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## Diana at the Bar: Hunting, Aristocrats and the Law in Renaissance Castile

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THE SCENE IMPLIED by my title would have troubled Renaissance hunters who had any knowledge of classical civilization. Diana, goddess of the hunt, was not the sort of deity one pictured being hustled into some magistrate's crowded courtroom by several surly forest constables. Rather, she was generally portrayed moving quietly through a tranquil, wooded grove in search of game. Just this latter image of a youthful, beautiful, and vigorous woman in close, revitalizing contact with nature was actually cultivated to enhance her charms by Diane of Poitiers, mistress to France's Henry II.<sup>1</sup> Any attempt to regulate hunting and thus force civilization between man and nature was probably received with something like the hostility often expressed in our own time on the subject of hunting regulations and gun control.<sup>2</sup> Yet in this article I will discuss a book, the *Aviso de cazadores y de caza* (*Counsel on Hunters and Hunting*) of Dr. Pedro Núñez de Avendaño,<sup>3</sup> which intruded the law court into the sylvan province of the hunter. Since William Bouwsma and others have recently shown that lawyers played an important role in the

<sup>1</sup>For the typical image of Diana see William Smith, ed., *Dictionary of Greek and Roman Biography and Mythology* (Boston: Little and Brown, 1849), I, 375-376 and 1000; on Diane of Poitiers see Grace Hart Seely, *Diane the Huntress: The Life and Times of Diane of Poitiers* (New York and London: Appleton-Century, 1936).

<sup>2</sup>For some idea of the attitude of early modern hunters towards regulation, see Douglas Hay, "Poaching and the Game Laws on Cannock Chase," *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon, 1975), pp. 189-254.

<sup>3</sup>Pedro Núñez de Avendaño, *Aviso de caçadores y de caça* (Alcalá de Henares: Juan de Brocar, 1543). The book was posthumously reprinted, with revisions in the notes by the author's son (Madrid: Pedro Madrugal, 1593). Both editions of the book are apparently very rare. See Frederick II of Hohenstaufen, *The Art of Falconry being the De Arte Venandi cum Avibus of Frederick II of Hohenstaufen*, Casey A. Wood and F. Marjorie Fyfe, eds. (Stanford: Stanford University Press, 1943), p. 593; James Edmund Harting, *Bibliotheca Accipitraria: A Catalogue of Books Ancient & Modern relating to Falconry* (London: Holland Press, 1964 [London, 1891]), p. 120; R. Souhart, *Bibliographie générale des ouvrages sur la chasse, la vénerie & la fauconnerie publiés ou composés depuis de XVe siècle jusqu'a ce jour en français, latin, allemand, anglais, espagnol, italien, etc.* (Leipzig: Zentralantiquariat de DDR, 1968 [Paris: P. Rouquette, 1886]), col. 354; Francisco de Uhagon and Enrique de Leguina, *Estudios bibliográficos: La Caza* (Madrid: Ricardo Fé, 1888), p. 56. I, therefore, would like to express my thanks to the Hispanic Society of America and especially to Sra. Martha M. de Narváez, its curator of Manuscripts and Rare Books, for providing me with both editions on microfilm.

development of Renaissance culture, such a discussion should expand our understanding of that culture.<sup>4</sup> My subject is thus the control of hunting through law.

No Renaissance scholar will doubt the importance of the hunt for people in his period of interest although there has been very little research on the subject. Often it has seemed to me that the slaughter of game formed an almost constant backdrop to the political and artistic life of the era's upper classes.<sup>5</sup> Castiglione had Count Lodovico da Canossa give hunting an honored place in the sporting life of the courtier, and on this part of his presentation the count received no argument as the chase was a widely accepted part of the gentleman's (and often the gentlewoman's) good life.<sup>6</sup> While hunting has been a distasteful subject for many scholars, it was nonetheless a central feature of Renaissance life and deserves more study than it has received.<sup>7</sup> Moreover, Avendaño's<sup>8</sup> little book offers a good opportunity to speculate not

<sup>4</sup>William J. Bouwsma, "Lawyers and Early Modern Culture," *The American Historical Review*, 78 (1973), 303-327. The notes of this article contain the related bibliography. Of special interest on this point is George Huppert, *The Idea of Perfect History: Historical Erudition and Historical Philosophy in Renaissance France* (Urbana: University of Illinois Press, 1970), pp. 185-193 where the author underlines in a special appendix the importance of lawyers in French culture from 1540 to 1584.

<sup>5</sup>Despite being on a trip, a great many hunts were part of the welcome provided the future Philip II during his journey through the Empire when he visited nobles rather than the independent cities like Augsburg or Ulm. See Juan Cristóbal Calvete de Estrella, *El felicissimo viaje del . . . Principe Don Phelippe . . . desde España à sus tierras de la baxa Alemaña . . .* (Antwerp: Martin Nucio, 1552). It is easy to see the importance of the hunt to the Renaissance noble in W. L. Wiley, *The Gentleman of Renaissance France* (Cambridge: Harvard University Press, 1954), especially chapter VII ("Life in the Country") and chapter VIII ("Sports and Diversions"). See also the comments of Ludwig Pfandl on the passion for hunting in Renaissance Spain: *Cultura y costumbres del pueblo español de los siglos XVI y XVII: Introducción al estudio del Siglo de Oro* (2. Spanish ed., Barcelona: Araluce, 1942), pp. 267-270.

<sup>6</sup>Baldesar Castiglione, *The Book of the Courtier*, trans. Charles S. Singleton (Garden City, N.Y.: Doubleday, 1959), p. 38. There are numerous references to the relationship between hunting and the good life. For example, see Gervaise Markham, *Country contentments, or, the husbandmans recreations* (11. ed., London: George Sawbridge, 1675), p. 2. Even a man like Philip II of Castile was a great hunting enthusiast, Duque de Almazán, *Historia de la montería en España* (Madrid: Instituto Gráfico Oliva de Vilanova, 1934), p. 76, as was his wife Isabel, Agustín G. de Amezúa y Mayo, *Isabel de Valois: Reina de España 1546-1568* (Madrid: Gráficas Ultra, 1949), I, 277-289. Something of hunting's importance for great lords lasted into the twentieth century; see Andrew Sinclair, *The Last of the Best: The Aristocracy in Europe in the Twentieth Century* (New York: Macmillan, 1969), chapter 11 ("A Sporting Difference"), especially pp. 253-260.

<sup>7</sup>See M. H. Michelant's comments on scholars and hunting in Hardouin, seigneur de Fontaines-Guérin, *Trésor de Venerie composé l'an M. ccc. Lxxx. iv* (Metz: Rousseau-Pallez, 1856), p. iii. Or perhaps distaste is not what has restrained scholarly interest. I quote Lynn White, Jr.: "To yawn, however, in the face of things that fascinated our ancestors is to fall into the historical sin of anachronism," "Medieval Engineering and the Sociology of Knowledge," *Pacific Historical Review*, XLIV (1975), 15. Several recent works underline the importance both of hunting and of conflict over hunting regulations; see E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon, 1975) and the article by Douglas Hay cited in note 2.

<sup>8</sup>I will follow the practice of others who use the author's second *apellido*. See José Gutiérrez de la Vega, ed., *Biblioteca Venatoria* (Madrid: M. Tello, 1877), I, vi.

just on hunting in the Renaissance or on developments in Castilian law but also on value conflicts in the period.

