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Royal *Forais* and Custom

Portugal, 12th-13th Centuries

Cartas forais régias e costume

Portugal, séc. XII-XIII

MARIA FILOMENA COELHO*

ABSTRACT The 12th and 13th centuries, in Portugal, have been historiographically identified as the hinge of the *forais* [charters], given the abundance of documents of these legal acts, mainly issued by the monarchy. Although the content of the diplomas often reflects “uses and customs”, this aspect does not merit due attention, preferring to underline potential political meanings concerning the capacities of the one who signs the *forais*: the king. For the medieval people, who created and used the instrument, it had a meaning and a power that went hand in hand with several others of formal law, of which custom – in addition to law – was a form. But, equally, it is still possible to observe in the elaboration of this type of legal instrument the weight of – so-called non-formal – norms. The intertwining of *forais* and custom is the central problem of this article, through a perspective that aims to highlight historical modulations of a multinormative character.

KEYWORDS *Forais*, custom, Medieval Portugal

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RESUMO Os séculos XII e XIII, em Portugal, têm sido historiograficamente identificados como charneira dos forais, dada a abundância documental desses atos jurídicos, principalmente emitidos pela monarquia. Apesar de o teor dos diplomas refletir, frequentemente, “usos e costumes”, tal aspecto não merece a devida atenção, preferindo-se sublinhar potenciais significados políticos atinentes às capacidades daquele que assina os forais: o rei. Para os medievais, que criaram e usaram o instrumento, ele tinha um sentido e uma potência que se conjugavam a vários outros do direito formal, do qual o costume – além da lei – era uma forma. De igual modo, contudo, é ainda possível observar na elaboração desse tipo de instrumento jurídico o peso de normas – ditas não formais. O entrelaçamento entre cartas forais e costume é o problema central deste artigo, por meio de uma perspectiva que pretende ressaltar modulações históricas de caráter multinormativo.

PALAVRAS-CHAVE Forais, costume, Portugal medieval

INTRODUCTION

Forais [charters] were an important instrument for regulating social life in the Middle Ages. As a written record of the rights and duties of women and men who wove and belonged to social and political networks, whether in small rural communities or large towns, *forais* set up bonds that can both introduce changes in relation to the institution of power and reinforce the ways in which society used to conceive and present itself. The intertwining of *forais* and custom is the central question of this article.

From the perspective of legal history, these are two well-known themes, although custom has taken on greater prominence in recent times, with a variety of characteristics: from romantic visions to culturalist analyses. In the contemporary era, custom has served various purposes, above all political, such as helping to promote and legitimize regional and local claims within national States. Such initiatives are usually based on the knowledge produced by jurists, whose theoretical

elaborations on “customs” tend to emphasize that they are formal rights belonging to certain communities, whose origins would be difficult to pinpoint, constituting a kind of associative and normative spirit that hovers around and binds their members. Romantic conceptions see custom as popular law and unwritten rights, with their own essence and originality.¹ These rights would be countered by the jurists’ law, by the government authorities, which would stifle the “true” spirit of the community. Immemorial and natural, but nonetheless necessary as civilizing and unavoidable means of building a national territorial community. For the discipline of history, the romantic explanation poses a lot of problems, not least the “ethereal” nature that prevents normative manifestations from being realized in time and space. However, without delving into the criticisms of romantic views, it is important to emphasize the historical nature of custom mentioned by various researchers who have discussed this perspective, such as Paola Miceli (2012), whose contributions are particularly important for the Middle Ages. In short, she argues that:

There is no doubt that anthropology has contributed significantly to the study of pre-capitalist societies, especially in terms of the possibility of studying them without modern prejudices. However, in the case of custom, what is clear is an over-interpretation of the customary phenomenon in

1 Among other noteworthy excerpts from Paolo Grossi’s (2014, p. 117) work: “Beneath the perennially agitated sea of daily events are the deep but calm waters – and calm because they are deep – of juridical tranquillity. It is the constitutional platform of custom, a primordial fact, second nature, sometimes – but to a minimal extent – expressed by the written word and transformed into *lex* by the work of a zealous prince; more often preserved in its original state as an invisible but omnipresent and imperious web, in which men and things are immersed”. Freely translated: “Sob o mar perenemente agitado dos acontecimentos cotidianos estão as águas profundas, mas calmas – e calmas porque profundas – da tranquilidade jurídica. É a plataforma constitucional do costume, fato primordial, segunda natureza, por vezes – mas em mínima parte – expresso pela palavra escrita e transformado em *lex* por obra de um príncipe zeloso; com mais frequência conservado no estado original de trama invisível, mas onipresente e imperiosa, na qual estão imersos homens e coisas”.

anthropological terms that neglects the juridical character it has in the documentation² (MICELI, 2012, p. 49-50).

Instead of being understood as a spirit difficult to define and master, custom takes on very concrete features in the judicial experience of communities. It is this legal form that historians can analyze, and which appears consistently in documentary records. On the historicity of custom, John Gilissen's (1982) *La coutume* [*Custom*] continues to inspire, offering a rich scholarly overview of the subject, as well as methodological proposals that make it possible to distinguish law content in seemingly customary texts (GILISSEN, 1953). The author's proposal also offers the reverse possibility of distinguishing customary content in other normative forms, including laws. An interesting melting pot process to study.

According to historiography, the 12th and 13th centuries in Portugal have been identified as the period of the *forais*, due to the abundance of documentation of these legal acts, mainly issued by the Portuguese royal government. Despite the fact that the documents often reflect "customs and practices", an aspect that is frequently overlooked in favor of highlighting potential political implications tied to the abilities of the person who signs the *forais*: the king. The leading role given to *forais* can be explained by a huge variety of reasons, but there are two main ones that are important for the argument at the center of this article.

The first reason is a metahistory. In Portuguese historiography, this is due to the importance of the monarchy as a vector of historical

2 Freely translated: "No hay ninguna duda de que la antropología ha contribuido notablemente al estudio de las sociedades precapitalistas, sobre todo en lo que concierne a la posibilidad de estudiarlas despojándonos de los prejuicios modernos. Sin embargo, en el caso particular de la costumbre lo que se evidencia es una sobreinterpretación del fenómeno consuetudinario en clave antropológica que descuida el carácter jurídico que tiene en la documentación". In addition to this author, who offers a dense critical review of this problem, the works cited in the final references of this article, whose titles clearly refer to "custom", are equally important, albeit in other geographies.

time, which is positively identified with state-building.³ Progress of human societies in a civilizational direction could only be achieved through the creation and solidification of legal and bureaucratic structures, which, in the Christian West, have their apotheotic image located between the second half of the 19th century and the beginning of the 20th. The “state” is imbued with a “national spirit”, which makes it a living body. History, “the science of the nation’s past”, would offer the appropriate methods to attest to the successes and mistakes made along the way. The “evidence” of a kind of monopoly power appears in the field of positive certainties. The monarchy is seen as the best regime of power. Its failures, though acknowledged, are attributed to the incapacities of the historical time of the agents who were “not yet” up to ideal civilizational standards. Concomitantly, the Church, besides being the king’s educator, becomes strengthened as an institution, through its most prominent intellectual members. Ultimately, the “desirable” path will require that, at a certain point, the competitiveness between secular and ecclesiastical power is eliminated, the former prevailing. The monarchy becomes the favored subject of study in medieval history, as the absolute embodiment of the state. Portuguese historiography, for instance, after having abandoned a nationalist bias as metahistory some time ago, ended up replacing this same perspective, in its medieval past, detecting strong “early” manifestations of the kings’ ability to centralize power, in other words, to govern with monopolistic features (COELHO, 2014; 2018; 2023).

