

lect, and observed there as the law of the territory he had then newly rescued from the Moors.²⁸

The precise time when this translation was made has not been decided. Marina, whose opinion should have weight, thinks it was not till the reign of Alfonso; but, from the early authority we know it to have possessed, it is more probable that it is to be dated from the latter years of Saint Ferdinand. In either case, however, considering the peculiar character and position of Alfonso, there can be little doubt that he was consulted and concerned in its preparation. It is a regular code, divided into twelve books, which are subdivided into titles and laws, and is of an extent so considerable and of a character so free and discursive, that we can fairly judge from it the condition of the prose language of the time, and ascertain that it was already as far advanced as that of the contemporaneous poetry.²⁹

But the wise forecast of Saint Ferdinand soon extended beyond the purpose with which he originally commanded the translation of the old Visigoth laws, and he undertook to prepare a code for the whole of

²⁸ Fuero Juzgo is a barbarous phrase, which signifies the same as Forum Judicum, and is perhaps a corruption of it. (Covarrubias, Tesoro, Madrid, 1674, fol., *ad verb.*) The first printed edition of the Fuero Juzgo is of 1600; the best is that by the Academy, in Latin and Spanish, Madrid, 1815, folio.

²⁹ See the Discurso prefixed to the Academy's edition, by Don Manuel de Lardizabal, y Uribe; and Marina's Ensayo, p. 29, in Mem. de la Acad. de Hist., Tom. IV., 1805. Perhaps the most curious passage in the Fuero Juzgo is the law (Lib. XII. Tit. iii. Ley 15) containing the tremendous oath of abjuration prescribed to those Jews who were about to enter the Christian Church. But I prefer to give as a specimen of its language one of a more

liberal spirit, namely, the eighth Law of the Primero Titulo, or Introduction, "concerning those who may become kings," which in the Latin original dates from A. D. 643: "Quando el rey morre, nengun non deve tomar el regno, nen facerse rey, nen ningun religioso, nen otro omne, nen servo, nen otro omne estrano, se non omne de linage de los godos, et fillo dalgo, et noble et digno de costumpnes, et con el otorgamiento de los obispos, et de los godos mayores, et de todo el poble. Asi que mientre que fómos todos de un corazon, et de una veluntat, et de una fé, que sea entre nos paz et justicia enno regno, et que podamos ganar la companna de los angeles en el otro sieglo; et aquel que quebrantar esta nuestra lee sea escomungado por sempre."

Christian Spain that was under his sceptre, which, in its different cities and provinces, was distracted by different and often contradictory *fueros* or privileges and laws given to each as it was won from the common enemy. But he did not live to execute his beneficent project, and the fragment that still remains to us of what he undertook, commonly known by the name of the "Setenario," plainly implies that it is, in part at least, the work of his son Alfonso.³⁰

Still, though Alfonso had been employed in preparing this code, he did not see fit to finish it. He, however, felt charged with the general undertaking, and seemed determined that his kingdom should not continue to suffer from the uncertainty or the conflict of its different systems of legislation. But he proceeded with great caution. His first body of laws, called the "Espejo," or "Mirror of all Rights," filling five books, was prepared before 1255; but, though it contains within itself directions for its own distribution and enforcement, * it does not seem ever to have * 46 gone into practical use. His "Fuero Real," a shorter code, divided into four books, was completed in 1255 for Valladolid, and perhaps was subsequently given to other cities of his kingdom. Both were followed by different laws, as occasion called for them, down nearly to the end of his reign. But all of them, taken together, were far from constituting a code such as had been projected by Saint Ferdinand.³¹

This last great work was undertaken by Alfonso in

³⁰ For the Setenario, see Castro, Biblioteca, Tom. II. pp. 680-684; and Marina, Historia de la Legislacion, Madrid, 1808, fol., §§ 290, 291. As far as it goes, which is not through the first of the seven divisions proposed, it consists, 1, of an introduction by Alfonso; and 2, of a series of discussions

on the Catholic religion, on Heathenism, etc., which were afterwards substantially incorporated into the first of the Partidas of Alfonso himself.

³¹ Opúsculos Legales del Rey Alfonso el Sabio, publicados, etc., por la Real Academia de la Historia, Madrid, 1836, 2 Tom., fol. Marina, Legislacion, §301.