As it has never received critical study, I want to provide first a very brief description of Avendaño's essay. Then I want to follow with a series of hypotheses about the author's intentions in writing the book and about both the role of law and the role of hunting in sixteenth-century Castilian history. In defending the plausibility of these hypotheses as foci for future research, I will try to offer numerous enough examples from the book to provide a good idea of its character.<sup>9</sup>

The *Aviso*'s 84 pages do not make it an especially long book. It has four parts: 1) a prologue (six pages without numbers); 2) a rhetorically correct introduction which contains a fanciful exploration of the etymological origins of the Castilian word for "hunter" (*cazador*) and a search for the book's subject matter among the possible conceptions of hunting (ff. 1-4); 3) a discussion of fourteen cases where hunting can be controlled by law (ff. 4-7v); and 4) the resolution of twelve particularly difficult problems, both legal and moral, which might occur in the actual application of hunting laws (ff. 8-37. There are some additional pages of conclusion.). Avendaño acknowledged that he had not exhausted all of the possible points but felt that any additional legal problems could be solved by analogy to those analyzed in the text. He wanted to keep his work short so that it would be used.<sup>10</sup>

Avendaño had a complex variety of aims in writing the *Aviso*. Not the least of these was a desire to extend the social responsibilities of his own profession into areas traditionally beyond its scope. The author was one of the most prominent lawyers and jurists of his time.<sup>11</sup> But hunting was the traditional preserve of the aristocracy, and thus, like the Renaissance humanists when they wrote on religious questions, Avendaño felt compelled to justify the right of a lawyer to say anything about the subject.<sup>12</sup> Such an

<sup>9</sup>The reader must keep in mind the hypothetical nature of much that is said in this article. I have tried to explore attitudes and ideas often not explicitly outlined in the writings of the period because they were taken for granted. To get at this material one often has to "... attempt the risky art of reading between the lines of ... documents, of interpreting their implication rather than what they say directly." One's "... ears must be attuned not only to the explicit but to the tacit as well," quoting Lynn White, Jr., "Medieval Engineering," p. 3. Research for this article will lead to a critical edition of the treatise and is also part of a planned book on what anthropologist Robert Redfield would call the "moral order" of Renaissance Castile; see Robert Redfield, *The Primitive World and Its Transformations* (Ithaca: Cornell University Press, 1953).

<sup>10</sup>f. 37v.

<sup>11</sup>Miguel Lafuente Alcántara, *Investigaciones sobre la montería y los demás ejercicios del cazador* (Madrid: T. Fortanet, 1877 [1849]), p. 119; Javier Malagón-Barceló, *La Literatura jurídica española del siglo de oro en la Nueva España* (Mexico: Biblioteca Nacional de Mexico; Instituto Bibliográfico Mexicano; Univ. Nacional Autónoma de Mexico, 1959), p. 116. Despite his prominence, there is almost no biographical information available on Avendaño. I am trying at present to supplement what little we know.

<sup>12</sup>On the attitude of the humanists, see Charles Trinkaus, *In Our Image and Likeness: Humanity and Divinity in Italian Humanist Thought* (London: Constable, 1970), II, 762.

attitude is perfectly understandable. I have looked at as many medieval and Renaissance books on hunting as I could find, as well as at the major bibliographies on the subject, and I have found that virtually all of them are books on proper technique written either by great lords and monarchs or by professional hunters in the employ of such men.<sup>13</sup> Only after Avendaño's time and in the Empire did a scholarly tradition develop of Latin dissertations on hunting law.<sup>14</sup> The *Aviso* was thus a kind of first in the western tradition of books on hunting. This was particularly true in the Iberian Peninsula where the names of the great dominate the hunter's bibliography. Prince Juan Manuel (died ca. 1349), nephew of Alfonso X, wrote the first which we have.<sup>15</sup> Another early one bears the name of Alfonso XI (d. 1350).<sup>16</sup> Yet another is by the great chancellor of the early Trastámara monarchs, Pero López de Ayala (d. 1407).<sup>17</sup> João I of Portugal, whose long reign ended in 1433, is given as the author of the first hunting guide in Portuguese.<sup>18</sup> One was apparently even written by Alfonso X (d. 1284).<sup>19</sup> It was probably because interest in these hunting manuals was confined to the aristocrats, who were few in number, that no book on technique was printed in Castile until that of aristocrat Fadrique Zúñiga y Sotomayor in 1565.<sup>20</sup> Therefore, Avendaño's was the first Castilian printed book on hunting (1543) as well as the first to deal with its legal and moral aspects.<sup>21</sup>

<sup>13</sup> See the comments of Marcelle Thiébaux, *The Stag of Love: The Chase in Medieval Literature* (Ithaca and London: Cornell University Press, 1974), p. 26. The appendix to this article provides a list of works I have consulted which are not cited in the notes.

<sup>14</sup> Souhart, *Bibliographie*, notes 67 different authors of these. With only a few exceptions from the late sixteenth-century, the bulk of these are seventeenth- or eighteenth-century publications.

<sup>15</sup> *Libro de la Caza* in Gutiérrez de la Vega ed., *Biblioteca Venatoria*, vol. 3.

<sup>16</sup> *Libro de la Montería* in *ibid.*, vols. 1 and 2.

<sup>17</sup> *Libro de la Caza de las Aves* in *ibid.*, vol. 3.

<sup>18</sup> *Livro da Montaria: Conforme o manuscrito No. 4352 da Biblioteca Nacional de Lisboa*, Francisco Maria Esteves Pereira, ed. (Coimbra: Imprensa de Universidade, 1918).

<sup>19</sup> There has been a long controversy about this book. Alfonso X's book on hunting was mentioned by his nephew Juan Manuel (Uhagon and Leguina, *Estudios*, p. 3), and many authors have chosen to attribute Alfonso XI's book to the earlier Alfonso. I have chosen to follow Gutiérrez de la Vega, *Biblioteca Venatoria*, I, xxxvii-Lvii; III, Lx-Lxxii, and Matilde López Serrano *Libro de la Montería del Rey de Castilla Alfonso XI* (Madrid: Editorial Patrimonio Nacional, 1969), pp. 8-12, who argue that the text is in fact from the time of Alfonso XI.

<sup>20</sup> Fadrique Cuñiga y Sotomayor, *Libro de Ceteria de Caça de acor* (Salamanca: Juan de Canova, 1565). This is apparently a very rare book. See Souhart, *Bibliographie*, col. 124, and Uhagon, *Estudios*, p. 78. There is a modern edition: Fadrique de Zúñiga y Sotomayor, *Libro de ceteria de caza de azor (1565)* (Madrid: La Sociedad de Bibliófilos Españoles, segunda época, XXVIII, 1853).

<sup>21</sup> Lafuente Alcántara even felt that it was the first printed in all of Spain, *Investigaciones*, p. 119, but I am certain only of Castile in this respect. The printing press was so important to the development of the law (Bouwsmá, "Lawyers," p. 317) that it is little wonder that a lawyer's work, rather than an aristocrat's, was the first. Within the church there was, of course, a long tradition of legal and moral concern about hunting

Lawyers had written on hunting before but never in a professional capacity. Petrus Crescentiensis was a Bolognese lawyer who wrote, for Charles II of Sicily, a book on country life which included a section on hunting.<sup>22</sup> In his 1529 treatise *De Philologia*, the great Renaissance legal scholar Guillaume Budé wrote a long digression on the practice of hunting which includes no discussion of law. In the 1570s this section was transformed into a vernacular book on hunting by Louis Le Roy.<sup>23</sup> A treatise on falconry was apparently attributed to Bartolus, but I have never seen it and doubt that it was really his.<sup>24</sup>

In any event, Avendaño probably knew none of these books and therefore felt he had to reply to possible charges that it was unseemly for a lawyer who did not hunt by personal custom or profession to write on the subject. He was very conscious, in preparing his justification, that he was carving out an important area of social action for his profession distinct from the role of the great nobles. Thus, he accepted the idea that he could write only with great temerity about hunting technique, about the capture, training, and use of falcons or similar problems. But he compared discussions of hunting to those of war, pointing out that while it was one thing for the military commander to know how to order the troops for battle, it was quite a different matter to know if it was licit to use his squadrons. While the first kind of

which was expressed in canon law prohibitions of its practice by clerics. For example: "Esau venator erat, quoniam peccator erat. Et penitus non invenimus in scripturis sanctis sanctum aliquem venatorem, piscatores invenimus sanctos," *Decretum Grat.*, D. 86, c. 9. On the church's attitude see H. Gourdon de Genouillac, *L'Église et la chasse* (Paris: Librairie des Bibliophiles, 1886); Gustaf Holmér, ed., *Le Sermon sur Esau: Discours allégorique sur la chasse de Pierre de Marini* (Stockholm: Almqvist & Wiksell, 1968), introduction.