The second reason for the historiographical significance of the *forais* is documentary. Regarding the first reigns, the available documentation issued by the monarchy is not as abundant as that produced from the mid-13th century onwards and is largely made up of *forais* or confirmations. Thus, the first reason mentioned is compounded by the

3 Most of the historians and jurists who have studied the theme point out the need to highlight certain aspects of the structures of power in the Portuguese Middle Ages and recognise the existence of other non-state logics. The fact is that this finding ends up being negatively assessed in terms of the quality and effectiveness of the political organisation of the period.

second, and the result is the transformation of *forais* into evidence of the centralizing power of the Portuguese monarchs of the First Dynasty,⁴ mainly during the reigns of Afonso Henriques (1128-1185) (COELHO, 2019a), Sancho I (1185-1211), Afonso II (1211-1223) and Sancho II (1223-1248). As far as documentary particularities are concerned, it is worth highlighting the weight of approaches that, even today, establish sharp differences between the so-called “customs and practices” – ever since they are recorded in writing – and the actual “*forais*”, which are often given superior legal status because they are granted by an authority (MERÊA, 1948; NOGUEIRA, 2009; REIS, 2004; SILVA, 2011).

This article seeks to analyze the *forais* through the lens of logics that are not subordinated to 19th-century paradigms, with the aim of contributing to a more nuanced and complex understanding of how the first kings of Portugal governed.⁵

The adoption of the monopolist/monist paradigm by historiography led to the methodological requirement of selecting primary sources that proved the royal abilities and effectiveness in terms of this type of power. As far as Portugal was concerned, the military aspect was “easily” proved by the leadership that the kings assumed in the enterprises of “reconquering”⁶ territories under Muslim domination and in confronting the recurrent “aggressions” of Leon and Castile. In terms of governance, legal and administrative factors take center stage,

4 However, this “evidence” cannot be given the same weight in historiography as that attributed to the so-called General Laws [Leis Gerais] (1211), General Confirmations [Confirmações Gerais] (1217) and General Inquiries [Inquirições Gerais] (1220). For a critique of this interpretation, see Coelho (2019a; 2020).

5 Nevertheless, we must emphasise that some authors, especially when discussing the controversial historiographical role attributed to Portuguese counties in the Middle Ages, move away from more jurisdictional positions, as is the case with Borges Coelho (1986) and José Mattoso (1995), albeit through different methodological and theoretical paths. However, there is a certain tendency in monographic studies on charters to consider the exercise of royal power as more in line with legal pluralism, although the historiography of synthesis continues to adopt centralist and monopolistic perspectives. António Manuel Hespanha’s (2001) analysis of the early modern period remains important.

6 The term *reconquista* has been strongly criticised because of its underlying political content: the supposed right of Christians to Iberian territories “occupied” by Muslims.

especially in terms of the ability to create laws and enforce them. But since, as mentioned, this type of document is rare, the *forais*, as it were, replace them to anachronistically support a bias of absolute state control or monist rule by the monarch.

Although a *foral* is not a code of laws in theory, this has not prevented it from often being practically considered as such.⁷ In fact, a range of normative items, including obligations and rights, were stipulated and signed by the king. The lords also granted *forais* to the populations of their domains, as an important instrument of the logic of fiefdom and vassalage, an aspect widely considered by historiography. However, this same instrument, with similar contents, when produced by the royal administration, amazingly leads to diametrically opposed historiographical interpretations, even serving to suggest monarchical strategies to combat feudalism in the Portuguese kingdom. In a reference work on the history of Portugal in the Middle Ages, José Mattoso (1997, p. 216) well summarises the historiographical problem:

7 The categorisation of *forais* as laws requires some reflection. Alexandre Herculano (1862, p. 49-50) draws historical attention to the problem: “Even during the 13th century, *fuero* meant [in Castile] not only unwritten customs, municipal institutions, and simple collective or singular leases, but even bodies of law or civil legislation. Among us, the expressions *forum*, *foros* produced two different words, *foro* and *foral*. *Foro*, without encompassing such a broad meaning as *fuero*, took on the value of traditional law, that of immunity and privileges that belonged to a class, to a corporation, in addition to the trivial meaning, which it still retains today, of instalments in recognition of dominion, while *foral* usually meant the charter of settlement, the document regulating the collective rights and duties of cities, towns and places (...) to designate the founding charters of municipalities, the codes that either established or fixed local public law, and which constituted a moral person through the association of various individuals (...)”. Freely translated: “Ainda no decurso do século XIII *fuero* significava [em Castela] não só os costumes não escriptos, as instituições municipaes, e os simples aforamentos collectivos ou singulares, mas até os corpos de leis ou a legislação civil. Entre nós as expressões *forum*, *foros* produziram dous vocabulos diversos, *foro* e *foral*. *Foro*, sem abranger um sentido tão amplo como *fuero*, tomou o valor de direito tradicional, o de imunidade e privilegios que pertenciam a uma classe, a uma corporação, além da significação trivial, que ainda hoje conserva, de prestações em reconhecimento de domínio, ao passo que *foral* importava em regra a carta de povoação, o diploma regulador dos direitos e deveres collectivos das cidades, villas e logares (...) para designar as cartas constitutivas dos municípios, os códigos que ou estatuíam ou fixavam o direito publico local, e que constituíam pela aggregação de varios individuos uma pessoa moral (...)”.

Let's start by discarding the juridical idea that makes the state the source of all legality and, from this, the condition for considering the social relations it defines as the only entities that can be considered. This idea is presupposed unconsciously by almost all Portuguese authors who have studied the issue, because they generally assume that the municipalities were created by royal decision: even if they existed before the granting of the respective *foral*, which some admit, only royal sanction would give them the right to exist. Recent research has increasingly shown the organisational ability of local human groups independently of any higher authority or sanction. It is therefore essential to conceive of the formation of countys as an autonomous process. In fact, what in my opinion constitutes their very nature is precisely their autonomous capacity.⁸

In another essay, José Mattoso (1995) drew attention, several decades ago, to the need to consider the importance of the community life of city and rural populations, when it predated the *forais*. Without associating himself with those who at a previous time wanted to identify the legal origins of the community in the *conventus publicus vicinorum* of the Visigoth Code, the author understood that the political and social organization capacity of the population nuclei could not be ignored, considering that they did not depend on external and superior powers

8 Freely translated: “Comecemos por descartar a ideia jurídicista que faz do Estado a fonte de toda a legalidade e, desta, a condição para se considerar as relações sociais que ela define com as únicas entidades que se podem ter em consideração. Esta ideia é pressuposta mais ou menos inconscientemente por quase todos os autores portugueses que têm estudado a questão, porque, em geral, partem do princípio que os concelhos foram criados por decisão régia: mesmo que existissem antes da concessão do respectivo *foral*, o que alguns admitem, só o sancionamento régio lhe daria direito à existência. Ora a investigação recente tem mostrado cada vez mais a capacidade organizativa de grupos humanos locais independentemente de qualquer autoridade ou sancionamento superior. É indispensável, portanto, conceber a formação dos concelhos como um processo autónomo. De resto, o que na minha opinião, constitui, de facto, a sua natureza própria é precisamente sua capacidade autonómica”.

to be configured at their level (MATTOSO, 1995, p. 348). Although with different specificities and varying degrees of complexity and social differentiation, the fact is that village and urban communities had created or adopted norms by which they governed daily life. Thus, the relationship that a lord had with the community had to necessarily take these rights into account, whether it was to preserve, minimize or even suppress them. These devices, known as “customs and practices”, made up a bundle that was unlikely to disappear in the reconfiguration of the new realities of manorial domination, including royal domination. This aspect is little explored by historiography, which does not perceive, in the language of the *forais* themselves, contents that reveal the protection of the interests of the communities, in addition to ensuring the powerful grantor of the instrument a position of superior jurisdictional authority.⁹

We intend to explore some central problems in this article is by moving away from anachronistic approaches attracted by the contemporary value attributed to the legal instrument *per se*. For the medieval people who created and used the instrument, it had meaning and power that were combined with various other aspects of formal legality, of which custom might well be a component. However, the historical relevance of so-called non-formal norms in the development of this type of legal instrument should also be considered.