1256, and finished either in 1263 or 1265. It was originally called by Alfonso himself "El Setenario," from the title of the code undertaken by his father; but it is now called "Las Siete Partidas," or The Seven Parts, from the seven divisions of the work itself. That Alfonso was assisted by others in the great task of compiling it out of the Decretals, and the Digest and Code of Justinian, as well as out of the Fuero Juzgo and other sources of legislation, both Spanish and foreign, is not to be doubted; but the general air and finish of the whole, its style and literary execution, must be more or less his own, so much are they in harmony with whatever else we know of his works and character.³²

The Partidas, however, though by far the most important legislative monument of its age, did not become at once the law of the land.³³ On the contrary, the great cities, with their separate privileges, and the great nobles, like the Laras, long resisted anything like a uniform system of legislation for the whole country; and it was not till 1348, two years before the death of Alfonso the Eleventh, and above sixty after that of their author, that the contest with the local authorities was over, and the Partidas were * 47 finally proclaimed and established as of * binding authority in all the territories held by the kings of Castile and Leon. But from that period the great code of Alfonso has been uniformly respected.³⁴

³² "El Setenario" was the name given to the work begun in the reign of St. Ferdinand, "because," says Alfonso, in the preface to it, "all it contains is arranged by sevens." In the same way his own code is divided into seven parts; but it does not seem to have been cited by the name of "The Seven Parts" till above a century after it was composed. (Marina, Legislacion, §§ 292-

303. Preface to the edition of the Partidas by the Academy, Madrid, 1807, 4to, Tom. I. pp. xv-xviii.)

³³ Much trouble arose from the attempt of Alfonso X. to introduce his code. (Marina, Legislacion, §§ 417-419.)

³⁴ Marina, Legis., § 449. Fuero Juzgo, ed. Acad., Pref., p. xliii. That Alfonso, however, intended to estab-

It is, in fact, a sort of Spanish common law, which, with the decisions under it, has been the basis of Spanish jurisprudence ever since; and becoming in this way a part of the constitution of the state in all Spanish colonies, it has, from the time when Louisiana and Florida were added to the United States, become in some cases the law in our own country;—so wide may be the influence of a wise legislation.³⁵

The Partidas, however, do not always read like a collection of statutes, or even like a code such as that of Justinian or Napoleon. On the contrary, they often seem rather to be a series of treatises on legislation, morals, and religion, divided with great formality, according to their subjects, into Parts, Titles, and Laws; the last of which, instead of being merely imperative ordinances, enter into arguments and investigations of various sorts, often discussing the moral principles they lay down, and often containing intimations of the manners and opinions of the age, that make them a curious mine of Spanish antiquities. They are, in short, a kind of digested result of the

lish the Partidas as the law of all Spain in his own time, seems not to be doubtful, from Chap. IX. of his chronicle, where we are told—Mando que todos los omes de sus reynos las oviessen por ley et por fuero et todos los alcaldes juzgassen por ellas los pleytos (Ed. 1554, f. 5, a). But we have already seen how imperfect was his authority for this or any other purpose, especially in the latter part of his reign, earlier than which his code was not completed.

³⁵ See a curious and learned book, entitled "The Laws of the Siete Partidas which are still in Force in the State of Louisiana," translated by L. Moreau Lislet and H. Carleton, New Orleans, 1820, 2 vols. 8vo; and a discussion on the same subject in Wheaton's "Reports of Cases in the Supreme Court of the United States," Vol. V. 1820, Appendix; together with various cases in

the other volumes of the Reports of the Supreme Court of the United States, e. g. Wheaton, Vol. III. 1818, p. 202, note (a). "We may observe," says Dunham (Hist. of Spain and Portugal, Vol. IV. p. 121), "that, if all the other codes were banished, Spain would still have a respectable body of jurisprudence; for we have the experience of an eminent advocate in the Royal Tribunal of Appeals for asserting that, during an extensive practice of twenty-nine years, scarcely a case occurred which could not be virtually or expressly decided by the code in question." The Partidas, it may be observed, lean more to the Roman law than to the old Visi-Gothic, which had prevailed in Christian Spain till that time, and is embodied in the Fuero Juzgo. This may account for their continued authority.

opinions and reading of a learned monarch and his coadjutors, in the thirteenth century, on the relative * 48 duties of a king and his subjects, and on the entire legislation and police, ecclesiastical, civil, and moral, to which, in their judgment, Spain should be subjected; the whole interspersed with discussions, sometimes more quaint than grave, concerning the customs and principles on which the work itself, or some particular part of it, is founded.

As a specimen of the style of the Partidas, an extract may be made from a law entitled "What meaneth a Tyrant, and how he useth his power in a kingdom when he hath obtained it."

"A tyrant," says this law, "doth signify a cruel lord, who by force, or by craft, or by treachery, hath obtained power over any realm or country; and such men be of such nature, that, when once they have grown strong in the land, they love rather to work their own profit, though it be in harm of the land, than the common profit of all, for they always live in an ill fear of losing it. And that they may be able to fulfil this their purpose unencumbered, the wise of old have said that they use their power against the people in three manners. The first is, that they strive that those under their mastery be ever ignorant and timorous, because, when they be such, they may not be bold to rise against them nor to resist their wills; and the second is, that they be not kindly and united among themselves, in such wise that they trust not one another, for, while they live in disagreement, they shall not dare to make any discourse against their lord, for fear faith and secrecy should not be kept among themselves; and the third way is, that they strive to make them poor, and to put them upon great under-

takings, which they can never finish, whereby they may have so much harm, that it may never come into their hearts to devise anything against their ruler. And above all this, have tyrants ever striven to make spoil of the strong and to destroy the wise; and have forbidden fellowship and assemblies of men in their land, and striven always to know what men said or did; and do trust their counsel and the guard of their person rather to foreigners, who will serve at their will, than to them of the land, who serve from oppression. * And, moreover, we say that, * 49 though any man may have gained mastery of a kingdom by any of the lawful means whereof we have spoken in the laws going before this, yet, if he use his power ill, in the ways whereof we speak in this law, him may the people still call tyrant; for he turneth his mastery which was rightful into wrongful, as Aristotle hath said in the book which treateth of the rule and government of kingdoms."³⁶