Before Avendaño, the church's worries about hunting entered the vernacular moral literature with Fray Pedro de Cobarrubias, *Remedio de jugadores* (Burgos: Alonso de Melgar, 1519). Cobarrubias devoted only three short chapters to hunting, Avendaño, perhaps because he was not a priest, was the first to see it as a problem requiring more extended treatment.

<sup>22</sup> *De omnibus Agriculturae partibus, et plantarum animaliumque partibus et utilitate*. On this work see D. H. Madden, *A Chapter of Mediaeval History: The Fathers of the Literature of Field Sport and Horses* (London: John Murray, 1924), pp. 82-103; Kurt Linder, *Das Jagdbuch des Petrus de Crescentiis in Deutschen Übersetzungen des 14. und 15. Jahrhunderts* (Berlin: Walter de Gruyter, 1957). Readers apparently did not even think of him as a lawyer. The Basel edition of 1538 said, "Autore optimo agricolo et philosopho Petro Crescentiensi," quoted in Albano Sorbelli, *Bibliografia delle edizioni dell'opera di Pier de' Crescenzi* (Bologna: Licinio Cappelli, 1933), p. 20.

<sup>23</sup> Guillaume Budé, *Omnia Opera* (Farnborough, Hants.: Gregg Press, 1966 [Basel: Nicolaum Episcopium, 1557]), *De Philologia*, Tomo I, lib. II, pp. 66-81; *Traite de la Venerie, traduit du latin en françois par Loys Le Roy dict Regius, publié pour la première fois, d'après le manuscrit de l'Institut par Henri Chevreul* (Paris: Auguste Aubry, 1861). Madden was, of course, wrong when he said that the Latin original was lost (*A Chapter*, p. 260).

<sup>24</sup> It is cited in a marginal note in Cobarrubias, *Remedio*, f. 34. Numerous works were incorrectly ascribed to the great lawyer, and this one was no doubt one of them. See Cecil N. Sidney Woolf, *Bartolus of Sassoferrato: His Position in the History of Medieval Political Thought* (Cambridge: University Press, 1913), p. viii.

knowledge was the business of the captain, the second was clearly that of the lawyer. So it was with hunting. It was the gentleman's role to know about the use of birds and dogs and the proper times and places to hunt, but the lawyer's responsibility was to know when one could hunt "...without offense to God or your neighbor."<sup>25</sup>

The mention of God as well as one's neighbor suggests how easy it was for Avendaño's professional concerns to shade off into moral ones. Indeed, the primary thrust of his book is moral. Lawyers would never have had such a great impact on Renaissance culture if they had not gone into such areas beyond formal legal questions.

Avendaño was chief attorney of the powerful Mendoza duke of Infantado and dedicated his little book to his employer. This was no idle dedication, designed only to curry favor with the duke, because, as the author made very clear in his prologue, the book was also directed at the duke as well as at the other great Castilian lords. Nor was much flattery intended by such a dedication. Avendaño was a conservative who believed that, due to their social station, great aristocrats often established by their actions the mores of their social inferiors. Thus, the magnates always had to organize their public lives as an example to others, especially since they were so often responsible for the condemnation of wrongdoers. If they themselves committed illicit acts condemned in inferiors, then the great nobles would be in effect condemning themselves and undermining both their own authority and the entire social order. And if on occasion seemingly with good reason they had to violate generally accepted proper practice, the aristocrats should be able to defend such actions with spiritual arguments and recourse to written authority in order that the vulgar masses did not fall into error and begin attacking the foundations of a just and holy society.<sup>26</sup>

While such platitudes about his importance to society may not have shaken the duke, Avendaño was prepared to make specific charges of serious misconduct which certainly would have drawn his master's attention. The duke, he said, ordered his life for the most part in a way suitable for imitation by others, referring no doubt to the fact that the duke, like the Mendoza family in general, took seriously the humanists' training program for the

<sup>25</sup> "sin offensa de Dios y del proximo..." Prologue, p. 5 (not numbered). Avendaño's professional interests are apparent within the main argument of the book as well. He is very careful to defend the king's rights as sole determinant of hunting law against the claims of any other group. It had been the monarchs, of course, who had supported an expanding role throughout their kingdoms for judicial institutions staffed by trained jurists. Monarchical claims to be the ultimate source of all justice in secular society were the foundation of this expansion, and thus lawyers had a professional interest in the defense of such royal pretensions. See f. 7v, case 14; f. 15, *duda* 5, cases 3 and 4.

<sup>26</sup> In his concern to make the social system work Avendaño was not unusual. See the comments of Bouwsma, "Lawyers," p. 324.

Renaissance gentleman.<sup>27</sup> But he did fail in one respect. His habitual manner of hunting, and that of the other gentlemen of the kingdom, constantly gave rise to dangerous complaints within the lower social orders. It was charged that the magnates hunted so much that they neglected the government of their vassals, which was the principal reason God had granted them their estates and social position. Others felt that too much wealth was wasted by noble hunting. Still others complained of the damage done to farms and other property by aristocratic hunting or by the animals in the game preserves of the great lords; for such destruction all the lords had unpaid debts. So general was the criticism that all condemned the aristocracy for some unpleasant acts associated with hunting; the exact charges seemed to depend only on the errors each critic sought to justify in himself, according to Avendaño. Thus, the magnates were undermining the moral and legal order of society.

It was to put an end to this situation that Avendaño wrote his little book. It was not to be the usual lawyer's treatise on some subject, a fact which greatly confused Gaspar de Bujanda when he produced the first real compilation of Castilian hunting and forest law, published in 1691.<sup>28</sup> In the first place, legal treatises were in Latin; Avendaño's own career was punctuated by Latin commentaries on important Castilian legal sources or major problems in jurisprudence.<sup>29</sup> But the *Aviso* was written in the vernacular so that its audience, the duke of Infantado and other great secular lords, might read it and profit from it.<sup>30</sup> Moreover, he dealt not only with the law, both

<sup>27</sup>For an excellent discussion of the Mendoza family interest in humanist education, see Erika Spivakovsky, *Son of the Alhambra: Don Diego Hurtado de Mendoza, 1504-1575* (Austin: University of Texas Press, 1970), *passim*. There are also indications of the family's intellectual interests scattered throughout Francisco Layna Serrano, *Historia de Guadalajara y sus Mendozas en los siglos XV y XVI* (4 vols.; Madrid: Aldus, 1942).