Regarding the problem that certain analyses have introduced into the study of the subject, there is an insistence on setting up specificities between legal instruments based on typological differences, and even

9 Maria Helena da Cruz Coelho (2014, p. 460), an unavoidable reference in Portuguese historiography and a scholar on the subject of counties, warns: “Even though the forais generally appear to us as documents issued by Count Henrique, Afonso Henriques and Sancho, or even by some noblemen or ecclesiastics, seeming to us to be acts of unilateral will, we are convinced that, many times, the populations of towns and villages would have claimed them from their lords, obtaining, more freely or compulsorily, favor”. Freely translated: “E se as cartas de foral nos surgem, no geral, como documentos emanados pelo conde D. Henrique, por D. Afonso Henriques e por D. Sancho, ou ainda por alguns nobres ou eclesiásticos, parecendo-nos actos de vontade unilateral, estamos convictas que, muitas vezes, as populações das vilas e lugares tê-las-iam reclamado junto dos seus senhores, obtendo, mais livre ou compulsivamente, um deferimento”.

then, they imply hierarchical objectives. For example, there are patterns used to separate charters of settlement [*cartas de povoamento*] and charters of land [*cartas de foro*], from *forais*. A scholar on the field, António Reis (2007, n.p.) clarifies that the lexicon is not quite as accurate as it is sometimes made out to be:

The word *foral* began to be used in the last decades of the 13th century. We find it for the first time in Lagoaça, in 1286: “*a tal preyto que fazem foro e vezinhança, assy como he teudo no foral de Mogadoyro*”. But it was in the 14th century that the term became generalized. It is used in the special chapters presented by various towns in the kingdom at the courts of Santarém in 1331, where in parallel and often in the same paragraphs, the word *foro* or the expression “*foro and ancient customs*” are also used in the same sense. In general, in the presentation made by the attorneys on behalf of the municipalities, the term *foral* is used, while in “El-Rei’s” reply the term *foro* is still used, which shows the popular origin and diffusion of the word, which the Royal Chancellery welcomed with some resistance. (...) The word *foro*, although it is still used, comes to have an increasingly restricted meaning, linked to emphyteusis or fixed-term contracts. *Foral* is the name that gradually came to be used to refer to what, in diplomatic parlance, from the 11th to the 13th century, was called *foro* or *carta de foro*, and in the last decades of the 15th century, it was already the only word used to refer to such documents.¹⁰

10 Freely translated: “Nas últimas décadas do século XIII começou a usar-se a palavra foral. Encontramo-la pela primeira vez no de Lagoaça, em 1286: ‘a tal preyto que façam foro e vezinhança, assy como he teudo no foral de Mogadoyro’ Mas é no século XIV que o vocábulo se generaliza. É utilizado nos capítulos especiais apresentados por várias povoações do reino nas cortes de Santarém, em 1331, onde, em paralelismo, e com frequência nos mesmos parágrafos, se usa ainda, no mesmo sentido, a palavra foro ou a expressão foro e costumes antigos. Em geral, na exposição feita pelos procuradores, em nome dos concelhos, emprega-se o termo foral, enquanto na resposta de El-Rei se continua a utilizar o termo foro, o que denota a origem e difusão popular do vocábulo, que a Chancelaria Régia acolhe com alguma

Thus, there are historical transformations of names that do not support nominalist and decontextualised definitions. In fact, it is interesting to look more closely at the interpenetration between *foro* and *foral* due to the close relationship between the meanings of both words in Portuguese. In a very similar way, we draw attention to the problem created by the separation between “customs and *foros*” and “*foral*”. Even though these are different instruments, one should not lose sight of how much “custom and *foro*” there is in a “*foral*”.¹¹ This reality is especially clear in the hybridization of the formulas recorded in the documents, in which the expressions *consuetudinem* and *forum* are variously associated (REIS, 2015, p. 104). Still about names, their meanings and significance, Filipa Roldão and Joana Serafim’s (2021, p. 377) observations are particularly apt:

It remains to be definitively clarified what documentary and legally falls under the designation of *foral*, what semantic variations should be used to name legal acts that are similar in every way, but have different characteristics (different grantors, different geopolitical contexts of the communities and different objectives to be achieved, for example), and how to interpret the textual composition of these documents and the ways in which they can be transferred within and outside the Kingdom.¹²

resistência. (...) A palavra foro, se não deixa de ser utilizada, passa a ter uma acepção cada vez mais restrita, ligada aos contratos de enfiteuse ou empraçamento. Foral é a designação que se impôs gradualmente, para referir aquilo que, em termos diplomáticos, do século XI ao século XIII, se chamou, entre nós, foro ou carta de foro, e, nas últimas décadas do século XV, era já a única palavra com que tais documentos se designavam”.

- 11 Maria Alice Tavares (2007, p. 14), when referring to the Customs of Guarda, notes the influences they receive from Salamanca, leading to the conclusion that “the communication of customs coincides with the families of forais, as it admits interpolations related to the closest areas of influence”. Freely translated: “a comunicação dos costumes coincide com as famílias de forais, pois admite interpolações relacionadas com as áreas de influência mais próximas”.
- 12 Freely translated: “está ainda por esclarecer em definitivo o que documental e juridicamente cabe sob a designação de *foral*, que variações semânticas devem ser utilizadas para nomear

COVENANT LETTERS

It is not uncommon to find expressions in the *forais* granted by kings that refer to the conclusion of a covenant, of which the written record is both the closure of an agreement and the aspiration of a promising relationship for both sides. Thus, there are mentions of letters of firmness, letters of donation and firmness, letters of firmness and stability, letters of firmness and *foro*, letters of convention and firmness. They therefore express the idea of a pact, unlike the unilateral character typical of a decree, as José Mattoso (1995),¹³ António Reis (2015)¹⁴ and José Domingues and Pedro Pinto (2015) rightly point out, when referring to a “settled right”. In this sense, these records are part of a political order whose covenantal logic should not be considered only circumstantially.

Whilst admitting that there were communities forced to accept a situation of jurisdictional submission, sealed in a charter, between the middle of the 12th century and the middle of the 13th century, it cannot be denied that there were also many considerable cases of agreement

os atos jurídicos em tudo similares, mas com características diferenciadas (distintos outorgantes, distintos contextos geopolíticos das comunidades e diversos objetivos a alcançar, por exemplo), e como interpretar a composição textual destes documentos e as vias da sua transmissibilidade dentro e fora do Reino”.

13 “A *foral* or a sanction is much more the result of a covenant between the higher authority and the local community to delimit their respective rights than a unilateral decision by the sovereign” (MATTOSON, 1995, p. 216). Freely translated: “O *foral* ou o sancionamento resultam muito mais de um pacto entre a autoridade superior e a comunidade local para uma delimitação dos respectivos direitos do que uma decisão unilateral do soberano”.