In other laws, reasons are given why kings and their sons should be taught to read;³⁷ and in a law about the governesses of kings' daughters, it is declared:—

"They are to endeavor, as much as may be, that the king's daughters be moderate and seemly in eating and in drinking, and also in their carriage and dress, and of good manners in all things, and especially that they be not given to anger; for, besides the wickedness that lieth in it, it is the thing in the world that most easily leadeth women to do ill. And they ought to teach them to be handy in performing those works that belong to noble ladies; for this is a matter that

³⁶ Partida II. Tit. I. Ley 10, ed. Acad., Tom. II. p. 11.

³⁷ Partida II. Tit. VII. Ley 10, and Tit. V. Ley 16.

becometh them much, since they obtain by it cheerfulness and a quiet spirit; and, besides, it taketh away bad thoughts, which it is not convenient they should have."³⁸

Many of the laws concerning knights, like one on their loyalty, and one on the meaning of the ceremonies used when they are armed,³⁹ and all the laws on the establishment and conduct of great public schools, which he was endeavoring, at the same time, to encourage, by the privileges he granted to Salamanca,⁴⁰ are written with even more skill and selectness of idiom. Indeed, the Partidas, * in whatever relates to manner and style, are not only superior to anything that had preceded them, but to anything that for a long time followed. The Poems of Berceo, hardly twenty years older, seem to belong to another age, and to a much ruder state of society; and, on the other hand, Marina, whose opinion on such a subject few are entitled to call in question, says that during the two or even three centuries subsequent nothing was produced in Spanish prose equal to the Partidas for purity and elevation of style.⁴¹

But, however this may be, there is no doubt that, mingled with something of the rudeness, and more of the ungraceful repetitions, common in the period to which they belong, there is a richness, an appropriate-

³⁸ Partida II. Tit. VII. Ley 11.

³⁹ Partida II. Tit. XXI. Leyes 9, 13.

⁴⁰ The laws about the Estudios Generales, — the name then given to what we now call Universities, — filling the thirty-first Titulo of the second Partida, are remarkable for their wisdom, — except in Ley 11, which relates to the sale of books, — and recognize some of the arrangements that still obtain in many of the Universities of the Continent. There was, however, at that period, no such establishment in Spain,

except one which had existed, in a very rude state, at Salamanca for some time, and to which Alfonso X. gave the first proper endowment in 1254. (Historia del Colegio viejo de S. Bartolomé, mayor de la celebre Universidad de Salamanca por Fr. Ruiz de Vergara y Alava, corregida ec. por el Marques de Alventos, Madrid, 1766, folio, Tom. I. p. 17.)

⁴¹ Marina, in Mem. de la Acad. de Hist., Tom. IV., Ensayo, p. 52.

ness, and sometimes even an elegance, in their turns of expression, truly remarkable. They show that the great effort of their author to make the Castilian the living and real language of his country, by making it that of the laws and the tribunals of justice, had been successful, or was destined speedily to become so. Their grave and measured movement, and the solemnity of their tone, which have remained among the characteristics of Spanish prose ever since, show this success beyond all reasonable question. They show, too, the character of Alfonso himself, giving token of a far-reaching wisdom and philosophy, and proving how much a single great mind, happily placed, can do towards imparting their final direction to the language and literature of a country, even so early as the first century of their separate existence.⁴²

⁴² As no more than a fair specimen of the genuine Castilian of the Partidas, I would cite Part. II. Tit. V. Ley 18, entitled "Como el Rey debe ser granado et franco": "Grandeza es virtud que está bien á todo home poderoso et señaladamente al rey quando usa della en tiempo que conviene et como debe; et por ende dixo Aristóteles á Alexandro que él puñase de haber en sí franqueza, ca por ella ganarie mas aína el amor et los corazones de la gente: et porque él mejor podiese obrar desta bondad, espaldinol qué cosa es, et dixo que franqueza es dar al que lo ha menester et al que lo merese, segunt el poder del

dador, dando de lo suyo et non tomando de lo ageno para darlo á otro, ca el que da mas de lo que puede non es franco, mas desgastador, et demas habera por fuerza á tomar de lo ageno quando lo suyo non compliere, et si de la una parte ganare amigos por lo que les diere, de la otra parte serle han enemigos aquellos á quien lo tomare; et otrosi dixo que el que da al que non lo ha menester non le es gracedido, et es tal come el que vierte agua en la mar, et el que da al que lo non merese es como el que guisa su enemigo que venga contra él."