<sup>28</sup>Lic. Don Gaspar de Bujanda, *Compendio de las leyes expedidas sobre la caza, nuevamente defendida, e ilustrada, practica civil, y criminal en la materia de Reales Bosques, y Sitios, y su expedicion en los Tribunales* (Madrid: Francisco Sanz, 1691). In his prologue Bujanda showed that he had no appreciation of Avendaño's rather different aims in writing a book on hunting. Neither did Lic. Pedro del Rey who wrote the introduction to Bujanda's book. The difference probably explains why Lafuente Alcántara had high praise for the *Aviso* while finding Bujanda's book "... de cansada é insípida lectura..." (*Investigaciones*, pp. 120 and 132). There exists another book which deals with questions of hunting law which I have not seen: Pedro de Cerbantes y Manuel Antonio de Cerbantes, *Recopilacion de las Reales Ordenanzas, y cédulas de los Bosques Reales del Pardo, Aranjuez, Escorial, Balsain y otros. Glossas y comentarios á ellas...* (Madrid: Melchor Alvarez, 1687). See Gutiérrez de la Vega, *Biblioteca Venatoria*, I, pp. cxciii-cxciv.

<sup>29</sup>*Quadráginta responsa*... (Salamanca: Ioannes à Canova, 1569); *De exequendis mandatis regum hispaniae* (Alcala de Henares: Joan de Brocar, 1543; Salamanca: Ioanem de Canova, 1554; Salamanca: Alexander a Canova, 1573; Madrid: Pedro Madrugal, 1593). All these editions are different. The 1554 edition includes a dictionary explaining important terms from the *Siete Partidas* and other medieval codes which reveals some of Avendaño's humanist interests. I have been working for some time on a systematic analysis of Avendaño's legal and political ideas.

<sup>30</sup>Because of the nature of their audience, books about hunting had traditionally been in the vernacular, Madden, *A Chapter*, p. 260.

civil and canon, but also with the works of theologians and writers on moral questions which Avendaño felt had some authority.

He was quick to point out, however, before his readers consigned his book to the library fireplace, that he was not attacking hunting. Rather he would defend hunting as both a licit and a natural act. He simply wanted to write about the proper manner of hunting for the benefit of the aristocracy and of society as a whole.

Indeed, Avendaño argued that hunting was legal by natural law and *ius gentium* and, thus, its practice could not be denied any man whatever his social status, even by the monarch.<sup>31</sup> But because man lived in society, the liberty to hunt could be limited by a king if he was acting in the public interest. The bulk of his essay then was spent explaining the cases when such limitations could be applied.

Many of the cases where hunting could be limited were, of course, those which required the defense of persons or of their property.<sup>32</sup> Thus, a trap could not be used because of the danger that some person would stumble into it. It was not hunting which was being prohibited, but the use of certain instruments.<sup>33</sup> In the case of property, it was not the prohibition of hunting which was involved but rather the owner's right to prohibit entry to his lands. Wild beasts on his land were not his, but control of access to that land was his right.<sup>34</sup> None of this was controversial in its legal aspects although my general impression is that great lords were not very careful of the property rights of others when they rode to the hunt.<sup>35</sup> Avendaño, however, made

<sup>31</sup> ff. 3-4. The argument here is a simple one. As the right to hunt was given to primitive men before the existence of monarchs, it is not a right which is subject to the monarch's control. His major defense of this point is from the writings of Felinus Sandeus (d. 1503) and Matthaues de Afflicitus (d. 1528), and from Hostiensis (d. 1271) and Antonius de Butrio (d. 1408) on *Extra*, 3, 34, 5. Gideon Sjöberg has correctly pointed out that this kind of use of natural law was intended primarily as a justification of the status quo, *The Preindustrial City: Past and Present* (Glencoe, Ill.: The Free Press, 1960), p. 227.

<sup>32</sup> This was the central concern of lawyers; see Bouwsma, "Lawyers," p. 311.

<sup>33</sup> For example ff. 4-4v, citing *Ordenanzas*, 8, 19, 4 which corrected *Part.* 7, 15, 7. When I first read this type of case, I thought Avendaño was, as an attorney for an aristocrat, attacking hunting practices characteristic of the lower social orders for the benefit of the duke and his friends. But illustrations in late medieval hunting guides clearly show that great nobles often built elaborate traps and snares to enable them to get close to even large game animals. For example: Gaston Phébus, *Livre de Chasse*, Gunnar Tilander, ed. (Karlshamn: Ab E G Johansson's Boktryckeri, 1971), pp. 227, 250, 252, 257, 260-264, and 285-287; *Les Livres du Roy Modus et de la Royne Ratio*, Gunnar Tilander, ed. (Paris: Société des Anciens Textes Français, 1932 [2 vols.]), vol. I, ff. 33, 50v, 51v, and 53.

<sup>34</sup> ff. 6-6v where he cites D. 41, 1, 3, 1 and *Part.* 3, 28, 16.

<sup>35</sup> As regards Castile, I have never seen the matter discussed. In neighboring Portugal monarch and lords interested in the hunt seemed little concerned about the desires of the common people, or even of the clergy for that matter; see A. H. de Oliveira Marques, *Daily Life in Portugal in the Late Middle Ages* (Madison: University of Wisconsin Press, 1971), p. 244.

perfectly clear that such rights had to be observed by nobles even if the property involved belonged to their vassals.<sup>36</sup> Nor could a magnate infringe on a vassal's right to hunt in legally sanctioned ways.<sup>37</sup> The lord of a manor was not even allowed to exempt his huntsmen from the taxes imposed on local villagers without committing an act of tyranny<sup>38</sup> although this rule would also protect, as Avendaño was always careful to do, the monarch's power as sole legislator.<sup>39</sup>

In light of recent national and international discussions, it is interesting that Avendaño was also concerned about maintaining the ecological system of Castile although he lacked the vocabulary to express completely his ideas and was solely concerned with preserving wildlife species hunted by man. Legal controversy in the Renaissance often centered on the area of jurisprudence which dealt with the monarch's right to act in the public interest contrary to natural law and *ius gentium*. Thus, Avendaño's defense of primitive royal efforts at ecological conservation may have irritated many people as government efforts in the same area often do now. But he nonetheless allowed limitations on hunting in the interest of preserving certain animal species from destruction. Such provisions could involve a complete prohibition on the hunting of some animals,<sup>40</sup> limitations on the use of certain weapons (shot-guns, for example, because they allowed the hunter to kill from a great distance),<sup>41</sup> or limitations of the conditions of the hunt (rabbits and partridge could not be hunted after a snow, presumably because it was too easy then).<sup>42</sup> All of

<sup>36</sup> For example, f. 21.

<sup>37</sup> ff. 15-15v, *duda* 5, case 3. Here he cites *Part.* 3, 28, 4 (although he apparently meant law 3) and a commentary of a Spanish jurist, Gaietanus, whom I have not been able to identify. Marc Bloch, *Feudal Society* (Chicago: University of Chicago Press, 1961), II, 303, indicated that it was very common in the Middle Ages for nobles to limit the hunting rights of their vassals without any legal sanction for the action but their own decree.

<sup>38</sup> f. 36, citing the text and gloss of C. 10, 32, 18; Bernardus de Montemirato (d. 1296) and Doctores bononienses on *Extra*, 3, 39, 5; q. 348 of the *Questionibus Capellae Tholosa* (which I have not yet identified).

<sup>39</sup> On this concern, see f. 7v, case 14, and ff. 15-16, *duda* 5, cases 3 and 4.

<sup>40</sup> ff. 5-5v, case 5, citing Petrus Rebuffus (d. 1557) on C. 11, 45, 1, 11.