14 “To emphasise the value that the provisions contained in them had, like other documents, some charters are called *cartam firmitudinis*, *cartam donationis et firmitudinis*, *cartam firmitudinis et stabilitatis*, *cartam firmitudinis et foro*, *cartam conventionis et firmitudinis*, *firmamenti cartam*, *cartam stabilitatis*, *firmitatis scripturam*, etc. Rarely, and perhaps to emphasise the unilateral nature of the covenant, the charter is referred to as a *decretum* or *decreta*” (REIS, 2015, p. 103-104). Freely translated: “Para vincar o valor que passavam a ter as disposições neles contidas, tal como outros documentos, alguns *forais* designam-se como *cartam firmitudinis*, *cartam donationis et firmitudinis*, *cartam firmitudinis et stabilitatis*, *cartam firmitudinis et foro*, *cartam conventionis et firmitudinis*, *firmamenti cartam*, *cartam stabilitatis*, *firmitatis scripturam*, etc. Raramente, e talvez a sublinhar o carácter unilateral do pacto, o *foral* é designado como *decretum* ou *decreta*”.

between parties. From the perspective of the populations covered by the *forais*, the advantages should be analyzed above all in terms of the abilities of the more privileged. The kingdom's political transformations, which began with the secession of León by the aristocracy that supported Afonso Henriques' accession to the throne of Portugal, redesigned the networks of power, creating an inviting new space for those who previously, in the context of the empire of *Hispania*, found it much more difficult to project themselves into the public sphere. The sudden reduction in the geography of royal power, for those who remained within the Portuguese borders, implied greater proximity of the people with the monarch and the possibility of setting up links with him that allowed the power of the local oligarchies to be re-dimensioned. Furthermore, the new dynasty of Burgundy had an absolute need to be intertwined with the powers – great and small – of the new kingdom, which came to see such an association as advantageous.¹⁵

In fact, as can easily be seen in the text of the *forais*, the stipulated duties and taxes, despite having the king as the ultimate beneficiary, are monitored, levied, and even celebrated by the “good men”, members of the county, whose functions alone guarantee them privileged status in the social hierarchy. Their association with the king gives them a legitimacy that, derived from a source outside the community, is much more difficult to challenge, either by the less well-off or by political opponents. Regarding symbolic representation, county offices enhance the prestige and effectiveness of the local positions of power, which are no longer just a matter of mere fact, but have the hallmarks of higher powers.

Regarding this perspective, it is worth remembering the more radical way in which Alexandre Herculano (1862, p. 40-41, emphasis added) understood the value of the oligarchic and aristocratic tradition:

15 For an inspiring interpretation regarding the reign of Sancho II and the role of royal *forais* in the articulation between the aristocracy and the monarchy itself, refer to Hermenegildo Fernandes (2010, p. 146-149).

However, the remaining *forais* only decide the extent to which the new community's guarantees would extend, and what its rights and duties would consist of in relation to the state or to the lord or crown official who represented public power in the territory of the new municipality. In the same way that (...) the civil status of the individuals who were going to form the popular guilds was not a situation that was created by this fact, so the municipal offices, the method of providing them, their attributions, everything, in short, that belongs exclusively to the internal economy, that does not in any way link that small society to the universal society, only appears in the respective *foral* in an indirect way: and therefore from none of these diplomas, taken separately, can the characteristics of the municipal organisation be known. The constant facts, or at least the more general ones, which represented the mechanism of the municipality, were a set of ideas, a doctrine, a type, which fluctuated, which was not expressed, fixed in any written monument, but which *pre-existed in an absolute way, which preceded the creation of any new municipality, which everyone understood, and no one was unaware should take place more or less completely in the new guild.*¹⁶

16 Freely translated: “Os foraes que nos restam não fazem por via de regra senão determinar até que ponto se estenderão as garantias da nova comunidade, em que consistirão as suas relações de direitos e deveres para com o estado ou para com o senhor ou oficial da coroa, que no território da nova municipalidade representa o poder publico. Do mesmo modo que (...) a condição civil dos indivíduos que iam constituir os grêmios populares não era uma situação que se creava por este facto, assim os cargos municipaes, o methodo de se proverem, as suas atribuições, tudo, enfim, o que pertence exclusivamente á economia interna, que não prende de algum modo aquella pequena sociedade á sociedade universal, apenas figura na respectiva carta de modo indirecto: e por isso de nenhum desses diplomas, tomado separadamente, se podem conhecer os caracteres da organização municipal. Os factos constantes, ou pelo menos mais geraes, que representavam o mecanismo do concelho, eram, digamos assim, um complexo de idéas, uma doutrina, um typo, que fluctuava, que não estava expresso, fixado em nenhum monumento escripto, mas *que preexistia de um modo absoluto, que precedia á criação de qualquer nova municipalidade, que todos comprehendiam, e ninguém ignorava* dever-se dar mais ou menos completamente em o novo gremio”.

The document comprises this traditional “set of ideas” and is written and signed by the monarch, recording the rights and duties that affect the populations of the different localities of the kingdom. There is a historical convergence of the social and political interests of aristocratic and oligarchic groups, along with the benefits to the monarch. Yet, a specific formula of the royal voice must be expressed in the *forais*, in an authoritative tone, as befits the political figurehead. When appealing to the king to obtain a *foral*, a certain result is expected and, in documentary terms, will only be achieved if the monarch clearly says that “it is his will” to grant/recognize certain rights to that population. A *foral* necessarily implies that an authority grants it. However, if the words of the grant reinforce the monarch’s will, this does not mean that he is literally the real driving force behind the bond. Very often, the will of the people can be attested to on the basis of *forais*, as in Melgaço, Montenegro and Monsaraz (REIS, 2015).¹⁷ Today, we have access to written documents that are the final product of a negotiation process, which certainly took place between the local oligarchies and the monarch, but whose details we do not know due to the typology of the document.

But surely a clear proof of what we have been arguing was the granting of *forais* by Afonso Henriques, between 1162 and 1163, to Mós, Trancoso, Marialva, Moreira, Celorico and Aguiar da Beira, at the root of the Portuguese incursions into León’s territory, which led to the taking of Salamanca. The political circumstances that led to this outcome – albeit short-lived – with the collaboration of a large part of the Salamanca oligarchy, help to emphasize the pact-like nature of this granting of *forais*. In fact, as António Reis (2015, p. 167, p. 343) rightly observed, it was a “re-grant”, since nothing was changed in relation to the contents that Fernando II of León had signed.

17 “It was at the request of the inhabitants of Monsaraz that King Afonso III granted them the charter of Beja: ‘it pleases me with good and spontaneous will to give and grant you, both present and future, the charter of Beja that you have asked of me’” (REIS, 2015, p. 110). Freely translated: “placuit mihi libenti animo et spontanea voluntate dare et concedere vobis tam presentibus quam futuris ibidem permansuris forum de Begis quod a me peticiistis”.

THE CUSTOMARY OLIGARCHY

The contents of the *forais* allow to infer that life was organized according to a deeply hierarchical logic based on the privileges of the superior orders, derived from a widely known tradition used to mold new situations. As Alexandre Herculano (1862, p. 40) pointed out, “these same charter [*forais*] insinuate that the municipality idea, its formulas and its judiciary, was a traditional thing”.¹⁸ The examples are vast. The “best” part of society is often defined by “good men”, or by other expressions and words that refer to those who are not submitted to others by ties of serfdom. Freedom is a fundamental requirement for assuming a position of social superiority.¹⁹ However, among the people who were free, there were differences between those who were able to govern the village/city and those who were merely residents.²⁰

In terms of the institution of social hierarchies, tradition is also manifested by the occupation of space, which can precede the granting of a *foral*. As is well known, the territory plays a part in the power strategies of the elites, especially in urban centers. The texts of many *forais* reveal this trait, showing the oligarchic interest of groups favored by the new legal instrument.²¹ Certain areas, which were older and/or close to buildings and spaces of power, such as churches, fortresses, squares, and markets, can convey a superior identity to their occupants.

Social dynamism was not unknown at the time, but it was accommodated within tradition and customary norms. The *forais* of the first reigns are good examples of this, due to the social and political

18 Freely translated: “esses mesmos diplomas [*forais*] nos insinuam que a ideia do município, das suas fórmulas e das suas magistraturas, era uma cousa tradicional”.

19 Also, in the *forais* of Penacova (1192) and Povos (1195). In the Santarém *foral* of 1095, “*meliorum civitatis*”.

20 In the charter of Melgaço (1185), for example, the difference between “neighbours” and “residents” is established. ARQUIVO NACIONAL DA TORRE DO TOMBO (ANTT), Lisbon. *Foral de Melgaço*, 1185. *Forais Antigos*, maço 12, n. 3.

