation much before 1242, but there are indications that such evidence may turn up as research into the origins of medieval Spanish institutions progresses.

⁵² My italics.

⁵³ *Ibid.*, II, 45.

At any rate, the evidence seems to be clear enough that corporate proctorial representation existed before 1305, that is, earlier than the date fixed by Professor Post.

As is to be expected, the evidence is clearest at the end of the thirteenth century, and becomes less clear as we go further back. In the 1290's, town proctors, called such, are engaging their constituents in political associations of towns and are empowered to do so *potestate plenissima*, in the form of written mandates which are extant. In the 70's and 80's, town proctors, called such, are said to be sent or summoned to assemblies of the Cortes with *plena potestas*; but we are told this by a chronicler who wrote circa 1312-1350. In the 60's and 70's, town proctors, called *personeros* or *mandaderos*, carrying *cartas de personería*, are pleading suits at the king's court and petitioning for municipal charters and privileges. In the 50's, town proctors, called such, are being summoned according to custom to an assembly of the Cortes, and there are invited to define, in union with the nobility and clergy, the traditions of the realm regarding the royal succession. In the 40's and 50's, persons designated by town councils, called *omnes buenos* and *cavalleros*, are made the subject of royal legislation which implies that they are sent to the royal court on the initiative of the town councils themselves, there to perform various services for their towns, including the defence and extension of town jurisdiction and possibly participation in the Cortes of the realm. Before the 40's, there is clear proof that the written mandate and *plena potestas* were known and used at least in individual procurations; while there are vague hints of corporate representation in primitive town confederations.

Obviously, there is nothing startlingly original in this analysis. Our picture of the development of town representation in thirteenth-century Castile remains essentially that of Colmeiro.⁵⁴ However, we may have pushed back the origins of that development somewhat earlier than Professor Post was willing to concede.

There is also a strong suggestion that proctorial representation in Spain was not entirely an importation from Italy, but had an extensive background in local institutions,

⁵⁴ See his *Curso de derecho político* (Madrid, 1873), pp. 281-282, for a concise and lucid summary.

on which the terminology of Roman and canon law was later superimposed. If so, will we have to assign a lesser role in the development of corporate representation to the influence of Romano-canonical procedures, and a correspondingly greater one to native Castilian institutions and customary law? That is a problem which can be adequately dealt with only in a separate study.