<sup>41</sup> f. 5, case 4. He cites pet. 28 of the Cortes of Valladolid of 1537. Legislation on the use of firearms for hunting had an interesting history in the Renaissance. Just after the rising of Granada's Moriscos in the late 1560s, people were concerned that the lack of experience with firearms would hurt Castile's defensive capabilities (pet. 17 of 1570 Cortes). Perhaps Charles V had gone too far in 1537 and in his Pragmatic of 1552 in a total prohibition of hunting with firearms. At the Cortes of 1588 shooting was allowed along the coasts so that local people would be able to defend themselves from pirates. The debate over hunting with firearms again became important in the reign of Philip III. On this legislation, see Duque de Almazán, *Historia*, pp. 108, 256-261, and 458-459.

It is interesting, as evidence of the broad implications of my topic, to see that this prohibition as well as questions of conscience about hunting were also a feature of English Puritan life; see Edmund S. Morgan, *The Puritan Dilemma: The Story of John Winthrop* (Boston: Little, Brown, 1958), p. 9.

<sup>42</sup> f. 4v-5, case 3, citing *Ordenanzas*, 8, 19, 39 (although he apparently meant law 40).

these methods are employed by wildlife departments in this country when necessary. The dates of the legislation cited by Avendaño suggest that such ecological concerns were fairly recent in Renaissance Castile.<sup>43</sup>

Avendaño did not just concern himself with the laws of hunting; he wanted to make sure that they were obeyed as well. Here the moral thrust of his book becomes very clear. He bluntly told the aristocrats that their bad behavior would encourage both disorder among the lower orders and a lack of respect for social superiors which could cost the magnates their estates and status.<sup>44</sup> As if even the threat of revolution were not sufficient, and it was a threat which would have carried weight since only two decades before the *comunero junta* had called for a war of "fire, sack, and blood" against the aristocracy,<sup>45</sup> he also gave attention to the types of secular punishments, both criminal and civil, which could be imposed on the man whose lust to kill

<sup>43</sup>The most eloquent testimony of the rapid decline in the number of game species comes from pet. 28 of the Cortes of Valladolid of 1537. Other expressions of concern can be found in petitions 28 and 165 of the 1528 Cortes, pet. 164 of 1548, pet. 132 of 1551, pet. 91 of 1555, pet. 67 of 1558, pet. 80 of 1559, and pet. 46 of 1570. While most of the laws in the *Ordenanzas* prohibiting various kinds of traps were originally promulgated by Alfonso XI at the Cortes of Alcalá de Henares in 1348, they were at first only designed for the protection of men and horses. In 1515, however, Ferdinand breathed new life into them in an effort to protect game animals. See Duque de Almazán, *Historia*, pp. 258-259 and Manuel Danvila y Collado, *El poder civil en España* (Madrid: Manuel Tello, 1885), I, 638. Until Ferdinand in 1510 granted Avila control of hunting in its lands, there seems to have been little attention to a decline in the animal population (*ibid.*, V, 145). In fact, number 34 of the petitions presented Henry IV at Cigales in 1464 shows very little concern for the animals, Miguel Salvá y Munar and Pedro Sainz de Baranda, eds., *Colección de documentos inéditos para la historia de España* (Madrid: Viuda de Calero, 1849), XIV, 390-391. Perhaps people were more threatened by animals than vice versa in a troubled and underpopulated fifteenth century Castilian countryside; see the interesting comments of Fernand Braudel on wolves in his *Capitalism and Material Life, 1400-1800* (New York: Harper and Row, 1973), pp. 34-35. Concern for maintaining the mutual relations between biological organisms and their environment seems always to have begun from some worry about man's disruption of such relations. Although it is a small step, as regards wildlife, the concern of hunters for the damage done their sport by overindulgence has been one of the first areas where ecological awareness has occurred. A more sophisticated understanding of the subject has simply not been possible or necessary until more modern times.

<sup>44</sup>f. 30v.

<sup>45</sup>J. H. Elliott, *Imperial Spain, 1469-1716* (New York: St. Martin's Press, 1963), p. 147. The *junta* authorization can be found in Danvila, *El poder civil*, 5, 228-230. Those who still think of the revolt of the *comuneros* as an exclusively urban affair or who doubt the importance of rural revolt during the period as a cause of aristocratic reaction will want to read Juan Ignacio Gutiérrez Nieto, *Las comunidades como movimiento antiseñorial (La formación del bando realista en la guerra civil castellana de 1520-1521)* (Barcelona: Editorial Planeta, 1973), especially part II, "La rebelión antiseñorial durante 1520-1521," pp. 123-227. It is particularly interesting to see how disputes over hunting were important in antagonizing peasants (for example, pp. 146 and 207) and how these rural revolts led to a state of permanent noble fear of peasants (p. 314). As Gutiérrez Nieto indicates (p. 125), we still know very little about peasant agitation in the period. In a forthcoming article, "Cities for the King: the Impact of Rural Revolt during the Comunidades," I will illustrate another aspect of this important problem.

animals was greater than his concern for the law and for the rights of others. But he began first with religious sanctions on the lawbreaker. Obviously, with aristocrats as traditionally suspicious of lawyers as they were and as hostile to the pre-emption of much of the magnates' judicial role by the crown, some additional sanction was necessary if the hunting laws were to be observed. The question of sin and the role of confessors had to be included. Hunting was, however, a minor thing, and thus breaking a hunting law involved only a venial and not a mortal sin unless the law was broken intentionally to undermine it. There was no role for civil disobedience in the cosmic or social vision of Avendaño; such an act was a mortal sin. Even without such a deliberate breaking of the law, Avendaño was careful to give conscience an important if moderate role in support of society's legal order.<sup>46</sup>

Not only did Avendaño want aristocrats to observe statutory limitations on hunting, but he also urged moderation in the practice of licit hunting. Vices like gluttonous slaughter of more animals than could be used, which would scandalize contemporaries, should be avoided and the prohibitions associated with the sabbath and religious holidays observed. Hunting should not be overdone to the neglect of governmental functions, especially the administration of justice; such abuse would leave the monarch without kingdoms and the lord without estates. Also, the aristocratic hunter should show some moderation in discussing the subject because others would lose respect for him.<sup>47</sup>

Avendaño was clearly trying to reshape the social practices of the magnate in ways which would allow the continuation of aristocratic social and political leadership. His book was thus akin to the humanist educators' attempted refashioning of the aristocracy in the Renaissance about which J. H. Hexter and others have written.<sup>48</sup> Nor should it surprise anyone that a lawyer

<sup>46</sup> Bouwsma probably gives too much weight to the secular nature of the thinking of Renaissance lawyers, "Lawyers," p. 321. The Castilian ones were very much concerned with "... the ultimate purpose of existence." Perhaps this was only because religion was a much more important part of life in Castile than beyond the Pyrenees as Américo Castro has claimed. See Castro's *The Spaniards: An Introduction to Their History* (Berkeley: University of California Press, 1971). But a concern among lawyers for religious questions can probably be found elsewhere as well, so important were religious values for the structure of government and the support of laws in all urban-agricultural civilizations, Sjöberg, *The Preindustrial City*, p. 270.

<sup>47</sup> ff. 28v-32v. This must have been a real problem in the Renaissance; Ben Jonson, *Every Man in His Humour*, I, 1: "Why, you know, an a man have not skill in the hawking and hunting languages now-a-days, I'll not give a rush for him; they are more studied than the Greek or the Latin. He is for no gallant's company without 'em," quoted from Sir Thomas Cockaine, *A Short Treatise of Hunting 1591*, W. R. Halliday, ed. (London: Oxford University Press, 1932), p. vi.