21 The oldest burghs are thus characterised in the *forais* of Constantim (1096) and Guimarães (1096), in the *condal* era.

situations that the new kingdom presented. Guimarães, which had already received a *foral* from Count Henrique in 1096, confirmed and amended in 1128 by Afonso Henriques, is generally cited as an example of the promotion of an oligarchic social profile with economic basis.²² In this case, the merit of those who could, through personal fortune, access the city's higher social ranks was measured. This was assessed on the basis of their equestrian status, i.e., their ability to support a horse and the corresponding equipment to fulfil their military duties. "As if" (fiction) they were knights: this is the gateway to higher orders. But the *fingere* can impose precautions and nuances, so as not to confuse the knights *per naturam* with those "as if they were". The nature of the ancestral blood gave ballast and firmness to the high position of the cavalry, which was expected to be fragile in relation to the newcomers to this status, as can be seen in the *foral* of Leiria of 1142: "If a natural knight loses his horse and cannot get it back, he will remain under the jurisdiction of the cavalry. But if another knight who is not a natural knight loses his horse and retains the knighthood for two years, then, if he cannot find another, he must pay *rationem*".²³

The traditional means of rising through the cavalry proved to be socially effective, as shown by the prominence that the villainous cavalry acquired in later *forais*, such as those of Coimbra, Santarém and Lisbon, of 1179. In these *forais*, the villainous cavalry is the strategic backbone of the royal forces. Equally interesting is the military role of the crossbowmen, whose importance will have consequences for the social promotion of these individuals, who will be equated with knights by the charter of 1179: "that the crossbowmen have the rank of knight".²⁴

22 ANTT, Lisbon. *Foral de Guimarães*, 1228. Gaveta 15, maço 8, n. 20. See also: Reis (2015, p. 133).

23 ANTT, Lisbon. *Carta de foro de Leiria*, 1142. Forais Antigos, maço 2, n. 1. Freely translated: "Si miles per naturam ibi perdiderit equum suum et recuperare non potuerit semper stet in foro militis. Alius vero miles qui non fuerit per naturam si perdiderit equum stet in foro militis per duos annos, deinde si non habuerit det rationem". See also: Reis (2015, p. 134).

24 ANTT, Lisbon. *Foral de Coimbra*, 1179. Forais Antigos, maço 12, n. 3, f. 57v-58; *Foral de Santarém*, 1179. Forais Antigos, maço 12, n. 3, f. 4v-5v; *Foral de Lisboa*, 1179. Forais Antigos, maço 12, n. 3, f. 7v-8v. Freely translated: "balistarii habeant forum militum".

The *concelho* [county] was the government of the cities, which was only accessible to good men, either in its widest version – when circumstances required it – or in its most restricted form. The mayor, whose names varied in Portugal – *alcaldes*, *alvazis*, *justiças* – handled the organization of the community (REIS, 2015, p. 139). To govern is to manage the production and distribution of wealth, which is obviously not limited to what we now consider the field of economics. In the Middle Ages, economics, in the sense of the Greek word (*oikonomia*), was the management of the household, and wealth came from many sources, which were not limited to income and rents, but extended to aspects considered essential, such as social relationships and symbolic and affective capacities (HESPANHA, 1983). The prominence of the Digest's principle (ULPIAN, in CUNHA, 2010, p. 23), inherited from Antiquity, which defined justice as “to each his own” [*suum cuique tribuere*], ended up summarizing what was expected of the ruler. He was the head of a political body – of a “universe” – which could be a kingdom, a *concelho*, a monastery, a lineage, a craft organization, who was expected to manage the distribution of rewards – and punishments – to the members fairly. The ruler was above all a judge. The *forais* reinforce this concept through the institution of rector offices appointed by words that show the predominance of justice, extending the institutional chains, with connections between the local and kingdom levels.

This legal dynamic of territorial power at various scales also operated at the regional level, allowing certain municipalities to link communities of villages to their judges, as seats or judiciaries. In this sense, too, the social implications unfolded in chains of dependence and projection that are reflected in the creation of trades responsible for collecting the charges due within the villages, favoring the social distinction of such functions, as in the case of the *mordomos* [stewards].

The right to choose one's own judge became a predominant principle in the relationship between the *concelhos* and the crown, as a way of recognizing the capabilities of the local oligarchies. Moreover, in regional contexts, these faculties ensured autonomy in relation to other powers of the *concelho*. This is clear in the Sintra charter of 1154: “that

the judge and bailiff be native-born and appointed and dismissed by the *concelho*, and that no judge or bailiff from another land have any power over you”.²⁵

Despite the difference that theoretically exists between the functions of an *alcalde* and an *alcaide*, the former being concerned with justice and the latter with military defense, the fact is that there was often an interpenetration between these functions. The way in which governance was traditionally conceived as linked to justice encouraged the powerful locals to “say justice”, even though this was supposedly not their role. As aforementioned, the social importance of military functions was promoted with great prominence in the local county’s life, and in the centres where the fortresses had an important role, the *alcaldes* gained significant prominence. This is especially true in the center-south of the kingdom, as the 1179 *forais* reveal, where the *alcaldes/pretores* take charge of judicial matters (REIS, 2015).²⁶ In Sortelha, the 1228 *foral* attempted to separate the functions, showing that this confusion was likely to recur: “the palace judge is the voice of all quarrels, the pretor or the lord do not come to the *curralem*”.²⁷ While it is true that at times there is a propensity to emphasize the difference, at others the amalgamation seems natural. According to Reis (2015), the predominance of “customs

25 ANTT, Lisbon. *Foral de Sintra*, 1154. Forais Antigos, maço 1, n. 11. Freely translated: “Iudicem et saiom sit ex naturalibus et intret et exeat per manum concilii, et numquam iudicem neque saiom de alia terra super vos veniat”.

26 “In some municipalities in the center, during the first half of the 12th century (Seia, 1136; Penela, 1136; Leiria, 1142; possibly Tomar, 1174) a great importance is attributed to the mayor, who, in certain circumstances, can constitute an *alternative to the judge*. This is certainly due to the location of these territories, which were then on the border line, and the importance given to the *military* at that time” (REIS, 2015, p. 147, emphasis added). Freely translated: “Nalguns municípios do centro, na primeira metade do século XII (Seia, 1136; Penela, 1136; Leiria, 1142; possivelmente Tomar, 1174) é atribuída uma grande importância ao alcaide, que, em certas circunstâncias, pode constituir uma *alternativa ao juiz*. Tal situação dever-se-á por certo à localização desses territórios, então na linha de fronteira, e à importância que nessa conjuntura era dada aos *militares*”.

27 ANTT, Lisbon. *Foral de Sortelha*, 1228. Gaveta 15, maço 3, n. 7. Freely translated: “de totis querelis de palatio iudex sit vozerio, pretor vel dominus non veniat ad curralem”. See also: Reis (2015, p. 147-148).

and practices” is perhaps the explanation for the prominence that the praetors assume with regard to questions of justice in the *forais* granted to populations of “franc” origin, which are similar to the provisions applied in their places of origin. Anyway, these customs were no stranger to the practices of the Portugal kingdom, where there was already an elasticity about the specificities of the *concelho* and municipal functions.