<sup>48</sup> J. H. Hexter, "The Education of the Aristocracy in the Renaissance," *Reappraisals in History: New Views on History and Society in Early Modern Europe* (New York: Harper & Row, 1963), pp. 45-70. It is especially interesting that these educators complained so much about excessive aristocratic interest in hunting (pp. 46 and 66). On the same subject, see Fritz Caspari, *Humanism and the Social Order in Tudor England* (Chicago: University of Chicago Press, 1954), esp. ch. 1; Lawrence Stone, *The Crisis of*

should have been part of this effort to adapt the leaders of an old society to new conditions since those with legal training played such an important role in the development of Renaissance humanism.<sup>49</sup>

That law was such an important part of the social and intellectual changes of the Renaissance tells us something about the type of changes which were taking place. Earlier attempts had been made to bring some order into aristocratic life and render the group a bit more useful to society as a whole. Such was the impetus behind the development of chivalric thought. But in at least two of its forms, religious and military, the values of chivalry were perfectly compatible with the almost completely rural orientation of medieval society.<sup>50</sup> However, the growth of urban areas and the resulting complexity this development introduced into all aspects of human existence meant that quite new forms of aristocratic behavior would have to evolve if the magnates were to retain their place in society and government. Humanists tried to shape this evolution through education to produce governors who could exercise administrative functions with an eye to justice and the good of society.

That law played such a large role in the development of an urban-agricultural civilization from the rural backwardness of the Middle Ages should be no surprise. Such had been the pattern in the western world since the Urban Revolution had begun the transformation of Neolithic society in ancient times.<sup>51</sup> Law was accepted as the standard according to which men's behavior would be controlled and their relations harmonized. Government by its regular, predictable standards would provide men some measure of security in a *the Aristocracy, 1558-1641* (London: Oxford University Press, 1967), p. 190 and ch. 12. Claus Uhlig argues that humanist attacks on hunting are ". . . part of an intellectual world which does not share the values of aristocratic courtly society," "The Sobbing Deer: *As You Like It*, II. i. 21-66 and the Historical Context," *Renaissance Drama*, S. Schoenbaum, ed. (Evanston: Northwestern University Press, 1970, New Series III), p. 98.

<sup>49</sup>Bouwsma, "Lawyers," p. 308. Except possibly for his dictionary (see note 29), there is little about Avendaño's works or professional career to justify calling him a humanist. The question here is not Avendaño's humanist credentials or lack of them but the similarity of interests in developing a new elite between educators and lawyers which goes a long way towards explaining the importance of jurists in the culture of Renaissance humanism. More detail on Avendaño's jurisprudence will be found in my forthcoming article "The Conception of Absolute Royal Power in 16th Century Castile."

<sup>50</sup>I have found the most useful book on medieval chivalry to be Sidney Painter, *French Chivalry: Chivalric Ideas and Practices in Mediaeval France* (Baltimore: The Johns Hopkins Press, 1940).

See also Léon Gautier, *Chivalry* (New York: Barnes & Noble, 1965); the following articles from Edgar Prestage, ed., *Chivalry: A Series of Studies to Illustrate Its Historical Significance and Civilizing Influence* (New York: Knopf, 1928): F. J. C. Hearnshaw, "Chivalry and Its Place in History," pp. 1-35; E. F. Jacob, "The Beginnings of Medieval Chivalry," pp. 37-55; A. T. Byles, "Medieval Courtesy Books and the Prose Romances of Chivalry," pp. 183-206.

<sup>51</sup>Gordon Childe, *What Happened in History* (Baltimore: Penguin, 1961), pp. 156-157; Mason Hammond, *The City in the Ancient World* (Cambridge: Harvard University Press, 1972), p. 51; Ralph Linton, *The Tree of Culture* (New York: Vintage, 1958), pp. 40-42 and 101.

world where natural disasters were still a major source of fear and where family and friends no longer provided the limits of an individual's existence.<sup>52</sup> It was the rule of law which would make the higher stage urban-agricultural society work and develop. Any other principle of government would produce only social confusion and disorder. Thus, with the rapid development of an urban-agricultural civilization in the Renaissance, law became an increasingly important part of the era's cultural tool box.

Avendaño's obvious desire for a kingdom whose political society would be held together and governed by the rule of law rather than divided and led by powerful men through the exercise of their personal influence was ultimately frustrated. Renaissance educators were successful in their efforts to create a new model for the gentlemen who would lead society. However, this model had been accepted only as a means of legitimizing aristocratic social and political predominance in a period when, as Lawrence Stone demonstrated for England, economic, political and military changes had seriously undermined both the objective position of the old aristocracy as well as the group's self-confidence;<sup>53</sup> the value structure behind the model, that of an educated social leader governing according to the dictates of law and justice, was rejected by most.<sup>54</sup> Aristocratic perceptions of political life remained much as they had during the turmoil of the fifteenth century when great magnates fought for control of Castile at the head of private armies. Gone were the bands of armed vassals; the desire remained that important administrative and judicial decisions involving the affairs of the great lords should be made as they would be within a family, informally and in light of their personal relationship with the ruler. In this view government would be based on the connections between men rather than on the dictates of the law.

What Avendaño had argued in theory was also true in fact: the monarch was the major foundation of the rule of law. Since the last quarter of the fifteenth century, Castilian monarchs, when they found it politically feasible,

<sup>52</sup>On the human condition in the Middle Ages, see Bloch, *Feudal Society*, p. 73. See the comments of Bouwsma on law and security in the Renaissance, "Lawyers," pp. 318 and 322. Arthur B. Ferguson quotes an interesting poem from the early sixteenth century which illustrates very well the concerns of the time; see *The Indian Summer of English Chivalry: Studies in the Decline and Transformation of Chivalric Idealism* (Durham: Duke University Press, 1960), pp. 211-212. For other interesting comments on the role of law in the developing Renaissance state, see Stone, *The Crisis*, pp. 117-118 and 121; Donald J. Wilcox, *In Search of God and Self: Renaissance and Reformation Thought* (Boston: Houghton Mifflin, 1975), pp. 211-212.

<sup>53</sup>Stone, *The Crisis*, esp. pp. 12-13.

<sup>54</sup>Caspari (*Humanism*, pp. 10 and 13) suggests that the humanists' appeal came because their program offered the aristocracy a way to preserve its position and not from any genuine love of learning. Indeed, aristocrats retained a suspicion of learning. Nicolas B. Round, "Renaissance Culture and Its Opponents in Fifteenth-Century Castile," *Modern Language Review*, 57 (1962), 204-215, esp. p. 214; Peter Russell, "Arms versus Letters: Towards a Definition of Spanish Fifteenth-Century Humanism," *Aspects of the Renaissance: A Symposium*, Archibald R. Lewis, ed. (Austin: University of Texas Press, 1967), pp. 47-58; Stone, *The Crisis*, p. 305.

had sought increased administrative effectiveness by excluding aristocrats from power in domestic councils while promoting the rule of law. Men in Castilian society, even important ones, who lacked the resources of the great magnates felt unable to control their own destinies in the turbulent conditions of an age of increasing complexity. They looked to the monarch to provide legal guarantees of their persons and property. But if such justice could not be had from a state dedicated to government by law, the insecure would become clients of the aristocracy in the hope that the powerful would use what influence they had to protect those who supported them. As the monarchs' administration and their independence from the magnates depended on those whose social station was somewhat below that of the great lords, lack of faith in the reality of law's paramount position in government would quickly weaken a king in the face of an aristocracy with important support throughout the realm. Smart kings realized this and worked for a judiciary as free as possible from manipulation by the great.<sup>55</sup>

In the late sixteenth century, however, there are clear signs of an erosion of such independence and a reassertion of aristocratic faction and influence at the highest levels of government. With the death of Philip II in 1598 the situation became severe, and any semblance of impartial government collapsed in an orgy of corruption and favoritism under his son. Moreover, as Richard Kagan has shown in a recent and brilliant book, *Students and Society in Early Modern Spain*,<sup>56</sup> Castile's great lawyer-bureaucrats were increasingly part of family dynasties who tried to use their influence to the educational and career advantage of their relatives. Favoritism rather than merit became more and more the source of important government appointments. Thus, government came to be based on the relationships between men, and the kingdom's lawyer-bureaucrats, heretofore the backbone of the rule of law, adopted the aristocratic ideas which supported the new political system. The development of a common value system among great landed magnates and great bureaucrats led as well to a development of common social patterns and to a reduction in the tension between the two groups which had been so

<sup>55</sup>For a fuller discussion of this model of socio-political life, see my dissertation "Despotism, Absolutism, and the Law in Renaissance Spain: Toledo versus the Counts of Belalcázar (1445-1574)" (University of Wisconsin-Madison, 1972) which I am presently revising for publication.