The intended social and political model is easily recognizable in the content of the *forais*, with varying degrees of detail. The oligarchy finds in this legal instrument an important part of the legitimization needed to exercise physical and symbolic power over the community. The growth and complexity of power structures was accompanied by the establishment of other functions, in addition to those already mentioned:

The *mordomo* handled the gathering of *foros*, rents, tributes and even fines, and it was these that saw him intervene in matters of justice. In some municipalities – Seia, Banho, Porto, the charters of the Numão and Évora groups - the person responsible for these functions was called the bailiff [*meirinho*]. (...) With the development of urban centers, several of the positions mentioned above were broken down and distributed into hierarchically interconnected categories: the major and minor alcaide, the gatekeepers [*porteiros*], the major *almotacé* and the minor *almotacé*. Other positions appeared in the meantime, some directly within the municipal institution, others at its service, such as the clerks, the common crier, the *andador*, the town treasurer, the judges of the “green”, the judges of the orphans, and the prosecutors²⁸ (REIS, 2015, p. 149-150).

28 Freely translated: “Ao mordomo cabia a recolha dos *foros*, rendas, tributos e até das coimas, sendo estas as responsáveis por o vermos a intervir em assuntos de justiça. Em alguns municípios – Seia, Banho, Porto, *forais* dos grupos de Numão e de Évora – o responsável por essas funções era designado como *meirinho*. (...) Com o desenvolvimento dos centros urbanos, vários dos cargos a que se fez referência foram-se desdobrando e distribuindo por categorias hierarquicamente interligadas: o alcaide maior e o alcaide menor, os *porteiros*, o *almotacé*

As pointed out by António Reis (2015), it is worth noting the unfolding of the offices drawn up in a “hierarchically interconnected manner”. This is a central aspect of what we are trying to highlight in this article, i.e., the close link between a social organization that custom has enshrined as tradition and the content of the *forais*. The clauses instituting administrative and justice “novelties” reflect a sociological reality; they are the result of a traditional conception that easily translates and adapts to the needs of oligarchies, whether older or more recent. The *modus operandi* in both cases is based on the logic of service and benefit with which municipal functions are created and distributed, configuring personal networks, to which the monarch is added by the letter of the *forais*.

As a central element of the strategies to centralize royal power, it is common to highlight the creation of positions that would guarantee the will of the monarch in each locality. The designations varied and could even reach a specialization justified by administrative and fiscal needs, although it is often seen in everyday life that the exercise of these functions ended up being quite flexible. This adaptability can be explained by the force of circumstances, but there is another important point to consider, since these officials often came from the communities and/or residents themselves. In Melgaço, the “king’s representative must be a resident of the town”,²⁹ which necessarily grafts the royal representative into local networks and leads him to consider the customs of the land when fulfilling his office.

Importantly, the recurring prohibitions on aristocrats entering the community of residents through the purchase of estates in order to avoid reducing, through land taxes exemption, the monarch income, negatively affected the local oligarchy, both in terms of municipal income and its ability to exercise power in the municipality. It was

maior e os almotacés menores. Outros cargos entretanto apareceram, alguns directamente inseridos na instituição municipal, outros ao seu serviço, como os escrivães, o pregoeiro, o andador, o tesoureiro, os juizes do verde, os juizes dos órfãos, e os procuradores”.

29 ANTT, Lisbon. *Foral de Melgaço*, 1181-1185. Forais Antigos, maço 12, n. 3. Freely translated: “vicarius regis debet esse morator ville”.

precisely in this sense that the 1128 *foral* of Guimarães forbade the lodging of free knights of vassalage, whose presence – sometimes prolonged – could disturb the city’s statutes: “no knight should have an inn in Guimarães, except for the love of his lord”. This meant that only those who were linked to lords duly integrated into the local power structures were allowed to stay. Similarly, the *concelho*’s necessary intermediation in legitimizing property transactions consolidated the position of authority achieved by the “best” in the community: “whoever sells or buys goods in Guimarães, before the *Concelho*, should have them freely and no one should be able to claim against them”.³⁰

One essential aspect of the oligarchic legal behavior in the *concelhos*, in which the monarchy plays a decisive role, is the “aristocratic” way in which the *forais* construct social differentiation as to exemptions and privileges. Though duties must be fulfilled by the “better-off” people, there are obviously marked differences within the same group. It is, however, regarding the kingdom as a whole that the markers of the aristocratic tradition of exemption can be seen most clearly. Once again, the Guimarães *foral* of 1128:

And I, wishing to do honor and part to you, your children and all your descendants, confirm the *foral* given to you by my father and mother, and I also give you the *foral* to pay no tolls in all my land. (...) And of the estates of those burghers who have endured evils and penalties with me in Guimarães, never pay *fossadeiras*, and with their properties, wherever they may be, be safe and free, and those who take them for evil pay me LX *soldos*, and in addition, pay these properties in double to the respective owner.³¹

30 ANT, Lisbon. *Foral de Guimarães*, 1128. Gaveta 15, maço 8, n. 20; *Foral de Guimarães*, 1128. *Forais Antigos*, maço 12, n. 3, f. 51v. Freely translated: “nullo cavallario non habeat pausada in Vimaranes nisi tantum per amorem domini sui”; “qui vendiderit aut comparaverit nullo aver in Vimaranes ante illo concilio habeat illum liber et nemo sit ausus postea qui illum requirat per male”.

31 ANT, Lisbon. *Foral de Guimarães*, 1128. Gaveta 15, maço 8, n. 20; *Foral de Guimarães*, 1128.

The mainstay of the exercise of power was the judiciary, and although kings endeavored to present themselves as the ultimate and most important resource in the matter, with general application to the kingdom, the powerful at the local level also tried to imbue themselves with this capacity. The *concelho*, as a legal *persona*, took on this role, placing itself as a necessary means to achieve justice, as can be seen in the *foral* of Melgaço (1185):

If someone comes from outside who has enmity with a villager and does not want a financial settlement and despises the village council, then the villager with his friends can go against him. And if they chase him down and kill him, they do not answer to the king. And if they refuse to heed the call, they must pay V *soldos*, and be contradicted by the county council.³²

This case highlights the strategy of the Melgaço county council, which managed, in the *foral* granted by the king, to set itself up as the authority that transformed the vigilante acts of neighbors and residents into justice.

Forais Antigos, maço 12, n. 3, f. 51v. Freely translated: “Et ego uolo super uos et super filios uestros et super omni progenie uestra facere honorem et cabo. Auctorizo uobis illum forum quod dedit uobis pater meus et mater mea et insuper dono uobis foros quod in tota mea terra non donetis portaticum. (...) Et de illas hereditates de illos burzeses qui mecum sustinuerunt male et pena in Vimaranes nunquam donent fossadeiras et suo auer ubicumque steterit sit saluus et qui illum prendiderit per malum pectet mihi LX solidos et insuper illo auer duplato ad dominum suum”. The royal exemption granted to councils within the kingdom is frequent. Another example is the Bragança *foral* of 1187, published in: AZEVEDO, Rui de; COSTA, Avelino J. da; PEREIRA, Marcelino (Ed.). *Documentos de Sancho I (1174-1211)*. Coimbra: Centro de História da Universidade de Coimbra, 1979, p. 39, doc. 24. See also: Reis (2015, p. 337-338).

32 ANTT, Lisbon. *Foral de Melgaço*, 1185. Forais Antigos, maço 12, n. 3. Freely translated: “Si quis de foris venerit qui inimiciam cum morante in villa habuerit et non antea a suo inimico financiam quesierit et despicit concilium ville, tunc morator ville cum amicis contra illum exeat. Et si eum usque ad mortem percusserit vel eum occiderit pro homicidio regi non respondeat. Si autem eum noluerint adiuuare quos vocaverit V solidos pariant et sint contradicti concilio”.

The payment of fines and fees by the population is a subject that occupies a large part of the charter clauses. On the one hand, the forms and contents of the exactions have served to support interpretations that highlight the strengthening of the monarchy and, on the other, to draw up tables and charts that prove the local and regional similarity of the charges levied on neighbors and residents of villages, towns, and cities, allowing a better understanding of the dynamics of the diffusion of charter models. There is, however, another aspect that shows how the association between the monarchy and the local oligarchies made it possible to reorganize the logics of appropriation and redistribution of wealth, giving the grantor of the *foral* a symbolic place of strategic superiority, which legitimizes the levying of taxes. At the same time, the physical distance from the king, on behalf of whom the tax is levied, politically unburdens the local authorities, which when convenient can present themselves as mere fulfillers of the function of levying what is owed to the king. The benefit that corresponded to the craft – understood as a service – was extracted by the beneficiary himself, or by the *concelho* from the rents levied, in various ways.

CUSTOMS AND ROYAL POWER

The kings of Portugal understood very early on the advantages of associating themselves with “customs”.³³ The practice was known to the kings of León – or their counts – who had previously been in the habit

33 This strategy remained valid for a long time, as shown in the interesting study by Maria Helena da Cruz Coelho (1990) on S. Martinho de Mouros, whose charter dates to the reign of Ferdinand I of León. In 1342, during the reign of Afonso IV, the Portuguese Chancellery decided to write down the customs of S. Martinho de Mouros, which dated back to the time of Sernando and were confirmed by Alfonso VI and D. Teresa. At the same time, the charter, which is believed to date from the 14th century, accepts 42% of the content regarding “uses and customs”. The author concludes: “Finally, Afonso IV’s innovative policy of appointing auditors to promote royal centralisation gave new impetus to the tradition of communal living” (COELHO, 1990, p. 17-25). Freely translated: “Afinal, a política inovadora de Afonso IV, ao nomear corregedores para favorecer a centralização régia, deu, em última instância, redobrado alento à tradição de um viver em comunidade”.

of recognizing or confirming the “customs” of various cities, as in the case of Coimbra (1085) and Santarém (1095).³⁴

At the same time, it should also be emphasized that royal charters were not necessary for the birth of a municipality. The examples of the existence of ancient counties, prior to the granting of the *foral*, are many and recognized by the monarchs in the very wording of the new instrument. There was a community experience of conceiving, organizing and exercising power that preceded monarchical/aristocratic lordship, which would be strategically incorporated into the transformations of the domination processes that would integrate the realities of the boroughs into the scenario of the kingdom.

Everything that was said until now leads to consider paradigms as the methodological frame of reference for analysis of the wide-ranging and copious literature of medieval charts, mostly to set aside, or, on the contrary, establish significant discrepancies within adopted models. Historical studies very early on have identified “families of *forais*” that set paradigms for the drafting of *forais* granted throughout the kingdom. For Portugal, the most famous are those of Numão (1130), Évora (1162) and the triad of Coimbra, Santarém and Lisbon (1179).

There are countless points of contact between them, sometimes making it difficult to set up differences that would support marked individualization and originality. For example, the Numão *foral* is said to be a subsidiary of the Salamanca *foral* (REIS, 2015, p. 167-168).³⁵ Similarly, the Évora *foral* states that it was based on the Ávila *foral*, which has not survived and whose content is still unknown (REIS, 2015, p. 167). Similarly, the three charters issued in 1179 show signs of the dynamization of urban life at the end of the 12th century yet take up the guidelines of the previous paradigms of Salamanca-Numão and Ávila-Évora once again.

34 ANTT, Lisbon. *Foral de Coimbra*, 1085. Livro Preto da Sé de Coimbra, f. 7-8v; *Foral de Santarém*, 1095. Livro Preto da Sé de Coimbra, f. 10.

35 The Numão *foral* was granted by Fernão Mendes.

Regarding Coimbra, it is significant to recognize how the 1179 charter does not fail to consider aspects stipulated in the first charter of 1085. And even more so after 1179,

the old paradigms developed in the Coimbra orbit continued to enjoy a certain fortune when they were granted to communities in the same geographical area, where rural activities predominated or were even exclusive: this was the case of Avô (1187), Penacova (1192), Valezim (1201, from the convent of Santa Cruz) and Pedrógão Grande (owned by Pedro Afonso, the king's brother, in 1206), localities where the tax base remained under the yoke, while in others, with a more peripheral location, the criterion of the ration or percentage of the harvest was adopted, as was the case with S. Marinha (1190, by Soeiro Mendes) and Mortágua (1192, by Queen Dulce, on behalf of the King). Viseu's charter, which was presented (in 1187) as confirmation of the one granted by King Afonso Henriques, also followed the old model³⁶ (REIS, 2015, p. 172-173).

The three paradigms continued to have a strong expression in the following reigns, serving as a reference to produce new *forais*, or having their value reaffirmed by the confirmations that the monarchs granted. Similarly, secular, and ecclesiastical lords – including military orders – signed charters that were associated with these broader traditions, or

36 Freely translated: “os velhos paradigmas elaborados na órbita de Coimbra continuaram a gozar de alguma fortuna ao serem outorgados a comunidades da mesma área geográfica, em cujo dia a dia predominavam ou eram mesmo exclusivas as actividades rurais: foi o caso de Avô (1187), Penacova (1192), Valezim (1201, do convento de Santa Cruz) e Pedrógão Grande (de Pedro Afonso, irmão do rei, em 1206), localidades onde a base de tributação continuou a ser a jugada, enquanto noutras, com localização mais periférica, se adoptou o critério da ração ou percentagem da colheita, como sucedeu com S. Marinha (1190, de Soeiro Mendes) e com Mortágua (1192, da Rainha D. Dulce, em nome do Rei). Também o foral de Viseu, que se apresenta (em 1187) como confirmação do que fora outorgado por D. Afonso Henriques, seguiu o antigo modelo”.

with more regional genealogies, but always legitimized by a formula that united communities through a common experience of organizing life.

The Barcelos *foral* is a good example of the weight that regional references could achieve. Granted by the first king between 1166 and 1169, it is particularly noteworthy that a royal charter resorted to what was customary in Braga, in the domains of the Church. Afonso Henriques granted Barcelos “the *foros* so that they may have the honor of Braga and pay the tithe of the Braga fine and the tithe of all work”.³⁷ In another *foral*, of Vila Nova de Famalicão, King Sancho I, in 1205, specifies that

they must pay no more than three *calumpnias*, those which are assigned to the men of the Hospital, except that instead of what the latter pay, the latter must pay *soldos* (...) I order that anyone who owns a beast or beasts shall have them for the Guimarães jurisdiction, and that they shall not be harmed or forced to do so (...) I also order that you hold a market on Sundays every fortnight and that you pay a toll [*portagem*] as is paid in São Pedro de Rates.³⁸

So, in the letter of the *foral*, the monarch mobilized three distinct references from the secular and ecclesiastical organization: the Guimarães law, the taxes imposed on those dependent on the Order do Hospital, and the way in which tolls were paid in São Pedro de Rates. However, at first glance it could be considered incongruous from a

37 ANTT, Lisbon. *Foral de Barcelos*, [1166-1169]. Forais Antigos, maço 12, n. 3, f. 16. Freely translated: “illis forum ut habeant honorem Bracare et pectent decimam de calumpnia Bracare et decimam de toto labore”. Consultar, também: Reis (2015, p. 343-344).

38 ANTT, Lisbon. *Foral de Vila Nova de Famalicão*, 1205. Forais Antigos, maço 12, n. 3, f. 4v. Freely translated: “non pectent nisi tres calumpnias, illas que sunt assignate hominibus Hospitalis, excepto quod pro modis quos illi pectant isti pectent sólidos (...) Mando quod quicumque ibi habuerit bestiam vel bestias habeant illas per forum de Vimaranes, ut non faciant illis tortum nec forciam super illas (...) Mando etiam ut faciatis feiram in dominico die de quindecim in quindecim diebus et detis portagium quomodo dant in Sancto Petro de Rates”.

formal point of view, but it takes on a different shape when considered from the perspective of the experience of the region shared by “the men who populated the *reguengo* of Vila Nova”.³⁹

In addition to the three most iconic paradigms, there are numerous examples of the adoption of *forais*, from regions outside the borders of the kingdom. A significant case is that of Melgaço (1185), in which Afonso Henriques expresses the pact in these terms: “I command and grant you this pact so that you may build and dwell in it on the land you asked me for, that is, the town of Rivadavia, which you considered good. This one certainly serves me, and I rightly serve you”.⁴⁰ Therefore, for Melgaço’s neighbors, it is in Rivadavia, nearby Galicia, that they find the legal reference with which they identify, probably because they share the idea of how municipal life should be organized with the bourgeoisie there.⁴¹ Both towns are in the same region, which, despite being divided by the political border between Portugal and León, is home to populations that share customs and traditions. The detailed comparison between the two *forais* raises an interesting question, since there are truly many differences between them, affecting judicial, fiscal, and social provisions. However, such specificities did not prevent the establishment of an affiliation that could also signify a kind of identity as a political community at regional level.