To avoid confusion, it should be noted that no monarch could exclude the aristocrats from government as their social prestige and training made them the natural military leaders as well as the best choices to administer outlying territories or undertake major embassies when no member of the royal house was available. Thus, contrary to older assumptions, the magnates remained politically powerful, and there was all the more reason for monarchs to desire independence from their control. Medieval standards of education were, however, no longer sufficient to qualify for such positions, and this fact brought about potentially difficult changes in values which the aristocracy would seek to minimize for both political and psychological reasons.

<sup>56</sup>(Baltimore: The Johns Hopkins University Press, 1975).

beneficial both to monarchical power and to those on the lower rungs of the social ladder.

For growth of government by personal influence among the lawyer-bureaucrats detrimentally affected the rule of law in another way which Kagan shows. As university positions in the law faculty became important stepping stones to high administrative posts in a system where advancement was not based on merit, scholars vanished from such faculties along with much of the intellectual dynamism which had made sixteenth century Castilian universities major centers for legal and political theory. The academic environment which had produced concerned legal theorists like Avendaño died in the seventeenth century, denying Castile the personnel for any revival of effective political leadership to deal with the great crises of the age. Instead, the kingdom wallowed in a mire of intrigue and corruption until a new dynasty would bring in its own brand of administrative reform.

To this process of value change, hunting was central. As I think he was aware, in writing a book on hunting Avendaño had not sought to deal with an institution at the periphery of social and value conflicts within Renaissance Castile but rather one at the center. I am certain that most noble hunters enjoyed the sport, but hunting also played a major role in easing the aristocracy through its crisis in the period. Hunting could play this role because it had both cultural connotations important to the continuing prestige of the magnates as well as a functional utility in the political style which the aristocracy wished to promote.

In the first place, the great hunt was a traditional aristocratic preserve as Avendaño himself noted.<sup>57</sup> No doubt these associations came from a long tradition of hunting for amusement among Europe's upper classes as well as its strong associations with training for war noted by numerous authors.<sup>58</sup> Participation in the military leadership of society had been the customary foundation for the position and prestige of the magnates, and hunting allowed them to maintain continuity with this tradition even when many aristocrats were pushed, by new military technology, to the margins of martial affairs, at

<sup>57</sup> ff. 28-28v. Sallust's idea that hunting was only for servants (Madden, *A Chapter*, p. 245) was submerged in the Germanic lust for game (Cornelius Tacitus, *Dialogus, Agricola, Germania* [Cambridge: Harvard University Press, 1963], p. 284).

<sup>58</sup> Since Artemis was worshipped by Sparta as the spirit of bravery and courage, this should be no surprise. For just a few examples of the many comments on this theme, see Dame Juliana Berners, *The Boke of Saint Albans* (London: Elliot Stock, 1881), intro. of William Blades; Bujanda, *Compendio*, pp. 3-5; Markham, *Country contentments*, p. 3; Juan Mateos, *Origen y dignidad de la caza 1634* (Madrid: Sociedad de Bibliófilos Españoles, 1928), pp. 9-10; Oppian, "Cynegetica, or The Chase," in *Oppian, Colluthus, Tryphiodorus*, A. W. Mair, ed. (London: William Heinemann, 1928), pp. 7 and 11; Xenophon, "On Hunting," *Scripta Minora* (Cambridge: Harvard University Press, 1925), pp. 373 and 443 (the work may not be by Xenophon; p. vii).

least where actual combat was involved.<sup>59</sup> Hunting, like chivalric literature which enjoyed a Renaissance revival,<sup>60</sup> became an important psychological prop for the great during a period when the role of aristocracy was changing, however prominent the group remained.<sup>61</sup>

Hunting also had long associations with rulership in urban-agricultural civilizations. Avendaño clearly expressed these in his introductory discussion of types of hunting. The first, *Oppressiva* or oppressive hunting, was associated with Nimrod, the mighty hunter of Genesis 10 who became the first king.<sup>62</sup> In his *City in History* Lewis Mumford argues persuasively that the actual origins of urban-agricultural civilization may lie in some process whereby neolithic agricultural villages came under the protection of, or fell under the domination of, paleolithic hunters who became the aggressive nobles of

<sup>59</sup> Thus, in hunting, the aristocracy kept contact with part of the prestige system of the old way of life, and this contact almost certainly kept many members of the group from becoming disoriented in the new social world of the Renaissance. American male plains Indians were denied any such contact with their old world of hunting and war and, therefore, have had much difficulty adjusting to settled, agricultural life. Margaret Mead, *The Changing Culture of an Indian Tribe* (New York: Columbia University Press, 1932), pp. 25-26 and 134-142; Paul Bohannan, *Social Anthropology* (New York: Holt, Rinehart and Winston, 1963), p. 386.

<sup>60</sup> "The chivalric tradition was thus the last refuge in secular thought for a bewildered and bedeviled aristocracy," Ferguson, *The Indian Summer*, p. 32. The humanist educators realized the danger of chivalric literature as a repository of values they opposed. They attacked it, Ronald S. Crane, *The Vogue of Medieval Chivalric Romance During the English Renaissance* (Menasha, Wis.: George Banta, 1919), pp. 11-13 and 18; Ferguson, p. 93; John J. O'Connor, "*Amadis de Gaule*" and its Influence on Elizabethan Literature (New Brunswick, N.J.: Rutgers University Press, 1970), pp. 9-14; Ida Rodríguez Prampolini, *Amadises de América: La Hazaña de Indias como empresa caballeresca* (Mexico: Junta Mexicana de Investigaciones Históricas, 1948), pp. 9-29; Henry Thomas, *Spanish and Portuguese Romances of Chivalry: The Revival of the Romance of Chivalry in the Spanish Peninsula and its Extension and Influence Abroad* (Cambridge: University Press, 1920), *passim*. Or, when the attacks failed to stem its revival, they sought to make use of it, where possible, in their own program, Caspari, *Humanism*, p. 14. It is no surprise that the opponents of humanist educators would recommend that nobles stress hunting and hawking in their educational programs, Ferguson, pp. 215-216.

<sup>61</sup> A similar line of thought might also be used to explain the increased use of the duel of honor (or the revival of tournaments) despite attacks by moralists and lawyers, especially those who were churchmen; see Robert Baldick, *The Duel: A History of Duelling* (London: Chapman & Hall, 1965), pp. 27 and 52; Norman A. Bennetton, *Social Significance of the Duel in Seventeenth Century French Drama* (Baltimore: The Johns Hopkins Press, 1938), pp. 14-17; Frederick R. Bryson, *The Sixteenth-Century Italian Duel: A Study in Renaissance Social History* (Chicago: University of Chicago Press, 1938), pp. xxv-xxvi and 103-119; José J. Rivanera, *Código de Honor Comentado: El duelo en la historia, el derecho y la institución castrense* (Buenos Aires: Círculo Militar Argentino, 1961), pp. 52-56, 98 and 129-134. As with hunting and chivalric values, when Renaissance lawyers wrote about duelling, they wrote more as moralists than as lawyers, Bryson, p. 102. See also Wiley, *The Gentleman*, chapter X ("The Code of Honor"). The well-known hostility of nobles towards laws against duelling, underlined by these authors, is probably also representative of their attitude towards laws directed against their hunting practices.