The practice also manifested itself in the sharing of custom and practice (extensive *forais*) between *concelhos*, which, like the dynamics observed in relation to manorial and royal charters, did not respect the political borders of the kingdoms (DOMINGUES; PINTO, 2015, p. 165), reinforcing one of the main ideas we seek to defend in this

39 ANTT, Lisbon. *Foral de Vila Nova de Famalicão*, 1205. Forais Antigos, maço 12, n. 3, f. 4v. Freely translated: “hominibus qui populaturi sunt illud regalengo de Villa Nova”.

40 ANTT, Lisbon. *Foral de Melgaço*, 1185. Forais Antigos, maço 12, n. 3, f. 22v-23v. Freely translated: “mando enim illam vobis et concedo tali pacto ut eam hedificetis atque in illa habitetis per illud forum quod a me quesistis scilicet de burgo de Ripia Avie quod vidistis esse bonum. Hoc mihi recte adtendite et ego vobis iuste adtendam”. See also: Reis (2019, p. 113).

41 Melgaço’s charter refers to “neighbours” [“vizinhos”] and “residents” [“moradores”]; Rivadavia’s refers to “burghers” [“burgueses”].

article: the importance of local powers in (re)elaborating, preserving, and requesting the granting and/or superior recognition of their community rights.

CONCLUSION

So far, we have tried to show how, in the early reigns of the Burgundy Dynasty in Portugal, the political construction of the kingdom was based, among other things, on a decisive and effective hybridization between the monarchs and the rural and urban communities. This situation is easily seen in the preserved written records of instruments known as *forais* and “practices and customs”. Historiography often insists on the differences in the formal character of the two because of a state-centered view, which overvalues *forais*, due to their royal authorship, to the detriment of customary law, which is attributed in a diffuse way to the people. This view, inherited from the end of the 18th century, tends to conceive of “law” as the only legitimate and superior source of law, belittling custom (GILISSEN, 1982, p. 19). Not only does this perspective favor “jurists’ knowledge”, it also raises the rank of the forms resulting from this “knowledge”, and makes monarchy appear as the legitimate configuration of public power. However, the hundreds of *forais* granted by the monarchy in the period analyzed allow us to see the importance of considering the written normative content from a perspective that, without denying the strengthening of royal power, allows us to understand this process in deep connection with the affirmation of a municipal oligarchy, based vigorously on the logic of custom and tradition.

In this sense, it is necessary to critically reflect on the very definition of “practices and customs”, in the context defended by John Gilissen (1982, p. 25):

Practices are born out of the repetition of acts or behavior by men in a given social group. Uses become custom when this way of acting is understood as obligatory by the group, while

at the same time an action contrary to custom is sanctioned. This sanction often comes from the judiciary; this is why it has often been said that custom is only definitively settled once judges have recognized and applied it. But this jurisprudential confirmation is not necessary for the group to feel and accept the way of acting as obligatory, i.e., as a rule of law.⁴²

The binding nature of the rules is clear, and this is the key to political power, with a meaning that can easily be translated as an instrument for protecting the public good, the common good. This particularity will be explored and emphasized in the content of the many *forais* granted by the Portuguese kings. Customs, increasingly territorialized in the 12th and 13th centuries, were progressively put into written form, “becoming a kind of law”⁴³ (GILISSEN, 1982, p. 25-26).⁴⁴ The operation carried out by the monarchy and local oligarchies in turn results in the reinforcement of the dynamic that promotes custom, with the repetition and diffusion of models that become “families of *forais*”. If repetition engenders custom, the repetition of *forais* makes them customary.

The fact is that the monarchy played a key role in elevating local customs to a position of authority and inserting them into the wider political scenario of the kingdom. This shift is also visible in the contents of the *forais*. Topics and devices, when analyzed, point to the existence of

42 Freely translated: “L’usage naît de la répétition d’actes ou du comportement des hommes dans un groupe social donné; il implique une continuité d’agir dans un sens donné. L’usage devient coutume lorsque cette façon d’agir est ressentie par le groupe comme obligatoire, en ce sens qu’une action contraire à l’usage est considérée comme devant être sanctionnée. Cette sanction vient le plus souvent de l’autorité judiciaire; c’est pourquoi on a souvent affirmé que la coutume n’est définitivement établie qu’à partir du moment où les juges la constatent, et l’appliquent. Mais cette confirmation jurisprudentielle n’est pas requise pour que le groupe sente et accepte la façon d’agir comme obligatoire, c’est-à-dire comme règle de droit”.

43 Trad. livre da autora: “devenant une sorte de loi”.

44 Later, Gilissen (1982, p. 57) also says: “homologated customs were recognized by the prince as having the force of law”. Freely translated: “les coutumes homologuées ont été reconnues par le prince comme ayant force de loi”. We think that this “half-baked” classification deserves more courage to break down once and for all the barriers that “legal knowledge” still imposes on legislative experiments that do not come from “legitimate authorities”.

epistemic communities and communities of practice, which, intertwined with the powers granted by the monarchy, require a methodology for their historical study that allows us to perceive the hybridizations operated between the various spheres of knowledge, considering that *forais* have as their objective the normative production for “a specific field of action” (DUVE, 2022a, p. 4). The method must therefore consider a “certain historical constellation of discourses, practices, rules, norms, and principles” (DUVE, 2022b, p. 2). In the specific case of charters, it needs to be based on a “historical regime of normativity” (DUVE, 2022, p. 1). A regime as a way of living the “public thing”, the result of transformations in the formal source, which, in turn, are the consequence of pacts signed between local powers and the monarchy. New social and political relationships, in other words, that are configured as power that produces norms. The connection between customs and *forais* is set out in this dimension. In the history that follows the first four reigns, and which for many scholars signified “a new era”, we should remember, however, that the fifth monarch, Afonso III (1248-1279), before assuming the throne of Portugal, took an oath in 1245 in the following manner:

I, D. Afonso, Count of Bologna, son of D. Afonso of illustrious memory, King of Portugal, promise and swear on these Holy Gospels of God, that by whatever title the Kingdom of Portugal attains, I will keep, and *will cause to be kept* for all the Communities, Counties, Knights, and for the peoples, Religious, and Clergy of the said Kingdom all the *good customs, and written and unwritten charters that they had in the time of my Grandfather, and of my Great Grandfather*.⁴⁵

45 ANTT, Lisbon. *Juramento de D. Afonso III*, 1245. Mitra Arquiepiscopal de Braga, rolo 6. Emphasis added. Freely translated: “Eu D. Afonso, conde de Bolonha, filho de D. Afonso de ilustre memória rei de Portugal, prometo, e juro sobre estes Santos Evangelhos de Deus, que por qualquer título que alcançar o reino de Portugal, guardarei, e farei guardar a todas as Comunidades, Concelhos, Cavaleiros, e aos povos, aos Religiosos, e Clero do dito Reino todos os bons costumes, e foros escritos, e não escritos que tiveram em tempo de meu Avô, e de meu Bisavô”.

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