<sup>62</sup> f. lv.

this new, more complex form of human organization.<sup>63</sup> So strong did the association of rulership with hunting become that Ortega y Gasset tells the story of a Roman crown prince who went to occupy the Persian throne but had to abdicate because the nobles were so hostile to a monarch who did not hunt. "The young man, apparently, had become interested in literature and was beyond hope."<sup>64</sup>

The relationship between political leadership and hunting was even embodied in Castilian law. *Partida* 2, 5, 20, for example, declared that the king should be good at hunting. Not only was hunting good for the health, sound thinking, and the promotion of general well-being, but it helped develop an understanding of warfare which was particularly important for monarchs. All these reasons were very much like those used to justify the important place given hunting in the training of the medieval noble. No traditional monarch could ignore the demands of the hunt as his claims to legitimacy rested so much on the symbols embodied in aristocratic practices.<sup>65</sup>

Avendaño himself put considerable stress on the appropriateness and acceptability of hunting for monarchs and their great vassals.<sup>66</sup> He was a social conservative and in no mood to challenge norms dear to his superiors as long as these were within the law.

But hunting was not just a matter of social legitimization and psychological support for the aristocracy. It also played a central role in strengthening the bonds of personal connection through which the great wished to exercise

<sup>63</sup> Lewis Mumford, *The City in History: Its Origins, Its Transformations, and Its Prospects* (New York: Harcourt, Brace & World, 1961), pp. 21-32. This point may seem peripheral to my subject, but it strikes me that the hypothesis Mumford presents suggests a useful perspective on the terms under which Germanic culture became part of western civilization. Only by keeping in mind the elements of Germanic tribal culture which contributed to the elite culture of medieval Europe can one understand how the widespread Roman upperclass disapproval of hunting as a servile task disappeared or the tenacity with which Renaissance aristocrats held onto the sport as a special characteristic of their status. On the Roman view of hunting, see Claus Uhlig, "The Sobbing Deer," pp. 89-90. Given such a long connection, perhaps we can call noble hunting part of the Braudelian deep levels of the historical process to which historians should pay more attention.

<sup>64</sup> José Ortega y Gasset, *Meditations on Hunting* (Wescott, N.Y.: Scribner's, 1972), p. 35. See the comments of Round, "Renaissance Culture," p. 214; the Persian situation was apparently very similar to that of Renaissance Castile, indicating perhaps that we are dealing with a level of political and social conflict embedded very deeply in the structure of urban-agricultural society.

<sup>65</sup> See S. N. Eisenstadt, *The Political Systems of Empires* (London: Collier-Macmillan, 1963), p. 150, for a good discussion of the importance to a ruler of his role as great aristocrat. The aristocracy was also the one secular group which maintained some sense of continuity in society; see Peter Laslett, *The World We Have Lost* (London: Methuen, 1965), p. 8. For an early modern comment on the importance of royal hunting, see Andrés Mendo, *Príncipe perfecto y ministros aiustados, documentos políticos y morales*. (Lyon: Horacio Boissat and George Remeus, 1662), D. 78, num. 8. See also Albert S. Barrow, *Monarchy and the Chase* (London: Eyre and Spottiswoode, 1948), p. 2.

<sup>66</sup> ff. 28-28v where he cites *Part.* 2, 5, 20.

influence in Castilian society. Like the old ties of feudal vassalage, Renaissance patron-client relationships were strongest where personal contact was maintained.<sup>67</sup> When wars were not available, the monarchs of China's Shang dynasty organized hunts to promote the association in joint enterprises which tied their vassals to them.<sup>68</sup> To be really successful and to sustain itself through temporary political or social setbacks for the patron, the relationship had to have something of comradeship in it, at least to the extent that this was possible with social inferiors. For most of Castile's Renaissance aristocracy, this *Frontgemeinschaft* could only be found in the hunt, so far removed were the majority from the tumult of war. Moreover, as Castilian monarchs were great hunters, the hunt gave aristocrats ample opportunity for close contact with the king. Powerful monarchs could use such contacts to calm the fears of the great that adherence to the rule of law would undermine their social position. But if arbitrary government in violation of the rule of law were the norm, such close contact would encourage the lower social orders to think that decisions were made under aristocratic influence and thereby strengthen the political power of the great lords. Weak monarchs tended to be drawn more and more into hunting as well as into the politics of favoritism and factionalism. One thinks of all those Velázquez portraits of an obtuse-looking Philip IV out hunting.<sup>69</sup>

Thus a hunting largely uncontrolled by the moral or legal values championed by Avendaño triumphed in Castile and with it a political order which was the antithesis of his more general view of society. The political and economic position of those socially inferior to the great Castilian landed magnates and who thus had the most to gain from the rule of law was too weak to allow challenge to aristocratic conceptions of government once the aristocracy had adapted to the changed conditions and once the monarchy had fallen into the hands of men unwilling (like Philips III and IV) or unable (like Charles II) to exercise power. Devotion to the rule of law withered in Castile along with the intellectual tradition which had given it vitality.

The last of Castile's great Renaissance lawyers, Juan de Solórzano y Pereira, tried to give expression to some of the same feelings about hunting as Avendaño had. He used the emblem book, since Alciato one of the important vehicles for the humanist-lawyer's exhortation of society. In his *Emblemata centum, regio politica* of 1651 he ridiculed devotion to hunting with a play on the story of Acteon turning into a stag and being chased by his own dogs. Emblem and poem were followed by a long commentary, but the aristocracy had long since outgrown its need for education by those thinkers who wanted to build a new society on a foundation of legal culture.<sup>70</sup> With renewed

<sup>67</sup>On medieval ties see Bloch, *Feudal Society*, pp. 236 and 238.

<sup>68</sup>Joseph R. Levenson and Franz Schurmann, *China: An Interpretive History, from the beginnings to the fall of Han* (Berkeley: University of California Press, 1969), p. 22.

<sup>69</sup>Ludwig Pfandl calls him, "este nuevo Nimrod": *Cultura y costumbres*, p. 59.

self-confidence and secure in their position of social and political leadership, the magnates could run Castile their way and did to the end of the Habsburg era. Solórzano's book was the last of its kind while Avendaño's was misunderstood even by the late seventeenth century lawyers like Bujanda who bothered to read it.

<sup>70</sup> Ioannis de Solorzano Pereira, *Emblemata centum, regio politica* (n.p.: n.p., after 1651). A vernacular translation of the work, which I have not seen, was published in Valencia in 1659; see Mateos, *Origen*, pp. ix-x. I have only seen the Alciato emblem on the same story in a vernacular translation: *Los Emblemas de Alciato* (Lyon: Guillaume Rouillé, 1549). There is a short but inadequate biography of Solórzano y Pereira by Manuel Arizmendi Simancas in La Real Academia de Jurisprudencia y Legislación al Instituto de Derecho Internacional, *Jurisconsultos Españoles: Biografías de los ex-Presidentes de la Academia y de los jurisconsultos anteriores al siglo XX inscritos en sus lápidas* (Madrid: Hijos de M. G. Hernández, 1911), II, 53-58.

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